IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF DISCIPLINE OF
TODD M. LEVENTHAL
BAR NO. 8543

Case No. 83245

RESPONDENT'S ANSWERING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF TODD M. LEVENTHAL BAR NO. 8543	Case No. 83245

RESPONDENT'S ANSWERING BRIEF

JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule ("SCR") 105(3)(b), "a decision recommending a public reprimand, suspension or disbarment shall be automatically reviewed by the supreme court."

ROUTING STATEMENT

This appeal is presumptively assigned to the Supreme Court pursuant to the Nevada Rules of Appellate Procedure ("NRAP") because it is an appeal from a case involving attorney admission, suspension, discipline, discipline, disability, reinstatement, or resignation. NRAP 17(a)(4).

STATEMENT OF THE ISSUES

1. Whether Respondent proved that Appellant violated RPC 1.8(a) as it pertains to Amalia Sosa-Avila.

2. Whether Respondent proved that Appellant violated RPC 1.8(a) as it pertains to Zan Mitrov.
3. Whether the Panel Chairs correctly denied Appellant's Motion for Summary Judgment.
4. Whether the record supports the Formal Hearing Panel's recommendation to impose a one-year stayed suspension on Appellant.

STATEMENT OF THE CASE

This is an automatic *de novo* appeal, brought pursuant to the Supreme Court Rules and applicable interpreting case law, of the Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing (hereinafter "Findings") from the duly designated Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board, filed on July 13, 2021. The Panel recommended that this Court impose a one (1) year stayed suspension on Appellant, Todd M. Leventhal (hereinafter "Leventhal"), to go into effect only if he receives any letter of reprimand/public reprimand or worse over the next five (5) years. Record on Appeal ("ROA") 381-87. In addition, the Panel recommended that Leventhal complete one (1) additional CLE hour for ethics and one (1) additional CLE hour for law practice management each year the suspension is stayed. *Id*. Leventhal contests the Panel's recommendation.

STATEMENT OF THE FACTS

OBC20-0670

On, about, or between February 13, 2020, and June 22, 2020, Leventhal represented Amalia Sosa-Avila (hereinafter "Ms. Sosa-Avila") in two (2) criminal matters. ROA 417-22, 433. Leventhal and Ms. Sosa-Avila negotiated a retainer agreement for $6,000.00. *Id.* at 420-21. Ms. Sosa-Avila signed the retainer agreement; Leventhal did not. *Id*. Ms. Sosa-Avila did not have money to pay the retainer agreement. *Id.* at 423. Leventhal agreed to accept collateral from Ms. Sosa-Avila as security for the payment of the attorney fees. *Id.* at 795-809.

Between February 2020 and June 2020, Ms. Sosa-Avila brought items as collateral to Leventhal which his office accepted. ROA 795-809. Leventhal's office accepted as collateral: (1) a Louis Vuitton purse; (2) a diamond ring; and (3) an iPhone. *Id.* at 424, 498. Leventhal's office does not have a policy on accepting collateral nor does the retainer agreement address a policy on accepting collateral. *Id.* at 517, 612-13. Leventhal did not abide by RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules) before receiving adverse possessory interests in the aforementioned items from Ms. Sosa-Avila. The transaction and terms were not fair and reasonable to Ms. Sosa-Avila, she was not advised of the desirability of seeking independent counsel, and she did not give informed consent to the terms of the transaction. *See* ROA 486-87, 506-07, 517; *see also* ROA 613-15.

Leventhal testified that after reviewing the discovery in Ms. Sosa-Avila's case, he believed that the iPhone, Louis Vuitton purse, and diamond ring were stolen. ROA 426-27, 432. Leventhal testified that upon discovering the items were allegedly stolen, he turned those items into Metro anonymously. *Id.* at 430. On June 17, 2020, Leventhal filed a Motion to Withdraw on both of Ms. Sosa-Avila's cases which were granted on June 22, 2020. *Id.* at 419-20, 747-60.

OBC20-0706

On, about, or between July 17, 2019, and June 22, 2020, Leventhal represented Zan Mitrov (hereinafter "Mr. Mitrov") in two (2) criminal matters that went into warrant. ROA 459-64. During this time, Mr. Mitrov allowed Leventhal to borrow a Dodge Viper. *Id.* at 526. On or about July 23, 2019, Mr. Mitrov delivered the Dodge Viper to Leventhal's office. *Id.* at 532. Leventhal did not abide by RPC 1.8 (Conflict of Interest: Current Clients: Specific Rules) before receiving an adverse possessory interest in Mr. Mitrov's Viper. The transaction and terms were not fair and reasonable to Mr. Mitrov, he was not advised of the desirability of seeking independent counsel, and he did not give informed consent to the terms of the transaction. *See* ROA 585-87; *see also* ROA 613-15.

Mr. Mitrov asked Leventhal to return the Dodge Viper to him multiple times between February 2020 and June 2020. ROA 533-39. Between June 5, 2020, and June 30, 2020, Mr. Mitrov rented a car because he did not have a vehicle with

working A/C. *Id.* at 540-41, 543. On June 24, 2020, Mr. Mitrov filed a grievance against Leventhal with the State Bar of Nevada (hereinafter "State Bar") to get his Dodge Viper back. *Id.* at 525, 553. Leventhal returned the Dodge Viper after Mr. Mitrov filed a grievance. *Id.* at 542, 555, 574. After Mr. Mitrov received the Dodge Viper, he tried to withdraw his grievance with the State Bar. *Id.* at 546; *but see* ROA 502-03 (a withdrawn grievance does not preclude the State Bar from moving forward with the disciplinary process).

PROCEDURAL HISTORY

On December 4, 2020, the State Bar filed a Complaint against Leventhal alleging two violations of RPC 1.8(a) (Conflict of Interest: Current Clients: Specific Rules). ROA 1-13.

On December 31, 2020, Leventhal filed a Motion for Summary Judgment ("MSJ"). *Id.* at 14-34. On January 15, 2021, the State Bar filed an opposition to Leventhal's MSJ. *Id.* at 38-81. On January 20, 2021, Leventhal filed a Reply to the State Bar's opposition. *Id.* at 72-75. On February 10, 2021, the Panel Chair, Marc P. Cook (hereinafter "Mr. Cook"), denied Leventhal's MSJ.[1] ROA 81-85.

On February 26, 2021, Leventhal filed a Verified Answer to the State Bar's complaint. ROA 86-92. Leventhal's MSJ, the State Bar's opposition, and

[1] On January 5, 2021, Mr. Cook was appointed as the Panel Chair for the underlying matter. ROA 35-37.

Leventhal's Reply were forwarded to the new Panel Chair, F. Thomas Edwards (hereinafter "Mr. Edwards").[2]

On May 6, 2021, Leventhal's MSJ was heard during a telephonic hearing. *See* ROA 250-51. Mr. Edwards requested that the State Bar provide a declaration from Mr. Mitrov, or in the alternative, a declaration from another individual explaining why the State Bar could not secure the same. *See* AOB 16. Per Mr. Edwards' request, the State Bar submitted the Declaration of Louise Watson (hereinafter "Ms. Watson"), an investigator with the State Bar, on May 13, 2021. ROA 1018-19.

On the morning of May 19, 2021, Mr. Edwards denied Leventhal's MSJ. *See* ROA 363-66. That afternoon, Leventhal filed a Motion to Reconsider on Order Shortening Time, which Mr. Edwards denied that same day (i.e., May 19, 2021). *See* ROA 352-55, 367-75.

On May 20, 2021, the Panel held a Formal Hearing. *See* ROA 396-691. After deliberations, the Panel unanimously found that Leventhal violated RPC 1.8(a) as to Ms. Sosa-Avila, and found that Leventhal violated RPC 1.8(a), by a 2-1 vote, as to Mr. Mitrov. *See* ROA 381-87. On July 13, 2021, Mr. Edwards signed and filed Findings. *Id.*

[2] On March 22, 2021, Mr. Edwards replaced Mr. Cook as the Panel Chair. ROA 105-07.

On July 20, 2021, the State Bar submitted the Record on Appeal with the Nevada Supreme Court, which was accepted and file stamped on July 21, 2021. *See* Supplemental ("Supp") ROA 111. On July 21, 2021, Leventhal filed a Motion for New Trial based on an allegedly unsolicited statement Mr. Mitrov delivered to Leventhal on March 26, 2021.[3] *See* Supp ROA 1-107, 151. On August 17, 2021, the State Bar filed an opposition to Leventhal's Motion for New Trial. Supp ROA 108-15. On September 2, 2021, Leventhal filed his Reply in Support of his Motion for New Trial. *See* Supp ROA 116.

On September 9, 2021, Leventhal's Motion for New Trial was heard during a telephonic hearing. *See* Supp ROA 116-18. Mr. Edwards found that good cause existed to reconvene the Panel for the purposes of considering the new statement of Mr. Mitrov and deciding whether to: (a) affirm the prior Findings; (b) alter or amend the judgment, with or without additional proceedings; (c) open the judgment, take additional testimony, amend the Findings or make new Findings, and direct the entry of a new judgment, with or without additional proceedings; or (d) grant a new trial on all or some of the issues. *Id.*

On September 27, 2021, the Panel reconvened. *See generally* Supp ROA 132-50. The Panel was given the new statement of Mr. Mitrov, the Findings, and

[3] Although Mr. Edwards and Panel member Lee received the electronic service of the motion, the State Bar was not aware of, nor did it receive, Leventhal's motion until August 9, 2021. *See* Supp ROA 121.

the transcript of the May 20, 2021, Formal Hearing. Supp ROA 141. The Panel did not reconsider any of the findings or recommendations as it relates to Amalia Sosa-Avila. *See* Supp ROA 138.

After deliberations, the Panel concluded that the new statement of Mr. Mitrov did not change any of the Panel's findings, conclusions, or recommendation. Supp ROA 142-43. The Panel stated that Mr. Mitrov's testimony at the Formal Hearing still supported their Findings even absent the text messages. *Id.* The Panel further stated that they were concerned that Leventhal did not show what the deleted text messages were during the Formal Hearing, and thus, the Panel could not conclude that the deletion of the text messages was actually material. *Id.*

As to Mr. Mitrov's alleged drug use, the Panel concluded that his statement conflicted with his prior testimony, but that it did not change their analysis. *Id.* Lastly, as it pertained to Ms. Watson, the Panel concluded that Mr. Mitrov's new statement was too vague for the Panel to reconsider the Findings. *Id.* Further, Mr. Mitrov's allegation that Ms. Watson advised him to lie is potentially collateral to the issues the Panel is considering. *Id.*

On November 22, 2021, Leventhal filed the instant Opening Brief. The State Bar responds as follows.

STANDARD OF REVIEW

This Court reviews the Panel's recommendation *de novo.* SCR 105(3)(b); *In re R. Christopher Reade, Bar No. 6791*, 133 Nev. Adv. Op. 87, NSC Docket No. 70989 (November 16, 2017). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation and must examine the record anew and exercise independent judgment." *In re Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001), *cert. denied*, 534 U.S. 1131 (2002). However, the Court uses a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and will not set them aside unless they are clearly erroneous or not supported by substantial evidence. *See generally Sowers v. Forest Hills Subdivision*, 129 Nev. Adv. Op. 9, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

The State Bar is required to establish allegations of professional misconduct by clear and convincing evidence. *See* SCR 105; *see also Schaefer*, 117 Nev. at 515, 25 P.3d at 204. This Court has defined clear and convincing evidence as "evidence which need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn." *Id.*

The purpose of attorney discipline is not to punish the attorney, but to protect the public and the integrity of the bar. *See State Bar of Nevada v. Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988) ("paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole").

SUMMARY OF THE ARGUMENT

The State Bar successfully proved that Leventhal violated RPC 1.8(a) on two separate occasions: once during his representation of Ms. Sosa-Avila and once during his representation of Mr. Mitrov. Based on Leventhal's misconduct, the Panel's recommendation of a one-year stayed suspension and five-year probationary term was not only appropriate, but lenient. Lastly, Leventhal's Motion for Summary Judgment was correctly denied twice.

ARGUMENT

I. THE RPC 1.8(a) VIOLATION PERTAINING TO AMALIA SOSA-AVILA IS SUPPORTED BY THE RECORD

Leventhal represented Ms. Sosa-Avila in two (2) criminal cases: (1) 19F03827B; and (2) 20F00283A. *See* ROA 434, 438; *see also* ROA 747-60. He

testified that he accepted a Louis Vuitton purse/wallet,[4] a diamond ring, and an iPhone from Ms. Sosa-Avila as collateral because she did not have money. ROA 422-24, 454-55. Leventhal went on to testify that after he reviewed the discovery in her cases, he "came to find out that the stuff that [Ms. Sosa-Avila] had given as collateral was stolen." ROA 430.

In his Opening Brief, Leventhal argues that the State Bar failed to prove an RPC 1.8(a) violation pertaining to Ms. Sosa-Avila because he could not acquire a valid possessory interest in stolen items. AOB 18-19. His entire argument is predicated upon the fact that the items he accepted from Ms. Sosa-Avila were stolen. However, contrary to Leventhal's belief, it is not "undisputed that the three items in question were stolen." AOB 19. Moreover, Leventhal's claim that he learned that the items he accepted from Ms. Sosa-Avila were stolen "after reviewing the discovery in [her] cases" is belied by the record. AOB 8; *see* ROA 430, 432-33.

Leventhal could not have learned that the Louis Vuitton purse/wallet, the diamond ring, or the iPhone were stolen by reviewing Ms. Sosa-Avila's discovery because Ms. Sosa-Avila was never charged with stealing a Louis Vuitton purse/wallet, a diamond ring, or an iPhone. ROA 113-114, 931-32; *see* ROA 736-

[4] The term "purse" and "wallet" are used interchangeably. *See* ROA 429 (Leventhal testified "[s]o it's not really a purse, it's more like a wallet . . . [i]t's a Louis Vuitton.")

43; *contra* ROA 426-27 (Leventhal testified that Ms. Sosa-Avila was charged with stealing an iPhone). In fact, the discovery in both of Ms. Sosa-Avila's cases do not mention a diamond ring or iPhone whatsoever.[5] *See* ROA 115-35, 150-231.

As to the Louis Vuitton purse/wallet, Leventhal testified that he "found out that there was, in fact, a Louis Vuitton wallet that was stolen" when he reviewed the discovery in Ms. Sosa-Avila's case. ROA 451-52; *see* ROA 973. Interestingly, Leventhal contradicted himself when he testified a few seconds later that the Louis Vuitton was "not listed as a stolen item[.]" *Id.* The discovery in 20F00283A only states that Ms. Sosa-Avila was "looking to sell a Louis Vuitton [purse]." ROA 191, 221-22, 940, 972, 1002-03; *see* ROA 429. The discovery in both of Ms. Sosa-Avila's cases do not allege that the Louis Vuitton purse/wallet was stolen, nor does Ms. Sosa-Avila ever admit that the Louis Vuitton purse/wallet was stolen. Therefore, Leventhal's arguments fail as the record supports that Leventhal violated RPC 1.8(a) as it pertains to Ms. Amalia-Sosa.

II. THE RPC 1.8(a) VIOLATION PERTAINING TO ZAN MITROV IS SUPPORTED BY THE RECORD

Leventhal has known Mr. Mitrov for approximately eight (8) years and represented him in a few cases. *See* ROA 457-59. On, about, or between July 17,

[5] Leventhal nonsensically argued that an iPhone was mentioned in the discovery for 20F00283A. ROA 445-46; *see* ROA 949 (type states "Misc. (Cell Phones, Bicycles, Worthless Doc, items not listed," while description states "Home depot credit card which was used, the info is in the details").

2019, and June 22, 2020, Leventhal represented Mr. Mitrov in three (3) criminal cases: (1) 19F04218X;[6] (2) 19F10566X; and (3) 20F07538X.[7] *See* ROA 870-77. In July 2019, Mr. Mitrov allowed Leventhal to borrow his Dodge Viper. ROA 527. On, about, or between June and July 2020, Mr. Mitrov regained possession of his Dodge Viper after asking Leventhal to return the same to him numerous times. *See* ROA 530-42.

In his Opening Brief, Leventhal argues that the State Bar failed to prove an RPC 1.8(a) violation pertaining to Mr. Mitrov because Mr. Mitrov "provided and [*sic*] undisputed statement admitting the text messages (State Bar Exhibit 19) was fabricated, that he lied regarding his drug use, and 'felt forced to lie' by State Bar personnel." AOB 20; *see* Supp ROA 18.

The crux of his argument is that Mr. Mitrov's is neither credible nor reliable. AOB 20; *see* AOB 9 (Leventhal concedes that "[t]he record here also features numerous retractions and contradictions by Mr. Mitrov."). If we are to believe that Mr. Mitrov is not credible and/or reliable as Leventhal suggests, then it follows that the credibility and/or reliability of Mr. Mitrov's new statement is in question as well.

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[6] The docket in 19F04218X shows that the case was closed on December 3, 2019. ROA 870-72.

[7] On June 17, 2020, Leventhal filed Motions to Withdraw as Counsel in 19F10566X and 20F07538X. ROA 835-48.

Leventhal's entire argument revolves around Mr. Mitrov's new statement. Specifically, Leventhal argues that the Panel did not give sufficient consideration to: (1) Mr. Mitrov's admission to fabricating text messages; (2) Mr. Mitrov's admission to lying about his alleged drug use; and (3) Mr. Mitrov's assertion that the State Bar counseled him to lie about his drug use. *See* AOB 20-27. However, Leventhal's assertions are purely speculative as there is no way to know how much weight the Panel placed on Mr. Mitrov's new statement.

If anything, the Panel gave more than enough consideration of Mr. Mitrov's new statement by reconvening the Panel to consider the same. *See* Supp ROA 121-23. Due to Mr. Mitrov's lack of credibility and/or reliability, it becomes even more important that the trier of fact (i.e., the Panel members) determine the credibility or weight of Mr. Mitrov's testimony and statements as a whole. The Panel reconvened to consider Mr. Mitrov's new statement. After arguments were heard and deliberations were held, Mr. Edwards stated that "[t]he panel had an opportunity to consider [Mr. Mitrov's new statement] and concluded that it does not change any of our Findings of Fact, Conclusions of Law or Recommendations." ROA 142.

Therefore, Leventhal's arguments fail as the record supports that Leventhal violated RPC 1.8(a) as it pertains to Mr. Mitrov.

III. THE PANEL CHAIRS CORRECTLY DENIED LEVENTHAL'S MOTION FOR SUMMARY JUDGMENT

On December 31, 2020, Leventhal filed a Motion for Summary Judgment ("MSJ"). ROA 14-34. On February 12, 2021, Mr. Cook denied Leventhal's MSJ. ROA 81-85. On May 19, 2021, Mr. Edwards, who replaced Mr. Cook as the Panel Chair, also denied Leventhal's MSJ. *See* ROA 363-66; *see also* ROA 105-07. Leventhal argues that the "denials [of Leventhal's MSJ] constitutes error in this case warranting rejection of the Recommendation and dismissal of the Complaint and both Counts." AOB 29. However, Leventhal's arguments are without merit.

Denials of summary judgment generally cannot be appealed after a full trial on the merits. *See Sorenson v. Pavlikowski*, 94 Nev. 440, 442, 581 P.2d 851, 853 (1978) ("There can be no appeal taken from the denial of summary judgments."). On summary judgment, the court decides only whether entry of judgment is warranted based on the undisputed, material facts before the court at the time; a denial does nothing more than allow a contested issue to be resolved at trial.

Once a trial has taken place, the "focus is on the evidence actually admitted and not on the earlier summary judgment record." *Chemetall GMBH v. ZR Energy Inc.*, 320 F.3d 714, 718 (7th Cir. 2003). Leventhal can argue the sufficiency of the evidence, but only through a Rule 50(a) motion before the case is submitted to the jury and, if successful, renew the motion under Rule 50(b) after the hearing. Only then can Leventhal appeal the denial of his Rule 50 motion, not the earlier denial

of summary judgment. However, even assuming Leventhal's appeal of the denial of his MSJ is appropriate, his argument still fails.

A request for summary judgment is considered through the eye of a rational trier of fact. An issue cannot be summarily adjudicated if a rational trier of fact could return a verdict for the nonmoving party. *See Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (2005). Since the State Bar was the nonmoving party for Leventhal's MSJ, that means that if a rational trier of fact (i.e., a panel member in this disciplinary matter) could find that Leventhal's conduct violated RPC 1.8, then summary judgment cannot be granted. In addition, "the trial judge may not in granting summary judgment pass upon the credibility or weight of the opposing affidavits or evidence. That function is reserved for the trial." *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.,* 425 P.2d 599, 83 Nev. 143 (Nev. 1967); s*ee also Borgerson v. Scanlon*, 117 Nev. 216, 19 P.3d 236 (Nev. 2001) (*affirming Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*).

Thus, if adjudication of the claims requires weighing evidence or opposing statements, then it cannot be decided outside of hearing at which the triers of fact consider such evidence. Accordingly, the granting of Leventhal's MSJ would not have been appropriate because Leventhal failed to show that there is no genuine dispute as to any material fact. *See* NRCP 56(a). Moreover, a rational trier of fact

could find – and did find – that Leventhal violated RPC 1.8. Therefore, both Mr. Cook and Mr. Edwards correctly denied Leventhal's MSJ.

IV. THE RECORD SUPPORTS THE PANEL'S RECOMMENDATION

In his Opening Brief, Leventhal argues that "[a] one-year stayed suspension and five-year probation under these circumstances and on these records is unfair and not crafted to the offense." AOB 29. However, contrary to Leventhal's belief, the Panel's recommendation was not only fair, but lenient.

When imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating circumstances. American Bar Association's Annotated Standards for Imposing Lawyer Sanctions (hereinafter "ABA Standards") 125 (Ellyn S. Rosen, 2d ed. 2019).

As discussed *supra*, Leventhal violated his duty under RPC 1.8(a) during his representation of both Ms. Sosa-Avila and Mr. Mitrov. Leventhal's mental state during both RPC 1.8(a) violations was knowing.[8] Leventhal knowingly acquired a security interest in the Louis Vuitton purse/wallet, diamond ring, and iPhone adverse to Ms. Sosa-Avila, and knowingly acquired a possessory interest in the

[8] Knowledge is defined as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards xxi.

Dodge Viper adverse to Mr. Mitrov. Leventhal's misconduct caused potential injury to Ms. Sosa-Avila, and actual injury to Mr. Mitrov. Accordingly, Standard 4.32, which states that "[s]uspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client," is the appropriate baseline sanction. ABA Standards 180.

The fourth factor – the existence of aggravating or mitigating circumstances – may justify an upward or downward departure from the baseline sanction. ABA Standards 141. The Panel unanimously found that five (5) aggravating[9] factors and one (1) mitigating[10] factor existed. ROA 385-86. With five (5) aggravating factors and only one (1) mitigating factor applying to the underlying matter, the Panel could have easily justified an upward deviation from the 4.32 suspension baseline sanction. Instead, the Panel *arguably* deviated downward from the baseline sanction in imposing a suspended sentence. ROA 386.

Accordingly, the Panel's recommendation was not only fair, but lenient. Therefore, Leventhal's arguments fail.

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[9] The aggravating factors were: (1) prior disciplinary offenses; (2) dishonest or selfish motive; (3) a pattern of misconduct; (4) refusal to acknowledge the wrongful nature of conduct; and (5) substantial experience in the practice of law. *See* SCR 102.5(1).

[10] Full and free disclosure to disciplinary authority or cooperative attitude toward proceeding. *See* SCR 102.5(2).

CONCLUSION

Based upon the foregoing, the State Bar respectfully requests that this Court AFFIRM the Southern Nevada Disciplinary Board's recommendation to impose a one (1) year stayed suspension on Appellant to go into effect only if he receives any letter of reprimand/public reprimand or worse over the next five (5) years, as well as the requirement that Leventhal complete one (1) additional CLE hour for ethics and one (1) additional CLE hour for law practice management each year the suspension is stayed.

DATED this 22nd day of February 2022.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2012 in 14-point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14-points or larger, contains no more than 14,000 words, and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 22nd day of February 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 22, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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