

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of Discipline of

TODD M. LEVENTHAL, ESQ.
Nevada Bar No. 8543

Supreme Court Case No.: 83245
Electronically Filed
Nov 22 2021 04:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**SECOND SUPPLEMENTAL RECORD OF DISCIPLINARY
PROCEEDINGS,
PLEADINGS AND TRANSCRIPT OF HEARING
(Vol. IV)**

LIPSON NEILSON, P.C.
DAVID A. CLARK
Nevada Bar No. 4443
9900 Covington Cross Dr., Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 (Telephone)
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*Counsel for Appellant
Todd M. Leventhal, Esq.*

STATE BAR OF NEVADA
GERARD GOSIOCO, ESQ.
Nevada Bar No. 14371
3100 West Charleston Blvd., Suite 100
Las Vegas, Nevada 89102

Counsel for the State Bar of Nevada

On July 21, 2021, the State Bar of Nevada filed the Record of Disciplinary Proceedings, Pleadings and Transcript of Hearing (“Record on Appeal” or “ROA”), Volumes I and II, relative to the Formal Hearing held May 20, 2021, in the above-captioned matter.

Pursuant to subsequent proceedings held September 27, 2021, to consider Mr. Leventhal’s Motion for New Trial filed November 10, 2021, the State Bar of Nevada filed a Supplemental Record of Disciplinary Proceedings, Pleadings and Transcript of Hearing on November 12, 2021. While not titled as such, the Supplemental ROA is in effect Volume III.

Mr. Leventhal notes that the Record on Appeal filed with this Court to date does not include the Southern Nevada Disciplinary Board Panel’s May 19, 2021, Order Denying Respondent’s Motion to Reconsider on Order Shortening Time, nor his Reply in Support of his Motion for New Trial filed on September 02, 2021. Additionally, there are several emails reflecting the Parties’ respective arguments and reasoning in support of the motion practice in the disciplinary proceedings that are informative to this Court’s review and to Mr. Leventhal’s briefing before this Court.

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Accordingly, Mr. Leventhal files this second supplemental record on appeal (in effect, Volume IV) to incorporate the foregoing documents into the record.

Respectfully submitted, this 22nd day of November, 2021.

LIPSON NEILSON P.C.

By: /s/ David A. Clark

DAVID A. CLARK
Nevada Bar No. 4443
9900 Covington Cross Dr., Suite 120
Las Vegas, Nevada 89144
Attorney for Todd M. Leventhal, Esq.

SECOND SUPPLEMENT AMENDED INDEX

Initial Record in Appeal (Volume 1)

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| Certificate of Service-Record on Appeal Dated July 20, 2021 | ROA Page 0395 | I |
| Complaint, Designation of Hearing Panel Members, and Declaration of Mailing Filed December 4, 2020 | ROA Page 0001-0013 | I |
| Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing Filed July 13, 2021 | ROA Page 0381-0387 | I |
| Notice of Filing Filed May 19, 2021 | ROA Page 0356-0366 | I |
| Notice of Formal Hearing Filed March 31, 2021 | ROA Page 0237-0238 | I |
| Notice of Hearing on Respondent's Motion Filed May 4, 2021 | ROA Page 0250-0251 | I |
| Notice of Telephonic Initial Case Conference Filed March 3, 2021 | ROA Page 0093-0094 | I |
| Order Filed February 10, 2021 | ROA Page 0076-0080 | I |
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| Order Appointing Formal Hearing Panel Filed March 25, 2021 | ROA Page 0234-0236 | I |
| Order Appointing Hearing Panel Chair Filed January 5, 2021 | ROA Page 0035-0037 | I |

| | | |
|---|-----------------------|---|
| Order Denying Respondent's Motion for Summary Judgment Filed February 12, 2021 | ROA Page 0081-0085 | I |
| Respondent's Final Disclosures of List Witnesses and Documents Filed April 21, 2021 | ROA Page 0244-0249 | I |
| Respondent's First Supplemental to Final Disclosures of List of Witnesses and Documents Filed May 14, 2021 | ROA Page 0343-0351 | I |
| Respondent's Initial Disclosures of List of Witnesses and Documents Filed March 24, 2021 | ROA Page 0108-0231 | I |
| Respondent's Motion for Summary Judgment Filed December 31, 2020 | ROA Page 0014-0034 | I |
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| Respondent's Objection to State Bar Exhibits Filed May 7, 2021 | ROA Page 0266-0269 | I |
| Respondent's Offer of Judgment Pursuant to SCR 113 and NCRP 68 Filed March 22, 2021 | ROA Page 0232-0233 | I |
| Respondent's Reply in Support of Motion for Summary Judgment Filed January 20, 2021 | ROA Page 0072-0075 | I |
| Respondent's Trial Brief Filed May 6, 2021 | ROA Page 0252-0265 | I |
| Scheduling Order Filed March 15, 2021 | ROA Page 0095-0099 | I |
| State Bar of Nevada's Final Disclosures of Documents and Witnesses Filed April 19, 2021 | ROA Page 0239-0243 | I |

| | | |
|--|-----------------------|---|
| State Bar of Nevada's Initial Disclosures of Documents and Witnesses Filed March 16, 2021 | ROA Page 0100-0104 | I |
| State Bar of Nevada's Memorandum of Costs Filed July 19, 2021 | ROA Page 0388-0394 | I |
| State Bar of Nevada's Opposition to Respondent's Motion for Summary Judgment Filed January 15, 2021 | ROA Page 0038-0071 | I |
| State Bar of Nevada's Supplemental Disclosures of Documents and Witnesses Filed May 7, 2021 | ROA Page 0270-0342 | I |

Transcript and Exhibits (Volume II)

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|---|-----------------------|-----------------|
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| State Bar's Exhibit 11 | ROA Page 0795-0809 | II |
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| | | |
|------------------------|-----------------------|----|
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| State Bar's Exhibit 19 | ROA Page 0892-0905 | II |

Supplemental ROA (presumptive Volume III)

| Description | Page Nos. |
|--|---------------------|
| Amended State Bar of Nevada's Memorandum of Costs Filed November 12, 2021 | ROA Page 125-130 |
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| Decision and Order Regarding Respondent's Motion for New trial Filed September 13, 2021 | ROA Page 116-118 |
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| Order Denying Respondent's Motion for New Trial Filed November 10, 2021 | ROA Page 121-124 |
| Respondent's Motion for New Trial Filed July 21, 2021 | ROA Page 001-107 |
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Supplemental ROA - TRANSCRIPTS & EXHIBITS (Presumptive Volume III)

| Description | Page Nos. |
|--|---------------------|
| Description Page Nos. Transcript of Proceedings | ROA Page 132-150 |
| Respondent's Exhibit G- Statement of Zan Mitrov | ROA Page 151 |

**SECOND SUPPLEMENTAL RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS AND TRANSCRIPT OF HEARING
(Vol. IV)**

| Descriptions | Page Nos. | Vol. |
|--|------------------------|-------------|
| Declaration of David Clark Dated May 13, 2021 | Supp2 ROA 0009-0032 | IV |
| Email from D. Clark to State Bar of Nevada Dated March 20, 2021 | Supp2 ROA 0001-0003 | IV |
| Email from D. Clark to T. Edwards Dated April 28, 2021 | Supp2 ROA 0004-0008 | IV |
| Email from D. Clark to T. Edwards Dated May 18, 2021 | Supp2 ROA 0033-0035 | IV |
| Email from D. Clark to State Bar of Nevada Dated May 18, 2021 | Supp2 ROA 0036-0040 | IV |
| Order on Respondent's Motion to Reconsider on Order Shortening Time Filed May 19, 2021 | Supp2 ROA 0041-0044 | IV |
| Reply in Support of Respondent's Motion for New Trial Submitted for filing September 02, 2021 | Supp2 ROA 0045-0057 | IV |

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of LIPSON NEILSON P.C. and that on the 22nd day of November, 2021, a true and correct copy of the foregoing SECOND SUPPLEMENTAL RECORD OF DISCIPLINARY PROCEEDINGS, PLEADINGS, AND TRANSCRIPT OF HEARING (Vol. IV) in Case No. 83245 was filed and served electronically with the Clerk of the Nevada Supreme in accordance with the master service list as follows:

STATE BAR OF NEVADA
GERARD GOSIOCO, ESQ.
Nevada Bar No. 14371
3100 West Charleston Blvd., Suite 100
Las Vegas, Nevada 89102

/s/ Debra Marquez

An employee of Lipson Neilson P.C.

Case Nos.: OBC20-0670 and OBC20-0706

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
TODD LEVENTHAL, ESQ.,)
Nevada Bar No. 8543)
Respondent.)

DECLARATION OF DAVID A. CLARK

DAVID A. CLARK, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice in the State of Nevada, and counsel of record for Respondent, Todd Leventhal, in this action. I make this Declaration at or near the time of the events and remarks described herein. I have personal knowledge of the information contained in this Declaration and would qualify as a competent witness if called upon to testify to the facts contained herein.

2. All of the referenced and attached exhibits are true and correct copies of what they are represented to be and what I received in the course of the events described below.

3. On May 6, 2021, I participated in a telephone hearing on Respondent's Motion for Summary Judgment, with Chair, Thomas Edwards, and Asst. Bar Counsel Gerard Gosioco. Before ruling, the Chair directed that the State Bar attempt to obtain a declaration from Zan Mitrov, or in the alternative, submit a declaration detailing why the State Bar was unable to obtain the same.

4. The parties prepared a proposed Order with this language for the Chair. (*See,*

1 **Exhibit 1**, email and attached draft of Order in Word).

2 5. On May 12, 2021, Mr. Gosioco emailed the Chair (with copy to me) and requested
3 clarification on whether the Chair was holding the motion pending the State Bar's response to the
4 request for a declaration, or whether the MSJ is denied without prejudice. By return email 2
5 minutes later, Mr. Edwards responded that, "I'd like to see the requested declaration before
6 issuing a formal ruling." Mr. Gosioco responded nine (9) minutes later, acknowledging same
7 (See, **Exhibit 2**, email thread).

8
9 6. The telephone Pre-Hearing Conference was scheduled for 10:00 am on Thursday,
10 May 13, 2021. Prior to that, by email time-stamped 9:33 a.m., Mr. Gosioco emailed to Mr.
11 Edwards (with copy to me, Kristi Faust of the State Bar, and Debra Marquez, my assistant), an
12 Adobe Sign email with an attached executed Declaration from Mrs. Louise Watson, State Bar
13 investigator. See, **Exhibit 3**, email and **Exhibit 4**, attached Declaration signed electronically by
14 Mrs. Watson.

15
16 7. The Declaration contains the following statements:

17 9. Mr. Mitrov confirmed that he submitted the grievance and the documents
18 attached thereto.

19 10. Mr. Mitrov confirmed that he retained Mr. Leventhal as his attorney, that
20 he let Mr. Leventhal borrow his Viper, that he asked Mr. Leventhal multiple times
21 via text to return the Viper, and he had to pay over \$5,000 to rent a vehicle as he
22 didn't have his Viper.

23 11. Mr. Mitrov agreed to sign a declaration regarding certain facts in this
24 case.

25 12. I have emailed a proposed declaration to Mr. Mitrov and am awaiting his
26 response.

27 8. At 10:00 a.m. this morning, I participated in a telephone call for the Pre-Hearing
28 Conference with Chair, Thomas Edwards, Asst. Bar Counsel Gerard Gosioco, and, upon
information and belief, Kristi Faust.

1 9. After Mr. Gosioco described the Declaration, I asked if there were any emails
2 between Mr. Mitrov and Mrs. Watson surrounding these communications. Mr. Gosioco stated
3 that there was an email from Mr. Mitrov, in which he said (per Mr. Gosioco), that “he was
4 retaining counsel.” When I stated to Mr. Gosioco, “and this is all that was in the email?” he
5 responded, “correct.” I then requested a copy of the email.
6

7 10. By email the same day, time-stamped 10:26 a.m. Mr. Gosioco forwarded to me
8 what he represented to be Mr. Mitrov’s email to Mrs. Watson at 2:44 pm May 12, 2021, which
9 stated,

10 -----Original Message-----

11 From: MTMK LOGISTICS <zan@m2lvnv.com>
12 Sent: Wednesday, May 12, 2021 2:44 PM
13 To: Louise Watson <LouiseW@nvbar.org>
14 Subject: Zan Mitrov

15 Miss. Watson,

16 I will hire a lawyer for this matter. Reasoning for that
17 decision is that I want to be left alone so I can continue
18 doing my daily activities with the business.

19 Again I have nothing else to seek from MrLeventhal, He gave
20 me my vehicle within 48 hours as I asked also he gave me
21 money to cover my rental cost from June 5th to June 30th.

22 Thank you

23 Sent from my iPhone

24 See, **Exhibit 5**, email from Mr. Gosioco to me.

25 11. At 11:04 a.m., I sent Mr. Gosioco an email (See **Exhibit 6**) expressing my belief
26 that the “email contradicts what is represented in Mrs. Watson’s sworn declaration, specifically at
27 paragraphs 10 and 11. [¶] In addition, before the Chair you represented that the only information
28 contained in the email was that Mr. Mitrov was seeking to retain counsel. I asked you, ‘And that

1 is the only information in the email,' to which you responded, 'correct.' That is clearly not the
2 case."

3 12. I emailed the Chair (with an attached copy of Mr. Mitrov's email) and requested a
4 conference call, which happened at 12 noon, using the same call-in number as the prior Pre-
5 Hearing Conference. **(Exhibit 5).**

6
7 13. At 12 noon, I participated in a telephone call with Chair, Thomas Edwards, Asst.
8 Bar Counsel Gerard Gosioco, and, upon information and belief, Kristi Faust.

9 14. At this call, I expressed my belief that the Declaration is inconsistent with Mr.
10 Mitrov's email and with Mr. Gosioco's representation of the contents of it at the 10:00 a.m. call.

11 15. In response to my questions, Mr. Gosioco stated that the email came after Mrs.
12 Watson's conversation with him. However, Mr. Gosioco stated she received the email before
13 preparing the Declaration.

14 16. For his part, Mr. Gosioco stated that he had only read the first line or so of the
15 email before describing it to the Chair and me. He also believed that other evidence corroborated
16 Mrs. Watson's recitation of facts, even though she was purportedly reciting facts that Mr. Mitrov
17 told in their phone call.

18 19. On Reply, I asked for dismissal of the Mitrov grievance based on either: (1)
19 prosecutorial misconduct for material misrepresentations, or (2) Summary Judgment because the
20 State Bar's declaration and Mr. Mitrov's email failed to carry the State Bar's burden to oppose
21 our Motion for Summary Judgment.

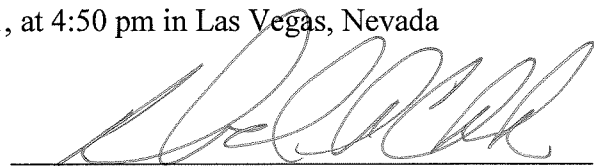
22 18. The Chair stated that he did not believe he had sufficient evidence before him to
23 find malfeasance on the part of the State Bar. He did indicate a willingness to consider it in the
24 pending motion for summary judgment.

25 19. In response to his questions, Mr. Gosioco indicated the State Bar would continue
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28

1 its efforts to reach Mr. Mitrov to secure a declaration. He estimated that he could get within the
2 next day.

3 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
4 is true and correct to the best of my knowledge.

5 Executed this 13th day of May, 2021, at 4:50 pm in Las Vegas, Nevada

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7
8 
9 DAVID A. CLARK
Nevada Bar No. 4443

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 1

David Clark

From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Tuesday, May 11, 2021 3:32 PM
To: David Clark
Cc: Kristi Faust
Subject: Proposed Order
Attachments: Leventhal, Todd M. MSJ Order (OBC20-0670; OBC20-0706).docx

Importance: High

Good Afternoon Mr. Clark,

Attached is the proposed order for the telephonic hearing that was conducted last Thursday, May 6, 2021. Please let me know if you approve of the same before we send it to Mr. Edwards for his signature.

Gerard Gosioco

Assistant Bar Counsel
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
Telephone: (702) 382-2200
www.nvbar.org



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The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to gerardg@nvbar.org. Thank you for your patience and cooperation during this difficult time.

Case Nos: OBC20-0670; OBC20-0706

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

| | |
|--------------------------|---|
| STATE BAR OF NEVADA, |) |
| |) |
| Complainant, |) |
| vs. |) |
| |) |
| TODD M. LEVENTHAL, ESQ., |) |
| Nevada Bar No. 8543 |) |
| |) |
| Respondent. |) |

ORDER

On December 30, 2020, the Respondent, TODD M. LEVENTHAL, by and through his counsel of record, DAVID A. CLARK, Esq., filed a Motion for Summary Judgment in the above-entitled matters. On January 15, 2021, the State Bar of Nevada, by and through Assistant Bar Counsel, Gerard, Esq., filed an Opposition to Respondent's Motion for Summary Judgment. On May 6, 2021, at 11:00 a.m., the parties held a telephonic hearing on Respondent's motion.

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Supp2 ROA 0016

1 **IT IS HEREBY FURTHER ORDERED** that the State Bar attempt to obtain a
2 declaration from Zan Mitrov, or in the alternative, submit a declaration detailing why the State
3 Bar was unable to obtain the same.

4 Dated this _____ day of May 2021.

5
6 STATE BAR OF NEVADA
 SOUTHERN NEVADA DISCIPLINARY BOARD

7
8 By: _____
 F. Thomas Edwards, Esq.
 Panel Chair
9

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing
ORDER was served via email to:

1. F. Thomas Edwards, Esq. (Panel Chair): tedwards@nevadafirm.com
2. David A. Clark, Esq. (Counsel for Respondent): dclark@lipsonneilson.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

Dated this _____ day of May 2021.

Kristi Faust, an employee
of the State Bar of Nevada

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 2

David Clark

From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Wednesday, May 12, 2021 1:46 PM
To: Tom Edwards
Cc: David Clark; Kristi Faust; Debra Marquez
Subject: RE: State Bar of Nevada v. Todd M. Leventhal MSJ Order

Understood. Thank you so much for your quick response.

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Wednesday, May 12, 2021 1:37 PM
To: Gerard Gosioco <gerardg@nvbar.org>
Cc: David Clark <DClark@lipsonneilson.com>; Kristi Faust <KristiF@nvbar.org>; Debra Marquez <DMarquez@lipsonneilson.com>
Subject: RE: State Bar of Nevada v. Todd M. Leventhal MSJ Order

I'd like to see the requested declaration before issuing a formal ruling.

F. Thomas Edwards
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912
400 S. 4th Street, Suite 300, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

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From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Wednesday, May 12, 2021 1:35 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Cc: David Clark <DClark@lipsonneilson.com>; Kristi Faust <KristiF@nvbar.org>; Debra Marquez <DMarquez@lipsonneilson.com>
Subject: State Bar of Nevada v. Todd M. Leventhal MSJ Order

Good Afternoon Mr. Edwards,

I sent Mr. Clark a proposed order on the Respondent's hearing held last week. We agreed on its contents but wanted to clarify whether you are holding the motion pending the State Bar's response to the request for a declaration, or whether the MSJ is denied without prejudice. Thank you for your time, and I look forward to hearing from you.

Gerard Gosioco

Assistant Bar Counsel
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
Telephone: (702) 382-2200
www.nvbar.org



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The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to gerardg@nvbar.org. Thank you for your patience and cooperation during this difficult time.

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 3

David Clark

From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Thursday, May 13, 2021 9:33 AM
To: Tom Edwards
Cc: David Clark; Kristi Faust; Debra Marquez
Subject: FW: Louise Watson has shared the Watson Declaration with you
Attachments: Watson Declaration.pdf

Good Morning Mr. Edwards,

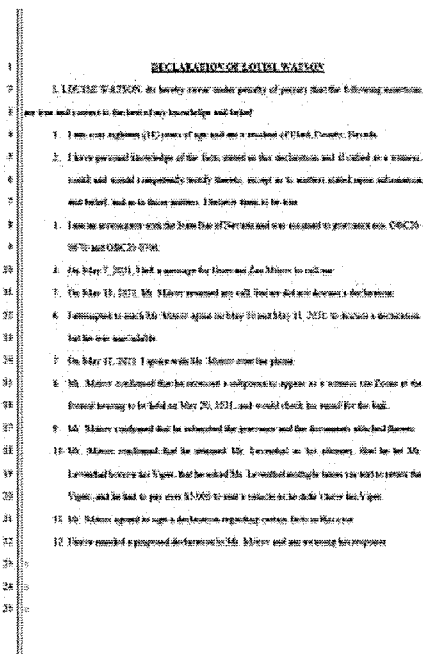
Attached is the declaration of Louise Watson, an investigator with the State Bar. Please let me know if you have any trouble opening the document. Thank you.

Gerard Gosioco

From: Louise Watson <adobesign@adobesign.com>
Sent: Thursday, May 13, 2021 9:30 AM
To: Gerard Gosioco <gerardg@nvbar.org>
Subject: Louise Watson has shared the Watson Declaration with you



Adobe Sign



2 pages

Attached is your copy of the Watson Declaration

Attached is your copy of the **Watson Declaration**, from: Louise Watson (louisew@nvbar.org) for your records.

Click here to view this document online in your Adobe Sign account.

Why use Adobe Sign:

- Exchange, Sign, and File Any Document. In Seconds!
- Set-up Reminders. Instantly Share Copies with Others.
- See All of Your Documents, Anytime, Anywhere.

To ensure that you continue receiving our emails, please add adobesign@adobesign.com to your address book or safe list.

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 4

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1 I declare under penalty of perjury under the laws of the State of Nevada¹ that the foregoing is
2 true and correct.

3 FURTHER YOUR DECLARANT SAYETH NAUGHT.

4 EXECUTED this 13th day of May, 2021.

5
6 *Louise Watson*

7 LOUISE WATSON, Declarant
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25 ¹ NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration; exception. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form.

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 5

David Clark

From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Thursday, May 13, 2021 10:26 AM
To: David Clark
Cc: Louise Watson; Kristi Faust; Debra Marquez
Subject: FW: Zane Mitrov

Mr. Clark,

Attached is yesterday's email from Mr. Mitrov to Ms. Watson.

Gerard Gosioco

-----Original Message-----

From: MTMK LOGISTICS <zane@m2lvnv.com>
Sent: Wednesday, May 12, 2021 2:44 PM
To: Louise Watson <LouiseW@nvbar.org>
Subject: Zane Mitrov

Miss. Watson,

I will hire a lawyer for this matter. Reasoning for that decision is that I want to be left alone so I can continue doing my daily activities with the business.

Again I have nothing else to seek from MrLeventhal, He gave me my vehicle within 48 hours as I asked also he gave me money to cover my rental cost from June 5th to June 30th.

Thank you

Sent from my iPhone

State Bar of Nevada v. Todd Leventhal, Esq,

Case Nos.: OBC20-0670 and OBC20-0706

Declaration of David A. Clark
May 13, 2021

EXHIBIT 6

David Clark

From: David Clark
Sent: Thursday, May 13, 2021 11:04 AM
To: Gerard Gosioco
Cc: Debra Marquez
Subject: SBN v. Leventhal Case Nos.: OBC20-0670 and OBC20-0706
Attachments: FW: Louise Watson has shared the Watson Declaration with you; FW: Zan Mitrov

State Bar of Nevada v. Todd Leventhal
Case Nos.: OBC20-0670 and OBC20-0706

Mr. Gosioco:

I have reviewed the email from Zan Mitrov to Mrs. Watson. I believe that this email contradicts what is represented in Mrs. Watson's sworn declaration, specifically at paragraphs 10 and 11.

In addition, before the Chair you represented that the only information contained in the email was that Mr. Mitrov was seeking to retain counsel. I asked you, "And that is the only information in the email," to which you responded, "correct." That is clearly not the case.

I am requesting an immediate conference call with the Panel Chair on the basis that the State Bar has materially misrepresented the statements of Mr. Mitrov to Mrs. Watson and his anticipated testimony at the hearing.

David A. Clark

Lipson|Neilson

9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: dclark@lipsonneilson.com
Website: www.lipsonneilson.com

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From: David Clark
Sent: Saturday, March 20, 2021 2:42 PM
To: 'Gerard Gosioco' <gerardg@nvbar.org>
Cc: Kristi Faust <KristiF@nvbar.org>; Debra Marquez <DMarquez@lipsonneilson.com>
Subject: RE: State Bar of Nevada v. Todd M. Leventhal (OBC20-0670; OBC20-0706)

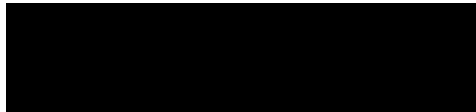
Mr. Gosioco:

Well, this is a first for me.

1. Respondent declines to waive the peremptory challenge and requests a new Panel Chair.

2. Respondent intends to seek re-hearing on our Motion to Summary Judgment.
 - a. Please let me know if the State Bar will stipulate to a re-hearing.
 - b. To that end, I request that the new Panel Chair NOT be apprised of the prior decision by Mr. Cook.
 - c. If not, I request that the Board Chair hear the motion for re-hearing and that, if granted, the new Panel Chair also NOT be apprised that Respondent sought re-hearing.

David A. Clark



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From: Gerard Gosioco <gerardg@nvbar.org>
Sent: Friday, March 19, 2021 12:16 PM
To: David Clark <DClark@lipsonneilson.com>
Cc: Kristi Faust <KristiF@nvbar.org>
Subject: State Bar of Nevada v. Todd M. Leventhal (OBC20-0670; OBC20-0706)

Good Afternoon Mr. Clark,

It has come to our attention that our assigned Panel Chair, Marc Cook, was listed on your peremptory challenges. Are you willing to waive any defects with Mr. Cook continuing to preside as Panel Chair, or would you like a new Panel Chair appointed? If you would like us to find a new Panel Chair, we will find one who is available on the dates listed in our Scheduling Order.

Gerard Gosioco

Assistant Bar Counsel
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
Telephone: (702) 382-2200
www.nvbar.org



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The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to gerardg@nvbar.org. Thank you for your patience and cooperation during this difficult time.

From: David Clark
Sent: Wednesday, April 28, 2021 5:39 PM
To: 'Tom Edwards' ; Kristi Faust
Cc: Sandy Sell ; Debra Marquez ; Gerard Gosioco ; Belinda Felix ; Sonia Del Rio
Subject: RE: State Bar of Nevada vs. Leventhal

Yes, I would like a hearing.

David A. Clark

[REDACTED]
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Las Vegas, Nevada 89144-7052
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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Wednesday, April 28, 2021 5:35 PM

To: David Clark <DClark@lipsonneilson.com>; Kristi Faust <KristiF@nvbar.org>

Cc: Sandy Sell <ssell@nevadafirm.com>; Debra Marquez <DMarquez@lipsonneilson.com>; Gerard Gosioco <gerardg@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>

Subject: RE: State Bar of Nevada vs. Leventhal

Mr. Clark and Mr. Gosioco,

My mistake. I wasn't planning on considering the motion until the pre-hearing conference. I've reviewed the motion, opposition and reply. Here are my preliminary thoughts:

1. Given the lack of discovery in a disciplinary matter, it does not seem that summary judgment works in the context of disciplinary matters. Summary judgment is dependent on the ability to conduct discovery. For example, if the State Bar needs the sworn testimony of the respondent to oppose a respondent's summary judgment, but does not have the ability to take the respondent's deposition to obtain that testimony, the Chair would be required to grant summary judgment under Respondent's interpretation. That appears to lead to an absurd result.
2. Given the lack of an answer on file, it appears that Respondent is treating the motion as one allowed by DRP 15, which does not include motions for summary judgment.
3. If the motion is treated as one to dismiss, it appears the State Bar has properly alleged violations of RPC 1.8.
4. If the motion is treated as one for summary judgment, it appears that Respondent's declaration confirms that he knowingly acquired a possessory interest adverse to his Ms. Sosa-Avila when he states: "Mrs. Sosa did not have any money that day but said that she could drop off some collateral so that I could start on her case. I agreed to accept collateral while she came up for the money to pay attorney fees." See Leventhal Dec., paragraph 3. Taking property as collateral would appear to be taking a possessory interest adverse to Respondent's client, triggering the obligations of RPC 1.8.

5. The fact that the collateral may have been stolen should not relieve Respondent of his obligations under RPC 1.8. At the time Respondent accepted the property as collateral, he did not know the property was stolen, and it appears that he should have complied with the requirements of RPC 1.8 in advance.
6. If the motion is treated as one for summary judgment, and if I accept Mr. Mitrov's complaint to the State Bar as evidence at this stage of the proceeding given the inability to take a deposition, it appears there is a question of fact about whether Respondent's possession of the Viper was adverse to Mr. Mitrov. Per the complaint, Mr. Mitrov requested the return of the Viper in early January, but did not receive it back for many months later.

Would the parties like to schedule a hearing to argue the motion?

Thanks,
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912 Tel: 775.851.8700 | Fax: 775.851.7681
400 S. 4th Street, Suite 300, Las Vegas NV 89101 800 S. Meadows Parkway, Suite 800, Reno NV 89521

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From: David Clark <DClark@lipsonneilson.com>
Sent: Tuesday, April 20, 2021 5:19 PM
To: Kristi Faust <KristiF@nvbar.org>; Tom Edwards <tedwards@nevadafirm.com>
Cc: Sandy Sell <ssell@nevadafirm.com>; Debra Marquez <DMarquez@lipsonneilson.com>; Gerard Gosioco <gerardg@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>
Subject: RE: State Bar of Nevada vs. Leventhal

Mr. Edwards and Mr. Gosioco:

I am following up on the status of Respondent's Motion for Summary Judgment. I have not seen a decision or notice of hearing.

Thank you.

David A. Clark



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From: Kristi Faust <KristiF@nvbar.org>
Sent: Monday, March 22, 2021 2:58 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Cc: Sandy Sell <ssell@nevadafirm.com>; David Clark <DClark@lipsonneilson.com>; Debra Marquez <DMarquez@lipsonneilson.com>; Gerard Gosioco <gerardg@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>
Subject: State Bar of Nevada vs. Leventhal

Mr. Edwards,

Please find attached the Respondent's Motion for Summary Judgment, the State Bar's Opposition, and the Respondent's Reply in Support.

Sincerely,

Kristi A. Faust
Hearing Paralegal
Office of Bar Counsel



State Bar of Nevada
3100 W. Charleston Blvd., Suite 100
Las Vegas, NV 89102
Phone: (702) 317-1461
Fax: (702) 385-8747
www.nvbar.org

The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to kristif@nvbar.org. Thank you for your patience and cooperation during this difficult time.

From: David Clark
Sent: Tuesday, May 18, 2021 4:13 PM
To: Gerard Gosioco; Tom Edwards
Cc: Kristi Faust; Debra Marquez
Subject: RE: Louise Watson has shared the Declaration re Mitrov with you

Messrs. Edwards and Gosioco:

The State Bar's proffered Declaration by Mrs. Watson fails to establish a genuine issue of material fact to defeat Respondent's Motion for Summary Judgment, even with an additional 12 days to do so.

Moreover, the chronology of the Bar's interaction with Mr. Mitrov demonstrates his last position that he will not submit a Declaration or, I would proffer, appear at the hearing.

Indeed, the fact that Mr. Mitrov apparently "reviewed" the Adobe Sign document indicates that he received it, reviewed its substance, and declines to testify to that substance. The State Bar cannot assert that it remains unclear if Mr. Mitrov might testify to the facts of the declaration or that he is simply unreachable at this time.

Respondent submits that the State Bar, on the eve of trial, has not met its burden under NRCP 56 to defeat Respondent's Motion for Summary Judgment. Further, based upon Mr. Mitrov's apparent unwillingness to cooperate in this hearing, the State Bar will not be able to meet its burden of clear and convincing evidence under SCR 105(2)(f), which provides,

Rules of evidence; support of panel's decision. The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel. Evidentiary rulings shall be made by the chair of the panel, if one has been designated, or by the chair of the appropriate disciplinary board prior to such a designation. The findings of the panel must be supported by clear and convincing evidence.

Based upon the foregoing, Respondent again moves and requests an Order from the Chair granting Respondent summary judgment on Grievance No. OBC20-0706/Zan Mitrov.

David A. Clark

Lipson|Neilson

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From: Gerard Gosioco
Sent: Tuesday, May 18, 2021 3:47 PM
To: Tom Edwards
Cc: David Clark ; Kristi Faust ; Debra Marquez
Subject: FW: Louise Watson has shared the Declaration re Mitrov with you

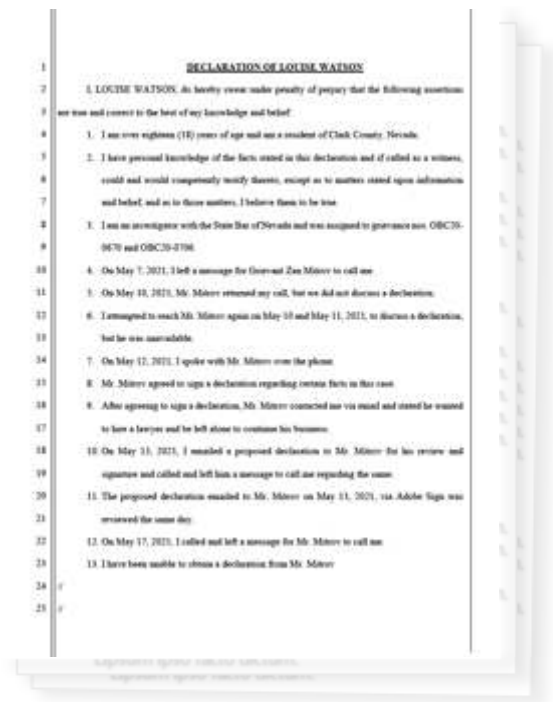
Good Afternoon,

Attached is the declaration of Ms. Watson stating that she was unable to obtain a declaration from Mr. Mitrov. If you have any questions or concerns, please feel free to contact me at any time. Thank you.

Gerard Gosioco

From: Louise Watson <adobesign@adobesign.com>
Sent: Tuesday, May 18, 2021 3:39 PM
To: Gerard Gosioco <gerardg@nvbar.org>
Subject: Louise Watson has shared the Declaration re Mitrov with you





2 pages

Attached is your copy of the Declaration re Mitrov

Attached is your copy of the **Declaration re Mitrov**, from: Louise Watson (louisew@nvbar.org) for your records.

[Click here](#) to view this document online in your Adobe Sign account.

Why use Adobe Sign:

- Exchange, Sign, and File Any Document. In Seconds!
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- See All of Your Documents, Anytime, Anywhere.

To ensure that you continue receiving our emails, please add adobesign@adobesign.com to your address book or safe list.

From: David Clark
Sent: Tuesday, May 18, 2021 2:06 PM
To: Gerard Gosioco; Tom Edwards
Cc: Kristi Faust; Debra Marquez
Subject: RE: SBN v. Leventhal Case Nos: OBC20-0670; OBC20-0706

Counsel:

Respectfully, at this now hour, is the State Bar providing a responsive declaration regarding Zane Mitrov?

We are one business day away from the Formal Hearing. The Chair's directive has been pending since May 6, 2021.

Respondent is entitled to know the scope of the charges against him for purposes of efficient preparation.

David A. Clark

Lipson|Neilson

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From: Gerard Gosioco
Sent: Monday, May 17, 2021 4:22 PM
To: Tom Edwards ; David Clark
Cc: Kristi Faust ; Debra Marquez
Subject: Re: SBN v. Leventhal Case Nos: OBC20-0670; OBC20-0706

Mr. Edwards,

We will submit a declaration by tomorrow. I apologize for the delay.

Gerard Gosioco

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Monday, May 17, 2021 4:09 PM
To: David Clark <DClark@lipsonneilson.com>; Gerard Gosioco <gerardg@nvbar.org>
Cc: Kristi Faust <KristiF@nvbar.org>; Debra Marquez <DMarquez@lipsonneilson.com>
Subject: RE: SBN v. Leventhal Case Nos: OBC20-0670; OBC20-0706

I certainly understand Mr. Clark's frustration. When is the State Bar going to provide one of the declarations I requested?

F. Thomas Edwards

Shareholder
Las Vegas Office

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From: David Clark <DClark@lipsonneilson.com>
Sent: Monday, May 17, 2021 1:22 PM
To: Tom Edwards <tedwards@nevadafirm.com>; Gerard Gosioco <gerardg@nvbar.org>
Cc: Kristi Faust <KristiF@nvbar.org>; Debra Marquez <DMarquez@lipsonneilson.com>
Subject: SBN v. Leventhal Case Nos: OBC20-0670; OBC20-0706

Counsel:

The purpose of this email is to request that the Chair either dismiss or grant Respondent summary judgment on that portion of the Complaint dealing with OBC20-0706/Zan Mitrov. The Formal Hearing is in three days and the State Bar has failed to produce a declaration from Mr. Mitrov to avoid summary judgment despite the Chair's directive May 6, 2021, that it do so. The following (all **emphasis** added) is based upon my personal knowledge as outlined in the attached Declaration and exhibits.

On May 6, 2021, the Conducted a telephone hearing on Respondent's Motion for Summary Judgment. Before ruling, **the Chair directed that the State Bar attempt to obtain a declaration from Zan Mitrov, or in the alternative, submit a declaration detailing why the State Bar was unable to obtain the same.** The parties prepared a proposed Order with this language for the Chair.

On May 12, 2021, Mr. Gosioco emailed the Chair (with copy to me) and requested clarification on whether the Chair was holding the motion pending the State Bar's response to the request for a declaration, or whether the MSJ is denied without prejudice. By return email 2 minutes later, **Mr. Edwards responded that, "I'd like to see the requested declaration before issuing a formal ruling."** Mr. Gosioco responded nine (9) minutes later, acknowledging same.

The telephone Pre-Hearing Conference was scheduled for 10:00 am on Thursday, May 13, 2021. Prior to that, by email time-stamped 9:33 a.m., Mr. Gosioco emailed to Mr. Edwards (with copy to me, Kristi Faust of the State Bar, and Debra Marquez, my assistant), an Adobe Sign email with an attached executed Declaration from Mrs. Louise Watson, State Bar investigator.

The Declaration includes the following statements:

9. Mr. Mitrov confirmed that he submitted the grievance and the documents attached thereto.

10. Mr. Mitrov confirmed that he retained Mr. Leventhal as his attorney, that he let Mr. Leventhal borrow his Viper, that he asked Mr. Leventhal multiple times via text to return the Viper, and he had to pay over \$5,000 to rent a vehicle as he didn't have his Viper.

11. Mr. Mitrov agreed to sign a declaration regarding certain facts in this case.

12. I have emailed a proposed declaration to Mr. Mitrov and am awaiting his response.

At the 10:00 a.m. Pre-Hearing Conference with Chair, after Mr. Gosioco described the Declaration, I asked if there were any emails between Mr. Mitrov and Mrs. Watson surrounding these communications. Mr. Gosioco stated that there was an email from Mr. Mitrov, in which he said (per Mr. Gosioco), that "he was retaining counsel." When I stated to Mr. Gosioco, "and this is all that was in the email?" he responded, "correct." I then requested a copy of the email.

By email the same day, time-stamped 10:26 a.m. Mr. Gosioco forwarded to me what he represented to be Mr. Mitrov's email to Mrs. Watson at 2:44 pm May 12, 2021, which stated,

-----Original Message-----

From: MTMK LOGISTICS <zan@m2lvnv.com>

Sent: Wednesday, May 12, 2021 2:44 PM

To: Louise Watson <LouiseW@nvbar.org>

Subject: Zan Mitrov

Miss. Watson,

I will hire a lawyer for this matter. Reasoning for that decision is that I want to be left alone so I can continue doing my daily activities with the business.

Again I have nothing else to seek from MrLeventhal, He gave me my vehicle within 48 hours as I asked also he gave me money to cover my rental cost from June 5th to June 30th.

Thank you

Sent from my iPhone

I emailed the Chair (with an attached copy of Mr. Mitrov's email) and requested a conference call, which happened at 12 noon, using the same call-in number as the prior Pre-Hearing Conference. At 12 noon, I participated in a telephone call with Chair, Thomas Edwards and Asst. Bar Counsel Gerard Gosioco.

At this call, I expressed my belief that the Declaration is inconsistent with Mr. Mitrov's email and with Mr. Gosioco's representation of the contents of it at the 10:00 a.m. call. In response to my questions, Mr. Gosioco stated that the email came after Mrs. Watson's conversation with him. However, Mr. Gosioco stated she received the email before preparing the Declaration. For his part, Mr. Gosioco stated that he had only read the first line or so of the email before describing it to the Chair and me. He also believed that other evidence corroborated Mrs. Watson's recitation of facts, even though she was purportedly reciting facts that Mr. Mitrov told in their phone call.

On reply, I asked for dismissal of the Mitrov grievance based on either: (1) prosecutorial misconduct for material misrepresentations, or (2) Summary Judgment because the State Bar's declaration and Mr. Mitrov's email failed to carry the State Bar's burden to oppose our Motion for Summary Judgment. The Chair stated that he did not believe he had sufficient evidence before him to find malfeasance on the part of the State Bar. It is my perception that the Chair did indicate a willingness to consider it in the pending motion for summary judgment.

In response to the Chair's questions, Mr. Gosioco indicated the State Bar would continue its efforts to reach Mr. Mitrov to secure a declaration. He estimated that he could get it within the next day.

Respondent's Motion for Summary Judgment and the Chair's decision on it remain pending.

To date, the State Bar has failed to produce a Declaration from Mr. Mitrov, at all, much less one that can successfully defend against the pending Motion for Summary Judgment. To the contrary, the only communication we have from Mr. Zitrov is his prior Declaration requesting that his grievance be withdrawn, and the above email telling the State Bar he wants nothing to do with this matter and seeks nothing else from Mr. Leventhal.

11 days ago, the Chair directed the State Bar to secure a declaration from Mr. Mitrov. It has failed to do so. The Formal Hearing is Thursday, May 20, 2021. Summary Judgment is appropriate under these circumstances. Please advise if the Chair wants a formal conference or motion.

David A. Clark

Lipson|Neilson

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FILED

MAY 19 2021

STATE BAR OF NEVADA
BY: B. Feltz
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
)
TODD M. LEVENTHAL, ESQ.,)
Nevada Bar No. 8543,)
)
Respondent.)

ORDER

PROCEDURAL POSTURE AND SUMMARY OF RULING

Respondent, Todd Leventhal, Esq., filed his Motion to Reconsider on Order Shortening Time on May 19, 2021. The Motion was reviewed and for reasons stated herein, the Motion is **DENIED**.

DECISION

1. SCR 110(7) only allows a deposition if the witness is not subject to a subpoena or is unable to attend to testify at the hearing because of age, illness or other infirmity. Respondent has not argued or shown that Mr. Mitrov is not subject to a subpoena or is unable to attend to testify at the hearing because of age, illness or other infirmity. Therefore, SCR 110(7) does not appear to provide a mechanism for the State Bar to take Mr. Mitrov's deposition. Respondent has not explained how DRP 1 permits the State Bar to take Mr. Mitrov's deposition. Therefore, the

1 conclusion that the State Bar does not have the ability to compel deposition
2 testimony in this case is not clearly erroneous.

- 3 2. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot
4 present facts essential to justify its opposition, NRCP56(d)(1) provides that the
5 motion for summary judgment can be denied. The State Bar provided such a
6 declaration, such that denial of summary judgment is expressly allowed by the rule.
- 7 3. Respondent has not cited to legal authority that an attorney is relieved of his
8 obligations under RPC 1.8 if the property he receives from his client is stolen.
- 9 4. Allowing the State Bar to attempt to prove its claims at a disciplinary hearing is not
10 manifestly unjust.

11 For these reasons, Respondent's Motion to Reconsider on Order Shortening Time is

12 **DENIED.**

13 Good cause appearing, **IT IS SO ORDERED.**

14 Dated this 21 day of May, 2021.

15 SOUTHERN NEVADA DISCIPLINARY BOARD

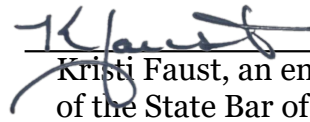
16 *Tom Edwards*
17 By: Tom Edwards (May 19, 2021 16:36 PDT)
18 F. Thomas Edwards, Esq.
19 *Hearing Panel Chair*
20
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **ORDER** was served via email to:

1. F. Thomas Edwards, Esq. (Panel Chair): tedwards@nevadafirm.com
2. David Clark, Esq. (Counsel for Respondent): DClark@lipsonneilson.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

Dated this 19th day of May, 2021.



Kristi Faust, an employee
of the State Bar of Nevada

2021.05.19- Order re Motion for Reconsideration

Final Audit Report

2021-05-19

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| Created: | 2021-05-19 |
| By: | Kristi Faust (kfaust@nvbar.org) |
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Case Nos.: OBC20-0670 and OBC20-0706

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

TODD LEVENTHAL, ESQ.,
Nevada Bar No. 8543

Respondent.

**REPLY IN SUPPORT OF
RESPONDENT'S MOTION
FOR NEW TRIAL**

Hearing Date: September 9, 2021

Hearing Time: 1:00 p.m.

The State Bar of Nevada's *Opposition to Respondent's Motion for New Trial* ("Opposition") asserts that: (1) the Chair lacks jurisdiction to hear this motion, and; (2) that Mr. Mitrov's recanting of sworn testimony after the hearing fails to constitute "newly-discovered evidence" because Respondent should have, somehow, "discovered and produced the evidence at the hearing." Both arguments fail.

Moreover, the State Bar fails to contest that the evidence is material and does not even bother to deny or contest the assertions that the Bar counseled Mr. Mitrov to lie. Mr. Leventhal is entitled to fair and due process before losing his license to practice law and his Motion for New Trial should be granted.

MEMORANDUM OF POINTS AND AUTHORITIES

To restate, NRCP 59 (New Trials; Amendment of Judgments) provides in pertinent part,

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by

which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

(2) Further Action After a Nonjury Trial. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.

I. THE STATE BAR FAILS TO CONTEST MATERIALITY OR THAT IT PROFFERED PERJURED TESTIMONY.

First, the State Bar concede that the proffered evidence is material,

Under NRCP 59(a)(1)(D), newly discovered evidence must meet two requirements. First, it must be material to the case. Second, the party making the motion could not, with reasonable diligence, have discovered and produced the material evidence at the trial. Assuming *arguendo* that Mr. Mitrov's statement is material, it fails to satisfy the second criteria. Respondent failed to establish why he could not, with reasonable diligence, have discovered and produced the evidence at the hearing.

Opposition, p. 5, lines 15-19. Thus, the State Bar concedes the proffered statement is material.

"Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." EDCR Rule 2.20(e); *See, also, Knickmeyer v. District Court*, 173 F. Supp. 3d 1034, 1044 (D. Nev. 2016) (Failure-to-oppose rule does not apply solely to failure to file a physical document,

1 but also to failure to assert, in an opposition, arguments that oppose those presented in the
2 motion).

3 Moreover, the State Bar fails to contest or even deny Mr. Mitrov's statements about its
4 alleged involvement,

5
6 When I first filed the bar complaint I deleted some messages from Mr. Leventhal
7 about where my Viper was located. At that time I was on drugs. When I told Ms.
8 Watson this she told me not to say anything because that can get me in trouble. . .
9 I feel bad for lying but I felt forced by Ms. Watson[.]

10 **Exhibit A; Opposition**, pp. 6-7. Does Mr. Mitrov mean that he told Ms. Watson about being on
11 drugs, deleting messages, or both? Did she tell him "not to say anything" about one, the other, or
12 both? The Opposition stands silent on the prospect that it knew of Mr. Mitrov's drug use or
13 manipulation of Exhibit 19. Thus, the Opposition raises the spectre of party misconduct as
14 additional bases for a new trial under NRCP 59(a)(1) (A) and (B).

15 **II. THE CHAIR AND PANEL CLEARLY HAVE JURISDICTION BECAUSE A**
16 **MOTION FOR NEW TRIAL IS A TOLLING MOTION.**

17 The State Bar asserts that this Panel (equivalent to the district court) lacks jurisdiction to
18 hear Respondent's NRCP 59 Motion for New Trial because the State Bar won the race to the
19 filing window by one day,

20 Here, the State Bar forwarded the ROA to the Supreme Court on July 20, 2021. It
21 acted within 30 days pursuant to DRP 36(b) and SCR 105(3)(b). It was unaware
22 of Respondent's intent to move the Panel Chair for a new trial [filed July 21,
23 2021]. However, once the Supreme Court received the hearing record, it obtained
24 jurisdiction. Accordingly, the instant matter is no longer within the jurisdiction of
25 the Southern Nevada Disciplinary Board, but rather, the Supreme Court.

26 *Opposition*, 5: 3-7. This statement contradicts black-letter law, which is one reason that
27 Respondent did not argue it in his Motion.

28 First, Respondent filed his Motion for New Trial eight (8) days after entry of the Panel's
Findings and Recommendation. Thus, the motion is timely filed under NRCP 59 (b) ("A motion

for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.”).

Second, NRAP 4 (Appeals in civil cases) states (*emphasis* added),

(4) *Effect of Certain Motions on a Notice of Appeal. If a party timely files in the district court any of the following motions* under the Nevada Rules of Civil Procedure, *the time to file a notice of appeal runs for all parties from entry of an order disposing of the last such remaining motion*, and the notice of appeal must be filed no later than 30 days from the date of service of written notice of entry of that order:

- (A) a motion for judgment under Rule 50(b);
 - (B) a motion under Rule 52 (b) to amend or make additional findings of fact;
 - (C) *a motion under Rule 59 to alter or amend the judgment;*
 - (D) *a motion for a new trial under Rule 59.*
-

(6) *Premature Notice of Appeal. A premature notice of appeal does not divest the district court of jurisdiction.* The court may dismiss as premature a notice of appeal filed after the oral pronouncement of a decision or order but before entry of the written judgment or order, or before entry of the written disposition of the last-remaining timely motion listed in Rule 4(a)(4). If, however, a written order or judgment, or a written disposition of the last remaining timely motion listed in Rule 4(a)(4), is entered before dismissal of the premature appeal, the notice of appeal shall be considered filed on the date of and after entry of the order, judgment or written disposition of the last-remaining timely motion.

Respondent’s Motion for New Trial under NRCP 59 is an expressly stated tolling motion under NRAP 4.¹ As the Supreme Court observed,

The timely motions filed . . . pursuant to NRCP 52(b) and NRCP 59(a) and (e) tolled the running of the appeal period and rendered ineffective all the notices of appeal which were filed before the formal disposition of the timely post-judgment motions. *Thus, the district court erred in concluding that it lacked jurisdiction to entertain the timely tolling motions which were filed* No appeal was pending at the time the district court rendered its decision concerning the motions because, pursuant to NRAP 4(a)(2), the notices of appeal were of "no effect."

Chapman Indus. v. United Ins., 110 Nev. 454, 457-58, 874 P.2d 739, 741 (1994) (*emphasis* added); *See, also, Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 528-29, 25 P.3d 898, 900 (2001) (“A timely-filed tolling motion terminates the running of the time for filing a notice of

¹ See SCR 119(3) *Applicability of other rules*. Except as otherwise provided in the Supreme Court Rules (SCR), the Nevada Rules of Civil Procedure (NRCP) and Nevada Rules of Appellate Procedure (NRAP) shall apply in disciplinary cases.

1 appeal, and a notice of appeal filed after the timely filing of a post-judgment tolling motion,
2 but before the formal disposition of the motion, is ineffective and *fails to vest jurisdiction in this*
3 *court*)” (*emphasis* added).

4 The Bar’s Opposition argues that:

5
6 The Disciplinary Rules of Procedure “govern procedures before the Northern and
7 Southern Nevada Disciplinary Boards . . . involving prosecution and adjudication
8 of attorney misconduct and incapacity.” DRP 1(a). *The Nevada Rules of Civil
Procedure, on the other hand, apply to disciplinary matters only when the DRP
is silent.* Nevada Supreme Court Rule (“SCR”) 119(2) (2020).

9 *Opposition*, 4:18-22² (*emphasis* added). The highlighted language misquotes DRP 1(c), which
10 repeats SCR 119(3), “Except as otherwise provided in the Supreme Court Rules (SCR), the
11 Nevada Rules of Civil Procedure (NRCP) and Nevada Rules of Appellate Procedure (NRAP shall
12 apply in disciplinary cases.” It is the Supreme Court Rules, not the DRPs (which are promulgated
13 by the Discipline Boards and approved by the Board of Governors) that determine application of
14 NRCP and NRAP provisions.

15
16 And the only provision of SCR 105 that applies is SCR 105(3)(b), “Review under this
17 paragraph shall be commenced by bar counsel forwarding the record of the hearing panel
18 proceedings to the court within 30 days of entry of the decision.” Nothing here speaks of
19 jurisdiction or of foreclosure of post-trial tolling motions.

20
21 Even under NRAP 4, where the Supreme Court obtains jurisdiction upon the filing of a
22 Notice of Appeal, such a notice is of “no effect” unless the timely-filed tolling motion is resolved
23 by written order. *Chapman*, 110 Nev. at 458. *See, also, Cole v. Shafer (In re Estate of Miller)*, 111
24 Nev. 1, 5, 888 P.2d 433, 435 (1995) (premature notice of appeal fails to vest jurisdiction in
25 supreme court, *citing Rust v. Clark Cty. School District*, 103 Nev. 686, 747 P.2d 1380 (1987)).

26
27 ² Again, the correct cite is SCR 119(3) (*supra*), not subsection (2) as contained in the DRPs posted to the
28 State Bar website. <https://www.nvbar.org/wp-content/uploads/Disciplinary-Rules-of-Procedure-Amended-6.28.17.pdf> (last visited September 2, 2021).

1 Under the State Bar’s argument, the Supreme Court’s “review shall be commenced” not by a
2 Notice of Appeal served on Respondent, but simply by bar counsel unilaterally forwarding the
3 record of proceedings to the Court.³

4 Put another way, “review shall be commenced” overcomes a timely-filed NRCP 59 tolling
5 motion when NRAP 4, which expressly divests the Supreme Court of jurisdiction in the presence
6 of a tolling motion, cannot do so. This leads to the dystopian result that, as happened here, the Bar
7 and Panel can ignore the deadline to file the written decision beyond the 30-day deadline of DRP
8 34(a) (“The Hearing Panel shall render a written decision within thirty (30) calendar days of the
9 conclusion of the hearing.”) yet deny Respondent the right to seek post-trial relief simply because
10 the Bar transmitted the record a day before a tolling motion was timely filed.

11
12 Finally, SCR 105(3)(b) states that, “The Respondent and bar counsel shall have thirty (30)
13 calendar days from the date the Supreme Court acknowledges receipt of the record within which
14 to file an opening brief *or otherwise advise the court of any intent to contest the Hearing*
15 *Panel’s findings and recommendations.*” See, also, DRP 36 (c) for the identical language (all
16 emphasis added). Attached as **Exhibit E** is a true and correct copy of Respondent’s *Motion For*
17 *Extension Of Time To File Opening Brief, Or In The Alternative, Stay In Briefing Pending*
18 *Outcome Of Motion For New Trial.* This motion identifies the instant NRCP 59 motion and
19 requests either a stay in briefing or an extension of time pending outcome of this motion.
20 Therefore, SCR 105 (3) (b) expressly provides for this remedy and Respondent has exercised this
21 right. Respondent’s NRCP 59 Motion for New Trial was timely filed under NRCP 59 and is
22 properly before this Panel pursuant to NRAP 4 and SCR 105(3) (b). The Chair is empowered to
23 hearing and decide the Motion.
24
25
26

27 ³ Both the Notice of Receipt of the Record by the Supreme Court and Respondent’s Motion for New Trial
28 were filed July 21, 2021.

III. RESPONDENT CANNOT, BY DEFINITION, “REASONABLY DISCOVERY A POST-TRIAL RECASTING OF SWORN TESTIMONY OR AN ALLEGED EFFORT BY THE STATE BAR TO SUBORN PERJURY.

The State Bar devotes most of its Opposition (pp. 5-7) to the premise that Mr. Mitrov’s recasting of sworn testimony, a day after the hearing, fails to constitute new evidence because, “the statements contained therein could have been discovered and produced at trial. Respondent had ample opportunity to produce the alleged newly discovered evidence at or before the time of trial.” With complete sincerity and deference, how is this even possible?

In response to the State Bar’s three examples:

A. “Respondent fails to explain why he could not interview or otherwise communicate with Mr. Mitrov.”

Respondent did so, as the State Bar acknowledges, with Mr. Mitrov’s affidavit in support of Respondent’s Motion for Summary Judgment. But Mr. Mitrov asserts that “When I told Ms. Watson this she told me not to say anything because that can get me in trouble. . . I feel bad for lying but I felt forced by Ms. Watson.” Communication with him is pointless if he feels “forced to lie.” Also, the Chair previously ruled that Mr. Mitrov could not be deposed. Respondent had no prior chance to place this witness under oath, advise him of the solemnity of truthful and accurate testimony, and then ask him these questions. Besides, he swore out a Declaration and never mentioned these “forced lies.”

B. “Respondent could have easily produced the alleged deleted messages at or before the time of trial with reasonable diligence.”

While this may be true assuming Mr. Leventhal had the texts (and remember he testified that he often called Mr. Mitrov rather than texted), it is not Respondent’s burden of proof in this prosecution. It is the State Bar’s. And it is the State Bar’s burden and obligation to make sure the evidence it presents is accurate and truthful. Again, Mr. Mitrov expressly lied under oath about

1 the character and nature of Exhibit 19. Respondent expressly objected to the adequacy of the
2 foundation for Exhibit 19.

3 The State Bar now asserts, in essence, that it can conspire to manufacture evidence and if
4 Respondent does not uncover it until the witness recants after the hearing, that risk is on
5 Respondent and Respondent's livelihood to practice law. This is not a basis for civil litigation,
6 criminal procedure, or for regulation of attorney ethics.
7

8 **C. "Lastly, with regard to Mr. Mitrov's alleged drug use and Ms.**
9 **Watson's alleged statements, Respondent had the opportunity to cross**
10 **examine both Mr. Mitrov and Ms. Watson at the Formal Hearing. In**
11 **fact, Respondent's counsel questioned both Mr. Mitrov and Ms.**
12 **Watson regarding their conversations. Therefore, the statements**
13 **regarding Mr. Mitrov's alleged drug use and Ms. Watson's alleged**
14 **statements do not constitute newly discovered evidence that warrants**
15 **a new trial."**

16 Respondent's counsel did examine Mr. Mitrov about his drug use. Counsel posed the
17 question directly to Mr. Mitrov. Mr. Mitrov lied:

18 Q. During this time that he represented you, were
19 you using methamphetamine?

20 A. No, I didn't.

21 *Transcript*, 168:1-19. How else does a party uncover a lie that is within the exclusive and
22 personal knowledge of the witness unless the witness later recants? As to "Ms. Watson's alleged
23 statements," they were never revealed until after the hearing. How then could these statements
24 "with reasonable diligence, have been discovered and produced at trial?"

25 The State Bar cites no authority for the proposition that, if a witness recants prior sworn
26 testimony after the hearing, such an event fails to constitute a basis for a new trial under NRPC
27 59. This position is untenable and the Chair should disregard it.
28

///

///

1 **IV. CONCLUSION.**

2 For the reasons above and as contained in Respondent's Motion, the Chair should grant
3 Respondent a new trial given Mr. Mitrov's post-hearing statement recanting his materially
4 substantive testimony and prior statements.

5 Dated this 2nd day of September 2021.

6 LIPSON NEILSON P.C.

7 */s/ David A. Clark*

8 By: _____

9 DAVID A. CLARK
10 Nevada Bar No. 4443
11 9900 Covington Cross Drive, Suite 120
12 Las Vegas, Nevada 89144
13 *Attorneys for Respondent,*
14 *Todd Leventhal, Esq.*

15 **CERTIFICATE OF SERVICE**

16 Pursuant to DRP 18((b)(2) and NRCP 5(b), I certify that on the 2nd day of September
17 2021, I served via email the foregoing **RESPONDENT'S REPLY IN SUPPORT OF MOTION**
18 **FOR NEW TRIAL** to the following:

| | |
|--|--|
| 18 Gerard Gosioco 19 Assistant Bar Counsel 20 Kristi A. Faust 21 Hearing Paralegal 22 3100 W. Charleston Blvd. 23 Suite 100 24 Las Vegas, Nevada 89102 25 sbnnotices@nvbar.org 26 ggsioco@nvbar.org 27 KristiF@nvbar.org 28 tedwards@nevadafirm.com | rotaryactv@cox.net tedwards@nevadafirm.com ssell@nevadalawfirm.com mike@mblnv.com |
|--|--|

/s/ Debra Marquez _____
LIPSON NEILSON P.C.

EXHIBIT E

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF) Case No. 83245

TODD M. LEVENTHAL,)

BAR NO. 8543)

Electronically Filed
Aug 18 2021 04:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF, OR IN THE ALTERNATIVE, STAY IN
BRIEFING PENDING OUTCOME OF MOTION FOR NEW TRIAL
(First Request)**

Respondent, Todd M. Leventhal by and through his attorney, David A. Clark, of the Law Firm Lipson Neilson P.C. and hereby moves this Court pursuant to NRAP 26(b)(1)(A) and NRAP 31(b)(3) for a 31-day extension of time, through and including Monday, September 20, 2021, to file his Opening Brief. Respondent's Opening Brief is currently due Friday, August 20, 2021.

Good cause exists for this extension of the deadline. Respondent has filed a Motion for New Trial that is scheduled for hearing before the Hearing Panel Chair on September 9, 2021. Alternatively, Respondent would request a stay in the briefing schedule until such time as the Panel Chair decides the pending Motion for New Trial.

The Formal Hearing in this matter took place on May 25, 2021. The Panel Chair filed the Findings of Fact, Conclusions of Law and Recommendation on July

1 12, 2021.¹ On July 21, 2021, eight days later, Respondent filed a Motion for New
2 Trial pursuant to NRCP 59(a)(1)(D) or, alternatively, to amend the judgment under
3 NRCP 59(e) or to take additional testimony under NRCP 59(a)(2). After some
4 confusion in the service of the pleadings (*See, Exhibit A, Declaration of Counsel*),
5 the State Bar filed its Opposition on August 17, 2021, and Respondent's Reply to the
6 opposition is due on September 2, 2021 the Chair has set the matter for hearing on
7 September 9, 2021, at 1:00 pm. The 31-day extension should be sufficient time for
8 the Chair to rule on the motion prior to the new briefing deadline.

9
10
11
12 Alternatively, because Respondent's motion for new trial is an enumerated
13 tolling motion under NRAP 4(a)(2), the Court should stay further briefing until the
14 post-judgment motion is resolved. *See, NRAP 4(a)(2); Moran v. Bonneville Square*
15 *Assocs.*, 117 Nev. 525, 529, 25 P.3d 898, 900 (2001) (A timely-filed tolling motion
16 terminates the running of the time for filing a notice of appeal).²

17
18 For the reasons foregoing, Respondent respectfully requests a 31-day extension
19 of time, through and including Monday, September 20, 2021, to file his Opening
20 Brief. In the alternative, Respondent requests a stay of the briefing schedule pending
21 a written decision from the Panel Chair on Respondent's Motion for New Trial, filed
22
23

24
25 ¹ Although SCR 105(2)(e) mandates "The hearing panel **shall** render a written
26 decision within 30 days of the conclusion of the hearing," times limits are
administrative, not jurisdictional. *See, SCR 119(2).*

27 ² The State Bar's position in its *Opposition* is that because it transmitted the Record
28 on Appeal July 20, 2021, the Chair no longer has jurisdiction to hear a motion for
new trial. Hence, it declined to stipulate to a stay. **Exh. A.**

July 21, 2021. This request is made in good faith and not intended to prejudice or cause delay.

Dated this 18th day of August, 2021.

LIPSON NEILSON P.C.

/s/ David A. Clark

DAVID A. CLARK
9900 Covington Cross Dr., # 120
Las Vegas, Nevada 89144
Attorney for Todd M. Leventhal

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of LIPSON NEILSON P.C. and that on the 18th day of August, 2021, a true and correct copy of the foregoing **MOTION FOR EXTENSION OF TIME TO FILE OPENEING BRIEF, OR ALTERNATIVELY, MOTION FOR STAY OF BRIEFING** was filed and served electronically with the Clerk of the Nevada Supreme Court in accordance with the master service list as follows:

Gerard Gosioco
Assistant Bar Counsel
Sonia Del Rio
Hearing Paralegal
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100
Las Vegas, Nevada 89102
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soniad@nvbar.org

F. Thomas Edwards, Esq.
Hearing Panel Chair
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/s/ Debra Marquez

An employee of LIPSON NEILSON P.C.