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Electronically Filed  
Jul 22 2021 09:31 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RECORD OF DISCIPLINARY PROCEEDINGS,**  
**PLEADINGS AND TRANSCRIPT OF HEARING**

James J. Jimmerson, Esq.  
Nevada Bar No. 0264  
Dennis L. Kennedy, Esq.  
Nevada Bar No. 1462  
Joshua P. Gilmore, Esq.  
Nevada Bar No. 11567  
8984 Spanish Ridge Ave.  
Las Vegas, NV 89148

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# CASE SUMMARY FOR RECORD ON APPEAL

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1 On April 30, 2021, a formal hearing commenced and subsequently concluded on  
2 May 13, 2021. After hearing testimony, the Panel took the case under advisement.  
3 Subsequently, on May 21, 2021, the Panel issued its decision. The Panel unanimously  
4 found that Respondent had violated RPC 1.15 (Safekeeping).

5 **2. Number of Grievances included in Case.**

6 One.

7 **3. The Rules of Professional Conduct (“RPC”) and Supreme Court Rules**  
8 **(“SCR”) alleged in the Complaint**

9 RPC 1.15 (Safekeeping)

10 RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants)

11 **4. Nature of the Rules Violated**

12 The Panel unanimously concluded that each of Respondent’s five transfers from  
13 his trust account constituted a violation of RPC 1.15 (Safekeeping).

14 The State Bar voluntarily dismissed the RPC 5.3 (Responsibilities Regarding  
15 Nonlawyer Assistants) allegation after Respondent admitted during his testimony at the  
16 formal hearing that he made all the transfers from his IOLTA account himself.

17 **5. Mental State**

18 The Panel found that as to each of the November transfers and also the Nady  
19 transfer, Respondent should have known that he was dealing improperly with client  
20 property when he made the withdrawals. As to the Family trust transfer, the Panel  
21 determined that Respondent’s conduct was negligent.

1           **6.     Injury**

2           The Panel found that the three November transfers created a potential injury to  
3 clients. The Panel found little or no injury as a result of the Nady and Family trust  
4 transfers.

5           **7.     ABA Baseline Sanction**

6           The Panel unanimously concluded that the baseline sanction is suspension pursuant  
7 to ABA Standard 4.12.

8           **8.     Aggravation/Mitigation**

9           Pursuant to SCR 102.5, the panel found the following aggravating factors relevant:

- 10          a.     Prior disciplinary offense.
- 11          b.     Substantial experience in the practice of law.

12          Pursuant to SCR 102.5, the panel found the following mitigating factors relevant:


- 13          a.     Absence of a dishonest or selfish motive.
- 14          b.     Personal or Emotional problems.
- 15          c.     Timely good faith effort to make restitution or to rectify the consequences of  
16 the misconduct.
- 17          d.     Full a free disclosure to the disciplinary authority or cooperative attitude  
18 toward the proceeding
- 19          e.     Remorse.
- 20          f.     Remoteness of prior offense.

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1. Respondent should receive a Public Reprimand.

DATED this 14 day of July 2021.

By:  Daniel Young (July 17, 2021 10:08 PDT)

---

Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd. Suite 101  
Las Vegas, Nevada 89102  
(702) 382-2200  
Attorney for State Bar of Nevada

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10	Respondent's Motion to Dismiss with Prejudice and/or For Other Relief	ROA Page 000443- 000455	I
11	Filed April 22, 2021		
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16	Respondent's Supplemental Disclosures	ROA Page 000100- 000107	I
17	Filed February 26, 2021		
18	Respondent's Trial Brief	ROA Page 000493- 000501	I
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7	State Bar of Nevada's Opposition to Respondent's Motion to Dismiss Cunt II in the State Bar's Complaint	ROA Page 000021-000034	I
8	Filed November 17, 2020		
9	State Bar of Nevada's Reply to Respondent's Opposition to State Bar of Nevada's Motion in Limine to Exclude Expert Testimony and Expert Report	ROA Page 000367-000370	I
10	Filed April 13, 2021		
11	State Bar of Nevada's Trial Brief	ROA Page 000502-000518	I
12	Filed April 23, 2021		
13	State Bar's Final Summary of Evidence and Disclosure of Witnesses for Formal Hearing	ROA Page 000108-000113	I
14	Filed March 11, 2021		
15	State Bar's Initial Summary of Evidence and Disclosure of Witnesses for Formal Hearing	ROA Page 000055-000060	I
16	Filed January 20, 2021		
17	State Bar's Response to Respondent's Objections to the State Bar's Proposed Witnesses and Exhibits	ROA Page 000434-000442	I
18	Filed April 16, 2021		
19	Stipulation and Order Admitting Exhibits 1, 10-13, 17-18, 26-28, 33, 42-46, Y, Z, AA, BB, and CC; and Sealing Exhibits 10-13, 18, 26-28, 33, 44, and 46	ROA Page 000524-000528	I
20	Filed April 29, 2021		
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## **TRANSCRIPTS & EXHIBITS**

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Case No: OBC20-0163



FILED

OCT 07 2020

STATE BAR OF NEVADA  
BY: *D. Felix*  
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
Respondent. )

**COMPLAINT**

TO: James J. Jimmerson, Esq.  
c/o Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2), a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada ("State Bar"), 3100 W. Charleston Boulevard, Suite 100, Las Vegas, Nevada 89102, **within twenty (20) days of service of this Complaint**. Procedure regarding service is addressed in SCR 109.

**General Allegations**

1. Complainant, State Bar of Nevada, alleges that the Respondent, James J. Jimmerson, Esq. ("Respondent"), Nevada Bar No. 0264, is currently an active member of

1 the State Bar of Nevada and at all times pertinent to this complaint had his principal place  
2 of business for the practice of law located in Clark County, Nevada.

3 2. Respondent engaged in acts of professional misconduct warranting the  
4 imposition of professional discipline as set forth below.

5 3. On February 5, 2020, Nicole Cruz, who worked for Respondent sent a  
6 grievance to the State Bar (SBN) and alleged that Respondent made his office manager,  
7 Leah Ballard, transfer unearned funds out of his client trust account to make payroll.

8 4. Cruz claimed that Respondent told them to look the other way or they would  
9 be fired.

10 5. Cruz stated that she had no first-hand knowledge of Respondent giving  
11 these instructions, but she allegedly saw texts that he sent to Ballard.

12 6. In his response to SBN's letter of investigation, Respondent provided a  
13 current trust account reconciliation, that included his account ledgers and current  
14 account statement.

15 7. On February 6, 2020, SBN issued a subpoena to Nevada State Bank (NSB)  
16 requesting Respondents trust and business account records.

17 8. After receiving the records from NSB, SBN Investigator, Louise Watson  
18 reviewed Respondent's IOLTA trust, corporate and payroll accounts for any instances in  
19 which it appeared that he would not have had sufficient funds to make payroll but for a  
20 withdrawal from his IOLTA trust account.

21 9. Watson identified an instance in which payroll and related taxes disbursed  
22 from Respondent's payroll account between November 22 and November 27, 2019, would  
23 not have been possible without funds being withdrawn from IOLTA trust account, which  
24 was around the time referenced by Cruz.

25

1           10.     Watson identified that on November 20, 2019 Respondent's payroll account  
2 closed with a balance of \$2,513.15.

3           11.     Similarly, on November 20, 2019 Respondent's corporate account closed  
4 with a balance of \$19,758.19.

5           12.     Subsequently, on November 21, 2019, Respondent or his agent made an  
6 unidentified transfer in the amount of \$45,000 from his IOLTA trust account to his  
7 corporate account.

8           13.     Respondent or his agent then transferred \$46,958.87 from his corporate  
9 account to his payroll account.

10          14.     After making the transfer to his payroll account, Respondent or his agent  
11 disbursed \$46,772.53 from his payroll account before another deposit was made.

12          15.     The subsequent disbursements from his payroll account were as follows:

13               a.     On November 22, 2019, Respondent or his agent made a direct debit  
14                     from his payroll account in the amount of \$30,025, and also issued  
15                     \$5,861.26 in payroll checks.

16               b.     On November 26, 2019, Respondent or his agent issued another check  
17                     in the amount of \$703.47 from his payroll account.

18               c.     On November 27, 2019, Respondent or his agent made a direct debit of  
19                     \$10,182.80 from his payroll account to the IRS.

20          16.     Additionally, on November 14, 2019, Respondent or his agent improperly  
21 transferred \$40,000 from his IOLTA trust account to his corporate account from funds  
22 that were not on deposit in his IOLTA account until after the transfer was made.

23     ///

24     ///

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17. Then again on November 25, 2019, Respondent or his agent improperly transferred \$60,000 from his IOLTA trust account to his corporate account from funds that were not on deposit in his IOLTA account until after the transfer was made.

18. On December 19, 2019, Respondent or his agent transferred \$10,000 from his IOLTA trust account to his corporate account claiming that it was a transfer from Jay Nady's trust funds.

19. However, the January 25, 2020, invoice that Respondent provided in support of this transaction set forth in paragraph 18 above, showed that the work on Jay Nady's case was not performed until January 2020.

20. On December 20, 2019, Respondent or his agent transferred \$15,000 from his IOLTA trust account to a checking account belonging to the Jimmerson Family Trust.

21. On December 27, 2020, the \$15,000 was transferred back into the client trust account from Respondent's corporate account.

22. In response to the grievance, Respondent stated that Ballard worked for him for less than a month and managed to turn his books into a complete mess by the time she resigned on December 2, 2019.

23. Respondent also stated that Ballard was absent several days during her employment for health reasons and as a result he had to personally make some transfers from his trust account to his corporate account.

**COUNT I**

### RPC 1.15 - Safekeeping

24. RPC 1.15 states in relevant part:

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds

received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

25. Respondent improperly used his IOLTA trust account to pay his payroll obligations, as more fully set forth in paragraphs 10 through 15 herein.
26. Respondent withdrew funds from his IOLTA trust account without first verifying the balances of his clients' trust funds to see if there were funds available to be withdrawn, as more fully set forth in paragraphs 16 and 17 herein.
27. Respondent withdrew funds from his IOLTA account on the Jay Nady matter before he actually earned the earned the fees, as more fully set forth in paragraphs 18 and 19 herein.
28. Respondent improperly transferred \$15,000 from his client trust account to his personal Jimmerson Family Trust Account, as more fully set forth in paragraphs 20 and 21 herein.
29. Respondent knew or should have known his conduct was improper.
30. Respondent's conduct resulted in potential harm to his clients.
31. Respondent's conduct resulted in harm to the legal profession.
32. In light of the foregoing including, without limitation, paragraphs 1 through 23, Respondent has violated RPC 1.15 (Safekeeping).

**COUNT II**

**RPC 5.3 – Responsibilities Regarding Nonlawyer Assistants**

33. RPC 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

34. Respondent failed to take reasonable efforts to train his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that they had the necessary skill and knowledge to properly execute his trust account transactions.

35. Respondent failed to take reasonable efforts to supervise his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that their conduct was compatible with Respondent's professional obligations regarding his trust account transactions.

36. Respondent knew or should have known his conduct was improper.

37. Respondent's conduct resulted in potential harm to his clients.

1       38.   Respondent's conduct resulted in harm to the legal profession.

2       39.   In light of the foregoing including, without limitation, paragraphs 1 through  
3           23, Respondent has violated RPC 5.3 (Responsibilities Regarding  
4           Nonlawyer Assistants).

5       **WHEREFORE**, Complainant prays as follows:


6       40.   That a hearing be held pursuant to Nevada Supreme Court Rule 105;

7       41.   That Respondent be assessed the actual and administrative costs of the  
8       disciplinary proceeding pursuant to SCR 120; and

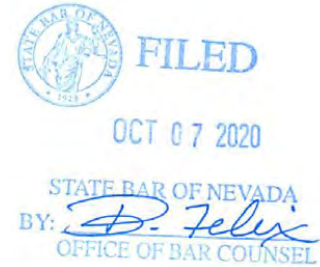
9       42.   That pursuant to SCR 102, such disciplinary action be taken by the Southern  
10      Nevada Disciplinary Board against Respondent as may be deemed appropriate under the  
11      circumstances.

12      **DATED** this 7 day of October, 2020.

13                                   **STATE BAR OF NEVADA**  
14                                   Daniel M. Hooge, Bar Counsel

15                                     
16                                   Daniel Young (Oct 7, 2020 08:51 PDT)  
17                                   Daniel T. Young, Assistant Bar Counsel  
18                                   Nevada Bar No. 11747  
19                                   3100 W. Charleston Blvd, Suite 100  
20                                   Las Vegas, Nevada 89102  
21                                   (702)-382-2200  
22                                   Attorney for State Bar of Nevada  
23  
24  
25

Case No: OBC20-0163



**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
)  
Respondent. )

**DECLARATION OF MAILING**

Kristi Faust, under penalty of perjury, being first and duly sworn, deposes and says  
as follows:

1. That Declarant is employed with the State Bar of Nevada and, in such capacity,  
Declarant is Custodian of Records for the Discipline Department of the State  
Bar of Nevada.
2. That Declarant states that the enclosed documents are true and correct copies  
of the **COMPLAINT, FIRST DESIGNATION OF HEARING PANEL  
MEMBERS, and STATE BAR OF NEVADA'S PEREMPTORY  
CHALLENGES** in the matter of the *State Bar of Nevada vs. James J.  
Jimmerson, Esq.*, Case Nos. OBC20-0163.
3. That pursuant to Supreme Court Rule 109, the Complaint, First Designation of  
Hearing Panel Members, and State Bar of Nevada's Peremptory Challenges

1 were served on the following by placing copies in an envelope which was then  
2 sealed and postage fully prepaid for regular and certified mail, and deposited  
3 in the United States mail at Las Vegas, Nevada on **Friday, October 9, 2020**,  
4 to:

5 James J. Jimmerson, Esq.  
6 c/o Bailey Kennedy  
7 8984 Spanish Ridge Avenue  
8 Las Vegas, NV 89148

**CERTIFIED MAIL RECEIPT 7019 2970 0001 1910 4546**

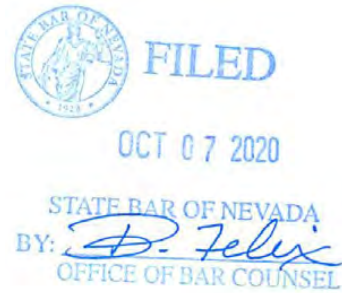
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Dated this 7<sup>th</sup> day of October, 2020.

11  
12 Kristi A. Faust

13 Kristi Faust, an employee  
14 of the State Bar of Nevada  
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Case No: OBC20-0163



**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
Respondent. )

**DESIGNATION OF  
HEARING PANEL MEMBERS**

The following are members of the Disciplinary Board for the Southern District of Nevada. Pursuant to Nevada Supreme Court Rule (SCR) 105, you may issue peremptory challenge to five (5) such individuals by delivering the same in writing to the Office of Bar Counsel within twenty (20) days of service of the complaint.

The Chair of the Southern Nevada Disciplinary Board will thereafter designate a hearing panel of three (3) members of the Disciplinary Board, including at least one member who is not an attorney, to hear the above-captioned matter.

1. Ronald C. Bloxham, Esq.
2. Annette Bradley, Esq.
3. John E. Bragonje, Esq.
4. Shemilly Bricoe, Esq.
5. Jacqueline B. Carman, Esq.
6. Andrew A. Chiu, Esq.
7. James P. Chrisman, Esq.


1	8. Nell Christensen, Esq.
2	9. Marc P. Cook, Esq.
3	10. Bryan A. Cox, Esq.
4	11. Ira W. David, Esq.
5	12. Damon Días, Esq.
6	13. Sandra DiGiacomo, Esq.
7	14. F. Thomas Edwards, Esq.
8	15. Matthew Fox, Esq.
9	16. Adam Garth, Esq.
10	17. Kelly Giordani, Esq.
11	18. Angela Guingcangco, Esq.
12	19. Parish D. Heshmati, Esq.
13	20. Kenneth E. Hogan, Esq.
14	21. Jennifer K. Hostetler, Esq.
15	22. Franklin Katschke, Esq.
16	23. Robert Kelley, Esq.
17	24. Christopher J. Lalli, Esq.
18	25. James T. Leavitt, Esq.
19	26. Michael B. Lee, Esq.
20	27. Jennifer Lloyd, Esq.
21	28. Donald Lowrey, Esq.
22	29. Jason R. Maier, Esq.
23	30. Russell E. Marsh, Esq.
24	31. Farhan Naqvi, Esq.
25	32. Michael J. Oh, Esq.
	33. Dana Oswalt, Esq.
	34. Brian J. Pezzillo, Esq.
	35. Gary A. Pulliam, Esq.
	36. Michael Rawlins, Esq.
	37. Jericho Remitio, Esq.
	38. Jarrod Rickard, Esq.
	39. Miriam E. Rodriguez, Esq.
	40. Vincent Romeo, Esq.
	41. Daniel Royal, Esq.
	42. Africa A. Sanchez, Esq.
	43. Jen J. Sarafina, Esq.
	44. Jay Shafer, Esq.
	45. Jeffrey G. Sloane, Esq.
	46. Sarah E. Smith, Esq.
	47. James Sweetin, Esq.
	48. Dawn Throne, Esq.
	49. Stephen Titzer, Esq.
	50. Jacob J. Villani, Esq.
	51. Dan R. Waite, Esq.
	52. Marni Watkins, Esq.
	53. Reed J. Werner, Esq.
	54. Shann D. Winesett, Esq.

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- 55. Mary E. Albregts
- 56. Afeni Banks
- 57. Alexander Falconi
- 58. Brittany Falconi
- 59. Joelyne Gold
- 60. Elizabeth A. Hanson
- 61. Jack S. Hegeduis
- 62. Julia D. Hesmati, Pharm. D.
- 63. William M. Holland
- 64. Nicholas Kho
- 65. Annette Kingsley
- 66. Gale Kotlikova
- 67. Benjamin S. Lurie
- 68. Jo Kent McBeath, MD
- 69. Steve Moore
- 70. Grace Ossowski
- 71. Peter Ossowski
- 72. Kellie C. Rubin
- 73. Vikki L. Seelig
- 74. Danny Lee Snyder, Jr.
- 75. Harvey Weatherford

**DATED** this 7 day of October, 2020.

**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

  
Daniel Young (Oct 7, 2020 09:52 PDT)  
Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
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Attorney for State Bar of Nevada

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*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S MOTION TO DISMISS COUNT  
II IN THE STATE BAR'S COMPLAINT**

Pursuant to NRCP 12(b)(5) and DRP 15, James J. Jimmerson moves to dismiss Count II in the State Bar's Complaint, filed October 9, 2020, alleging a violation of Nevada RPC 5.3. As shown below, the State Bar has not alleged any facts establishing that Mr. Jimmerson failed to ensure that his firm has in effect measures reasonably assuring him that non-lawyer employees will act in a manner that is compatible with his professional obligations. Nevada RPC 5.3(a)-(b). Further, the State Bar has not alleged any facts establishing that a non-lawyer employee at Mr. Jimmerson's firm committed an act that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson. Nevada RPC 5.3(c). Absent such allegations, the RPC 5.3 charge must be dismissed. SCR 105(2) ("The complaint shall be sufficiently clear and specific to inform the attorney of ... the underlying conduct supporting the charges.").

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any oral argument as may be heard by the Chair (or Vice Chair) of the Disciplinary Board.

DATED this 2<sup>nd</sup> day of November, 2020.

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore  
DENNIS L. KENNEDY  
JOSHUA P. GILMORE

*Attorneys for Respondent*  
James J. Jimmerson, Esq.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

This matter arises from alleged mismanagement of Mr. Jimmerson's client trust account. The State Bar alleges in Count I that Mr. Jimmerson made several improper withdrawals from his client trust account in late 2019. While Mr. Jimmerson disputes those allegations, this Motion is not directed at Count I in the State Bar's Complaint for violation of Nevada RPC 1.15.

The State Bar alleges in Count II that Mr. Jimmerson did not properly train two non-lawyer employees at his firm and failed to ensure that they acted in a manner that was compatible with Mr. Jimmerson's professional obligations. The State Bar's allegations are conclusory in nature and unsupported by any facts. Absent specifics, there is nothing in the Complaint giving fair notice to Mr. Jimmerson concerning his alleged violation of Nevada RPC 5.3 in accordance with the elements of due process. Consequently, Count II in the Complaint must be dismissed.

### **II. STATEMENT OF ASSUMED FACTS**

The following allegations in the State Bar's Complaint are assumed true solely for purposes of this Motion. *See, e.g., Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

In or around February 2020, the State Bar opened an investigation of Mr. Jimmerson after receiving a grievance from a (disgruntled) former employee of his firm. (Compl., ¶ 3.) As part of its investigation, the State Bar subpoenaed Mr. Jimmerson's "trust and business account records." (*Id.*

¶¶ 6-7.) Based on a review of those records, together with financial documents produced by Mr. Jimmerson in response to the grievance, the State Bar alleges that Mr. Jimmerson made various improper withdrawals from his client trust account in late 2019. (*Id.* ¶¶ 10-21.)

With regard to the grievant (Nicole Cruz), the State Bar does not allege that she was involved in the subject withdrawals from Mr. Jimmerson’s client trust account. (*See id.*) In fact, the State Bar does not allege that Mr. Jimmerson directed Ms. Cruz to do anything wrong. (*See generally id.*)

The State Bar references another former employee of Mr. Jimmerson’s firm in its Complaint—Leah Ballard. (*Id.* ¶ 3.) While the State Bar implies that Ms. Ballard may have been involved in the subject withdrawals from Mr. Jimmerson’s client trust account (*see id.* ¶ 4), the State Bar acknowledges that it is uncertain of that since it is based on hearsay (*see id.* ¶ 5). Conversely, the State Bar alleges that Mr. Jimmerson “personally ma[de] some transfers from his trust account to his corporate account.” (*Id.* ¶ 23.)

Based on these allegations, the State Bar alleges that Mr. Jimmerson violated Nevada RPC 1.15 (Count I) and Nevada RPC 5.3 (Count II). This Motion seeks dismissal of the Nevada RPC 5.3 charge in the State Bar’s Complaint.

### III. ARGUMENT

#### A. Standard of Decision.

A defendant may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” NRCP 12(b)(5);<sup>1</sup> *see also* DRP 15 (“Separate from a verified response or answer, Respondent may file a motion to dismiss all or part of the Complaint . . .”). “Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.” *Stockmeier v. Nev. Dept. of Corrections*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) (quotation marks and citation omitted); *see also Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (providing that dismissal is appropriate where the allegations “fail to state a cognizable claim for relief”). Likewise, dismissal is proper “[w]here an essential element of a claim for relief is absent.” *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992).

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<sup>1</sup> The Nevada Rules of Civil Procedure apply in disciplinary cases. SCR 119(3).

1 In a disciplinary case, the sufficiency of the State Bar’s Complaint is vital to protecting the  
2 respondent’s due process rights. To that end, the Supreme Court Rules provide that a complaint  
3 must be “sufficiently clear and specific to inform the attorney of the charges against him or her and  
4 the underlying conduct supporting the charges.” SCR 105(2); *see also Burgess v. Storey Cty.*, 116  
5 Nev. 121, 125, 992 P.2d 856, 858-59 (2000) (holding that due process requires that a party be  
6 notified of the specific charges against him and the facts underlying those charges); *State ex rel.*  
7 *Okla. Bar Ass’n v. Seratt*, 66 P.3d 390, 392 (Okla. 2003) (“The bar association must allege facts  
8 specific enough to put the accused attorney on notice of the charges of misconduct and give him an  
9 opportunity to respond to the alleged facts.”). *The Nevada Supreme Court will not hesitate to set*  
10 *aside a disciplinary finding if the attorney did not receive fair notice of his alleged wrongdoing at*  
11 *the outset of the proceeding. See In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204  
12 (2001); *see also Statewide Grievance Comm. v. Botwick*, 627 A.2d 901, 906-08 (Conn. 1993)  
13 (reversing an RPC violation where the charging document did not fully apprise the attorney of the  
14 alleged wrongdoing); *Colvin v. Comm. on Prof’l Conduct*, 806 S.W.2d 385, 386 (Ark. 1991) (“Since  
15 no notice of the charge of Rule 1.4 was given in advance of the committee’s proceedings, the finding  
16 of a violation of that rule cannot be sustained.”).

17 **B. The Nevada RPC 5.3 Charge Should Be Dismissed.**

18 As shown below, the State Bar did nothing more than assert—in conclusory fashion—that  
19 Mr. Jimmerson violated Nevada RPC 5.3 with regard to his retention of two non-lawyer employees,  
20 Ms. Cruz and Ms. Ballard. Because a rote recitation of the elements of a claim is insufficient to  
21 survive a motion to dismiss, the Disciplinary Chair (or Vice Chair) should dismiss Count II in the  
22 State Bar’s Complaint. *See, e.g., Brondas v. Corizon Health, Inc.*, No. 7:14-CV-00369, 2014 U.S.  
23 Dist. LEXIS 151061, at \*6 -7 (W.D. Va. Oct. 23, 2014) (dismissing a claim that was premised on a  
24 “rote recitation of the elements” without “anything more specific” than conclusory allegations); *see*  
25 *also Williams v. Wicomico Cty. Bd. of Educ.*, 836 F. Supp. 2d 387, 391 (D. Md. 2011)  
26 (“[U]nadorned accusations and [a] rote recitation of a cause of action’s elements fail to meet the  
27 requisite pleading standard.”).

1. The State Bar Did Not Plead Specific Facts Supporting a Nevada RPC 5.3(a) or (b) Violation.

Although unclear, it appears that the State Bar alleges that Mr. Jimmerson violated Nevada RPC 5.3(a) or (b). (*See* Compl., ¶¶ 33-35.) Nevada RPC 5.3(a) and (b) provide that a lawyer with managerial or supervisory authority, respectively, must make “reasonable efforts” to ensure that the conduct of non-lawyers at his firm is “compatible with the professional obligations of the lawyer.”

In this case, the State Bar’s Complaint is utterly devoid of any allegations establishing that Mr. Jimmerson did not make reasonable efforts to ensure that non-lawyer employees at his firm (in particular, Ms. Cruz and Ms. Ballard) complied with the Rules of Professional Conduct. For example, the State Bar does not allege that Mr. Jimmerson did not have policies and procedures in place to ensure that his office manager properly assisted him in maintaining his books and records. Similarly, the State Bar does not allege that Mr. Jimmerson neglected to supervise his office manager and take reasonable steps to ensure that she helped him properly maintain his books and records. There are simply no facts set forth in the Complaint supporting the State Bar’s conclusory allegation that Mr. Jimmerson “failed to take reasonable efforts to train his nonlawyer assistants ... to ensure that they had the necessary skill and knowledge to properly execute his trust account transactions.” (Compl., ¶ 34.)

Although the State Bar alleges that Ms. Ballard turned Mr. Jimmerson’s books and records “into a complete mess” (*see* Compl., ¶ 22), ***the State Bar does not allege that Ms. Ballard’s actions were due to negligent training, supervision or oversight by Mr. Jimmerson.*** It is axiomatic that “employee misconduct, without more, does not necessarily denote a violation of Rule 5.3.” *See* AMERICAN BAR ASS’N, *Annotated Model Rules of Prof’l Conduct* 517 (9th ed. 2019); *see also In re Discipline of Lerner*, 124 Nev. 1232, 1243, 197 P.3d 1067, 1075 (2008) (“The mere fact that an employee acted improperly does not necessarily result in lawyer discipline; the lawyer is not per se vicariously responsible for an employee’s misconduct.”). With that in mind, accepting as true (solely for purposes of this Motion) that Ms. Ballard failed in her duties as office manager, the State Bar has not alleged how or why Ms. Ballard’s shortcomings were Mr. Jimmerson’s fault. That omission is fatal to the State Bar’s charge that Mr. Jimmerson violated Nevada RPC 5.3(a) or (b).

1 For these reasons, the Nevada RPC 5.3(a) or (b) charge should be dismissed.

2 2. The State Bar Did Not Plead Specific Facts Supporting a Nevada RPC 5.3(c)  
3 Violation.

4 Although unclear, it appears that the State Bar alleges that Mr. Jimmerson violated Nevada  
5 RPC 5.3(c). (*See* Compl., ¶¶ 33-35.) Nevada RPC 5.3(c) provides that a lawyer shall be responsible  
6 for the conduct of non-lawyers and liable for any violation of the Rules of Professional Conduct  
7 committed by such non-lawyers if the lawyer (i) orders or knowingly ratifies the specific misconduct  
8 or (ii) fails to promptly take remedial measures upon discovering the specific misconduct.

9 In this case, the State Bar's Complaint lacks allegations establishing that Mr. Jimmerson  
10 either directed Ms. Cruz or Ms. Ballard to make the subject withdrawals at issue in this case from his  
11 client trust account or, upon discovering those withdrawals by his non-lawyer employees, failed to  
12 reverse them. In fact, other than alleging that Ms. Ballard left Mr. Jimmerson's books and records in  
13 disarray (*see* Compl., ¶ 22), the State Bar does not allege how Ms. Ballard (or Ms. Cruz) was  
14 responsible for or involved in the subject withdrawals from Mr. Jimmerson's client trust account.  
15 To the contrary, the State Bar alleges that Mr. Jimmerson was responsible for those withdrawals.  
16 (*See id.*, ¶ 23.) Because the Complaint does not establish that a non-lawyer employee at Mr.  
17 Jimmerson's firm facilitated any withdrawal from his client trust account, there are no facts in the  
18 Complaint supporting the State Bar's allegation that Mr. Jimmerson violated Nevada RPC 5.3(c).

19 For these reasons, the Nevada RPC 5.3(c) charge should be dismissed.

20 **IV. CONCLUSION**

21 The State Bar does not allege any facts supporting its Nevada RPC 5.3 charge. There is  
22 nothing in the Complaint establishing that Mr. Jimmerson did not have measures in effect at his firm  
23 giving him reasonable assurance that his non-lawyer employees would act in accordance with his  
24 professional obligations. There is also nothing in the Complaint establishing that Mr. Jimmerson  
25 directed any non-lawyer employee at his firm to engage in acts that would amount to a violation of  
26 the Rules of Professional Conduct if committed by him. In sum, the Complaint is lacking in terms of  
27 specificity when it comes to the Nevada RPC 5.3 charge. Allowing the State Bar to proceed on this  
28 charge would violate Mr. Jimmerson's due process rights.

1 For these reasons, the Disciplinary Chair (or Vice Chair) should grant this Motion in its  
2 entirety and dismiss Count II in the State Bar's Complaint.

3 DATED this 2<sup>nd</sup> day of November, 2020.

4 BAILEY ♦ KENNEDY

5 By: /s/ Joshua P. Gilmore  
6 DENNIS L. KENNEDY  
JOSHUA P. GILMORE

7 *Attorneys for Respondent*  
8 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 2<sup>nd</sup> day of November, 2020, service of the foregoing **RESPONDENT’S MOTION TO DISMISS COUNT II IN THE STATE BAR’S COMPLAINT** was made by email to the following at their last known address:

DANIEL M. HOOGE  
BAR COUNSEL  
DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniel@nvbar.org  
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*Attorneys for Complainant*  
STATE BAR OF NEVADA

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

Case No: OBC20-0163



FILED

NOV 17 2020

STATE BAR OF NEVADA  
BY: *B. Felix*  
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 0264,

Respondent.

**STATE BAR OF NEVADA'S  
OPPOSITION TO  
RESPONDENT'S MOTION TO  
DISMISS COUNT II IN THE  
STATE BAR'S COMPLAINT**

The State Bar of Nevada, by and through Assistant Bar Counsel Daniel T. Young, hereby submits its Opposition to Respondent's Motion to Dismiss Count II in the State Bar's Complaint and requests that the motion be denied. This Opposition is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Chair.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**STATEMENT OF FACTS**

The State Bar's Complaint regarding these matters was filed on October 7, 2020. See Exhibit 1. This Complaint was filed by the Nevada State Bar pursuant to Supreme Court Rule (SCR) 105. Prior to filing the Complaint, the State Bar, pursuant to SCR 105(1)(a) presented these matters to a Screening Panel of the Southern Nevada Disciplinary Board. That Screening Panel determined that Respondent's conduct violated the Rules of Professional Conduct as set

1 forth in Court II of the Complaint, and determined that the charges, along with Count I, was of  
2 a nature sufficient to warrant Reprimanding the Respondent. Subsequently, on August 28,  
3 2020, Respondent issued an objection to the Panel's Reprimand.

4 Following Respondent's Objection, the State Bar filed a Complaint. SCR 105(2) requires  
5 that the State Bar file a Complaint that is ". . . sufficiently clear and specific to inform  
6 Respondent of the charges against him or her and the underlying conduct supporting the  
7 charges." See SCR 105(2). SCR 105(2)(e) requires that the State Bar must prove by clear and  
8 convincing evidence that Respondent violated the Rules of Professional Conduct.

9 The Complaint deals with Respondent or his agent conducting improper trust account  
10 actions and Respondent directing his nonlawyer staff to conduct an improper trust account  
11 transfer to his payroll account. The Complaint includes specific details of account numbers and  
12 transfer amounts showing misappropriation and commingling of funds by Respondent or his  
13 agent.

## 14 **LEGAL ARGUMENT**

### 15 **I. The State Bar's Complaint Meets Requirements of SCR 105 and was Pled** 16 **with Sufficient Particularity.**

#### 17 **a. The RPC 5.3(a)&(b) violation**

18 Courts must construe pleadings liberally and accept all factual allegations in the  
19 complaint as true. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1217,  
20 14 P.3d 1275, 1278 (Nev. 2000). Courts must also draw every fair inference in favor of the non-  
21 moving party. Id.

22 In this case, Count II clearly states that paragraph 1-23 of the Complaint details the  
23 actions taken by Respondent or his agent and/or nonlawyer staff that supports the RPC 5.3  
24 violation. Complaint at ¶ 39. The allegations set forth in paragraphs 12-23 of the Complaint

1 document with specificity the mishandling of Respondent's trust account. See Complaint at ¶  
2 12-23. The Complaint clearly sets forth the particular account and the specified amount of  
3 funds which were transferred improperly. Id. The Complaint sufficiently states that  
4 Respondent admitted that his new employee had, within the space of one month of being hired  
5 by Respondent, turned his accounts into a complete mess. See Complaint at ¶ 12-22. Therefore,  
6 based upon the specific allegations in the Complaint, particularly paragraphs 12-22, it is fair to  
7 infer that Respondent failed to, *inter alia*, properly train, instruct, and/or supervise his new  
8 employee or verify that she was conducting his trust account transactions properly. Blackjack  
9 Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (Nev.  
10 2000).

11 Therefore, Respondent fails to show that there is no set of facts that supports a violation  
12 of RPC 5.3(a)-(b) violation in Count II of the Complaint. Simpson v. Mars Inc., 113 Nev. 188,  
13 929 P.2d 966 (1997). As a result, his motion should be denied.

14 **b. The RPC 5.3(c) violation**

15 Respondent also argues that "the State Bar's Complaint lacks allegations establishing  
16 that Mr. Jimmerson either directed Ms. Cruz or Ms. Ballard to make subject withdrawals at  
17 issue in this case from his trust account or, upon discovering those withdrawals by his non-  
18 lawyer employees, failed to reverse them," sufficient to violate RPC 5.3(c) Motion to Dismiss,  
19 p. 6:9-12.

20 However, the plain language of paragraph 3 through 5 of the Complaint clearly assert  
21 that Respondent ordered his nonlawyer staff to make an improper withdrawal from his trust  
22 account to so that the Respondent could make his payroll. Complaint at ¶ 3-5, 39. Further,  
23 paragraphs 10-15 show the specific dollar amounts of the transfer(s) that Respondent ordered  
24 his nonlawyer assistants to complete. Complaint at ¶ 10-15, 39. Based upon the allegations in

1 paragraphs 10-15, a fair inference can also be drawn that Respondent failed to remediate the  
2 improper payroll transfer that he ordered his nonlawyer assistant to complete in violation of  
3 RPC 5.3(c)(2). Complaint at ¶ 10-15.

4 Therefore, the plain language of the Complaint contradicts Respondent's assertion. His  
5 motion should be denied.

## 6 **II. Count II Survives a Motion to Dismiss**

7 A Complaint will not be dismissed for failure to state a claim unless it appears beyond a  
8 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would  
9 entitle him or her to relief. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev.  
10 1213, 1217, 14 P.3d 1275, 1278 (Nev. 2000); Simpson v. Mars Inc., 113 Nev. 188, 929 P.2d 966  
11 (1997). Additionally, a trial court may dismiss a complaint only if it appears to a certainty that  
12 a plaintiff can prove no set of facts which would entitle him to relief after a court accepts all  
13 allegations pled as true. Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993).

14 In this case, the facts as alleged in Count II are that Respondent ordered his nonlawyer  
15 staff to improperly transfer funds from his trust account so that he could make payroll and that  
16 Respondent failed to remediate that transfer. Complaint at ¶ 39. Additionally, Count II alleges  
17 that Respondent's nonlawyer assistant was not properly trained or supervised during her first  
18 month of employment as evidence by the myriad of improper transfers that had taken place in  
19 Respondent's trust account. Id. Lastly, Count II alleges that Respondent himself improperly  
20 transferred funds out of his trust account which resulted in misappropriation and/or  
21 commingling. Id.

22 If true, the facts alleged in Count II establish that Respondent violated RPC 5.3(c) and  
23 should be sanctioned appropriately.


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**CONCLUSION**

For the reasons set forth above, the State Bar respectfully requests that Respondent's Motion to Dismiss Count II in the State Bar's Complaint be denied.

**DATED** this 17 day of November 2020.

**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

  
Daniel Young (Verified, 2020 13:24 PST)  
Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing The State Bar of Nevada's Opposition to Respondent's **State Bar of Nevada's Opposition to Respondent's Motion to Dismiss Count II in the State Bar's Complaint** was deposited via electronic mail to:

1. Russ Marsh, Esq. (Disciplinary Board Chair): [russ@wmllawlv.com](mailto:russ@wmllawlv.com); [remarsh2000@hotmail.com](mailto:remarsh2000@hotmail.com)
2. Joshua P. Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)
3. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

DATED this 17<sup>th</sup> day of November, 2020.

By: Kristi A. Faust  
Kristi Faust,  
an employee of the State Bar of Nevada.

# **Exhibit A**

Case No: OBC20-0163



FILED

OCT 07 2020

STATE BAR OF NEVADA  
BY: *D. Felix*  
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
Respondent. )

**COMPLAINT**

TO: James J. Jimmerson, Esq.  
c/o Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2), a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada ("State Bar"), 3100 W. Charleston Boulevard, Suite 100, Las Vegas, Nevada 89102, **within twenty (20) days of service of this Complaint**. Procedure regarding service is addressed in SCR 109.

**General Allegations**

1. Complainant, State Bar of Nevada, alleges that the Respondent, James J. Jimmerson, Esq. ("Respondent"), Nevada Bar No. 0264, is currently an active member of

1 the State Bar of Nevada and at all times pertinent to this complaint had his principal place  
2 of business for the practice of law located in Clark County, Nevada.

3 2. Respondent engaged in acts of professional misconduct warranting the  
4 imposition of professional discipline as set forth below.

5 3. On February 5, 2020, Nicole Cruz, who worked for Respondent sent a  
6 grievance to the State Bar (SBN) and alleged that Respondent made his office manager,  
7 Leah Ballard, transfer unearned funds out of his client trust account to make payroll.

8 4. Cruz claimed that Respondent told them to look the other way or they would  
9 be fired.

10 5. Cruz stated that she had no first-hand knowledge of Respondent giving  
11 these instructions, but she allegedly saw texts that he sent to Ballard.

12 6. In his response to SBN's letter of investigation, Respondent provided a  
13 current trust account reconciliation, that included his account ledgers and current  
14 account statement.

15 7. On February 6, 2020, SBN issued a subpoena to Nevada State Bank (NSB)  
16 requesting Respondents trust and business account records.

17 8. After receiving the records from NSB, SBN Investigator, Louise Watson  
18 reviewed Respondent's IOLTA trust, corporate and payroll accounts for any instances in  
19 which it appeared that he would not have had sufficient funds to make payroll but for a  
20 withdrawal from his IOLTA trust account.

21 9. Watson identified an instance in which payroll and related taxes disbursed  
22 from Respondent's payroll account between November 22 and November 27, 2019, would  
23 not have been possible without funds being withdrawn from IOLTA trust account, which  
24 was around the time referenced by Cruz.

25

1           10.     Watson identified that on November 20, 2019 Respondent's payroll account  
2 closed with a balance of \$2,513.15.

3           11.     Similarly, on November 20, 2019 Respondent's corporate account closed  
4 with a balance of \$19,758.19.

5           12.     Subsequently, on November 21, 2019, Respondent or his agent made an  
6 unidentified transfer in the amount of \$45,000 from his IOLTA trust account to his  
7 corporate account.

8           13.     Respondent or his agent then transferred \$46,958.87 from his corporate  
9 account to his payroll account.

10          14.     After making the transfer to his payroll account, Respondent or his agent  
11 disbursed \$46,772.53 from his payroll account before another deposit was made.

12          15.     The subsequent disbursements from his payroll account were as follows:

13               a.     On November 22, 2019, Respondent or his agent made a direct debit  
14                     from his payroll account in the amount of \$30,025, and also issued  
15                     \$5,861.26 in payroll checks.

16               b.     On November 26, 2019, Respondent or his agent issued another check  
17                     in the amount of \$703.47 from his payroll account.

18               c.     On November 27, 2019, Respondent or his agent made a direct debit of  
19                     \$10,182.80 from his payroll account to the IRS.

20          16.     Additionally, on November 14, 2019, Respondent or his agent improperly  
21 transferred \$40,000 from his IOLTA trust account to his corporate account from funds  
22 that were not on deposit in his IOLTA account until after the transfer was made.

23     ///

24     ///

25

17. Then again on November 25, 2019, Respondent or his agent improperly transferred \$60,000 from his IOLTA trust account to his corporate account from funds that were not on deposit in his IOLTA account until after the transfer was made.

18. On December 19, 2019, Respondent or his agent transferred \$10,000 from his IOLTA trust account to his corporate account claiming that it was a transfer from Jay Nady's trust funds.

19. However, the January 25, 2020, invoice that Respondent provided in support of this transaction set forth in paragraph 18 above, showed that the work on Jay Nady's case was not performed until January 2020.

20. On December 20, 2019, Respondent or his agent transferred \$15,000 from his IOLTA trust account to a checking account belonging to the Jimmerson Family Trust.

21. On December 27, 2020, the \$15,000 was transferred back into the client trust account from Respondent's corporate account.

22. In response to the grievance, Respondent stated that Ballard worked for him for less than a month and managed to turn his books into a complete mess by the time she resigned on December 2, 2019.

23. Respondent also stated that Ballard was absent several days during her employment for health reasons and as a result he had to personally make some transfers from his trust account to his corporate account.

**COUNT I**

### RPC 1.15 - Safekeeping

24. RPC 1.15 states in relevant part:

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds

received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

25. Respondent improperly used his IOLTA trust account to pay his payroll obligations, as more fully set forth in paragraphs 10 through 15 herein.
26. Respondent withdrew funds from his IOLTA trust account without first verifying the balances of his clients' trust funds to see if there were funds available to be withdrawn, as more fully set forth in paragraphs 16 and 17 herein.
27. Respondent withdrew funds from his IOLTA account on the Jay Nady matter before he actually earned the earned the fees, as more fully set forth in paragraphs 18 and 19 herein.
28. Respondent improperly transferred \$15,000 from his client trust account to his personal Jimmerson Family Trust Account, as more fully set forth in paragraphs 20 and 21 herein.
29. Respondent knew or should have known his conduct was improper.
30. Respondent's conduct resulted in potential harm to his clients.
31. Respondent's conduct resulted in harm to the legal profession.
32. In light of the foregoing including, without limitation, paragraphs 1 through 23, Respondent has violated RPC 1.15 (Safekeeping).

**COUNT II**

**RPC 5.3 – Responsibilities Regarding Nonlawyer Assistants**

33. RPC 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

34. Respondent failed to take reasonable efforts to train his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that they had the necessary skill and knowledge to properly execute his trust account transactions.

35. Respondent failed to take reasonable efforts to supervise his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that their conduct was compatible with Respondent's professional obligations regarding his trust account transactions.

36. Respondent knew or should have known his conduct was improper.

37. Respondent's conduct resulted in potential harm to his clients.

1       38.   Respondent's conduct resulted in harm to the legal profession.

2       39.   In light of the foregoing including, without limitation, paragraphs 1 through  
3           23, Respondent has violated RPC 5.3 (Responsibilities Regarding  
4           Nonlawyer Assistants).

5       **WHEREFORE**, Complainant prays as follows:


6       40.   That a hearing be held pursuant to Nevada Supreme Court Rule 105;

7       41.   That Respondent be assessed the actual and administrative costs of the  
8       disciplinary proceeding pursuant to SCR 120; and

9       42.   That pursuant to SCR 102, such disciplinary action be taken by the Southern  
10      Nevada Disciplinary Board against Respondent as may be deemed appropriate under the  
11      circumstances.

12      **DATED** this 7 day of October, 2020.

13                                   **STATE BAR OF NEVADA**  
14                                   Daniel M. Hooge, Bar Counsel

15                                     
16                                   Daniel Young (Oct 7, 2020 08:51 PDT)  
17                                   Daniel T. Young, Assistant Bar Counsel  
18                                   Nevada Bar No. 11747  
19                                   3100 W. Charleston Blvd, Suite 100  
20                                   Las Vegas, Nevada 89102  
21                                   (702)-382-2200  
22                                   Attorney for State Bar of Nevada  
23  
24  
25



FILED

DEC 02 2020

STATE BAR OF NEVADA  
BY: B. Felix  
OFFICE OF THE CLERK

Case No: OBC 20-0163

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

**ORDER**

This matter is before the Chair of the Southern Nevada Disciplinary Panel on Respondent's Motion to Dismiss Count II in the State Bar's Complaint ("Motion"). This Motion is directed solely at the second count of a two-count Complaint filed against Respondent, James J. Jimmerson, on October 7, 2020. The Chair has reviewed the Motion, filed on November 2, 2020; and the State Bar of Nevada's Opposition, filed on November 17, 2020. For the reasons set forth below, this motion is denied.

The Complaint alleges in Count I that Respondent made improper withdrawals from his IOLTA trust account to meet payroll obligations. Complaint, ¶¶ 10-15, 25. Count II also addresses the trust account transactions, this time alleging a violation of NRPC 5.3 regarding responsibilities over non-lawyer assistants. Complaint, ¶¶ 33-39. Count II also incorporates the introductory General Allegations in the first 23 paragraphs of the Complaint. *Id.*, ¶ 39.

Respondent argues that the Complaint fails to allege sufficient facts to show a violation of NRPC 5.3. First, he asserts that "the State Bar's Complaint is utterly devoid of any allegations establishing that Mr. Jimmerson did not make reasonable efforts to ensure that non-

1 lawyer employees at his firm . . . complied with the Rules of Professional Conduct.” Motion  
2 at 5. Second, Respondent argues that the State Bar has not sufficiently alleged that any non-  
3 lawyer employee actually violated the Rules of Professional Conduct. *Id.* at 6.

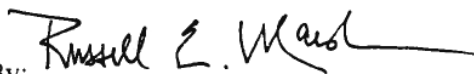
4 In reviewing a motion to dismiss a complaint for failure to state a claim, the Chair must  
5 accept all factual allegations as true and draw every fair inference in favor of the non-moving  
6 party, and only if it appears beyond a doubt that the plaintiff could prove no set of facts entitling  
7 it to relief should the complaint be dismissed. *Blackjack Bonding v. City of Las Vegas Municipal*  
8 *Court*, 11 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).

9 Here, the State Bar has alleged that Respondent failed to train his non-lawyer assistants  
10 regarding management of the trust account and that he failed to take reasonable steps to  
11 supervise them. Complaint, ¶¶ 34-35. As alleged in the Complaint and acknowledged in the  
12 Motion, Mr. Jimmerson responded to the grievance by stating that “Ballard . . . managed to turn  
13 his books into a complete mess” in less than a month. Complaint, ¶ 22; Motion at 5. It strikes  
14 the Chair as a fair inference that this was due to a lack of training or supervision. Further, the  
15 Complaint states that there was an allegation that Respondent told his office manager to transfer  
16 unearned funds out of the trust account to make payroll and told others to look the other way.  
17 Complaint, ¶¶ 3-5. This sufficiently alleges a violation of Rule 5.3(c).

18 Respondent’s motion to dismiss for failure to state a claim under NRCP 12(b)(5) and  
19 DRP 15 is therefore DENIED.

20 Dated this 1st day of December, 2020.

21 SOUTHERN NEVADA DISCIPLINARY BOARD

22 By:   
23 \_\_\_\_\_  
24 Russell E. Marsh, Esq.  
25 CHAIR  
26

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing Order was served via electronic mail to:

1. Russ Marsh, Esq. (Disciplinary Board Chair): [russ@wmlawlv.com](mailto:russ@wmlawlv.com); [remarsh2000@hotmail.com](mailto:remarsh2000@hotmail.com)
2. Joshua P. Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)
3. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

DATED this 2<sup>nd</sup> day of December, 2020.

By: Kristi A. Faust  
Kristi Faust,  
an employee of the State Bar of Nevada.

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.



FILED

DEC 10 2020

STATE BAR OF NEVADA  
BY: B. J. Jellison  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**VERIFIED ANSWER TO COMPLAINT**

Respondent James J. Jimmerson, Esq., by and through his counsel, answers the State Bar of Nevada's ("State Bar") Complaint, filed October 7, 2020, as follows:

**General Allegations**

1. Answering Paragraph 1, Mr. Jimmerson admits the averments.
2. Answering Paragraph 2, Mr. Jimmerson denies the averments.
3. Answering Paragraph 3, the grievance submitted by Nicole Cruz dated February 5, 2020, being in writing, speaks for itself. Mr. Jimmerson disputes the allegations in the grievance and denies all remaining averments.
4. Answering Paragraph 4, the grievance submitted by Nicole Cruz dated February 5, 2020, being in writing, speaks for itself. Mr. Jimmerson disputes the allegations in the grievance and denies all remaining averments.

1           5.       Answering Paragraph 5, the grievance submitted by Nicole Cruz dated February 5,  
2 2020, being in writing, speaks for itself. Mr. Jimmerson disputes the allegations in the grievance and  
3 denies all remaining averments.

4           6.       Answering Paragraph 6, Mr. Jimmerson's letter to the State Bar dated April 21, 2020,  
5 and all related enclosures, being in writing, speak for themselves. Mr. Jimmerson denies all  
6 remaining averments.

7           7.       Answering Paragraph 7, Mr. Jimmerson is without knowledge or information  
8 sufficient to form a belief as to the truth of the averments.

9           8.       Answering Paragraph 8, Mr. Jimmerson is without knowledge or information  
10 sufficient to form a belief as to the truth of the averments.

11          9.       Answering Paragraph 9, Mr. Jimmerson is without knowledge or information  
12 sufficient to form a belief as to the truth of the averments.

13          10.      Answering Paragraph 10, Mr. Jimmerson admits that on November 20, 2019, his  
14 payroll account closed with a balance of \$2,513.15. Mr. Jimmerson is without knowledge or  
15 information sufficient to form a belief as to the truth of the remaining averments.

16          11.      Answering Paragraph 11, Mr. Jimmerson admits that on November 20, 2019, his  
17 corporate account closed with a balance of \$19,758.19. Mr. Jimmerson is without knowledge or  
18 information sufficient to form a belief as to the truth of the remaining averments.

19          12.      Answering Paragraph 12, Mr. Jimmerson admits that on November 21, 2019, he  
20 transferred \$45,000.00 from his IOLTA trust account to his corporate account. Mr. Jimmerson  
21 denies all remaining averments.

22          13.      Answering Paragraph 13, Mr. Jimmerson admits that he transferred \$46,958.87 from  
23 his corporate account to his payroll account. Mr. Jimmerson denies all remaining averments.

24          14.      Answering Paragraph 14, Mr. Jimmerson admits that he disbursed \$46,772.53 from  
25 his payroll account. Mr. Jimmerson denies all remaining averments.

26          15.      Answering Paragraph 15, Mr. Jimmerson admits that he made subsequent  
27 disbursements from his payroll account. Mr. Jimmerson denies all remaining averments.  
28

1           a.       Answering Paragraph 15(a), Mr. Jimmerson admits that on November 22,  
2           2019, he debited \$30,025.00 from his payroll account and also issued \$5,861.26 in payroll  
3           checks. Mr. Jimmerson denies all remaining averments.

4           b.       Answering Paragraph 15(b), Mr. Jimmerson admits that on November 26,  
5           2019, he issued a check in the amount of \$703.47 from his payroll account. Mr. Jimmerson  
6           denies all remaining averments.

7           c.       Answering Paragraph 15(c), Mr. Jimmerson admits that on November 27,  
8           2019, he debited \$10,182.80 from his payroll account to the IRS. Mr. Jimmerson denies all  
9           remaining averments.

10          16.       Answering Paragraph 16, Mr. Jimmerson admits that on November 14, 2019, he  
11       transferred \$40,000.00 from his IOLTA trust account to his corporate account. Mr. Jimmerson  
12       denies all remaining averments.

13          17.       Answering Paragraph 17, Mr. Jimmerson admits that on November 25, 2019, he  
14       transferred \$60,000.00 from his IOLTA trust account to his corporate account. Mr. Jimmerson  
15       denies all remaining averments.

16          18.       Answering Paragraph 18, Mr. Jimmerson admits that on December 19, 2019, he  
17       transferred \$10,000.00 from his IOLTA account to his corporate account for work associated with  
18       Jay Nady. Mr. Jimmerson denies all remaining averments.

19          19.       Answering Paragraph 19, Mr. Jimmerson's letter to the State Bar dated May 22,  
20       2020, and enclosed invoice reflecting services rendered and expenses incurred in January 2020 by  
21       The Jimmerson Law Firm, P.C. for Jay Nady, being in writing, speak for themselves. Mr.  
22       Jimmerson denies all remaining averments.

23          20.       Answering Paragraph 20, Mr. Jimmerson admits the averments.

24          21.       Answering Paragraph 21, Mr. Jimmerson admits the averments.

25          22.       Answering Paragraph 22, Mr. Jimmerson's letters to the State Bar dated April 21,  
26       2020, and May 22, 2020, and all related enclosures, being in writing, speak for themselves. Mr.  
27       Jimmerson denies all remaining averments.

23. Answering Paragraph 23, Mr. Jimmerson's letters to the State Bar dated April 21, 2020, and May 22, 2020, and all related enclosures, being in writing, speak for themselves. Mr. Jimmerson denies all remaining averments.

**COUNT I**

**RPC 1.15 - Safekeeping**

24. Answering Paragraph 24, RPC 1.15, being in writing, speaks for itself. Mr. Jimmerson denies all remaining averments.

25. Answering Paragraph 25, Mr. Jimmerson denies the averments.

26. Answering Paragraph 26, Mr. Jimmerson denies the averments.

27. Answering Paragraph 27, Mr. Jimmerson denies the averments.

28. Answering Paragraph 28, Mr. Jimmerson admits that he transferred \$15,000.00 from his IOLTA account to the Jimmerson Family Trust Account. Mr. Jimmerson denies all remaining averments.

29. Answering Paragraph 29, Mr. Jimmerson denies the averments.

30. Answering Paragraph 30, Mr. Jimmerson denies the averments.

31. Answering Paragraph 31, Mr. Jimmerson denies the averments.

32. Answering Paragraph 32, Mr. Jimmerson denies the averments.

**COUNT II**

**RPC 5.3 - Responsibilities Regarding Nonlawyer Assistants**

33. Answering Paragraph 33, RPC 5.3, being in writing, speaks for itself. Mr. Jimmerson denies all remaining averments.

34. Answering Paragraph 34, Mr. Jimmerson denies the averments.

35. Answering Paragraph 35, Mr. Jimmerson denies the averments.

36. Answering Paragraph 36, Mr. Jimmerson denies the averments.

37. Answering Paragraph 37, Mr. Jimmerson denies the averments.

38. Answering Paragraph 38, Mr. Jimmerson denies the averments.

39. Answering Paragraph 39, Mr. Jimmerson denies the averments.

**AFFIRMATIVE DEFENSES**

Having fully answered the State Bar's Complaint, Mr. Jimmerson asserts the following affirmative defenses:

1. The Complaint violates Mr. Jimmerson's right to due process by failing to properly notify him of the charges alleged as required under Nevada law. *See In re Discipline of Schaefer*, 117 Nev. 496, 25 P.3d 191 (2001).

2. The State Bar's claims are barred, in whole or in part, because the State Bar is unable to prove the commission of the alleged ethical violations by clear and convincing evidence as required under Nevada law. *See In re Discipline of Stuhff*, 108 Nev. 629, 837 P.2d 853 (1992).

3. The State Bar's claims are barred, in whole or in part, because Mr. Jimmerson at all times acted reasonably under the circumstances consistent with the skill, prudence, and diligence that a lawyer of ordinary skill and capacity would have used. *See Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004).

4. The State Bar's claims are barred, in whole or in part, because at all times and places mentioned in the Complaint, Mr. Jimmerson substantially complied with the letter and spirit of the Nevada Rules of Professional Conduct.

5. The State Bar's claims are barred, in whole or in part, because the alleged wrongful acts committed by Mr. Jimmerson's employees were neither ordered nor ratified by Mr. Jimmerson.

6. The State Bar's claims are barred, in whole or in part, because Mr. Jimmerson took prompt remedial measures to organize his books and records upon discovering bookkeeping issues created by his former bookkeeper (who misrepresented her qualifications to Mr. Jimmerson).

7. The State Bar's claims are barred, in whole or in part, because Jay Nady authorized the transfer of funds for work associated with his matter.

8. The State Bar's claims are barred, in whole or in part, because the grievant (Nicole Cruz) made several misrepresentations and omissions in her grievance.

9. The State Bar's claims are barred, in whole or in part, because Mr. Jimmerson's actions were justified under the circumstances.

1           10.     The State Bar's claims are barred, in whole or in part, because Mr. Jimmerson's  
2 actions were consistent with the community standard in terms of managing a client trust account.

3           11.     The State Bar's claims are barred, in whole or in part, because Mr. Jimmerson had in  
4 place reasonable measures to ensure that the conduct of nonlawyers at his firm was compatible with  
5 his professional obligations.

6           12.     The State Bar's claims are barred, in whole or in part, due to the State Bar's failure to  
7 comply with the Nevada Supreme Court Rules during the course of its investigation of the grievance.

8           13.     The State Bar's claims are barred, in whole or in part, due to reliance on evidence that  
9 was obtained unlawfully and/or in violation of Mr. Jimmerson's rights.

10          14.     The State Bar's claims are barred, in whole or in part, by the equitable doctrines of  
11 laches, estoppel, and/or unclean hands.

12          15.     If the Southern Nevada Disciplinary Board finds that Mr. Jimmerson violated one or  
13 more of the Rules of Professional Conduct set forth in the Complaint, which it should not, the facts  
14 and circumstances weigh against the imposition or recommendation of any form of discipline.

15          16.     If the Southern Nevada Disciplinary Board finds that Mr. Jimmerson violated one or  
16 more of the Rules of Professional Conduct set forth in the Complaint and imposes or recommends  
17 discipline, which it should not, Mr. Jimmerson states that one or more mitigating factors under SCR  
18 102.5(2) and/or extenuating circumstances under RPC 1.0A(c) justify a reduction in the degree of  
19 discipline to be imposed, if any, including, without limitation: (i) absence of recent discipline; (ii)  
20 absence of a dishonest or selfish motive; (iii) personal or emotional problems; (iv) timely good faith  
21 effort to rectify consequences of alleged misconduct; (v) full and free disclosure to the State Bar and  
22 cooperative attitude toward the proceeding; (vi) character or reputation; (vii) remorse; (viii)  
23 remoteness of prior offenses; (ix) absence of client harm; and (x) the unfair impact that discipline  
24 would have on Mr. Jimmerson's family members.

25          Mr. Jimmerson reserves the right to assert, and gives notice that he intends to rely upon, any  
26 other affirmative defense(s) that may become available or appear during discovery or otherwise in  
27 this matter, and reserves the right to amend this Verified Answer to assert any such additional  
28 affirmative defense(s).

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Jimmerson, having fully answered the State Bar's Complaint, prays for judgment as follows:

1. That the Complaint, and each claim therein, be dismissed with prejudice and that the State Bar take nothing thereby;

2. That Mr. Jimmerson be awarded his costs and attorneys' fees incurred in the defense of this matter as may be permitted by law; and

3. For such other and further relief as the Southern Nevada Disciplinary Board deems just and proper.

DATED this 16<sup>th</sup> day of December, 2020.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy  
DENNIS L. KENNEDY  
JOSHUA P. GILMORE

*Attorneys for Respondent*  
James J. Jimmerson, Esq.

**VERIFICATION**

I, James J. Jimmerson, declare as follows:

1. I am the Respondent named in the Complaint filed in the above-captioned matter.
2. I have read the Answer to the Complaint and know the contents thereof.
3. The Answer is true of my own knowledge, except as to those matters stated on information and belief, and that, as to such matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 16<sup>th</sup> day of December, 2020.

/s/ James J. Jimmerson  
JAMES J. JIMMERSON

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16<sup>th</sup> day of December, 2020, service of the foregoing **VERIFIED ANSWER TO COMPLAINT** was made by email and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

DANIEL M. HOOGE  
BAR COUNSEL

Email: daniel@nvbar.org  
kristif@nvbar.org  
sbnnotices@nvbar.org

DANIEL T. YOUNG  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

*Attorneys for Complainant*  
**STATE BAR OF NEVADA**

/s/ Stephanie M. Kishi  
Employee of BAILEY ♦ KENNEDY

Case No.: OBC20-0163



FILED

DEC 04 2020

STATE BAR OF NEVADA  
BY: S. Felix  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES JIMMERSON, ESQ.  
NV BAR NO. 264

Respondent.

**ORDER APPOINTING  
HEARING PANEL CHAIR**

**IT IS HEREBY ORDERED** that the following member of the Southern Nevada  
Disciplinary Board has been designated as the Hearing Panel Chair.

1. Thomas Edwards, Esq., Chair

DATED this 31 day of December, 2020.

STATE BAR OF NEVADA

By: Russell E. Marsh  
Russell E. Marsh (Dec 31, 2020 15:36 PST)  
Russell E. Marsh, Esq.  
Nevada Bar No. 11198  
Chair, Southern Nevada Disciplinary Board

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**ORDER APPOINTING PANEL CHAIR** was served via email to:

1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)
2. Dennis Kennedy, Esq. (Counsel for Respondent):  
[dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)
3. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)
4. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

Kristi A. Faust  
Kristi Faust, an employee  
of the State Bar of Nevada



FILED

JAN 04 2021

STATE BAR OF NEVADA  
BY: S. Felix  
OFFICE OF BAR COUNSEL

Case No: OBC20-0163

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
)  
Respondent. )

**NOTICE OF TELEPHONIC INITIAL  
CASE CONFERENCE**

PLEASE TAKE NOTICE, the telephonic Initial Case Conference in the above-entitled matter is set for Wednesday, January 13, 2021, at 10:00 a.m. The State Bar conference number is (877) 594-8353, participant passcode is 16816576 then #.

**DATED** this 4 day of January, 2021.

**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

  
Daniel Young (Jan 04 2021 15:38 PST)

Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

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1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)
2. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)
3. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)
4. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

Kristi A. Faust  
Kristi Faust, an employee  
of the State Bar of Nevada

Case No: OBC20-0163



**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,

Nevada Bar No. 0264,

Respondent.

**SCHEDULING ORDER**

Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), on Wednesday, January 13, 2021, at 10:00 a.m., Thomas Edwards, Esq., the Formal Hearing Panel Chair, met telephonically with Daniel T. Young, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Joshua Gilmore, Esq., on behalf of Respondent to conduct the Initial Conference in this matter.

During the Case Conference the parties discussed disclosures, discovery issues, the potential for resolution of this matter prior to the hearing, a status conference, and the hearing date.

The parties agreed to the following:

**1.** The parties consent to service by electronic means of all documents pursuant to SCR 109(2), NRCP 5, and DRP 11(b)(3) with the understanding that **all documents need to be submitted by 5:00 p.m. to be file stamped timely.**

**2.** The parties stipulate that venue is proper in Clark County, Nevada.

**3.** The Formal Hearing for this matter is hereby set for **one (1) day starting at 9:00 a.m. on April 30, 2021**, and shall take place via Zoom video conference.

1           **4.**     On or before **January 20, 2021, at 5:00 p.m.**, the State Bar of Nevada's initial  
2 disclosures shall be served on all parties. The documents provided by the State Bar shall be  
3 bates stamped with numerical designations. See DRP 17 (a).

4           **5.**     On or before **January 28, 2021, at 5:00 p.m.**, Respondent's initial disclosures  
5 shall be served on all parties. The documents provided by the Respondent shall be bates  
6 stamped with alphabetical exhibit designations. See DRP 17 (a).

7           **6.**     On or before **February 26, 2021, at 5:00 p.m.**, Respondent's Expert  
8 Disclosure Report shall be served on all parties.

9           **7.**     On or before **March 12, 2021, at 5:00 p.m.**, the State Bar of Nevada's Rebuttal  
10 Expert Disclosure Report shall be served on all parties.

11          **8.**     On or before **March 26, 2021, at 5:00 p.m.**, the parties shall file and serve any  
12 Motions.

13          **9.**     On or before **April 9, 2021, at 5:00 p.m.**, all oppositions to the Motions, if any,  
14 shall be filed and served on the parties.

15          **10.**    On or before **April 14, 2021, at 5:00 p.m.**, all replies to any opposition, if any,  
16 shall be filed and served on the parties.

17          **11.**    On or before **March 12, 2021, at 5:00 p.m.**, the parties shall serve Final  
18 Disclosure of documentary evidence, Final Designation of witnesses expected to testify and  
19 Final list of Exhibits expected to be presented, at the Formal Hearing in this matter, pursuant  
20 to SCR 105(2)(d), DRP 17(a) and DRP 21.

21          **12.**    All documents disclosed shall be bates stamped, the State Bar will use numerical  
22 exhibit designations and Respondent will use alphabetical exhibit designations, pursuant to  
23 DRP 17.  
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**13.** On **April 20, 2021, at 3:00 p.m.**, the parties shall meet telephonically with Thomas Edwards, Esq. for the Pre-hearing Conference. Any pending issues, including pending Motions, will be addressed at the Pre-hearing Conference. The parties shall use the State Bar conference bridge (877) 594-8353 and the passcode is 16816576#.

**14.** Pursuant to DRP 23, at the Pre-hearing conference (i) the parties shall discuss all matters needing attention prior to the hearing date, (ii) the Chair may rule on any motions or disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by either the State Bar or Respondent as well as a stipulated statement of facts, if any.

**15.** The parties stipulate to waive SCR 105(2)(d) to allow for the formal appointment of the remaining hearing panel members on a date that is greater than 45 days prior to the scheduled hearing.

**16.** Based on the parties' verbal agreement to the foregoing during the telephonic Initial Conference and good cause appearing, **IT IS SO ORDERED.**

**DATED** this 14 day of January, 2021.

## SOUTHERN NEVADA DISCIPLINARY BOARD

Tom Edwards

Tom Edwards (Jan 14, 2021 11:12 PST)

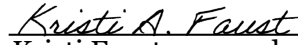
Thomas Edwards, Esq.  
Hearing Panel Chair

1 **CERTIFICATE OF SERVICE**

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

- 4 1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
5 2. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)  
6 3. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)  
7 4. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

8 Dated this 14<sup>th</sup> day of January, 2021.

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10 Kristi Faust, an employee  
11 of the State Bar of Nevada  
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1 Case No: OBC20-0163

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**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

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STATE BAR OF NEVADA, )

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Complainant, )

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vs. )

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JAMES J. JIMMERSON, ESQ., )

Nevada Bar No. 0264, )

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Respondent. )

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**STATE BAR'S INITIAL SUMMARY  
OF EVIDENCE AND DISCLOSURE  
OF WITNESSES FOR FORMAL  
HEARING**

10 PLEASE TAKE NOTICE that the following is an initial list of witnesses and initial  
11 summary of evidence which may be offered against Respondent at the time of the  
12 Formal Hearing, in the above-entitled complaint.

13 **A. Documentary Evidence**

14 Attached hereto is the State Bar's Exhibit List, SBN Exhibit 3 – SBN Exhibit 48,  
15 of proposed bate-stamped exhibits being submitted to Respondent via E-Mail.

16 1. Any and all documentation contained in the State Bar of Nevada's files  
17 including but not limited to, correspondence, emails, memorandums, text messages,  
18 notes, payments, invoices, bank records, receipts, billing entries and pleadings  
19 regarding grievance file number OBC20-0163.

20 2. Any and all documentation contained in records of the State Bar of Nevada  
21 regarding Respondent's licensure, compliance with reporting requirements, and  
22 disciplinary history.

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The State Bar reserves the right to supplement this evidence list, as necessary.

<b>Exhibit#</b>	<b>Document</b>	<b>Bates No.</b>
1.	<b>State Bar Hearing Packet</b> – <i>to be produced 1 week prior to hearing</i>	<i>n/a</i>
2.	Affidavit of Prior Discipline, if any – <i>to be produced at the hearing</i>	<i>n/a</i>
3.	2/5/2020 – Grievance from Nicole Cruz	SBN Exhibit 3
4.	2/6/2020 – Email from SBN to Cruz	SBN Exhibit 4
5.	2/6/2020 – Email to SBN	SBN Exhibit 5
6.	2/13/2020 – Signed Green Card	SBN Exhibit 6
7.	3/10/2020 – Letter of Investigation	SBN Exhibit 7
8.	3/10/2020 – Cert Mail Card	SBN Exhibit 8
9.	3/12/2020 – Signed Green Card re: Letter of Investigation	SBN Exhibit 9
10.	3/12/2020 – Email from Amanda Fisher re: attachments Respondents Client Trust Ledger Report Trust Banking Account Unclear Check Copy	SBN Exhibit 10
11.	3/23/2020 – Email from SBN to Amanda Fisher	SBN Exhibit 11
12.	4/10/2020 – Email from SBN to Amanda Fisher	SBN Exhibit 12
13.	4/21/2020 – Jimmerson Response	SBN Exhibit 13
14.	5/8/2020 – Email from SBN to Jimmerson re: request for more info.	SBN Exhibit 14
15.	5/8/2020 – SBN letter requesting additional info.	SBN Exhibit 15
16.	5/8/2020 – Email delivery confirmation	SBN Exhibit 16
17.	5/8/2020 – Email from Amanda Fisher confirming receipt of letter requesting further info.	SBN Exhibit 17
18.	5/22/2020 – Jimmerson Response to request for further info.	SBN Exhibit 18
19.	8/12/2020 – Signed Green Card	SBN Exhibit 19
20.	8/12/2020 – Letter of Reprimand	SBN Exhibit 20
21.	8/28/2020 – Objection to Letter of Reprimand	SBN Exhibit 21
22.	9/1/2020 – Email chain with Nicole Cruz	SBN Exhibit 22

23.	Jimmerson Law Firm IOLTA Acct #7126, trust account ledger January 2019 – January 2020	SBN Exhibit 23
24.	NSB Records Account ending #5195	SBN Exhibit 24
25.	NSB Records Account ending #5401	SBN Exhibit 25
26.	NSB Records Account ending #7126	SBN Exhibit 26
27.	NSB Records Account ending #7217	SBN Exhibit 27
28.	NSB Records Account ending #7225	SBN Exhibit 28
29.	NSB Records Account ending #7233	SBN Exhibit 29
30.	NSB Records Account ending #7241	SBN Exhibit 30
31.	NSB Records Account ending #8215	SBN Exhibit 31
32.	NSB Records Account ending #4903	SBN Exhibit 32
33.	NSB Records Account ending #1525	SBN Exhibit 33
34.	NSB Records Account ending #4064	SBN Exhibit 34
35.	NSB Records Account ending #4072	SBN Exhibit 35
36.	NSB Records Account ending #9417	SBN Exhibit 36
37.	NSB Records Account ending #9425	SBN Exhibit 37
38.	NSB Records Account ending #2510	SBN Exhibit 38
39.	NSB Records Account ending #7243	SBN Exhibit 39
40.	NSB Records Account ending #7698	SBN Exhibit 40
41.	NSB Records Account ending #0458	SBN Exhibit 41
42.	2/6/2020 – NSB Sub DT	SBN Exhibit 42
43.	2/6/2020 – Cert Mail Card re: NSB Sub DT	SBN Exhibit 43
44.	2/18/2020 – NSB Release	SBN Exhibit 44

45.	2/19/2020 – NSB Custodian of Records Affidavit	SBN Exhibit 45
46.	Jimmerson Account Summary	SBN Exhibit 46
47.	Checks issued to pay Booth Medical liens	SBN Exhibit 47
48.	Cleared checks paying Booth Medical liens	SBN Exhibit 48

The State Bar incorporates by reference all documents identified by Respondent in this matter.

**B. Witnesses**

1. The State Bar expects to call Respondent James J. Jimmerson, Esq. (“Respondent” or “Jimmerson”) to testify about the facts and circumstances alleged in the complaint. Such testimony will include, but not be limited to, his trust account, operating account, and payroll account records, employees that had access to those records, his office policies and procedures, and any other facts or circumstances that give rise to the allegations set forth in the Complaint. To the extent Respondent makes representations about his good character, the State Bar reserves the right to present information to rebut those representations with relevant facts and circumstances regarding his representation of other clients.

2. Nicole Cruz is expected to offer testimony including but not limited to her employment relationship and dealings with Respondent, her job duties including tasks she was instructed to perform for Respondent, and her knowledge of the facts and circumstances that give rise to the complaint in this matter.

3. Leah Ballard is expected to offer testimony including but not limited to her employment relationship and dealings with Respondent, her job duties including tasks

1 she was instructed to perform for Respondent, and her knowledge of the facts and  
2 circumstances that give rise to the complaint in this matter.

3 4. Ashley Johnson is expected to offer testimony including but not limited to her  
4 employment relationship and dealings with Respondent, her job duties including tasks  
5 she was instructed to perform for Respondent, and her knowledge of the facts and  
6 circumstances that give rise to the complaint in this matter.


7 5. Person most knowledgeable from Nevada State Bank is expected to testify  
8 regarding Respondent's bank records.

9 6. Louise Watson, Investigator with the State Bar of Nevada Office of Bar Counsel is  
10 expected to provide testimony regarding her investigation of the Office of Bar Counsel  
11 matter referenced above, including but not limited to, communications with  
12 Respondent, investigation and documentation obtained, and Respondent's licensure  
13 and disciplinary history.

14 The State Bar reserves the right to supplement this witness list, as necessary.

15 Dated this 20 day of January, 2020.

16  
17 **STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

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19   
20 Daniel T. Young, Assistant Bar Counsel  
21 Nevada Bar No. 11747  
22 3100 W. Charleston Blvd, Suite 100  
23 Las Vegas, Nevada 89102  
24 (702)-382-2200  
25 Attorney for State Bar of Nevada

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DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S INITIAL  
DISCLOSURES**

As ordered by the Panel Chair and in accordance with DRP 17(a), Respondent James J. Jimmerson, Esq. makes the following initial disclosure of witnesses and documents.

**INITIAL DISCLOSURE QUALIFICATIONS**

1. These Initial Disclosures are based upon information presently known to counsel for Mr. Jimmerson and are given without prejudice to producing, prior to the formal hearing in this matter, information or documents that are: (1) subsequently discovered; (ii) subsequently determined to be relevant for one or more purposes; or (iii) subsequently determined to have been omitted from these disclosures.

2. Mr. Jimmerson reserves the right to revise and/or supplement these Initial Disclosures in response to the Initial Disclosures produced by the State Bar of Nevada ("State Bar").

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3. Mr. Jimmerson reserves all objections to the use, for any purpose, of these Initial Disclosures or any of the information and documents referenced herein, whether in this proceeding or any other case or proceeding.

4. By referring to or producing documents as part of the initial disclosure process, Mr. Jimmerson makes no representations or concessions regarding the relevancy or appropriateness of any particular document and reserves the right to object to the use of such documents at the formal hearing in this matter.

5. Mr. Jimmerson states that discovery is ongoing. If, in the course of such discovery, Mr. Jimmerson learns that additional individuals have knowledge of facts supporting his defenses or rebutting the State Bar's allegations, Mr. Jimmerson will advise the State Bar of such additional individuals to the extent required by the DRPs and NRCs, as applicable.

6. These initial disclosure qualifications shall apply to each and every disclosure given herein and are incorporated by reference as though fully set forth in each disclosure.

**DRP 17(a) INITIAL DISCLOSURES**

**A. The name and, if known, the address and telephone number of each witness, including a summary of the subjects to which each witness is expected to testify.**

NAME OF WITNESS	SUBJECT OF INFORMATION
James J. Jimmerson, Esq. c/o Bailey❖Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James J. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, oversight and control of his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz, Leah Ballard, and Ashley Johnson; employment issues related to Nicole Cruz, Leah Ballard, and Ashley Johnson; credits to and debits from his operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; his lack of notice of issuance of a subpoena by the State Bar for his bank account records; and mitigating factors.

James M. Jimmerson, Esq. c/o Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James M. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, involvement in overseeing his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz, Leah Ballard, and Ashley Johnson; employment issues related to Nicole Cruz, Leah Ballard, and Ashley Johnson; credits to and debits from his firm's operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; and mitigating factors.
Louis Watson c/o State Bar of Nevada Daniel T. Young, Assistant Bar Counsel 3100 W. Charleston Blvd., Suite 100 Las Vegas, Nevada 89102	Ms. Watson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, her review of bank account records for Mr. James J. Jimmerson; and notice, if any, that she provided to Mr. James J. Jimmerson in advance of subpoenaing his bank account records from Nevada State Bank.

The disclosures provided herein are based on information reasonably available at this time. Mr. Jimmerson reserves the right to identify additional witnesses as discovery goes forward, including an expert witness in accordance with the Scheduling Order issued by the Panel Chair. Mr. Jimmerson further reserves the right to rely on witnesses identified by the State Bar during the course of this proceeding.

**B. A copy of, or a description by category and location of, all documents that Mr. Jimmerson intends to use at the formal hearing.**

Exhibit No.	Description	Bates Range
A	March 10, 2020 Letter from the State Bar to James J. Jimmerson, Esq.	JJJ0001-JJJ00002

<b>B</b>	February 5, 2020 Nevada State Bar Complaint Submission from Nicole Desiree Cruz	JJJ00003-JJJ00004
<b>C</b>	March 11, 2020 Response to Nevada State Bar from Amanda Fisher	JJJ00005
<b>D</b>	Client Trust Ledger Report for the Period November 1, 2019, through March 11, 2020	JJJ00006-JJJ00009
<b>E</b>	Jimmerson Law Firm Trust Banking Account Register for the Period February 12, 2020 through March 11, 2020	JJJ00010
<b>F</b>	Jimmerson Law Firm Trust Account Check No. 1461	JJJ00011
<b>G</b>	March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson, CP	JJJ00012-JJJ00015
<b>H</b>	Exhibit List to March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson CP	JJJ00016
<b>I</b>	Client Trust Ledger Report From November 1, 2019 through March 11, 2020 – Exhibit A to March 21, 2020 Letter	JJJ00017-JJJ00021
<b>J</b>	Jimmerson Law Firm Trust Banking Account Register for the Period February 12, 2020 through March 11, 2020 – Exhibit B to March 21, 2020 Letter	JJJ00022-JJJ00023
<b>K</b>	Jimmerson Law Firm Trust Account Check No. 1461 – Exhibit C to March 21, 2020 Letter	JJJ00024-JJJ00025

<b>L</b>	Summary Sheet – Explanation of Reconcile Trust Banking Account with Client Trust Account – Exhibit D to March 21, 2020 Letter	JJJ00026-JJJ00027
<b>M</b>	December 20, 2019 Letter from James J. Jimmerson to Nicole Cruz – Exhibit E to March 21, 2020 Letter	JJJ00028-JJJ00029
<b>N</b>	Text Messages Between James J. Jimmerson, Amanda Fisher, and Leah Ballard – Exhibit F to March 21, 2020 Letter	JJJ00030-JJJ00034
<b>O</b>	Jimmerson Law Firm Trust Account Record From November 1, 2019, to March 9, 2020 – Exhibit G to March 21, 2020 Letter	JJJ00035-JJJ00044
<b>P</b>	Trust Account Transaction Documents – Exhibits 1 through 133 to Exhibit G to March 21, 2020 Letter	JJJ00045-JJJ00561
<b>Q</b>	May 8, 2020 Letter from Louise Watson, CP, to James Jimmerson, Esq.	JJJ00562
<b>R</b>	May 22, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson, CP	JJJ00563-JJJ00565
<b>S</b>	November 20, 2019 Statement Re: Melanie Valentine - Exhibit 1 to May 22, 2020 Letter	JJJ00566-JJJ00569
<b>T</b>	January 25, 2020 Statement Re: Jay Nady – Exhibit 2 to May 22, 2020 Letter	JJJ00570-JJJ00572

U Jimmerson Law Firm, P.C. Check Nos. 65981, 65980, JJJ00573-JJJ00577  
65979, and 66978 Re: Medical Liens paid on behalf of  
Darrin Booth – Exhibit 3 to May 22, 2020 Letter

V August 14, 2020 Letter from Daniel Young, Assistant Bar JJJ00578-JJJ00580  
Counsel to James J. Jimmerson, Esq.

W August 14, 2020 Letter of Reprimand from Luke JJJ00581-JJJ00584  
Puschnig, Esq. to James J. Jimmerson, Esq.

X August 28, 2020 Letter from Joshua P. Gilmore, Esq. to JJJ00585-JJJ00592  
Daniel Young, Assistant Bar Counsel.

Documents bearing Bates Nos. JJJ00001-JJJ00592. These documents are being provided via  
a secure Sharefile link, to accompany these Initial Disclosures.

DATED this 28<sup>th</sup> day of January, 2021.

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

DENNIS L. KENNEDY  
JOSHUA P. GILMORE

*Attorneys for Respondent*  
James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 28<sup>th</sup> day of January, 2021, service of the foregoing **RESPONDENT'S INITIAL DISCLOSURES** was made via email addressed to the following at their last known email addresses:

DANIEL M. HOOGE  
BAR COUNSEL

DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniel@nvbar.org  
kristif@nvbar.org  
sbnnotices@nvbar.org

*Attorneys for Complainant*  
**STATE BAR OF NEVADA**

---

/s/ Susan L. Russo  
Employee of BAILEY ♦ KENNEDY



FILED

JAN 29 2021

STATE BAR OF NEVADA  
BY: B. Felix  
CLERK OF BAR COUNSEL

Case Nos: OBC20-0163

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES JIMMERSON, ESQ.

NV BAR No. 264

Respondent.

**ORDER APPOINTING  
FORMAL HEARING PANEL**

**IT IS HEREBY ORDERED** that the following members of the Southern Nevada Disciplinary Board have been designated as members of the formal hearing panel in the above-entitled action. The hearing will be convened on the 30<sup>th</sup> day of April, 2021 starting at 9:00 a.m. via Zoom Video Conferencing.

1. Tom Edwards, Esq., Chair;
2. Ira David, Esq.
3. Anne Hanson, Laymember

DATED this 29 day of January, 2021.

STATE BAR OF NEVADA

By: Russell E. Marsh  
Russell E. Marsh (Jan 29, 2021 10:17 PST)  
Russell E. Marsh, Esq.  
Nevada Bar No. 11198  
Chair, Southern Nevada Disciplinary Board

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**ORDER APPOINTING PANEL** was served via email to:

- Dated this 29<sup>th</sup> day of January, 2021.

-1-



FILED

FEB 04 2021

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

Case No: OBC20-0163

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
 )  
 Complainant, )  
 vs. )  
 JAMES J. JIMMERSON, ESQ., )  
 Nevada Bar No. 0264, )  
 )  
 Respondent. )

**NOTICE OF FORMAL HEARING**

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for **one day on April 30, 2021, at the hour of 9:00 a.m.** The hearing will be conducted via audio/visual simultaneous transmission (using Zoom) hosted from Las Vegas Nevada. The State Bar of Nevada will email an access link on April 29, 2021.

**DATED** this 4<sup>th</sup> day of February, 2021.**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel
  
 Daniel Young (Filed Feb 4 2021 10:53 PST)

Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing  
3 **NOTICE OF FORMAL HEARING** was served via email to:

- 4 1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
5 2. Ira David, Esq. (Panel Member): [lawofficesofiradavid@gmail.com](mailto:lawofficesofiradavid@gmail.com)  
6 3. Anne Hanson (Lay Member): [2555aspen@gmail.com](mailto:2555aspen@gmail.com)  
7 4. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)  
8 5. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)  
9 6. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

7 Dated this 4<sup>th</sup> day of February, 2021.

9 Kristi A. Faust  
10 Kristi Faust, an employee  
11 of the State Bar of Nevada  
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DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S EXPERT  
DISCLOSURES**

Pursuant to the Scheduling Order entered in this matter, Respondent James J. Jimmerson, Esq., by and through his counsel, makes the following disclosure of expert witness:

1. Rob Bare  
150 Las Vegas Boulevard North  
Las Vegas, NV 89101

Mr. Bare's expert report is attached hereto as Exhibit A. Mr. Bare's training, qualifications, and experience are discussed in his report and detailed further in Exhibit 1 attached to his report. He has not previously testified as an expert witness. A list of documents reviewed by Mr. Bare for this matter is set forth in Exhibit 2 attached to his report.

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1 His hourly fee for services rendered in this matter is also set forth in his report.

2 DATED this 26<sup>th</sup> day of February, 2021.

3 BAILEY ♦ KENNEDY

4 By: /s/ Joshua P. Gilmore

5 DENNIS L. KENNEDY

6 JOSHUA P. GILMORE

7 *Attorneys for Respondent*

8 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 26<sup>th</sup> day of February, 2021, service of the foregoing **RESPONDENT'S EXPERT DISCLOSURES** was made via email addressed to the following at their last known email addresses:

DANIEL M. HOOGE  
BAR COUNSEL

DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniely@nvbar.org  
kristif@nvbar.org  
sbnnotices@nvbar.org

*Attorneys for Complainant*  
STATE BAR OF NEVADA

---

/s/ Susan L. Russo  
Employee of BAILEY ♦ KENNEDY

# **EXHIBIT A**

# **EXHIBIT A**

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No.: OBC20-0163

**EXPERT REPORT OF ROB BARE**

**INTRODUCTION**

1. I have been retained by James J. Jimmerson, Esq. in connection with the above-captioned matter (the “Matter”). I have been asked to address certain legal ethics and professional responsibility issues presented in the Matter. The opinions expressed in this Report are solely my own. I reserve the right to reconsider, modify, revise, and/or supplement my opinions if other evidence or documents are presented to me.

**BACKGROUND & QUALIFICATIONS**

2. I am an attorney and have been licensed to practice law in the State of Nevada since 1993. Prior to admission to practice in Nevada, I was admitted to practice in the State of Pennsylvania in 1989. From October 1989 through August 1993, I served as a trial attorney in the United States Army Judge Advocate General’s Corps. Once I moved to Nevada, I served as an Assistant Bar Counsel to the State Bar of Nevada from August 1993 to early 1995, and thereafter served as the Bar Counsel to the State Bar of Nevada, with the exception of a six-month Municipal Judicial term, until becoming a District Court Judge in January 2011. I served as a judge in the Las Vegas Municipal Court from January through July of 2007, as well as a judge in the Eighth Judicial District Court, Department 32, for ten years, from January 2011 until January 2021. All of this is set forth in my curriculum vitae, which is attached hereto as Exhibit 1. I am charging \$650 per hour for my work in this Matter. Given my experience, I believe this is a reasonable rate for my expert work in the areas of legal malpractice and other ethics-related areas, such as the instant task.

**MATTERS REVIEWED**

3. The list of documents that I reviewed in preparing this Report, and upon which I am basing my opinions expressed in this Report, is attached hereto as Exhibit 2. In preparing this Report, I also spoke to Mr. Jimmerson to gather those facts underlying the Matter that are pertinent to this Report and am relying upon the information that he provided as further discussed in this Report. I am also relying on testimony that I understand will be given at the hearing by Amanda Fisher. In addition, I regularly review legal ethics treatises as well as court

decisions, periodicals, and other writings pertaining to legal ethics and professional responsibility and incorporate such knowledge in my opinions expressed in this Report. Further, I am basing my opinions upon my experience as a former District Court Judge for the Eighth Judicial District and as a member of the Office of Bar Counsel for the State Bar of Nevada, including as Bar Counsel.

#### **MATERIAL FACTS**

4. The following facts are either uncontested or not subject to reasonable dispute and are derived from the documents that I reviewed in preparing this Report, my discussions with Mr. Jimmerson concerning the Matter, and anticipated testimony from Ms. Fisher.

##### ***Nicole Cruz Works - for Seven Days - For Jimmerson Law***

5. In or around November 2019, Mr. Jimmerson posted a position for a paralegal to work at his law firm, The Jimmerson Law Firm, P.C. ("Jimmerson Law"). Nicole Cruz applied for the position. Among her stated qualifications, she represented that she was a third-year law student at the William S. Boyd School of Law at UNLV. Mr. Jimmerson interviewed Ms. Cruz and, based on the interview, offered her the position, which she accepted.

6. Within days of commencing her employment, Mr. Jimmerson realized that Ms. Cruz was not qualified for the position. For example, she did not comprehend basic legal terms and her work product was extremely poor. Mr. Jimmerson immediately questioned Ms. Cruz's background and, doubting her prior representations, terminated her employment. He later learned that she lied about being a law student.

7. Relevant to this Matter, as a seven-day, non-accounting, non-bookkeeping employee, there is no evidence that Ms. Cruz knew or could have known of the reasonable efforts taken by Mr. Jimmerson's law firm, through the efforts of Mr. Jimmerson himself, his veteran bookkeeper Amanda Fisher, and his longtime legal secretary Kim Stewart, to train and supervise Ms. Ballard. Nevertheless, months after her termination, and after becoming aware that her misrepresentation concerning Boyd Law School was discovered by Mr. Jimmerson, Ms. Cruz submitted the Bar grievance, which focused on her alleged concerns over accounting and bookkeeping matters even though she was not involved, at all, with Jimmerson Law's books and records.

##### ***Leah Ballard Works - for Twenty-Five Days - For Jimmerson Law***

8. In or around October 2019, Mr. Jimmerson posted a position for a bookkeeper to work at Jimmerson Law. Ms. Fisher was serving as his bookkeeper at the time and had served in that position for over one year after having served as an accountant for many years for Mr. Jimmerson's other businesses. She was interested in taking time away from work due to personal, non-work-related reasons, which Mr. Jimmerson respected, and which prompted him to look for a replacement.

9. Ms. Ballard applied for the position. She was initially interviewed by Ms. Fisher and Ms. Stewart. Ms. Ballard was thereafter recommended to Mr. Jimmerson. Mr. Jimmerson

met with Ms. Ballard for approximately 15-30 minutes and, as a result of the interview, and after noting her prior bookkeeping experience, offered her the position, which she accepted.<sup>1</sup>

10. Mr. Jimmerson tasked Ms. Fisher with training Ms. Ballard. The training took place over the course of two and a half weeks, during which time Ms. Ballard familiarized herself with working at Jimmerson Law, including understanding the administrative tasks associated with serving as the firm's bookkeeper. She was consistently reminded of the need to carefully track and monitor activity involving the firm's bank accounts, including its client trust account. She was also told of the importance of inputting time sheets on client matters daily to facilitate preparing monthly billing statements for clients. Further, she was told to generate daily cash reports for the firm, reflecting all transactions involving the firm's bank accounts.

11. Ms. Fisher was satisfied that Ms. Ballard knew what she was doing. After her training concluded, she assumed the position in place of Ms. Fisher.

12. Mr. Jimmerson maintained daily contact with Ms. Ballard to make sure that she was comfortable in her position and was keeping up with the job. Likewise, even after Ms. Fisher's last day at the firm on November 7, 2019, she continued to communicate with Ms. Ballard and answer any questions that she had. Notwithstanding this, Ms. Ballard started falling behind in preparing daily cash reports for the firm. By the end of November 2019, only 11 days after she finished training and started working on her own, it became clear that she had fallen behind in her work and was unable to complete the various tasks assigned to her.<sup>2</sup>

13. On or about November 25, 2019, Mr. Jimmerson learned that Ms. Ballard was behind in inputting daily timesheets for members of the firm. He immediately reached out to Ms. Fisher and asked her to speak with Ms. Ballard about the matter.

14. On or about November 26, 2019, Ms. Ballard admitted to Mr. Jimmerson, in writing, that she was behind in inputting daily timesheets for members of the firm. When he asked, "How did this happen?", she responded: "It is my complete failure. I got myself overwhelmed and did not communicate that. I have gotten unorganized and made a large mess. I take the responsibility for it. I am willing to work to clean it up and help it in order to the best of my ability. I apologize and it will not happen again."

15. Also, on or about November 26, 2019, in a separate text message to Ms. Fisher, with whom Ms. Ballard had maintained contact, Ms. Ballard apologized for being behind in her work, indicated that she had "made a mess," and disclosed that she was having personal problems at home with her husband.

16. These text messages of on or about November 26, 2019, evidence that Ms. Ballard, upon reflection, took time to type out and memorialize the truth concerning perhaps the most salient fact in this Matter as it relates to the Nevada RPC 5.3 allegation: Ms. Ballard

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<sup>1</sup> According to Mr. Jimmerson, either he or Ms. Fisher contacted Ms. Ballard's prior employer to verify her employment history and received high remarks concerning her credentials.

<sup>2</sup> During her brief tenure with the firm, Ms. Ballard was out of the office for several days due to personal reasons.

concealed the impact of her personal problems and professional shortcomings while remaining employed at the firm, especially during the 11 days of capacity as the sole bookkeeper, only to admit everything after the fact in these text writings.

17. On or about December 2, 2019, Ms. Ballard tendered her resignation to Jimmerson Law. In a text message that she sent to Ms. Fisher, she indicated that the job “is more than I can clearly handle” and “just too much for me.”

18. After accepting Ms. Ballard’s resignation, Mr. Jimmerson took immediate and swift remedial measures. He quickly reached out to Ms. Fisher to request that she return as his firm’s bookkeeper. She agreed (albeit for higher pay) and, at Mr. Jimmerson’s direction, she immediately took steps to address the tasks that had been ignored or not timely handled by Ms. Ballard. According to Mr. Jimmerson, by December 27, 2019, the firm’s books and records were back in order. Notably, and perhaps practically most important, Mr. Jimmerson has relayed that no actual harm was done to any client as a result of Ms. Ballard’s activities, or inactivities, as the case may be.

#### ***Ms. Cruz Files a Grievance Against Mr. Jimmerson***

19. On February 5, 2020, Ms. Cruz filed a grievance against Mr. Jimmerson with the State Bar, alleging that she had heard from Ms. Ballard that Mr. Jimmerson had allegedly instructed Ms. Ballard to pay payroll using funds from his client trust account.

20. The State Bar opened an investigation of Ms. Cruz’s grievance and promptly issued a subpoena for Mr. Jimmerson’s bank account records. In response to the State Bar’s request, Mr. Jimmerson immediately cooperated by producing bank records and client statements, together with an explanation regarding what occurred with his firm’s employment of Ms. Cruz and Ms. Ballard.<sup>3</sup>

#### ***The State Bar Initiates this Disciplinary Proceeding Against Mr. Jimmerson***

21. On October 7, 2020, the State Bar filed its Complaint against Mr. Jimmerson, claiming that he violated Nevada RPC 1.15 (Count I) and Nevada RPC 5.3 (Count II).

22. The State Bar’s allegations underlying Count II may be summarized as follows:

a. Mr. Jimmerson was not reasonable in his efforts to train Ms. Cruz and Ms. Ballard to assist him in managing his firm’s client trust account;

b. Mr. Jimmerson was not reasonable in his efforts to supervise Ms. Cruz and Ms. Ballard to ensure that they appropriately assisted him in managing his firm’s client trust account; and

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<sup>3</sup> As I understand it, Mr. Jimmerson produced more than 500 pages of documents in response to the State Bar’s request.

c. Mr. Jimmerson knew or should have known that his conduct (in training and supervising these two employees) was improper (or not reasonable).

23. On November 2, 2020, Mr. Jimmerson filed a Motion to Dismiss, arguing that the State Bar failed to allege facts supporting a Nevada RPC 5.3 violation.

24. On November 17, 2020, the State Bar filed an Opposition to the Motion to Dismiss, arguing that Mr. Jimmerson's nonlawyer employees (Ms. Cruz and Ms. Ballard) engaged in "improper trust account actions" at Mr. Jimmerson's direction and that Mr. Jimmerson "failed to, *inter alia*, properly train, instruct, and/or supervise his new employee or verify that she was conducting his trust account transactions properly."

25. On December 2, 2020, the Disciplinary Chair entered an Order denying the Motion to Dismiss, finding that it was fair to infer from the allegations in the Complaint (which were accepted by the Chair as true solely for purposes of the Motion to Dismiss) that they alleged that Mr. Jimmerson did not properly train or supervise his non-lawyer employees and directed them to make improper withdrawals from his client trust account.

26. On December 16, 2020, Mr. Jimmerson filed his Verified Answer to the Complaint.

#### ISSUES PRESENTED

27. The legal ethics and professional responsibility issues presented in the Matter that I have been asked to address are as follows:

a. Whether Mr. Jimmerson – as the managing attorney of Jimmerson Law – failed to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that nonlawyer employees will act in a manner that is compatible with Mr. Jimmerson's professional obligations, *see* Nevada RPC 5.3(a) and (b); and

b. Whether Mr. Jimmerson ordered his non-lawyer employees to engage in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson or failed to take reasonable remedial action upon learning that his non-lawyer employees had engaged in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson, *see* Nevada RPC 5.3(c).<sup>4</sup>

#### SUMMARY OF OPINIONS

28. It is my opinion that Mr. Jimmerson satisfied his professional obligations under Nevada RPC 5.3. Specifically:

a. Mr. Jimmerson had and has policies and procedures in place to ensure that nonlawyer employees at his firm act in a manner that is compatible with his professional obligations. As it pertains to the conduct of Ms. Ballard, as described previously herein,

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<sup>4</sup> I was not asked to address whether Mr. Jimmerson satisfied his professional obligations under Nevada RPC 1.15.

the procedure used to hire her was reasonable. Likewise, the procedure used to train her was reasonable. She was trained—at Mr. Jimmerson’s direction—for two and a half weeks before assuming the role of bookkeeper for his law firm. Mr. Jimmerson ensured that she had the appropriate background, training, and experience for the position and checked with her daily to ensure that she was performing her duties and responsibilities.

b. Once Mr. Jimmerson learned that Ms. Ballard was incapable of serving as his firm’s bookkeeper—a fact that she admitted in writing—and had failed to properly input time on client matters and maintain his firm’s books and records, Mr. Jimmerson immediately took steps to correct these errors, including rehiring his former bookkeeper, Ms. Fisher.

c. Nevada RPC 5.3 does not impose strict liability on a lawyer for errors or mistakes committed by a nonlawyer. Based on the facts and circumstances presented, it is clear to me that Mr. Jimmerson neither ordered Ms. Ballard to neglect her duties and responsibilities as the firm’s bookkeeper, nor did he turn a blind eye toward her shortcomings once he discovered that she was not fit for the position, especially when considering the short period of time between her hiring, the discovery of her deficiencies, and the efforts undertaken to remediate those deficiencies, all without harm to any client.

#### ANALYSIS

29. The Nevada Rules of Professional Conduct (RPCs) are evidence of the standard of care to which Nevada-licensed attorneys are held. Nevada RPC 1.0A(d); *Mainor v. Nault*, 120 Nev. 750, 768-69, 101 P.3d 308, 320-21 (2004). Whether an attorney met the standard of care is generally established through expert testimony. *Mainor*, 120 Nev. at 767-69, 101 P.3d at 320-21; *see also Allyn v. McDonald*, 112 Nev. 68, 71, 910 P.2d 263, 266 (1996). This is true in the context of a disciplinary proceeding. *See, e.g., In re Disciplinary Proceeding Against Rodriguez*, 306 P.3d 893, 900 (Wash. 2013); *accord In re Assad*, 124 Nev. 391, 393, 402-03, 185 P.3d 1044, 1045, 1051 (2008). An expert is someone who is qualified by virtue of special knowledge, skill, experience, training, or education to express an opinion on matters within the scope of such knowledge, NRS 50.275, and is permitted to submit an opinion relating to the ultimate issue in a case, NRS 50.295.<sup>5</sup>

30. In the context of a disciplinary proceeding, the State Bar must prove the alleged Nevada RPC violations by clear and convincing evidence. SCR 105(2)(f); *In re Discipline of Reade*, 133 Nev., Adv. Op. 87, 405 P.3d 105, 106 (2017).

#### ***Mr. Jimmerson Properly Trained and Supervised Ms. Ballard and Appropriately Oversaw Her Work as His Firm’s Bookkeeper***

31. Nevada RPC 5.3(a) states that a lawyer who possesses managerial authority within a law firm “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that [a nonlawyer employee]’s conduct is compatible with the professional obligations of the lawyer.” Similarly, Nevada RPC 5.3(b) states that a lawyer who

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<sup>5</sup> The Nevada Rules of Evidence apply in this Matter. SCR 105(2)(f).

has “direct supervisory authority” over a non-lawyer employee “shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” It is my professional opinion that the word “reasonable,” in appearing so often in this ethical mandate, is ultimately the key to this whole scenario in assessing any disciplinary exposure of Mr. Jimmerson’s conduct as the guidelines contained in Nevada RPC 1.0A(c) clearly mandate. This is reflected more specifically by the guidance in interpreting the Rules of Professional Conduct provided by Nevada RPC 1.0A(c), that disciplinary assessment of a lawyer’s conduct will be made on the basis of facts and circumstances as they existed at the time. This is further the reason why elements of willfulness and knowledge, in addition to whether remedial measures were taken to mitigate, are so incredibly important in disciplinary cases.

32. Nevada RPC 5.3(a) and (b) make clear that a lawyer with managerial or supervisory authority is responsible for “ensuring that nonlawyers perform their duties in a manner compatible with the lawyer’s own ethical obligations,” irrespective of the lawyer’s ability to delegate certain tasks to the non-lawyer employees to assist the lawyer in rendering legal services to a client. AMERICAN BAR ASS’N, *Annotated Model Rules of Prof’l Conduct* 511 (9th ed. 2019) [hereinafter, “*Annotated Model Rules*”]; see also *id.* at 273 (noting that a lawyer may delegate recordkeeping tasks to a nonlawyer employee so long as the lawyer remains “ultimately responsible for compliance”). Thus, lawyers who hire nonlawyers “to help discharge their fiduciary duties ... must provide adequate training and supervision” to such nonlawyers. See *id.* at 513.

33. The State Bar alleges that Mr. Jimmerson did not properly train, supervise, and oversee Ms. Ballard.<sup>6</sup> In my opinion, the facts prove otherwise.

34. Mr. Jimmerson relied on Ms. Fisher and Ms. Stewart to conduct the initial interview of Ms. Ballard since she would be assuming Ms. Fisher’s role as the firm’s bookkeeper. As I understand it, Ms. Ballard’s background and qualifications fit the criteria necessary for serving as Jimmerson Law’s bookkeeper. After the interview, Ms. Fisher and Ms. Stewart recommended to Mr. Jimmerson that he hire Ms. Ballard. Mr. Jimmerson then met with Ms. Ballard to assure himself that she had the necessary skill set and, after the meeting, was satisfied that she was a qualified candidate and hired her.

35. Ms. Ballard was not thrust into the proverbial deep end upon being hired. Rather, she worked closely with Ms. Fisher for two and a half weeks, during which time she was trained on the duties and responsibilities associated with the firm’s bookkeeper. During that time, Mr. Jimmerson would check in with Ms. Ballard to make sure that she was familiarizing herself with the position and answer any questions that she had. He also spoke with Ms. Fisher to make sure that she was comfortable with Ms. Ballard acting as the firm’s bookkeeper.

36. After her training was complete, Ms. Ballard began working independent of Ms. Fisher who, as noted above, had decided to take some time away from the firm. Mr. Jimmerson checked in with Ms. Ballard daily to ensure that she had everything under control. He would relay to her the importance of promptly depositing funds in his client trust account, paying

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<sup>6</sup> Ms. Cruz was not involved with Mr. Jimmerson’s client trust account, and therefore, I focus my discussion on the training, supervision, and oversight undertaken by Mr. Jimmerson for Ms. Ballard.

vendors, and inputting timesheets on client matters to assist in preparing monthly statements. Each time that they spoke, Ms. Ballard assured Mr. Jimmerson that she was knowledgeable and capable of handling the job. Further, as I understand it, Ms. Fisher maintained contact with Ms. Ballard to answer her questions, remind her of the importance of documenting transactions involving the trust account, and ensure that she communicated with Mr. Jimmerson on matters relating to the trust account.

37. It was not until the end of November 2019 when Mr. Jimmerson learned that Ms. Ballard was incapable of being the firm's bookkeeper. Despite her prior assurances, Mr. Jimmerson realized that within 11 days, Ms. Ballard had fallen behind in managing the firm's books and records and inputting time sheets for client matters. He immediately took the appropriate steps to address the situation.

38. Mr. Jimmerson had then, and still has now, policies and procedures in place for properly maintaining his firm's books and records and tracking time on client matters. He instructs his bookkeeper to input time from attorneys and non-attorneys at the firm working on client matters daily so that invoices may be timely prepared and sent to clients. Further, he instructs his bookkeeper to carefully track activity associated with his bank accounts, including his client trust account, daily to ensure that the accounts are balanced and reconciled. My impression, after having spoken with Mr. Jimmerson, is that he takes his obligation to manage his client trust account very seriously—he is not indifferent toward his duty to keep complete and accurate records of activity involving his client trust account.

39. The Nevada Supreme Court has said, “The mere fact that an employee acted improperly does not necessarily result in lawyer discipline; the lawyer is not per se vicariously responsible for an employee's misconduct.” *See In re Discipline of Lerner*, 124 Nev. 1232, 1243, 197 P.3d 1067, 1075 (2008).<sup>7</sup> That statement rings true here, where Ms. Ballard fell short in her duties and responsibilities as the firm's bookkeeper despite reasonable efforts undertaken by Mr. Jimmerson to ensure that she was qualified for the position. He maintained regular contact with her to assure himself that she was acting in a manner that was compatible with his professional obligations; nevertheless, it turned out that she was not fit for the job.

40. It must be remembered that a disciplinary assessment of Mr. Jimmerson's conduct must be made “on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation.” Nevada RPC 1.0A(c). Stated differently, the State Bar may not use the benefit of hindsight to assess whether Mr. Jimmerson properly trained, supervised, and oversaw Ms. Ballard. *See Mainor*, 120 Nev. at 775, 101 P.3d at 325.

41. At the time, Mr. Jimmerson neither knew nor had reason to believe that Ms. Ballard was incapable of serving as his firm's bookkeeper until she came forward and disclosed that she had fallen behind in her work. That discovery does not, however, mean that Ms.

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<sup>7</sup> Although the Nevada Supreme Court was not addressing a Nevada RPC 5.3 violation in *In re Lerner*, see *id.* at 1236 n.1, 197 P.3d at 1070 n.1, the Court cited as support for this statement a disciplinary case from the Arizona Supreme Court analyzing Arizona's counterpart to Nevada RPC 5.3. See *id.* at 1243, 197 P.3d at 1075 (citing *Matter of Galbasini*, 786 P.2d 971, 975 (Ariz. 1990)).

Ballard's shortcomings were the direct result of an alleged failure to properly train, supervise, and oversee Ms. Ballard.

42. According to Mr. Jimmerson, he has not had issues with his client trust account in the past (over forty years of practice), and no client suffered any harm as a result of what happened, which further affirms my opinion that Ms. Ballard's mishaps were not due to a systemic failure on Mr. Jimmerson's part in discharging his duties as the managing attorney of Jimmerson Law.

43. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(a) and (b).

***Mr. Jimmerson Neither Ordered Ms. Ballard to Engage in Misconduct nor Failed to Take Reasonable Remedial Action Once He Learned of Ms. Ballard's Shortcomings***

44. Nevada RPC 5.3(c) states that a lawyer "shall be responsible for [the] conduct" of a non-lawyer employee "that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer" if either of the following conditions is met:

- a. The lawyer orders the conduct or ratifies it upon its discovery; or
- b. The lawyer is in a managerial position within the firm, or has direct supervisory authority over the person, and knows of the conduct at a time "when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

45. This rule imposes vicarious liability on a lawyer for non-lawyer misconduct under "certain circumstances." *Attorney Grievance Comm'n v. McDowell*, 93 A.3d 711, 721-22 & n.11 (Md. 2014); *see also* MODEL R. PROF'L CONDUCT, R. 5.3 cmt. [1] (stating that Rule 5.3(c) "specifies the circumstances in which a lawyer is responsible for the conduct of ... nonlawyers"). As noted above, "the mere fact of employee misconduct, without more, does not necessarily denote a violation of Rule 5.3." *Annotated Model Rules* at 517; *see also In re Discipline of Lerner*, 124 Nev. at 1243, 197 P.3d at 1075.

46. The State Bar alleges that Mr. Jimmerson violated Nevada RPC 5.3(c) in two ways: First, by ordering Ms. Ballard to transfer funds purportedly representing attorney's fees out of his client trust account that had not yet been earned; and Second, by failing to take "reasonable remedial action" upon learning that Ms. Ballard had "turn[ed] his books into a complete mess."<sup>8</sup> In my opinion, neither allegation is supported by the facts.

47. As it relates to the transactions involving Mr. Jimmerson's client trust account, according to Mr. Jimmerson, he handled those transactions, not Ms. Ballard, and he reasonably and in good faith believed that the funds in question had been earned and could be withdrawn. Setting aside that Mr. Jimmerson disputes the alleged violation of Nevada RPC 1.15, the fact that

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<sup>8</sup> As noted above, Ms. Cruz was not involved with Mr. Jimmerson's client trust account, and therefore, I focus my discussion on Mr. Jimmerson's interactions with Ms. Ballard.

he directed the transfers based on information available to him at the time means that Nevada RPC 5.3(c) does not apply.

48. As it relates to the handling of Jimmerson Law's books and records, it is clear to me that Mr. Jimmerson fully expected Ms. Ballard to input timesheets for client matters daily and to log activity involving his client trust account. Mr. Jimmerson did not order Ms. Ballard to mishandle his client trust account; nor did he direct her to be careless in terms of tracking credits to and debits from his client trust account. Absent such evidence, there is nothing that leads me to believe that Mr. Jimmerson violated Nevada RPC 5.3(c)(1).


49. Mr. Jimmerson was not indifferent toward the administrative issues created by Ms. Ballard once they were brought to his attention. To the contrary, he confronted her about what had occurred and, upon accepting her resignation, immediately took steps to rehire his former bookkeeper, Ms. Fisher. He then instructed Ms. Fisher to complete all the tasks that had been disregarded or overlooked by Ms. Ballard. She did so within a few weeks (specifically, by December 27, 2019), even in light of this being the holiday season and Mr. Jimmerson having to deal with a recent personal tragedy, at which time Jimmerson Law's books and records were in order. Mr. Jimmerson did exactly what he was supposed to do in this scenario; thus, he did not violate Nevada RPC 5.3(c)(2).

50. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(c).

51. In sum, Mr. Jimmerson acted reasonably regarding all hiring, training and supervising issues presented here, as well as demonstrated extreme and commendable professionalism in swiftly and immediately employing remedial measures to remedy the errors that are the subject of this Matter.

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DATED this \_\_\_\_ day of February, 2021.

DocuSigned by:  
  
720B309B9BEA4A3  
ROB BARE

# **EXHIBIT 1**

**ROB BARE**  
**CURRICULUM VITAE**

150 Las Vegas Boulevard North #1812  
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RobBare32@gmail.com  
(702) 909-7732  
(702) 250-3392 (c)

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**EDUCATION**

Pennsylvania State University, State College, PA, B.A., Pre-Law (Highest Distinction), 1985  
University of Pittsburgh School of Law, Pittsburgh, PA, J.D., 1988  
The Judge Advocate General's School, Charlottesville, VA, 1989  
National Judicial College, Special Court Jurisdiction, Advanced, Reno, NV 2007  
National Judicial College, General Court Jurisdiction, Reno, NV 2010

**ADMISSIONS TO PRACTICE LAW**

Pennsylvania, 1989 (Inactive)  
United States Army Court of Military Review, 1989  
Nevada, 1993  
United States District Court, District of Nevada, 1996  
United States Supreme Court, 1997  
United States Court of Appeals for the Ninth Circuit, 1998

**LEGAL EXPERIENCE**

**JUDICIAL**

**Judge.** Eighth Judicial District Court, Clark County, NV, Department 32  
(January 3, 2011 to January 3, 2021) Civil/Criminal Court.

Elected in November 2010. Re-elected in November 2014.

**Judge.** Las Vegas, NV, Municipal Court, Department 6  
(January 1, 2007 to July 1, 2007) Criminal Court.

Unanimously appointed by Mayor Oscar Goodman and the Las Vegas City Council to fill the unexpired term of Judge Abbi Silver until the general election.

## **BAR COUNSEL TO THE STATE BAR OF NEVADA**

**Bar Counsel.** State Bar of Nevada (August 1993 to January 2011, with exception of Municipal Judicial term).

Chief attorney for the State Bar of Nevada (Beginning in 1995). Responsibilities included prosecution of all aspects of the attorney professional discipline process in the state of Nevada for both the northern and southern regions; hearings from the informal to the formal level; Continuing Legal Education speaker; supervisory duties over a ten-member staff, including three (3) attorneys and four (4) Certified Legal Assistants.

- Tried or presented to conclusion approximately 870 hearings on behalf of the State Bar of Nevada before either the Southern or Northern Nevada Disciplinary Boards.
- Presented a total of fifteen (15) matters to the en banc Nevada Supreme Court, including disciplinary cases and administrative docket hearings.

### **HIGHLIGHTS OF SEVENTEEN YEAR TENURE AS BAR COUNSEL**

**Ethics Hotline:** Personally and professionally responsible for establishing what now, for years, has been known as the “Ethics Hotline” maintained by the Office of Bar Counsel at the State Bar of Nevada. The genesis of the Ethics Hotline began in 1994 after recommendation by me to the Board of Governors of the State Bar, and since then has evolved into an incredibly important aspect of the services offered by the State Bar. I am extremely proud that literally thousands upon thousands of attorneys have utilized the hotline over the years in order to practice better, and at times, avoid ethical pitfalls. The practical application of the Ethics Hotline is now described by the State Bar as follows: “Nevada-licensed attorneys with questions regarding their professional responsibilities can contact the Office of Bar Counsel for informal guidance during any business day. Each day, a State Bar attorney is assigned to take calls from Nevada-licensed attorneys with questions about their professional responsibilities. Although the Office of Bar Counsel makes every effort to return all calls by the end of the day, our attorneys try to take calls as they come in or, if a message is left, to call back within an hour.” During my time as Bar Counsel, I personally fielded and answered thousands of calls.

**ADKT 370 “E2K” Complete Overhaul of Supreme Court Rules 150-203.5 Adopting the Nevada Rules of Professional Conduct:** With oversight and direction from the Supreme Court of Nevada, and specific appointment by the Board of Governors of the State Bar of Nevada, I served as the Reporter to the committee tasked with review of each and every rule of professional conduct or ethics rule. This resulted in a lengthy submission to the Supreme Court, after numerous committee meetings and public hearings in 2003-2004, which dissected and ultimately

led to the adoption of the current version of the Nevada Rules of Professional Conduct. As Reporter, the pleading submitted and filed with the Supreme Court was my responsibility. Further, along with select committee members, I presented the petition to the en banc Supreme Court in Carson City, NV. This effort, in ADKT 370, affectionately referred to as “Ethics 2000”, resulted in transforming the prior set of Supreme Court Rules into the Nevada Rules of Professional Conduct, which have essentially been in place as of the effective date May 1, 2006. Significant changes as a result of this effort were the establishment of interpretive guidelines as to how the Rules of Professional Conduct should be applied, as well as substantive changes concerning lawyer fees, confidentiality, duties to prospective clients, conflict waivers, sex with client prohibition and disqualification and screening in hiring of lawyers.

**NRS 7.285 Unlawful Practice of Law: Initiation of Civil Action by State Bar of Nevada:**

Personally and professionally instrumental, following lobbying efforts and presentation to both the Nevada Assembly and Nevada Senate, in what is now the entirety of NRS 7.285, Unlawful Practice of Law. With approval from the Board of Governors for the State Bar of Nevada and the Unauthorized Practice of Law Committee of the State Bar, I presented multiple live witnesses to the Nevada Legislature in Carson City, NV. These witnesses had been victimized by business-like predators engaged in the unauthorized practice of law. This resulted in the current version of NRS 7.285, which includes recidivist provisions, and perhaps most importantly, Section 3, which specifically provides that the State Bar of Nevada may bring a civil action to secure an injunction and any other appropriate relief against a person who violates this section.

**SCR 106.5(4) Lawyer Wellness Program, Limited Use Policy:** Personally and professionally responsible for the recommendation and draft of what is now SCR 106.5(4) Limited Use Policy, which states in relevant part that all information obtained by the Lawyers Concerned for Lawyers Program, or as a result of voluntary services sought from the Nevada Lawyer Assistance Program, including the initial report and any subsequent report to the program thereafter, shall be confidential and shall not be admissible in any State Bar disciplinary, admission, administrative, or other State Bar proceeding. My idea for this vitally important rule, which allows attorneys affected by drug and alcohol abuse to get help without fear of disciplinary exposure, was actually taken from what is now Army regulation 600-85, a United States Army provision which I was familiar with in my time in the service, likewise known in the Army as the Limited Use Policy, which enables soldiers to get help with drug and alcohol abuse without retribution.

**Lawyer Advertising:** As Bar Counsel, I played a prominent role in the development of what is now a full set of lawyer-advertising Rules of Professional Conduct.

**SCR 102(1) Irrevocable (Permanent) Disbarment:** After some time of prosecuting cases as Bar Counsel to the State Bar, I formed an opinion that an option that should be available to both Disciplinary Panels and ultimately the Supreme Court, in appropriate cases, is permanent disbarment. After recommendation to the Board of Governors and approval by them, and adoption by the Supreme Court, ultimately an irrevocable disbarment became an option pursuant to SCR 102(1).

**Attorney Specialization:** Played an integral role in the drafting of and presentation to the Nevada Supreme Court of what now are Attorney Specialization Rules of Professional Conduct, which allows Nevada attorneys to communicate specialty areas of practice, provided the Certifying Organization has approved and certain conditions precedent are met. Over the years, this effort has resulted in Nevada lawyers having the ability to be approved as specialists in the areas of business bankruptcy, child welfare, civil trial advocacy, criminal trial advocacy, elder law, estate planning law, family law, personal injury and workers' compensation.

**SCR 105.5 Diversion and Mentoring:** Played an integral role in what became SCR 105.5 Diversion and Mentoring Program. Here, as an alternative to, or in conjunction with disciplinary sanctions, an attorney deemed eligible by the appropriate disciplinary board panel may participate in an approved diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct.

**Justice Nancy Saitta's Professionalism Summits:** Honored to have been asked by then Justice of the Supreme Court Nancy Saitta to lead in the creation of a number of professionalism summits, 2005-2007, which were ethics programs conducted under the direction of Justice Saitta and sponsored by the State Bar of Nevada, the Clark County Bar Association, the Washoe County Bar Association, the Nevada Justice Association, and lawyers and law firms throughout the state of Nevada.

**Gardner v. State Bar of Nevada, 284 F.3d 1040 (2002):** Sole counsel for the State Bar of Nevada and all its Board of Governors. Following argument at the US District Court level and to the Ninth Circuit Court of Appeals, the case resulted in a reported decision from the United States Court of Appeals, Ninth Circuit. The Court upheld the State Bar of Nevada's efforts to publicize to and to educate the public concerning our system of justice, the role of lawyers, and to make the law work for everyone. In relevant part, the Ninth Circuit found that the work of the State Bar to foster public understanding of the adversary nature of law is vital to the Bar's function. The court went on to find that in our real world, lawyers are not merely a necessity, but a blessing. (Emphasis added).

## AUTHORED PUBLICATIONS

*Nevada Lawyer*. November 2008. "Operational Law."

*Nevada Lawyer*. November 2006. "Civilian Lawyers Defending Military Personnel at a Trial by Court-Martial."

*Nevada Lawyer*. January 2006. "The Professional Independence of a Lawyer."

*Nevada Lawyer*. November 2005. "State Bar Counsel Reflects on JAG Career."

*Nevada Lawyer*. June 2005. "Top 10 Bar Complaints and How to Avoid Them."

*Nevada Lawyer*. January 2002. "Lawyers who Serve their Country."

*Nevada Lawyer*. September 1996. "Some Thoughts on Ethics and Lawyer Advertising."

*Nevada Lawyer*. December 1995. "Avoid Business Transactions with Clients...But if you must, Know the Rules."

*Nevada Lawyer*. November 1995. "Look at the Less Serious Side of Bar Discipline: The Names have Been Changed."

## US ARMY JUDGE ADVOCATE GENERAL'S CORPS

**Senior Defense Trial Lawyer.** (Captain) U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Irwin, California (May 1991 to August 1993).

Attorney Responsible for managing all defense functions for clients stationed at Fort Irwin and all of southern California, including:

**Criminal Accused Trial Representation.** Represented as the trial attorney and assigned other lawyers to represent soldiers accused of criminal offenses at Court-Martial proceedings. This included all stages of the Court-Martial process: formal preliminary investigation, extensive motion practice (including written briefs) in front of the military judge, and in-court trial advocacy before military juries.

**Supervisor, Trainer, Rater.** Supervised two (2) criminal defense lawyers and two (2) paralegals. Supervisory duties included primary responsibility for staff training in all aspects of client representation. Prepared written ratings (Officer Evaluation Reports) for the two (2) other attorneys in the office.

- \* Selected for Senior Defense Lawyer position in first tour of duty.  
(This position is usually given to a Major or senior Captain).

**Trial Defense Lawyer.** U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Ord, California (October 1989 to May 1991).

Represented clients accused of criminal offenses and facing trial by Court-Martial. Carried an average case load of 25 concurrent Court-Martial clients. Deployed with units from Fort Ord to Panama from December 19, 1989 to February 6, 1990, in removal of General Noriega from Panama; advised commanders of various legal aspects of armed conflict scenario.

As a lawyer in the Judge Advocate General Corps, I have:

- Tried approximately 150 jury and bench trials representing clients accused of murder, attempted murder, rape, larceny, aggravated assault, and various other serious alleged felony cases.
- Litigated approximately 100 hearings concerning the command's attempts to discharge a soldier for alleged administrative misconduct.

**Speaking/Instructor Experience in the Military of Notable Mention.** Speaker and instructor at the Judge Advocate General's School, Charlottesville, VA, 1990. Instructed students on operational law, as well as ethics and professional responsibility.

**TEACHING AND INSTRUCTION EXPERIENCE/ATTENDANCE AT RELEVANT  
EDUCATIONAL SEMINARS**

- Adjunct Professor at Community College of Southern Nevada, which became the College of Southern Nevada, teaching Legal Research from 2001-2009. Instructor within College's Paralegal Studies Program teaching substantive law and legal ethics to college students two semesters per year. Total of sixteen semesters.
- Speaker at various Bridge the Gap Continuing Legal Education Programs, beginning in 1993, held in both Las Vegas, NV and in Reno, NV, sponsored by the State Bar of Nevada, provided to new admittees to the Nevada State Bar. One to two hours, depending on curriculum, per year. Topic: Ethics and Professional Responsibility.
- Speaker at various Annual Meetings of the State Bar of Nevada, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker at various conventions, held in various locations within the United States and in Canada, sponsored by the Nevada Trial Lawyers Association (NTLA), which became the Nevada Justice Association (NJA), in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of the Federal Public Defender's Office held in both Las Vegas, NV and in Reno, NV, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2007. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of various law firms, including McDonald Carano, at both their Las Vegas, NV and Reno, NV offices, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker at various luncheon meetings held by the Southern Nevada Association of Women Attorneys (SNAWA), held in Las Vegas, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor at various annual Family Law seminars sponsored by the State Bar of Nevada in the State Bar's Family Law section, in both Tonopah, NV and Ely, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility, specifically applied to Family Law matters.
- Attendee and occasional Presenter at National Organization of Bar Counsel (NOBC) meetings held in conjunction with the American Bar Association Annual and Semi-Annual meetings, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2009. Topic: Ethics and Professional Responsibility.

- Attendee and Graduate of Special Court Jurisdiction: Advanced, Two-Week Course at the National Judicial College, Reno, NV, in capacity as Municipal Court Judge. An intense training given to lower court judges, including Ethics instruction relevant to the canons of judicial ethics. 2007.
- Instructor at State Bar of Alabama Annual Convention, held in Destin, FL, 2008. Topic: Ethics and Professional Responsibility, with primary focus on the ethics of lawyer advertising.
- Attendee and Graduate of General Court Jurisdiction Two-Week Course at the National Judicial College, Reno, NV, in capacity as District Court Judge. An intense training given to District Court judges, including Ethics instruction relevant to the canons of judicial ethics. 2011.
- Attendee at State Bar of Nevada 2011 Annual Meeting, Kauai, HI. June 2011. Continuing Legal Education seminar. This included 5.5 credit hours of Ethics.
- Attendee at Nevada Justice Association' 35<sup>th</sup> Annual Convention, San Francisco, CA. September 2011. This included 2 credit hours of Ethics.
- Attendee at Advanced Family Law Seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. December 2011. This included 2 credits hours of Ethics.
- Attendee at Nevada Judicial Leadership Conference, sponsored by the Nevada Administrative Office of Courts, Las Vegas, NV. May 2012. This included 5.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, San Diego, CA. June 2012. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 12.5 hours of instruction.
- Attendance at the 84<sup>th</sup> Annual Meeting of the State Bar of Nevada, San Diego, CA. June 2012.
- Attendance at the 36<sup>th</sup> Annual Convention of the Nevada Justice Association (NJA), San Diego, CA. October 2012. This included 2 credit hours of Ethics.
- Presenter and Ethics Continuing Legal Education Provider at event sponsored by the Washoe County Bar Association, entitled "Preventing Nevada Legal Malpractice", Reno, NV. March 2013. This included 4 credit hours of Ethics instruction.
- Attendee at Ethics in Trial and Appellate Practice seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. February 2013. This included 5 credit hours of Ethics.
- Attendee at Evidence in a Courtroom Setting seminar, sponsored by the National Judicial College (NJC). May 2013. This included 2.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, Lake Tahoe, NV. July 2013. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 17.5 credit hours of instruction.

- Instructor, along with attorney F. Lee Bailey, at the Organization of Bar Investigators Tenth Anniversary Seminar, Las Vegas, NV, October 2013.
- Instructor at Las Vegas Defense Lawyers seminar, “Civil Trial Practice Tips”, Las Vegas, NV. January 2014.
- Attendee at Inn of Court seminar, “The Wrong Man: Witness Identification”. February 2014.
- Attendee at District Court Judge training on Medical Malpractice cases. April 2014.
- Attendee at State Bar of Nevada 2014 Annual Meeting. July 2014.
- Attendee at National Judicial College seminar, “Today’s Justice: The Historic Bases”. July 2014.
- Attendee at Nevada Justice Association (NJA) Annual Convention/Seminar. October 2014. This included 2 credit hours of Ethics.
- Instructor at seminar sponsored by the State Bar of Nevada, “Ethics and Practice Tips in Trial and Appellate Practice”. October 2014. This included 6 credit hours of Ethics instruction.
- Attendee at the State Bar of Nevada, Young Lawyers Section, 2015 Annual Meeting. July 2015.
- Attendee at Nevada Justice Association 39<sup>th</sup> Annual Convention. October 2015. This included 2 credit hours of Ethics.
- Attendee at State Bar of Nevada seminar, “Top 10 Ethical Pitfalls for Nevada Attorneys”. April 2016. This included 3 credit hours of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Nevada Judicial Leadership Summit”. April 2016. This included 4 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 40<sup>th</sup> Annual Convention/Seminar. September 2016. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar, “Ethics”. February 2017. This included 8 credit hours of Ethics instruction.
- Instructor at event sponsored by the Nevada Attorney General’s Office, “Ethics in Litigation”. May 2017. This included 3 credit hours of Ethics instruction.
- Attendee at National Judicial College seminar, “Conducting the Trial”. June 2017. This included 1.5 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 41<sup>st</sup> Annual Convention/Seminar. October 2017. This included 1 credit hour of Ethics.
- Attendee at State Bar of Nevada seminar, “To Report or Not to Report, Save a Life”. November 2018.
- Instructor at Supreme Court of Nevada seminar, “2019 Nevada Limited Jurisdiction Judges, Winter Seminar”. January 2019. Instructed approximately 100 lower court judges on how to make an effective record to better substantiate court orders on appeal.

- Attendee at Eighth Judicial District Court seminar, “Judges Advance”. February 2019. This included 1.5 credit hours of Ethics.
- Attendee at Supreme Court of Nevada, Nevada District Judges Conference. May 2019. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar held at the Boyd School of Law, “Elements of Nevada Legal Theories”. In attendance were lawyers and law students. September 2019.
- Instructor at Nevada Justice Association seminar, “Entertaining Elements of Nevada Legal Theories”. November 2019.
- Attendee at State Bar of Nevada seminar, “Dealing with Adversity”. June 2020. This included 1 credit hour of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Ethics – Judges as Bosses”. August 2020. This included 1 credit hour of Ethics.
- Attendee at Eighth Judicial District Court AB 236 Training. September 2020.

#### **LEGAL MALPRACTICE CASES ASSIGNED TO ME AS DISTRICT JUDGE (2011-2021)**

A-10-627470-C - Company sued its former attorneys for alleged malpractice. After extensive motion practice, parties ultimately settled their case (after Defendants' motion to enforce the settlement agreement was granted).

A-11-650047-C – Personal Injury attorney's former client sued for malpractice after she received a smaller settlement than expected. Parties settled at the arbitration stage.

A-13-677618 - Former client sued her divorce attorney for malpractice. Parties stipulated to settle their case just after discovery commenced.

A-17-756039-C - Company sued its former attorney alleging that he had a conflict of interest due to ownership in a competing company. Defendant never appeared resulting in Plaintiff obtaining a default judgment.

A-17-759347-C - An elderly couple sued their former attorneys alleging that they stole their property and overbilled them.

A-17-760737-C - Several financial companies sued multiple firms alleging they failed to diligently represent them in their Nevada cases. The case included extensive motion practice.

A-17-763982-C – Doctor sued his former business attorney based on myriad of malpractice allegations. Numerous pre-trial motions.

A-18-768688-C - Plaintiffs sued their former construction defense attorney. Parties stipulated to dismiss their case.

A-18-785751-C - Attorney sued his former clients for breach of contract (representation on multiple properties on HOA foreclosure cases) and Defendant counterclaimed for legal malpractice. After some motion practice, parties stipulated to dismiss the case.

A-18-786655-C - Plaintiff is an inmate convicted of murder along with his father. Plaintiff alleged that attorney committed legal malpractice for failing to represent him after non-payment. Defendant's motion to dismiss was granted and that order was affirmed by the Nevada Supreme Court.

A-19-792712-C - Plaintiff sued his former personal injury attorney. Complaint was never served and thus the case was dismissed.

A-19-797290-C - Plaintiffs (estate and the widow) sued their attorney (who drafted the trust document in question) for malpractice alleging that the trust document incorrectly deprived them of their ownership of certain property.

A-19-799229-C - Plaintiff sued her former personal injury attorney. Parties stipulated to dismiss the case.

### **PROFESSIONAL ASSOCIATIONS**

Pennsylvania State Bar (Admitted 1989) (Inactive)

State Bar of Nevada (1993- Present)

National Organization of Bar Counsel (1993-2010)

Clark County Bar Association (1994-2020)

### **NOTABLE PROFESSIONAL AWARDS/RATINGS**

- Recipient of the Pro Bono Award of Judicial Excellence, presented by the Legal Aid Center of Southern Nevada (2014)
- Martindale-Hubbell – AV Preeminent (The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for the legal expertise, communication skills, and ethical standards by their peers.)

# **EXHIBIT 2**

### **DOCUMENTS REVIEWED**

- Complaint, filed October 7, 2020
- Motion to Dismiss, filed November 2, 2020
- Opposition to Motion to Dismiss, filed November 17, 2020
- Order Denying Motion to Dismiss, filed December 2, 2020
- Verified Answer, filed December 16, 2020
- Order Appointing Formal Hearing Panel, filed January 29, 2021
- Notice of Formal Hearing, filed February 4, 2021
- Mr. Jimmerson's Initial Disclosures, served January 28, 2021, with the following exhibits:
  - o Exhibit A (JJJ0001-JJJ00002)
  - o Exhibit B (JJJ00003-JJJ00004)
  - o Exhibit C (JJJ00005)
  - o Exhibit G (JJJ00012-JJJ00015)
  - o Exhibit M (JJJ00028-JJJ00029)
  - o Exhibit N (JJJ00030-JJJ00034)
  - o Exhibit Q (JJJ00562)
  - o Exhibit R (JJJ00563-JJJ00565)
- Mr. Jimmerson's Supplemental Disclosures, served February 26, 2021, with the following exhibits:
  - o Exhibit Y (JJJ00593-JJJ00597)
  - o Exhibit Z (JJJ00598-JJJ00601)
  - o Exhibit AA (JJJ00602-JJJ00606)
  - o Exhibit BB (JJJ00607-JJJ00608)
  - o Exhibit CC (JJJ00609-JJ00610)

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
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*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S SUPPLEMENTAL  
DISCLOSURES**

As ordered by the Panel Chair and in accordance with DRP 17(a), Respondent James J. Jimmerson, Esq. makes the following supplemental disclosure of witnesses and documents.

**SUPPLEMENTAL DISCLOSURE QUALIFICATIONS**

1. These Supplemental Disclosures are based upon information presently known to counsel for Mr. Jimmerson and are given without prejudice to producing, prior to the formal hearing in this matter, information or documents that are: (1) subsequently discovered; (ii) subsequently determined to be relevant for one or more purposes; or (iii) subsequently determined to have been omitted from these disclosures.

2. Mr. Jimmerson reserves the right to revise and/or supplement these Supplemental Disclosures in response to the Initial Disclosures produced by the State Bar of Nevada ("State Bar").

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3. Mr. Jimmerson reserves all objections to the use, for any purpose, of these Supplemental Disclosures or any of the information and documents referenced herein, whether in this proceeding or any other case or proceeding.

4. By referring to or producing documents as part of the disclosure process, Mr. Jimmerson makes no representations or concessions regarding the relevancy or appropriateness of any particular document and reserves the right to object to the use of such documents at the formal hearing in this matter.

5. Mr. Jimmerson states that discovery is ongoing. If, in the course of such discovery, Mr. Jimmerson learns that additional individuals have knowledge of facts supporting his defenses or rebutting the State Bar's allegations, Mr. Jimmerson will advise the State Bar of such additional individuals to the extent required by the DRPs and NRCs, as applicable.

6. These supplemental disclosure qualifications shall apply to each and every disclosure given herein and are incorporated by reference as though fully set forth in each disclosure.

#### DRP 17(a) INITIAL DISCLOSURES

A. The name and, if known, the address and telephone number of each witness, including a summary of the subjects to which each witness is expected to testify.

NAME OF WITNESS	SUBJECT OF INFORMATION
James J. Jimmerson, Esq. c/o Bailey❖Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James J. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, oversight and control of his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz, Leah Ballard, and Ashley Johnson; employment issues related to Nicole Cruz, Leah Ballard, and Ashley Johnson; credits to and debits from his operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; his lack of notice of issuance of a subpoena by the State Bar for his bank account records; and mitigating factors.

James M. Jimmerson, Esq. c/o Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James M. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, involvement in overseeing his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz, Leah Ballard, and Ashley Johnson; employment issues related to Nicole Cruz, Leah Ballard, and Ashley Johnson; credits to and debits from his firm's operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; and mitigating factors.
Louis Watson c/o State Bar of Nevada Daniel T. Young, Assistant Bar Counsel 3100 W. Charleston Blvd., Suite 100 Las Vegas, Nevada 89102	Ms. Watson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, her review of bank account records for Mr. James J. Jimmerson; and notice, if any, that she provided to Mr. James J. Jimmerson in advance of subpoenaing his bank account records from Nevada State Bank.
Amanda Fisher c/o Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Ms. Fisher will testify concerning the facts and circumstances surrounding this matter, including, without limitation, her position as the bookkeeper for Mr. Jimmerson's law firm; the firm's policies and practices for managing its books and records; her interactions and dealings with Nicole Cruz and Leah Ballard; and mitigating factors.

The disclosures provided herein are based on information reasonably available at this time.

Mr. Jimmerson reserves the right to identify additional witnesses as discovery goes forward, including an expert witness in accordance with the Scheduling Order issued by the Panel Chair. Mr. Jimmerson further reserves the right to rely on witnesses identified by the State Bar during the course of this proceeding.

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**B. A copy of, or a description by category and location of, all documents that Mr. Jimmerson intends to use at the formal hearing.**

Exhibit No.	Description	Bates Range
<b>A</b>	March 10, 2020 Letter from the State Bar to James J. Jimmerson, Esq.	JJJ0001-JJJ00002
<b>B</b>	February 5, 2020 Nevada State Bar Complaint Submission from Nicole Desiree Cruz	JJJ00003-JJJ00004
<b>C</b>	March 11, 2020 Response to Nevada State Bar from Amanda Fisher	JJJ00005
<b>D</b>	Client Trust Ledger Report for the Period November 1, 2019, through March 11, 2020	JJJ00006-JJJ00009
<b>E</b>	Jimmerson Law Firm Trust Banking Account Register for the Period February 12, 2020 through March 11, 2020	JJJ00010
<b>F</b>	Jimmerson Law Firm Trust Account Check No. 1461	JJJ00011
<b>G</b>	March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson, CP	JJJ00012-JJJ00015
<b>H</b>	Exhibit List to March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson CP	JJJ00016
<b>I</b>	Client Trust Ledger Report From November 1, 2019 through March 11, 2020 – Exhibit A to March 21, 2020 Letter	JJJ00017-JJJ00021

<b>J</b>	Jimmerson Law Firm Trust Banking Account Register for the Period February 12, 2020 through March 11, 2020 – Exhibit B to March 21, 2020 Letter	JJJ00022-JJJ00023
<b>K</b>	Jimmerson Law Firm Trust Account Check No. 1461 – Exhibit C to March 21, 2020 Letter	JJJ00024-JJJ00025
<b>L</b>	Summary Sheet – Explanation of Reconcile Trust Banking Account with Client Trust Account – Exhibit D to March 21, 2020 Letter	JJJ00026-JJJ00027
<b>M</b>	December 20, 2019 Letter from James J. Jimmerson to Nicole Cruz – Exhibit E to March 21, 2020 Letter	JJJ00028-JJJ00029
<b>N</b>	Text Messages Between James J. Jimmerson, Amanda Fisher, and Leah Ballard – Exhibit F to March 21, 2020 Letter	JJJ00030-JJJ00034
<b>O</b>	Jimmerson Law Firm Trust Account Record From November 1, 2019, to March 9, 2020 – Exhibit G to March 21, 2020 Letter	JJJ00035-JJJ00044
<b>P</b>	Trust Account Transaction Documents – Exhibits 1 through 133 to Exhibit G to March 21, 2020 Letter	JJJ00045-JJJ00561
<b>Q</b>	May 8, 2020 Letter from Louise Watson, CP, to James Jimmerson, Esq.	JJJ00562
<b>R</b>	May 22, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson, CP	JJJ00563-JJJ00565

1			
2	<b>S</b>	November 20, 2019 Statement Re: Melanie Valentine -	JJJ00566-JJJ00569
3		Exhibit 1 to May 22, 2020 Letter	
4	<b>T</b>	January 25, 2020 Statement Re: Jay Nady – Exhibit 2 to	JJJ00570-JJJ00572
5		May 22, 2020 Letter	
6			
7	<b>U</b>	Jimmerson Law Firm, P.C. Check Nos. 65981, 65980,	JJJ00573-JJJ00577
8		65979, and 66978 Re: Medical Liens paid on behalf of	
9		Darrin Booth – Exhibit 3 to May 22, 2020 Letter	
10	<b>V</b>	August 14, 2020 Letter from Daniel Young, Assistant Bar	JJJ00578-JJJ00580
11		Counsel to James J. Jimmerson, Esq.	
12			
13	<b>W</b>	August 14, 2020 Letter of Reprimand from Luke	JJJ00581-JJJ00584
14		Puschnig, Esq. to James J. Jimmerson, Esq.	
15			
16	<b>X</b>	August 28, 2020 Letter from Joshua P. Gilmore, Esq. to	JJJ00585-JJJ00592
17		Daniel Young, Assistant Bar Counsel.	
18	<b>Y</b>	<b>Leah Ballard’s Jimmerson Law Firm Employment</b>	<b>JJJ00593-</b>
19		<b>Application</b>	<b>JJJ00597</b>
20			
21	<b>Z</b>	<b>Leah Ballard’s Resume</b>	<b>JJJ00598-</b>
22			<b>JJJ00601</b>
23	<b>AA</b>	<b>Nicole Cruz’s Jimmerson Law Firm Employment</b>	<b>JJJ00602-</b>
24		<b>Application</b>	<b>JJJ00606</b>
25			
26	<b>BB</b>	<b>Nicole Cruz’s Resume</b>	<b>JJJ00607-</b>
27			<b>JJJ00608</b>
28			

CC	Text Messages between Leah Ballard and Amanda	JJJ00609-
	Fisher	JJJ00610

Documents bearing Bates Nos. JJJ00593 -JJJ00610 are attached hereto.

DATED this 26<sup>th</sup> day of February, 2021.

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

DENNIS L. KENNEDY

JOSHUA P. GILMORE

*Attorneys for Respondent*

James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 26<sup>th</sup> day of February, 2021, service of the foregoing **RESPONDENT'S SUPPLEMENTAL DISCLOSURES** was made via email addressed to the following at their last known email addresses:

DANIEL M. HOOG  
BAR COUNSEL  
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*Attorneys for Complainant*  
STATE BAR OF NEVADA

/s/ Susan L. Russo  
Employee of BAILEY ♦ KENNEDY



FILED

MAR 11 2021

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

Case No: OBC20-0163

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
JAMES J. JIMMERSON, ESQ., )  
Nevada Bar No. 0264, )  
)  
Respondent. )

**STATE BAR'S FINAL SUMMARY  
OF EVIDENCE AND DISCLOSURE  
OF WITNESSES FOR FORMAL  
HEARING**

PLEASE TAKE NOTICE that the following is a final list of witnesses and final summary of evidence which may be offered against Respondent at the time of the Formal Hearing, in the above-entitled complaint.

**A. Documentary Evidence**

Attached hereto is the State Bar's Exhibit List, SBN Exhibit 3 – SBN Exhibit 48, of proposed bate-stamped exhibits were previously submitted to Respondent via E-Mail.

1. Any and all documentation contained in the State Bar of Nevada's files including but not limited to, correspondence, emails, memorandums, text messages, notes, payments, invoices, bank records, receipts, billing entries and pleadings regarding grievance file number OBC20-0163.

2. Any and all documentation contained in records of the State Bar of Nevada regarding Respondent's licensure, compliance with reporting requirements, and disciplinary history.

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The State Bar reserves the right to supplement this evidence list, as necessary.

Exhibit#	Document	Bates No.
1.	<b>State Bar Hearing Packet</b> – <i>to be produced 1 week prior to hearing</i>	n/a
2.	Affidavit of Prior Discipline, if any – <i>to be produced at the hearing</i>	n/a
3.	2/5/2020 – Grievance from Nicole Cruz	SBN Exhibit 3
4.	2/6/2020 – Email from SBN to Cruz	SBN Exhibit 4
5.	2/6/2020 – Email to SBN	SBN Exhibit 5
6.	2/13/2020 – Signed Green Card	SBN Exhibit 6
7.	3/10/2020 – Letter of Investigation	SBN Exhibit 7
8.	3/10/2020 – Cert Mail Card	SBN Exhibit 8
9.	3/12/2020 – Signed Green Card re: Letter of Investigation	SBN Exhibit 9
10.	3/12/2020 – Email from Amanda Fisher re: attachments Respondents Client Trust Ledger Report Trust Banking Account Unclear Check Copy	SBN Exhibit 10
11.	3/23/2020 – Email from SBN to Amanda Fisher	SBN Exhibit 11
12.	4/10/2020 – Email from SBN to Amanda Fisher	SBN Exhibit 12
13.	4/21/2020 – Jimmerson Response	SBN Exhibit 13
14.	5/8/2020 – Email from SBN to Jimmerson re: request for more info.	SBN Exhibit 14
15.	5/8/2020 – SBN letter requesting additional info.	SBN Exhibit 15
16.	5/8/2020 – Email delivery confirmation	SBN Exhibit 16
17.	5/8/2020 – Email from Amanda Fisher confirming receipt of letter requesting further info.	SBN Exhibit 17
18.	5/22/2020 – Jimmerson Response to request for further info.	SBN Exhibit 18
19.	8/12/2020 – Signed Green Card	SBN Exhibit 19
20.	8/12/2020 – Letter of Reprimand	SBN Exhibit 20
21.	8/28/2020 – Objection to Letter of Reprimand	SBN Exhibit 21
22.	9/1/2020 – Email chain with Nicole Cruz	SBN Exhibit 22

23.	Jimmerson Law Firm IOLTA Acct #7126, trust account ledger January 2019 – January 2020	SBN Exhibit 23
24.	NSB Records Account ending #5195	SBN Exhibit 24
25.	NSB Records Account ending #5401	SBN Exhibit 25
26.	NSB Records Account ending #7126	SBN Exhibit 26
27.	NSB Records Account ending #7217	SBN Exhibit 27
28.	NSB Records Account ending #7225	SBN Exhibit 28
29.	NSB Records Account ending #7233	SBN Exhibit 29
30.	NSB Records Account ending #7241	SBN Exhibit 30
31.	NSB Records Account ending #8215	SBN Exhibit 31
32.	NSB Records Account ending #4903	SBN Exhibit 32
33.	NSB Records Account ending #1525	SBN Exhibit 33
34.	NSB Records Account ending #4064	SBN Exhibit 34
35.	NSB Records Account ending #4072	SBN Exhibit 35
36.	NSB Records Account ending #9417	SBN Exhibit 36
37.	NSB Records Account ending #9425	SBN Exhibit 37
38.	NSB Records Account ending #2510	SBN Exhibit 38
39.	NSB Records Account ending #7243	SBN Exhibit 39
40.	NSB Records Account ending #7698	SBN Exhibit 40
41.	NSB Records Account ending #0458	SBN Exhibit 41
42.	2/6/2020 – NSB Sub DT	SBN Exhibit 42
43.	2/6/2020 – Cert Mail Card re: NSB Sub DT	SBN Exhibit 43
44.	2/18/2020 – NSB Release	SBN Exhibit 44

45.	2/19/2020 – NSB Custodian of Records Affidavit	SBN Exhibit 45
46.	Jimmerson Account Summary	SBN Exhibit 46
47.	Checks issued to pay Booth Medical liens	SBN Exhibit 47
48.	Cleared checks paying Booth Medical liens	SBN Exhibit 48

The State Bar incorporates by reference all documents identified by Respondent in this matter.

**B. Witnesses**

1. The State Bar expects to call Respondent James J. Jimmerson, Esq. (“Respondent” or “Jimmerson”) to testify about the facts and circumstances alleged in the complaint. Such testimony will include, but not be limited to, his trust account, operating account, and payroll account records, employees that had access to those records, his office policies and procedures, and any other facts or circumstances that give rise to the allegations set forth in the Complaint. To the extent Respondent makes representations about his good character, the State Bar reserves the right to present information to rebut those representations with relevant facts and circumstances regarding his representation of other clients.

2. Nicole Cruz is expected to offer testimony including but not limited to her employment relationship and dealings with Respondent, her job duties including tasks she was instructed to perform for Respondent, and her knowledge of the facts and circumstances that give rise to the complaint in this matter.

3. Leah Ballard is expected to offer testimony including but not limited to her employment relationship and dealings with Respondent, her job duties including tasks

1 she was instructed to perform for Respondent, and her knowledge of the facts and  
2 circumstances that give rise to the complaint in this matter.

3 4. Ashley Johnson is expected to offer testimony including but not limited to her  
4 employment relationship and dealings with Respondent, her job duties including tasks  
5 she was instructed to perform for Respondent, and her knowledge of the facts and  
6 circumstances that give rise to the complaint in this matter.


7 5. Person most knowledgeable from Nevada State Bank is expected to testify  
8 regarding Respondent's bank records.

9 6. Louise Watson, Investigator with the State Bar of Nevada Office of Bar Counsel is  
10 expected to provide testimony regarding her investigation of the Office of Bar Counsel  
11 matter referenced above, including but not limited to, communications with  
12 Respondent, investigation and documentation obtained, and Respondent's licensure  
13 and disciplinary history.

14 The State Bar reserves the right to supplement this witness list, as necessary.

15 Dated this 11 day of March, 2021.

16 **STATE BAR OF NEVADA**  
17 Daniel M. Hooge, Bar Counsel

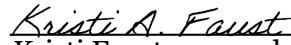
18   
19 Daniel T. Young, Assistant Bar Counsel  
20 Nevada Bar No. 11747  
21 3100 W. Charleston Blvd, Suite 100  
22 Las Vegas, Nevada 89102  
23 (702)-382-2200  
24 Attorney for State Bar of Nevada  
25

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing  
3 **STATE BAR'S FINAL SUMMARY OF EVIDENCE AND DISCLOSURE OF**  
4 **WITNESSES FOR FORMAL HEARING** was served via email to:

- 5 1. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)  
6 2. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)  
7 3. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

8 Dated this 11<sup>th</sup> day of March, 2021.

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10 Kristi Faust, an employee  
11 of the State Bar of Nevada  
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DENNIS L. KENNEDY  
Nevada Bar No. 1462  
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*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S FINAL  
DISCLOSURES**

As ordered by the Panel Chair and in accordance with DRP 17(a) and 21, Respondent James J. Jimmerson, Esq. makes the following final disclosure of witnesses and documents.<sup>1</sup>

**DISCLOSURE QUALIFICATIONS**

1. These Final Disclosures are based upon information presently known to counsel for Mr. Jimmerson and are given without prejudice to producing, prior to the formal hearing in this matter, information or documents that are: (1) subsequently discovered; (ii) subsequently determined to be relevant for one or more purposes; or (iii) subsequently determined to have been omitted from these disclosures.

<sup>1</sup> These Final Disclosures further serve as the list of final hearing exhibits, identified alphabetically by Mr. Jimmerson, and list of witnesses that Mr. Jimmerson either intends to call during his case in chief, or may call in rebuttal, in accordance with the Scheduling Order entered in this matter on January 14, 2021.

2. Mr. Jimmerson reserves all objections to the use, for any purpose, of these Final Disclosures or any of the information and documents referenced herein, whether in this proceeding or any other case or proceeding. Each document identified herein is subject to all objections, including, without limitation, competence, relevance, materiality, propriety, admissibility, foundation, and authenticity, to which the same would be subject if offered into evidence by the State Bar of Nevada ("State Bar") at the formal hearing in this matter. All such objections are expressly reserved by Mr. Jimmerson and may be interposed at the time of the hearing or in conjunction with any use of these disclosures.

3. These disclosure qualifications shall apply to each and every disclosure given herein and are incorporated by reference as though fully set forth in each disclosure.

#### FINAL DISCLOSURES

A. **The name and, if known, the address and telephone number of each witness who Mr. Jimmerson intends to call, or may call, as a witness at the formal hearing, together with a summary of the subjects to which each such witness is or would be expected to testify.**

NAME OF WITNESS	SUBJECT OF INFORMATION
James J. Jimmerson, Esq. c/o Bailey❖Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James J. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, oversight and control of his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz and Leah Ballard; employment issues related to Nicole Cruz and Leah Ballard; credits to and debits from his operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; his lack of notice of issuance of a subpoena by the State Bar for his bank account records; and mitigating factors.

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James M. Jimmerson, Esq. c/o Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Mr. James M. Jimmerson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, involvement in overseeing his firm's operating and trust accounts; trust account management; his firm's policies and procedures, including billings and disbursements; his role in hiring, training, and supervising non-attorneys at his firm; his dealings and communications with Nicole Cruz and Leah Ballard; employment issues related to Nicole Cruz and Leah Ballard; credits to and debits from his firm's operating and trust accounts, including the transactions at issue in the State Bar's Complaint; his handling of the cases for those clients for whom transfers of funds were made from his firm's trust account in November and December 2019; and mitigating factors.
Louis Watson c/o State Bar of Nevada Daniel T. Young, Assistant Bar Counsel 3100 W. Charleston Blvd., Suite 100 Las Vegas, Nevada 89102	Ms. Watson will testify concerning the facts and circumstances surrounding this matter, including, without limitation, her review of bank account records for Mr. James J. Jimmerson; and notice, if any, that she provided to Mr. James J. Jimmerson in advance of subpoenaing his bank account records from Nevada State Bank.
Amanda Fisher c/o Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302	Ms. Fisher will testify concerning the facts and circumstances surrounding this matter, including, without limitation, her position as the bookkeeper for Mr. Jimmerson's law firm; the firm's policies and practices for managing its books and records; her interactions and dealings with Leah Ballard; and mitigating factors.
Rob Bare 150 Las Vegas Boulevard North Las Vegas, NV 89101	Mr. Bare will provide testimony that supports Mr. Jimmerson's defenses in this matter consistent with the opinions expressed in his expert report dated February 26, 2021.
Jay Nady 3418 Pama Lane Las Vegas, NV 89120	Mr. Nady may testify concerning the facts and circumstances surrounding this matter, including, without limitation, his conversations with Mr. Jimmerson related to work being performed for Mr. Nady by the Jimmerson Law Firm in late 2019 and early 2020 and his conversations with Mr. Jimmerson related to the timing of payment of fees and costs for such services.

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**B. A copy of, or a description by category and location of, all documents that Mr. Jimmerson intends to use, or may use, at the formal hearing.**

<b>Exhibit No.</b>	<b>Description</b>	<b>Bates Range</b>
<b>A</b>	March 10, 2020 Letter from the State Bar to James J. Jimmerson, Esq.	JJJ0001-JJJ00002
<b>B</b>	February 5, 2020 Nevada State Bar Complaint Submission from Nicole Desiree Cruz	JJJ00003-JJJ00004
<b>C</b>	March 11, 2020 Response to Nevada State Bar from Amanda Fisher	JJJ00005
<b>D</b>	Client Trust Ledger Report for the Period November 1, 2019, through March 11, 2020	JJJ00006-JJJ00009
<b>E</b>	Jimmerson Law Firm Trust Banking Account Register for the Period February 12, 2020 through March 11, 2020	JJJ00010
<b>F</b>	Jimmerson Law Firm Trust Account Check No. 1461	JJJ00011
<b>G</b>	March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson, CP	JJJ00012-JJJ00015
<b>H</b>	Exhibit List to March 21, 2020 Letter from James J. Jimmerson, Esq. to Louise Watson CP	JJJ00016
<b>I</b>	Client Trust Ledger Report From November 1, 2019 through March 11, 2020 – Exhibit A to March 21, 2020 Letter	JJJ00017-JJJ00021

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2	<b>J</b>	Jimmerson Law Firm Trust Banking Account Register for	JJJ00022-JJJ00023
3		the Period February 12, 2020 through March 11, 2020 –	
4		Exhibit B to March 21, 2020 Letter	
5	<b>K</b>	Jimmerson Law Firm Trust Account Check No. 1461 –	JJJ00024-JJJ00025
6		Exhibit C to March 21, 2020 Letter	
7			
8	<b>L</b>	Summary Sheet – Explanation of Reconcile Trust Banking	JJJ00026-JJJ00027
9		Account with Client Trust Account – Exhibit D to March	
10		21, 2020 Letter	
11	<b>M</b>	December 20, 2019 Letter from James J. Jimmerson to	JJJ00028-JJJ00029
12		Nicole Cruz – Exhibit E to March 21, 2020 Letter	
13			
14	<b>N</b>	Text Messages Between James J. Jimmerson, Amanda	JJJ00030-JJJ00034
15		Fisher, and Leah Ballard – Exhibit F to March 21, 2020	
16		Letter	
17	<b>O</b>	Jimmerson Law Firm Trust Account Record From	JJJ00035-JJJ00044
18		November 1, 2019, to March 9, 2020 – Exhibit G to	
19		March 21, 2020 Letter	
20			
21	<b>P</b>	Trust Account Transaction Documents – Exhibits 1	JJJ00045-JJJ00561
22		through 133 to Exhibit G to March 21, 2020 Letter	
23	<b>Q</b>	May 8, 2020 Letter from Louise Watson, CP, to James	JJJ00562
24		Jimmerson, Esq.	
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26	<b>R</b>	May 22, 2020 Letter from James J. Jimmerson, Esq. to	JJJ00563-JJJ00565
27		Louise Watson, CP	
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2	<b>S</b>	November 20, 2019 Statement Re: Melanie Valentine -	JJJ00566-JJJ00569
3		Exhibit 1 to May 22, 2020 Letter	
4	<b>T</b>	January 25, 2020 Statement Re: Jay Nady – Exhibit 2 to	JJJ00570-JJJ00572
5		May 22, 2020 Letter	
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7	<b>U</b>	Jimmerson Law Firm, P.C. Check Nos. 65981, 65980,	JJJ00573-JJJ00577
8		65979, and 66978 Re: Medical Liens paid on behalf of	
9		Darrin Booth – Exhibit 3 to May 22, 2020 Letter	
10	<b>V</b>	August 14, 2020 Letter from Daniel Young, Assistant Bar	JJJ00578-JJJ00580
11		Counsel to James J. Jimmerson, Esq.	
12			
13	<b>W</b>	August 14, 2020 Letter of Reprimand from Luke	JJJ00581-JJJ00584
14		Puschnig, Esq. to James J. Jimmerson, Esq.	
15			
16	<b>X</b>	August 28, 2020 Letter from Joshua P. Gilmore, Esq. to	JJJ00585-JJJ00592
17		Daniel Young, Assistant Bar Counsel.	
18	<b>Y</b>	Leah Ballard’s Jimmerson Law Firm Employment	JJJ00593-JJJ00597
19		Application	
20			
21	<b>Z</b>	Leah Ballard’s Resume	JJJ00598-JJJ00601
22	<b>AA</b>	Nicole Cruz’s Jimmerson Law Firm Employment	JJJ00602-JJJ00606
23		Application	
24			
25	<b>BB</b>	Nicole Cruz’s Resume	JJJ00607-JJJ00608
26	<b>CC</b>	Text Messages between Leah Ballard and Amanda Fisher	JJJ00609-JJJ00610
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1 Mr. Jimmerson may redact some of the above documents, if necessary, in order to omit  
2 reference to other clients who are not the subject of the State Bar's Complaints.

3 Documents bearing Bates Nos. JJJ00001-JJJ000610 have already been disclosed.

4 Mr. Jimmerson reserves the following rights: (i) to use any exhibit and/or to call any witness  
5 disclosed by the State Bar at the formal hearing; and (ii) to supplement the above list of witnesses  
6 and documents in response to the State Bar's final disclosures.

7 DATED this 12<sup>th</sup> day of March, 2021.

8 BAILEY ♦ KENNEDY

9 By: /s/ Joshua P. Gilmore

10 DENNIS L. KENNEDY

11 JOSHUA P. GILMORE

12 *Attorneys for Respondent*

13 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 12<sup>th</sup> day of March, 2021, service of the foregoing **RESPONDENT'S FINAL DISCLOSURES** was made via email addressed to the following at their last known email addresses:

DANIEL M. HOOG  
BAR COUNSEL  
DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniel@nvbar.org  
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*Attorneys for Complainant*  
STATE BAR OF NEVADA

/s/ Susan L. Russo  
Employee of BAILEY ♦ KENNEDY

Case No: OBC20-0163



**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.  
Nevada Bar No. 0264,

Respondent.

**STATE BAR OF NEVADA'S  
MOTION IN LIMINE TO  
EXCLUDE EXPERT  
TESTIMONY AND EXPERT  
REPORT**

The State Bar of Nevada, by and through Assistant Bar Counsel Daniel T. Young, hereby moves to exclude Respondent's expert report from admission and exclude expert witness Rob Bare from testifying in this disciplinary formal hearing. This Motion is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Chair.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Mr. Bare is identified by Respondent as an expert witness and has issued a report on whether Respondent's conduct violated the respective Rules of Professional Conduct. This proposed report and correlating expert testimony should be excluded because he makes conclusions on issues that are reserved for the trier of fact in this matter. Further, neither Mr. Bare nor his report purport to offer the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinary laity such as any expertise in accounting or his audit of any accounting or financial records, or expertise in handling human resource issues in a small

1 business which might be applicable to this case. Instead, Mr. Bare and his report are exclusively  
2 offered to supplant the disciplinary panel's duty to determine whether Respondent violated the  
3 rules of professional conduct. Therefore, the testimony of Mr. Bare and his report should be  
4 excluded from the formal hearing as more fully set forth hereafter.

5 **A. Mr. Bare's report should be excluded as inadmissible hearsay.**

6 An expert report is generally inadmissible as hearsay. *See Hunt v. City of Portland*, 599  
7 Fed. Appx. 620, 621 (9<sup>th</sup> Cir. 2009) (concluding expert report was inadmissible hearsay); see  
8 also *Kimbrough v. Anderson*, 55 N.E.3d 325, 335-336, (Indiana, 2016) (finding that the expert  
9 report was prepare in anticipation of litigation and therefore inadmissible hearsay). Mr. Bare's  
10 report is impermissible hearsay because it is an out of court statement that was prepared in  
11 anticipation of litigation. There is no hearsay exception that applies to Mr. Bare's report and  
12 therefore it should be excluded. Additionally, Mr. Bare's report should also be excluded for the  
13 same reasons that Mr. Bare's actual testimony must be excluded as discussed hereafter.

14 **B. Mr. Bare's expert report and his actual testimony must be excluded**  
15 **because it impinges on the purview of the Panel's responsibilities by providing**  
16 **opinions on whether Respondent violated the rules of professional conduct**  
17 **and/or what his mental state was when in engaging in the misconduct.**

18 "The admission of expert testimony lies within the sound discretion of the trial court."  
19 *McKeeman v. General American Life Ins. Co.* 111 Nev. 1042, 1051, 899 P.2d 1124, 1130 (Nev.  
20 1995). NRS 50.275 provides,

21 If scientific, technical or other specialized knowledge will assist the trier of fact  
22 to understand the evidence or to determine a fact in issue, a witness qualified as  
23 an expert by special knowledge, skill, experience, training or education may  
24 testify to matters within the scope of such knowledge.

25 "The purpose of expert testimony 'is to provide the trier of fact a resource for  
ascertaining truth in relevant areas outside the ken of ordinary laity.'" *McKeeman*, 111 Nev. at  
1051 (citing *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (Nev. 1987)).

1 In *Townsend v. State*, the Court held that it was appropriate for an expert to offer  
2 testimony on whether a child had been sexually assaulted or abused because “posttraumatic  
3 stress disorder patterns in sexually abused children” was “a critical and relevant subject of an  
4 esoteric nature” about which a lay juror would not ordinarily have knowledge. *See Townsend*,  
5 103 Nev. at 118. However, the Court held that it was inappropriate for the expert to identify the  
6 person who assaulted the victim because “it transcended the test of jury enlightenment and  
7 entered the realm of fact-finding that was well within the capacity of a lay jury.” *Id.* In a  
8 disciplinary Formal Hearing, the trier of fact is the Panel. Therefore, appropriate expert  
9 testimony would offer knowledge that is outside the capacity of a panel member.

10 In *In the matter of Mosley* the Nevada Supreme Court deferred to the Judicial  
11 Commission’s discretion in excluding proposed expert testimony in a judicial disciplinary  
12 hearing to decide whether a judge’s conduct violated the canons. *See In the matter of Mosley*,  
13 120 Nev. 908, 102 P.3d 555, 564 (Nev. 2004). The proffered expert witness in that disciplinary  
14 hearing had observed the Judicial Commission hearing and was to be offered to (i) summarize  
15 the evidence and (ii) provide his opinion on whether Judge Mosley had violated the judicial  
16 canons.

17 In support of the Commission’s decision to exclude the expert’s proffered testimony, the  
18 Court cited a *Judicial Court Reporter* article which stated:

19 Judicial conduct organizations often have the difficult job of determining ethical  
20 issues of first impression in their states, or perhaps, nationally. That important  
21 job should not be delegated to an expert witness in a proceeding. No legal scholar  
22 or judge familiar with the customs of a judicial community possesses unique  
23 knowledge of ethical standards that is more reliable than the independent  
24 decision making of the members of the judicial conduct organization. By relying  
25 on their own expertise as representatives of the public and legal community,  
rather than the opinions of experts, a judicial conduct commission fulfills its  
official public responsibility to formulate the appropriate ethical standards for  
their states.

*Id.* at 564-565.

1 Similarly, the Court upheld the exclusion of a proposed expert affidavit because the  
2 Judicial Commission did not find the affidavit necessary for it to determine a fact at issue in *In*  
3 *re Assad*, 185 P.3d 1044 (Nev. 2008). In that matter, Judge Assad appealed the exclusion of  
4 the affidavit, which was offered by the alleged expert, in his judicial disciplinary matter. The  
5 Court found that, in the affidavit at issue, the expert engaged in “tasks reserved to the  
6 Commission,” particularly credibility determinations and weighing the evidence. *Id.* at 1050.  
7 The Court found the Commission did not abuse its discretion when it excluded the affidavit  
8 because it determined “that [the expert’s] testimony would not be helpful.” *Id.*

9 In this case, Mr. Bare’s report is replete with impermissible statements and conclusions  
10 that impinge upon the disciplinary Panel’s exclusive role to determine if Respondent violated  
11 the Rules of Professional Conduct. See Expert Report of Rob Bare attached as Exhibit A. The  
12 attached report clearly shows that Bare’s opinions in his report and his anticipated testimony  
13 transcend the test of Panel enlightenment and enter the realm of fact-finding which is reserved  
14 for the Panel members. See *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (Nev.  
15 1987)).

16 Here, like in *Assad*, in his report and in his anticipated testimony, Bare engages in  
17 making inappropriate credibility determinations of Respondent, witnesses Nicole Cruz,  
18 Amanda Fisher, and others. These witnesses are percipient witnesses in the case and weighing  
19 their credibility, based on hearing their direct testimony, is the exclusive role of the disciplinary  
20 Panel. *In re Assad*, 185 P.3d at 1050.

21 Further, Mr. Bare impermissibly engages in weighing the strength of certain evidence  
22 to impermissibly conclude that, *inter alia*, Respondent satisfied his obligations under RPC 1.15  
23 and RPC 5.3 and thereby did not violate the rules of professional conduct. The report clearly  
24 illustrates that Bare’s report and proposed testimony purports to substitute Bare for the Panel  
25 as the trier of fact in this case. Bare repeatedly impinges upon tasks reserved to the Disciplinary

1 Panel. *Id.* As with the Judicial Commission, it is appropriate for this Panel to rely on its own  
2 expertise as representatives of the public and legal community to formulate the appropriate  
3 ethical standards for attorneys in Nevada. Therefore, Mr. Bare's report and his proposed  
4 testimony should be excluded from the Disciplinary hearing. *Id.*

5 **B. Mr. Bare's Report and Proffered Testimony is Not Based on His**  
6 **Expertise in scientific, technical, or permissible specialized knowledge.**

7 NRS 50.275 states that

8 If scientific, technical, or other specialized knowledge will assist the trier of fact  
9 to understand the evidence or to determine a fact in issue, a witness qualified as  
10 an expert by special knowledge, skill, experience, training, or education **may**  
11 **testify to matters within the scope of such knowledge.**

12 NRS 50.275 (Emphasis added).

13 "The goal, of course, is to provide the trier of fact a resource for ascertaining truth in  
14 relevant areas ***outside the ken of ordinary laity.***" *Townsend v. State*, 103 Nev. 113, 117,  
15 734 P.2d 705, 708 (1987) (emphasis added). For professional adjudicators, the expert must  
16 provide a resource outside the ken of an ordinary lawyer.

17 In this case, Respondent is charged with violating two rules of professional conduct. He  
18 violated RPC 1.15 (Safekeeping) by misappropriating client funds to cover his payroll, by  
19 withdrawing fees before they were deposited, and commingling personal money with client  
20 money. He also violated RPC 5.3 (Responsibilities regarding nonlawyer assistants) by failing  
21 to supervise two employees.

22 Mr. Bare's opinion accepts all of Respondent's statements as true, rejects the State Bar's  
23 allegations, and then offers a legal argument as opinion. *See* Exhibit A. He, however, offers  
24 nothing outside the ken of a lawyer. Notably absent from Mr. Bare's report is any discussion or  
25 analysis that requires specialized knowledge. *Id.* He offers nothing scientific. He offers nothing  
technical. He offers no specialized experience and training. But his specialization is nothing  
more than an ability to draw a legal conclusion from a set of facts. As a result, neither Bare's

1 report nor his proposed testimony would enlighten the panel. The ability to weigh the  
2 credibility of the witnesses and form legal conclusions are simply not outside the capacity of  
3 the disciplinary panel. *See Townsend*, 103 Nev. at 119 (It was improper to admit unnecessary  
4 expert testimony because it “invaded the prerogative of the jury”).

5 Mr. Bare presents no scientific, technical, or permissible special knowledge which  
6 qualifies him as an expert in matters of accounting, employment or human resource matters  
7 which might be applicable to this case. *See Exhibit A* (CV of Robert Bare set forth in Exhibit 1  
8 to expert report). None of Mr. Bare’s credentials endow him with any special knowledge,  
9 experience or training that will help the disciplinary panel in these areas. Thus, neither Mr.  
10 Bare’s report nor his legal opinion is necessary for the panel to determine a fact at issue in this  
11 case. *In re Assad*, 185 P.3d 1044.

12 Mr. Bare lists his qualifications as his legal experience. He lists his license to practice  
13 law, his work as previous bar counsel, and his time as a judge in the Eighth Judicial District.  
14 He provides no scientific, technical, or other specialized knowledge. As previous Bar Counsel,  
15 Mr. Bare, has no more “specialized” knowledge regarding the rules of professional conduct  
16 than the panel members or the Supreme Court.

17 Assuming arguendo that Mr. Bare’s former employment as Bar Counsel even qualifies  
18 him to opine on whether a lawyer violated the rules of professional conduct, this use of Mr.  
19 Bare’s testimony or his report is improper because it invades the exclusive province of the  
20 disciplinary panel. *See In the matter of Mosley*, 120 Nev. 908, 102 P.3d 555, at 564-565 (Nev.  
21 2004) (adopting the reasoning that “by relying on their own expertise as representatives of the  
22 public and legal community, rather than the opinions of experts, a judicial conduct commission  
23 fulfills its official public responsibility to formulate the appropriate ethical standards for their  
24 states.”).

1 Therefore, the Chair should exclude Mr. Bare's report and his testimony . *See Townsend*,  
2 103 Nev. at 118.

3 **C. The Prejudice from Mr. Bare's Proposed Testimony Outweighs Any**  
4 **Probative Value.**

5 NRS 48.035 provides, in pertinent part:

6 Although relevant, evidence is not admissible if its probative value is  
7 substantially outweighed by the danger of unfair prejudice, of confusion of the  
issues or of misleading the jury.

8 Mr. Bare's expert opinion advocates for Respondent. His report improperly bolsters  
9 Respondent's testimony, ignores the State Bar's evidence, and sums up the advocacy as an  
10 expert opinion.

11 First, Mr. Bare improperly accepts all of Respondent's statements as true. For example,  
12 he accepts as true that "Mr. Jimmerson maintained daily contact with Ms. Ballard to make sure  
13 that she was comfortable in her position and was keeping up with the job." *See Exhibit A*  
14 *(Expert Report Exhibit 2 at paragraph 12)*. An expert may not bolster a witness' credibility.  
15 *State v. District Court (Romano)*, 120 Nev. 613, 97 P.3d 594 (2004), *overruled on other*  
16 *grounds by Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (2006). Mr. Bare's opinion  
17 would inherently bias the panel by improperly bolstering the credibility of favorable witnesses  
18 and evidence.

19 On the other hand, Mr. Bare did not review the State Bar's evidence or interview its  
20 witnesses. *See Exhibit A (Expert Report Exhibit 2)*. Mr. Bare's opinion would inherently bias  
21 the panel by improperly impugning the credibility of the State Bar's witnesses and evidence.

22 Finally, Mr. Bare's opinion is advocacy. He opines that Respondent did not violate the  
23 rules of professional conduct. His conclusion "invade[s] the prerogative" of the panel. *See*  
24 *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (Nev. 1987)). A lawyer's opinion has  
25 no probative value—even if the lawyer has a prestigious resume like Mr. Bare. It is no different


1 than closing argument. It is well-known that “statements and arguments of the attorneys are  
2 not evidence in the case.” *See, e.g., Santoyo v. State*, 2016 Nev. App. LEXIS 256, \*3, 132 Nev.  
3 1026, 2016 WL 3584684. Mr. Bare’s legal conclusions would unduly prejudice the prosecution.  
4 Panel members undoubtedly will give Mr. Bare’s legal conclusions undue weight. This undue  
5 prejudice outweighs any probative value that Mr. Bare’s report or testimony might have. This  
6 prejudice warrants exclusion of Mr. Bare’s testimony (and report) from evidence in this  
7 disciplinary hearing.

8 **D. Conclusion.**

9 Based on the foregoing, Mr. Bare’s report and proposed testimony lack the foundation  
10 required for expert testimony. He lacks scientific, technical, or specialized knowledge. His  
11 knowledge is professional ethics, which is the prerogative of the disciplinary panel. The State  
12 Bar respectfully requests that the Chair exclude his testimony and opinion in this matter.

13 **DATED** this 26 day of March 2021.

14 **STATE BAR OF NEVADA**  
15 Daniel M. Hooge, Bar Counsel

16   
Daniel Young (Vedder, 2021 08:52 PDT)  
17 Daniel T. Young, Assistant Bar Counsel  
18 Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
19 Attorney for State Bar of Nevada

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1. Dennis Kennedy, Esq. (Counsel for Respondent):

2. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)

Dated this 26th day of March, 2021.

ROA Page 000130

# EXHIBIT A

# EXHIBIT A

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No.: OBC20-0163

**EXPERT REPORT OF ROB BARE**

**INTRODUCTION**

1. I have been retained by James J. Jimmerson, Esq. in connection with the above-captioned matter (the “Matter”). I have been asked to address certain legal ethics and professional responsibility issues presented in the Matter. The opinions expressed in this Report are solely my own. I reserve the right to reconsider, modify, revise, and/or supplement my opinions if other evidence or documents are presented to me.

**BACKGROUND & QUALIFICATIONS**

2. I am an attorney and have been licensed to practice law in the State of Nevada since 1993. Prior to admission to practice in Nevada, I was admitted to practice in the State of Pennsylvania in 1989. From October 1989 through August 1993, I served as a trial attorney in the United States Army Judge Advocate General’s Corps. Once I moved to Nevada, I served as an Assistant Bar Counsel to the State Bar of Nevada from August 1993 to early 1995, and thereafter served as the Bar Counsel to the State Bar of Nevada, with the exception of a six-month Municipal Judicial term, until becoming a District Court Judge in January 2011. I served as a judge in the Las Vegas Municipal Court from January through July of 2007, as well as a judge in the Eighth Judicial District Court, Department 32, for ten years, from January 2011 until January 2021. All of this is set forth in my curriculum vitae, which is attached hereto as Exhibit 1. I am charging \$650 per hour for my work in this Matter. Given my experience, I believe this is a reasonable rate for my expert work in the areas of legal malpractice and other ethics-related areas, such as the instant task.

**MATTERS REVIEWED**

3. The list of documents that I reviewed in preparing this Report, and upon which I am basing my opinions expressed in this Report, is attached hereto as Exhibit 2. In preparing this Report, I also spoke to Mr. Jimmerson to gather those facts underlying the Matter that are pertinent to this Report and am relying upon the information that he provided as further discussed in this Report. I am also relying on testimony that I understand will be given at the hearing by Amanda Fisher. In addition, I regularly review legal ethics treatises as well as court

decisions, periodicals, and other writings pertaining to legal ethics and professional responsibility and incorporate such knowledge in my opinions expressed in this Report. Further, I am basing my opinions upon my experience as a former District Court Judge for the Eighth Judicial District and as a member of the Office of Bar Counsel for the State Bar of Nevada, including as Bar Counsel.

#### **MATERIAL FACTS**

4. The following facts are either uncontested or not subject to reasonable dispute and are derived from the documents that I reviewed in preparing this Report, my discussions with Mr. Jimmerson concerning the Matter, and anticipated testimony from Ms. Fisher.

##### ***Nicole Cruz Works - for Seven Days - For Jimmerson Law***

5. In or around November 2019, Mr. Jimmerson posted a position for a paralegal to work at his law firm, The Jimmerson Law Firm, P.C. (“Jimmerson Law”). Nicole Cruz applied for the position. Among her stated qualifications, she represented that she was a third-year law student at the William S. Boyd School of Law at UNLV. Mr. Jimmerson interviewed Ms. Cruz and, based on the interview, offered her the position, which she accepted.

6. Within days of commencing her employment, Mr. Jimmerson realized that Ms. Cruz was not qualified for the position. For example, she did not comprehend basic legal terms and her work product was extremely poor. Mr. Jimmerson immediately questioned Ms. Cruz’s background and, doubting her prior representations, terminated her employment. He later learned that she lied about being a law student.

7. Relevant to this Matter, as a seven-day, non-accounting, non-bookkeeping employee, there is no evidence that Ms. Cruz knew or could have known of the reasonable efforts taken by Mr. Jimmerson’s law firm, through the efforts of Mr. Jimmerson himself, his veteran bookkeeper Amanda Fisher, and his longtime legal secretary Kim Stewart, to train and supervise Ms. Ballard. Nevertheless, months after her termination, and after becoming aware that her misrepresentation concerning Boyd Law School was discovered by Mr. Jimmerson, Ms. Cruz submitted the Bar grievance, which focused on her alleged concerns over accounting and bookkeeping matters even though she was not involved, at all, with Jimmerson Law’s books and records.

##### ***Leah Ballard Works - for Twenty-Five Days - For Jimmerson Law***

8. In or around October 2019, Mr. Jimmerson posted a position for a bookkeeper to work at Jimmerson Law. Ms. Fisher was serving as his bookkeeper at the time and had served in that position for over one year after having served as an accountant for many years for Mr. Jimmerson’s other businesses. She was interested in taking time away from work due to personal, non-work-related reasons, which Mr. Jimmerson respected, and which prompted him to look for a replacement.

9. Ms. Ballard applied for the position. She was initially interviewed by Ms. Fisher and Ms. Stewart. Ms. Ballard was thereafter recommended to Mr. Jimmerson. Mr. Jimmerson

met with Ms. Ballard for approximately 15-30 minutes and, as a result of the interview, and after noting her prior bookkeeping experience, offered her the position, which she accepted.<sup>1</sup>

10. Mr. Jimmerson tasked Ms. Fisher with training Ms. Ballard. The training took place over the course of two and a half weeks, during which time Ms. Ballard familiarized herself with working at Jimmerson Law, including understanding the administrative tasks associated with serving as the firm's bookkeeper. She was consistently reminded of the need to carefully track and monitor activity involving the firm's bank accounts, including its client trust account. She was also told of the importance of inputting time sheets on client matters daily to facilitate preparing monthly billing statements for clients. Further, she was told to generate daily cash reports for the firm, reflecting all transactions involving the firm's bank accounts.

11. Ms. Fisher was satisfied that Ms. Ballard knew what she was doing. After her training concluded, she assumed the position in place of Ms. Fisher.

12. Mr. Jimmerson maintained daily contact with Ms. Ballard to make sure that she was comfortable in her position and was keeping up with the job. Likewise, even after Ms. Fisher's last day at the firm on November 7, 2019, she continued to communicate with Ms. Ballard and answer any questions that she had. Notwithstanding this, Ms. Ballard started falling behind in preparing daily cash reports for the firm. By the end of November 2019, only 11 days after she finished training and started working on her own, it became clear that she had fallen behind in her work and was unable to complete the various tasks assigned to her.<sup>2</sup>

13. On or about November 25, 2019, Mr. Jimmerson learned that Ms. Ballard was behind in inputting daily timesheets for members of the firm. He immediately reached out to Ms. Fisher and asked her to speak with Ms. Ballard about the matter.

14. On or about November 26, 2019, Ms. Ballard admitted to Mr. Jimmerson, in writing, that she was behind in inputting daily timesheets for members of the firm. When he asked, "How did this happen?", she responded: "It is my complete failure. I got myself overwhelmed and did not communicate that. I have gotten unorganized and made a large mess. I take the responsibility for it. I am willing to work to clean it up and help it in order to the best of my ability. I apologize and it will not happen again."

15. Also, on or about November 26, 2019, in a separate text message to Ms. Fisher, with whom Ms. Ballard had maintained contact, Ms. Ballard apologized for being behind in her work, indicated that she had "made a mess," and disclosed that she was having personal problems at home with her husband.

16. These text messages of on or about November 26, 2019, evidence that Ms. Ballard, upon reflection, took time to type out and memorialize the truth concerning perhaps the most salient fact in this Matter as it relates to the Nevada RPC 5.3 allegation: Ms. Ballard

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<sup>1</sup> According to Mr. Jimmerson, either he or Ms. Fisher contacted Ms. Ballard's prior employer to verify her employment history and received high remarks concerning her credentials.

<sup>2</sup> During her brief tenure with the firm, Ms. Ballard was out of the office for several days due to personal reasons.

concealed the impact of her personal problems and professional shortcomings while remaining employed at the firm, especially during the 11 days of capacity as the sole bookkeeper, only to admit everything after the fact in these text writings.

17. On or about December 2, 2019, Ms. Ballard tendered her resignation to Jimmerson Law. In a text message that she sent to Ms. Fisher, she indicated that the job “is more than I can clearly handle” and “just too much for me.”

18. After accepting Ms. Ballard’s resignation, Mr. Jimmerson took immediate and swift remedial measures. He quickly reached out to Ms. Fisher to request that she return as his firm’s bookkeeper. She agreed (albeit for higher pay) and, at Mr. Jimmerson’s direction, she immediately took steps to address the tasks that had been ignored or not timely handled by Ms. Ballard. According to Mr. Jimmerson, by December 27, 2019, the firm’s books and records were back in order. Notably, and perhaps practically most important, Mr. Jimmerson has relayed that no actual harm was done to any client as a result of Ms. Ballard’s activities, or inactivities, as the case may be.

#### ***Ms. Cruz Files a Grievance Against Mr. Jimmerson***

19. On February 5, 2020, Ms. Cruz filed a grievance against Mr. Jimmerson with the State Bar, alleging that she had heard from Ms. Ballard that Mr. Jimmerson had allegedly instructed Ms. Ballard to pay payroll using funds from his client trust account.

20. The State Bar opened an investigation of Ms. Cruz’s grievance and promptly issued a subpoena for Mr. Jimmerson’s bank account records. In response to the State Bar’s request, Mr. Jimmerson immediately cooperated by producing bank records and client statements, together with an explanation regarding what occurred with his firm’s employment of Ms. Cruz and Ms. Ballard.<sup>3</sup>

#### ***The State Bar Initiates this Disciplinary Proceeding Against Mr. Jimmerson***

21. On October 7, 2020, the State Bar filed its Complaint against Mr. Jimmerson, claiming that he violated Nevada RPC 1.15 (Count I) and Nevada RPC 5.3 (Count II).

22. The State Bar’s allegations underlying Count II may be summarized as follows:

a. Mr. Jimmerson was not reasonable in his efforts to train Ms. Cruz and Ms. Ballard to assist him in managing his firm’s client trust account;

b. Mr. Jimmerson was not reasonable in his efforts to supervise Ms. Cruz and Ms. Ballard to ensure that they appropriately assisted him in managing his firm’s client trust account; and

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<sup>3</sup> As I understand it, Mr. Jimmerson produced more than 500 pages of documents in response to the State Bar’s request.

c. Mr. Jimmerson knew or should have known that his conduct (in training and supervising these two employees) was improper (or not reasonable).

23. On November 2, 2020, Mr. Jimmerson filed a Motion to Dismiss, arguing that the State Bar failed to allege facts supporting a Nevada RPC 5.3 violation.

24. On November 17, 2020, the State Bar filed an Opposition to the Motion to Dismiss, arguing that Mr. Jimmerson's nonlawyer employees (Ms. Cruz and Ms. Ballard) engaged in "improper trust account actions" at Mr. Jimmerson's direction and that Mr. Jimmerson "failed to, *inter alia*, properly train, instruct, and/or supervise his new employee or verify that she was conducting his trust account transactions properly."

25. On December 2, 2020, the Disciplinary Chair entered an Order denying the Motion to Dismiss, finding that it was fair to infer from the allegations in the Complaint (which were accepted by the Chair as true solely for purposes of the Motion to Dismiss) that they alleged that Mr. Jimmerson did not properly train or supervise his non-lawyer employees and directed them to make improper withdrawals from his client trust account.

26. On December 16, 2020, Mr. Jimmerson filed his Verified Answer to the Complaint.

#### **ISSUES PRESENTED**

27. The legal ethics and professional responsibility issues presented in the Matter that I have been asked to address are as follows:

a. Whether Mr. Jimmerson – as the managing attorney of Jimmerson Law – failed to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that nonlawyer employees will act in a manner that is compatible with Mr. Jimmerson's professional obligations, *see* Nevada RPC 5.3(a) and (b); and

b. Whether Mr. Jimmerson ordered his non-lawyer employees to engage in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson or failed to take reasonable remedial action upon learning that his non-lawyer employees had engaged in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson, *see* Nevada RPC 5.3(c).<sup>4</sup>

#### **SUMMARY OF OPINIONS**

28. It is my opinion that Mr. Jimmerson satisfied his professional obligations under Nevada RPC 5.3. Specifically:

a. Mr. Jimmerson had and has policies and procedures in place to ensure that nonlawyer employees at his firm act in a manner that is compatible with his professional obligations. As it pertains to the conduct of Ms. Ballard, as described previously herein,

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<sup>4</sup> I was not asked to address whether Mr. Jimmerson satisfied his professional obligations under Nevada RPC 1.15.

the procedure used to hire her was reasonable. Likewise, the procedure used to train her was reasonable. She was trained—at Mr. Jimmerson’s direction—for two and a half weeks before assuming the role of bookkeeper for his law firm. Mr. Jimmerson ensured that she had the appropriate background, training, and experience for the position and checked with her daily to ensure that she was performing her duties and responsibilities.

b. Once Mr. Jimmerson learned that Ms. Ballard was incapable of serving as his firm’s bookkeeper—a fact that she admitted in writing—and had failed to properly input time on client matters and maintain his firm’s books and records, Mr. Jimmerson immediately took steps to correct these errors, including rehiring his former bookkeeper, Ms. Fisher.

c. Nevada RPC 5.3 does not impose strict liability on a lawyer for errors or mistakes committed by a nonlawyer. Based on the facts and circumstances presented, it is clear to me that Mr. Jimmerson neither ordered Ms. Ballard to neglect her duties and responsibilities as the firm’s bookkeeper, nor did he turn a blind eye toward her shortcomings once he discovered that she was not fit for the position, especially when considering the short period of time between her hiring, the discovery of her deficiencies, and the efforts undertaken to remediate those deficiencies, all without harm to any client.

#### ANALYSIS

29. The Nevada Rules of Professional Conduct (RPCs) are evidence of the standard of care to which Nevada-licensed attorneys are held. Nevada RPC 1.0A(d); *Mainor v. Nault*, 120 Nev. 750, 768-69, 101 P.3d 308, 320-21 (2004). Whether an attorney met the standard of care is generally established through expert testimony. *Mainor*, 120 Nev. at 767-69, 101 P.3d at 320-21; *see also Allyn v. McDonald*, 112 Nev. 68, 71, 910 P.2d 263, 266 (1996). This is true in the context of a disciplinary proceeding. *See, e.g., In re Disciplinary Proceeding Against Rodriguez*, 306 P.3d 893, 900 (Wash. 2013); *accord In re Assad*, 124 Nev. 391, 393, 402-03, 185 P.3d 1044, 1045, 1051 (2008). An expert is someone who is qualified by virtue of special knowledge, skill, experience, training, or education to express an opinion on matters within the scope of such knowledge, NRS 50.275, and is permitted to submit an opinion relating to the ultimate issue in a case, NRS 50.295.<sup>5</sup>

30. In the context of a disciplinary proceeding, the State Bar must prove the alleged Nevada RPC violations by clear and convincing evidence. SCR 105(2)(f); *In re Discipline of Reade*, 133 Nev., Adv. Op. 87, 405 P.3d 105, 106 (2017).

#### ***Mr. Jimmerson Properly Trained and Supervised Ms. Ballard and Appropriately Oversaw Her Work as His Firm’s Bookkeeper***

31. Nevada RPC 5.3(a) states that a lawyer who possesses managerial authority within a law firm “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that [a nonlawyer employee]’s conduct is compatible with the professional obligations of the lawyer.” Similarly, Nevada RPC 5.3(b) states that a lawyer who

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<sup>5</sup> The Nevada Rules of Evidence apply in this Matter. SCR 105(2)(f).

has “direct supervisory authority” over a non-lawyer employee “shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” It is my professional opinion that the word “reasonable,” in appearing so often in this ethical mandate, is ultimately the key to this whole scenario in assessing any disciplinary exposure of Mr. Jimmerson’s conduct as the guidelines contained in Nevada RPC 1.0A(c) clearly mandate. This is reflected more specifically by the guidance in interpreting the Rules of Professional Conduct provided by Nevada RPC 1.0A(c), that disciplinary assessment of a lawyer’s conduct will be made on the basis of facts and circumstances as they existed at the time. This is further the reason why elements of willfulness and knowledge, in addition to whether remedial measures were taken to mitigate, are so incredibly important in disciplinary cases.

32. Nevada RPC 5.3(a) and (b) make clear that a lawyer with managerial or supervisory authority is responsible for “ensuring that nonlawyers perform their duties in a manner compatible with the lawyer’s own ethical obligations,” irrespective of the lawyer’s ability to delegate certain tasks to the non-lawyer employees to assist the lawyer in rendering legal services to a client. AMERICAN BAR ASS’N, *Annotated Model Rules of Prof’l Conduct* 511 (9th ed. 2019) [hereinafter, “*Annotated Model Rules*”]; see also *id.* at 273 (noting that a lawyer may delegate recordkeeping tasks to a nonlawyer employee so long as the lawyer remains “ultimately responsible for compliance”). Thus, lawyers who hire nonlawyers “to help discharge their fiduciary duties ... must provide adequate training and supervision” to such nonlawyers. See *id.* at 513.

33. The State Bar alleges that Mr. Jimmerson did not properly train, supervise, and oversee Ms. Ballard.<sup>6</sup> In my opinion, the facts prove otherwise.

34. Mr. Jimmerson relied on Ms. Fisher and Ms. Stewart to conduct the initial interview of Ms. Ballard since she would be assuming Ms. Fisher’s role as the firm’s bookkeeper. As I understand it, Ms. Ballard’s background and qualifications fit the criteria necessary for serving as Jimmerson Law’s bookkeeper. After the interview, Ms. Fisher and Ms. Stewart recommended to Mr. Jimmerson that he hire Ms. Ballard. Mr. Jimmerson then met with Ms. Ballard to assure himself that she had the necessary skill set and, after the meeting, was satisfied that she was a qualified candidate and hired her.

35. Ms. Ballard was not thrust into the proverbial deep end upon being hired. Rather, she worked closely with Ms. Fisher for two and a half weeks, during which time she was trained on the duties and responsibilities associated with the firm’s bookkeeper. During that time, Mr. Jimmerson would check in with Ms. Ballard to make sure that she was familiarizing herself with the position and answer any questions that she had. He also spoke with Ms. Fisher to make sure that she was comfortable with Ms. Ballard acting as the firm’s bookkeeper.

36. After her training was complete, Ms. Ballard began working independent of Ms. Fisher who, as noted above, had decided to take some time away from the firm. Mr. Jimmerson checked in with Ms. Ballard daily to ensure that she had everything under control. He would relay to her the importance of promptly depositing funds in his client trust account, paying

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<sup>6</sup> Ms. Cruz was not involved with Mr. Jimmerson’s client trust account, and therefore, I focus my discussion on the training, supervision, and oversight undertaken by Mr. Jimmerson for Ms. Ballard.

vendors, and inputting timesheets on client matters to assist in preparing monthly statements. Each time that they spoke, Ms. Ballard assured Mr. Jimmerson that she was knowledgeable and capable of handling the job. Further, as I understand it, Ms. Fisher maintained contact with Ms. Ballard to answer her questions, remind her of the importance of documenting transactions involving the trust account, and ensure that she communicated with Mr. Jimmerson on matters relating to the trust account.

37. It was not until the end of November 2019 when Mr. Jimmerson learned that Ms. Ballard was incapable of being the firm's bookkeeper. Despite her prior assurances, Mr. Jimmerson realized that within 11 days, Ms. Ballard had fallen behind in managing the firm's books and records and inputting time sheets for client matters. He immediately took the appropriate steps to address the situation.

38. Mr. Jimmerson had then, and still has now, policies and procedures in place for properly maintaining his firm's books and records and tracking time on client matters. He instructs his bookkeeper to input time from attorneys and non-attorneys at the firm working on client matters daily so that invoices may be timely prepared and sent to clients. Further, he instructs his bookkeeper to carefully track activity associated with his bank accounts, including his client trust account, daily to ensure that the accounts are balanced and reconciled. My impression, after having spoken with Mr. Jimmerson, is that he takes his obligation to manage his client trust account very seriously—he is not indifferent toward his duty to keep complete and accurate records of activity involving his client trust account.

39. The Nevada Supreme Court has said, “The mere fact that an employee acted improperly does not necessarily result in lawyer discipline; the lawyer is not per se vicariously responsible for an employee's misconduct.” *See In re Discipline of Lerner*, 124 Nev. 1232, 1243, 197 P.3d 1067, 1075 (2008).<sup>7</sup> That statement rings true here, where Ms. Ballard fell short in her duties and responsibilities as the firm's bookkeeper despite reasonable efforts undertaken by Mr. Jimmerson to ensure that she was qualified for the position. He maintained regular contact with her to assure himself that she was acting in a manner that was compatible with his professional obligations; nevertheless, it turned out that she was not fit for the job.

40. It must be remembered that a disciplinary assessment of Mr. Jimmerson's conduct must be made “on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation.” Nevada RPC 1.0A(c). Stated differently, the State Bar may not use the benefit of hindsight to assess whether Mr. Jimmerson properly trained, supervised, and oversaw Ms. Ballard. *See Mainor*, 120 Nev. at 775, 101 P.3d at 325.

41. At the time, Mr. Jimmerson neither knew nor had reason to believe that Ms. Ballard was incapable of serving as his firm's bookkeeper until she came forward and disclosed that she had fallen behind in her work. That discovery does not, however, mean that Ms.

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<sup>7</sup> Although the Nevada Supreme Court was not addressing a Nevada RPC 5.3 violation in *In re Lerner*, *see id.* at 1236 n.1, 197 P.3d at 1070 n.1, the Court cited as support for this statement a disciplinary case from the Arizona Supreme Court analyzing Arizona's counterpart to Nevada RPC 5.3. *See id.* at 1243, 197 P.3d at 1075 (citing *Matter of Galbasini*, 786 P.2d 971, 975 (Ariz. 1990)).

Ballard's shortcomings were the direct result of an alleged failure to properly train, supervise, and oversee Ms. Ballard.

42. According to Mr. Jimmerson, he has not had issues with his client trust account in the past (over forty years of practice), and no client suffered any harm as a result of what happened, which further affirms my opinion that Ms. Ballard's mishaps were not due to a systemic failure on Mr. Jimmerson's part in discharging his duties as the managing attorney of Jimmerson Law.

43. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(a) and (b).

***Mr. Jimmerson Neither Ordered Ms. Ballard to Engage in Misconduct nor Failed to Take Reasonable Remedial Action Once He Learned of Ms. Ballard's Shortcomings***

44. Nevada RPC 5.3(c) states that a lawyer "shall be responsible for [the] conduct" of a non-lawyer employee "that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer" if either of the following conditions is met:

- a. The lawyer orders the conduct or ratifies it upon its discovery; or
- b. The lawyer is in a managerial position within the firm, or has direct supervisory authority over the person, and knows of the conduct at a time "when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

45. This rule imposes vicarious liability on a lawyer for non-lawyer misconduct under "certain circumstances." *Attorney Grievance Comm'n v. McDowell*, 93 A.3d 711, 721-22 & n.11 (Md. 2014); *see also* MODEL R. PROF'L CONDUCT, R. 5.3 cmt. [1] (stating that Rule 5.3(c) "specifies the circumstances in which a lawyer is responsible for the conduct of ... nonlawyers"). As noted above, "the mere fact of employee misconduct, without more, does not necessarily denote a violation of Rule 5.3." *Annotated Model Rules* at 517; *see also In re Discipline of Lerner*, 124 Nev. at 1243, 197 P.3d at 1075.

46. The State Bar alleges that Mr. Jimmerson violated Nevada RPC 5.3(c) in two ways: First, by ordering Ms. Ballard to transfer funds purportedly representing attorney's fees out of his client trust account that had not yet been earned; and Second, by failing to take "reasonable remedial action" upon learning that Ms. Ballard had "turn[ed] his books into a complete mess."<sup>8</sup> In my opinion, neither allegation is supported by the facts.

47. As it relates to the transactions involving Mr. Jimmerson's client trust account, according to Mr. Jimmerson, he handled those transactions, not Ms. Ballard, and he reasonably and in good faith believed that the funds in question had been earned and could be withdrawn. Setting aside that Mr. Jimmerson disputes the alleged violation of Nevada RPC 1.15, the fact that

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<sup>8</sup> As noted above, Ms. Cruz was not involved with Mr. Jimmerson's client trust account, and therefore, I focus my discussion on Mr. Jimmerson's interactions with Ms. Ballard.

he directed the transfers based on information available to him at the time means that Nevada RPC 5.3(c) does not apply.

48. As it relates to the handling of Jimmerson Law's books and records, it is clear to me that Mr. Jimmerson fully expected Ms. Ballard to input timesheets for client matters daily and to log activity involving his client trust account. Mr. Jimmerson did not order Ms. Ballard to mishandle his client trust account; nor did he direct her to be careless in terms of tracking credits to and debits from his client trust account. Absent such evidence, there is nothing that leads me to believe that Mr. Jimmerson violated Nevada RPC 5.3(c)(1).


49. Mr. Jimmerson was not indifferent toward the administrative issues created by Ms. Ballard once they were brought to his attention. To the contrary, he confronted her about what had occurred and, upon accepting her resignation, immediately took steps to rehire his former bookkeeper, Ms. Fisher. He then instructed Ms. Fisher to complete all the tasks that had been disregarded or overlooked by Ms. Ballard. She did so within a few weeks (specifically, by December 27, 2019), even in light of this being the holiday season and Mr. Jimmerson having to deal with a recent personal tragedy, at which time Jimmerson Law's books and records were in order. Mr. Jimmerson did exactly what he was supposed to do in this scenario; thus, he did not violate Nevada RPC 5.3(c)(2).

50. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(c).

51. In sum, Mr. Jimmerson acted reasonably regarding all hiring, training and supervising issues presented here, as well as demonstrated extreme and commendable professionalism in swiftly and immediately employing remedial measures to remedy the errors that are the subject of this Matter.

26

DATED this \_\_\_\_ day of February, 2021.

DocuSigned by:  
  
720B309B9BEA4A3  
ROB BARE

# **EXHIBIT 1**

**ROB BARE**  
**CURRICULUM VITAE**

150 Las Vegas Boulevard North #1812  
Las Vegas, NV 89101  
RobBare32@gmail.com  
(702) 909-7732  
(702) 250-3392 (c)

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**EDUCATION**

Pennsylvania State University, State College, PA, B.A., Pre-Law (Highest Distinction), 1985  
University of Pittsburgh School of Law, Pittsburgh, PA, J.D., 1988  
The Judge Advocate General's School, Charlottesville, VA, 1989  
National Judicial College, Special Court Jurisdiction, Advanced, Reno, NV 2007  
National Judicial College, General Court Jurisdiction, Reno, NV 2010

**ADMISSIONS TO PRACTICE LAW**

Pennsylvania, 1989 (Inactive)  
United States Army Court of Military Review, 1989  
Nevada, 1993  
United States District Court, District of Nevada, 1996  
United States Supreme Court, 1997  
United States Court of Appeals for the Ninth Circuit, 1998

**LEGAL EXPERIENCE**

**JUDICIAL**

**Judge.** Eighth Judicial District Court, Clark County, NV, Department 32  
(January 3, 2011 to January 3, 2021) Civil/Criminal Court.

Elected in November 2010. Re-elected in November 2014.

**Judge.** Las Vegas, NV, Municipal Court, Department 6  
(January 1, 2007 to July 1, 2007) Criminal Court.

Unanimously appointed by Mayor Oscar Goodman and the Las Vegas City Council to fill the unexpired term of Judge Abbi Silver until the general election.

## **BAR COUNSEL TO THE STATE BAR OF NEVADA**

**Bar Counsel.** State Bar of Nevada (August 1993 to January 2011, with exception of Municipal Judicial term).

Chief attorney for the State Bar of Nevada (Beginning in 1995). Responsibilities included prosecution of all aspects of the attorney professional discipline process in the state of Nevada for both the northern and southern regions; hearings from the informal to the formal level; Continuing Legal Education speaker; supervisory duties over a ten-member staff, including three (3) attorneys and four (4) Certified Legal Assistants.

- Tried or presented to conclusion approximately 870 hearings on behalf of the State Bar of Nevada before either the Southern or Northern Nevada Disciplinary Boards.
- Presented a total of fifteen (15) matters to the en banc Nevada Supreme Court, including disciplinary cases and administrative docket hearings.

## **HIGHLIGHTS OF SEVENTEEN YEAR TENURE AS BAR COUNSEL**

**Ethics Hotline:** Personally and professionally responsible for establishing what now, for years, has been known as the “Ethics Hotline” maintained by the Office of Bar Counsel at the State Bar of Nevada. The genesis of the Ethics Hotline began in 1994 after recommendation by me to the Board of Governors of the State Bar, and since then has evolved into an incredibly important aspect of the services offered by the State Bar. I am extremely proud that literally thousands upon thousands of attorneys have utilized the hotline over the years in order to practice better, and at times, avoid ethical pitfalls. The practical application of the Ethics Hotline is now described by the State Bar as follows: “Nevada-licensed attorneys with questions regarding their professional responsibilities can contact the Office of Bar Counsel for informal guidance during any business day. Each day, a State Bar attorney is assigned to take calls from Nevada-licensed attorneys with questions about their professional responsibilities. Although the Office of Bar Counsel makes every effort to return all calls by the end of the day, our attorneys try to take calls as they come in or, if a message is left, to call back within an hour.” During my time as Bar Counsel, I personally fielded and answered thousands of calls.

**ADKT 370 “E2K” Complete Overhaul of Supreme Court Rules 150-203.5 Adopting the Nevada Rules of Professional Conduct:** With oversight and direction from the Supreme Court of Nevada, and specific appointment by the Board of Governors of the State Bar of Nevada, I served as the Reporter to the committee tasked with review of each and every rule of professional conduct or ethics rule. This resulted in a lengthy submission to the Supreme Court, after numerous committee meetings and public hearings in 2003-2004, which dissected and ultimately

led to the adoption of the current version of the Nevada Rules of Professional Conduct. As Reporter, the pleading submitted and filed with the Supreme Court was my responsibility. Further, along with select committee members, I presented the petition to the en banc Supreme Court in Carson City, NV. This effort, in ADKT 370, affectionately referred to as “Ethics 2000”, resulted in transforming the prior set of Supreme Court Rules into the Nevada Rules of Professional Conduct, which have essentially been in place as of the effective date May 1, 2006. Significant changes as a result of this effort were the establishment of interpretive guidelines as to how the Rules of Professional Conduct should be applied, as well as substantive changes concerning lawyer fees, confidentiality, duties to prospective clients, conflict waivers, sex with client prohibition and disqualification and screening in hiring of lawyers.

**NRS 7.285 Unlawful Practice of Law: Initiation of Civil Action by State Bar of Nevada:**

Personally and professionally instrumental, following lobbying efforts and presentation to both the Nevada Assembly and Nevada Senate, in what is now the entirety of NRS 7.285, Unlawful Practice of Law. With approval from the Board of Governors for the State Bar of Nevada and the Unauthorized Practice of Law Committee of the State Bar, I presented multiple live witnesses to the Nevada Legislature in Carson City, NV. These witnesses had been victimized by business-like predators engaged in the unauthorized practice of law. This resulted in the current version of NRS 7.285, which includes recidivist provisions, and perhaps most importantly, Section 3, which specifically provides that the State Bar of Nevada may bring a civil action to secure an injunction and any other appropriate relief against a person who violates this section.

**SCR 106.5(4) Lawyer Wellness Program, Limited Use Policy:** Personally and professionally responsible for the recommendation and draft of what is now SCR 106.5(4) Limited Use Policy, which states in relevant part that all information obtained by the Lawyers Concerned for Lawyers Program, or as a result of voluntary services sought from the Nevada Lawyer Assistance Program, including the initial report and any subsequent report to the program thereafter, shall be confidential and shall not be admissible in any State Bar disciplinary, admission, administrative, or other State Bar proceeding. My idea for this vitally important rule, which allows attorneys affected by drug and alcohol abuse to get help without fear of disciplinary exposure, was actually taken from what is now Army regulation 600-85, a United States Army provision which I was familiar with in my time in the service, likewise known in the Army as the Limited Use Policy, which enables soldiers to get help with drug and alcohol abuse without retribution.

**Lawyer Advertising:** As Bar Counsel, I played a prominent role in the development of what is now a full set of lawyer-advertising Rules of Professional Conduct.

**SCR 102(1) Irrevocable (Permanent) Disbarment:** After some time of prosecuting cases as Bar Counsel to the State Bar, I formed an opinion that an option that should be available to both Disciplinary Panels and ultimately the Supreme Court, in appropriate cases, is permanent disbarment. After recommendation to the Board of Governors and approval by them, and adoption by the Supreme Court, ultimately an irrevocable disbarment became an option pursuant to SCR 102(1).

**Attorney Specialization:** Played an integral role in the drafting of and presentation to the Nevada Supreme Court of what now are Attorney Specialization Rules of Professional Conduct, which allows Nevada attorneys to communicate specialty areas of practice, provided the Certifying Organization has approved and certain conditions precedent are met. Over the years, this effort has resulted in Nevada lawyers having the ability to be approved as specialists in the areas of business bankruptcy, child welfare, civil trial advocacy, criminal trial advocacy, elder law, estate planning law, family law, personal injury and workers' compensation.

**SCR 105.5 Diversion and Mentoring:** Played an integral role in what became SCR 105.5 Diversion and Mentoring Program. Here, as an alternative to, or in conjunction with disciplinary sanctions, an attorney deemed eligible by the appropriate disciplinary board panel may participate in an approved diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct.

**Justice Nancy Saitta's Professionalism Summits:** Honored to have been asked by then Justice of the Supreme Court Nancy Saitta to lead in the creation of a number of professionalism summits, 2005-2007, which were ethics programs conducted under the direction of Justice Saitta and sponsored by the State Bar of Nevada, the Clark County Bar Association, the Washoe County Bar Association, the Nevada Justice Association, and lawyers and law firms throughout the state of Nevada.

**Gardner v. State Bar of Nevada, 284 F.3d 1040 (2002):** Sole counsel for the State Bar of Nevada and all its Board of Governors. Following argument at the US District Court level and to the Ninth Circuit Court of Appeals, the case resulted in a reported decision from the United States Court of Appeals, Ninth Circuit. The Court upheld the State Bar of Nevada's efforts to publicize to and to educate the public concerning our system of justice, the role of lawyers, and to make the law work for everyone. In relevant part, the Ninth Circuit found that the work of the State Bar to foster public understanding of the adversary nature of law is vital to the Bar's function. The court went on to find that in our real world, lawyers are not merely a necessity, but a blessing. (Emphasis added).

### **AUTHORED PUBLICATIONS**

*Nevada Lawyer*. November 2008. "Operational Law."

*Nevada Lawyer*. November 2006. "Civilian Lawyers Defending Military Personnel at a Trial by Court-Martial."

*Nevada Lawyer*. January 2006. "The Professional Independence of a Lawyer."

*Nevada Lawyer*. November 2005. "State Bar Counsel Reflects on JAG Career."

*Nevada Lawyer*. June 2005. "Top 10 Bar Complaints and How to Avoid Them."

*Nevada Lawyer*. January 2002. "Lawyers who Serve their Country."

*Nevada Lawyer*. September 1996. "Some Thoughts on Ethics and Lawyer Advertising."

*Nevada Lawyer*. December 1995. "Avoid Business Transactions with Clients...But if you must, Know the Rules."

*Nevada Lawyer*. November 1995. "Look at the Less Serious Side of Bar Discipline: The Names have Been Changed."

### **US ARMY JUDGE ADVOCATE GENERAL'S CORPS**

**Senior Defense Trial Lawyer.** (Captain) U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Irwin, California (May 1991 to August 1993).

Attorney Responsible for managing all defense functions for clients stationed at Fort Irwin and all of southern California, including:

**Criminal Accused Trial Representation.** Represented as the trial attorney and assigned other lawyers to represent soldiers accused of criminal offenses at Court-Martial proceedings. This included all stages of the Court-Martial process: formal preliminary investigation, extensive motion practice (including written briefs) in front of the military judge, and in-court trial advocacy before military juries.

**Supervisor, Trainer, Rater.** Supervised two (2) criminal defense lawyers and two (2) paralegals. Supervisory duties included primary responsibility for staff training in all aspects of client representation. Prepared written ratings (Officer Evaluation Reports) for the two (2) other attorneys in the office.

\* Selected for Senior Defense Lawyer position in first tour of duty.

(This position is usually given to a Major or senior Captain).

**Trial Defense Lawyer.** U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Ord, California (October 1989 to May 1991).

Represented clients accused of criminal offenses and facing trial by Court-Martial. Carried an average case load of 25 concurrent Court-Martial clients. Deployed with units from Fort Ord to Panama from December 19, 1989 to February 6, 1990, in removal of General Noriega from Panama; advised commanders of various legal aspects of armed conflict scenario.

As a lawyer in the Judge Advocate General Corps, I have:

- Tried approximately 150 jury and bench trials representing clients accused of murder, attempted murder, rape, larceny, aggravated assault, and various other serious alleged felony cases.
- Litigated approximately 100 hearings concerning the command's attempts to discharge a soldier for alleged administrative misconduct.

**Speaking/Instructor Experience in the Military of Notable Mention.** Speaker and instructor at the Judge Advocate General's School, Charlottesville, VA, 1990. Instructed students on operational law, as well as ethics and professional responsibility.

**TEACHING AND INSTRUCTION EXPERIENCE/ATTENDANCE AT RELEVANT  
EDUCATIONAL SEMINARS**

- Adjunct Professor at Community College of Southern Nevada, which became the College of Southern Nevada, teaching Legal Research from 2001-2009. Instructor within College's Paralegal Studies Program teaching substantive law and legal ethics to college students two semesters per year. Total of sixteen semesters.
- Speaker at various Bridge the Gap Continuing Legal Education Programs, beginning in 1993, held in both Las Vegas, NV and in Reno, NV, sponsored by the State Bar of Nevada, provided to new admittees to the Nevada State Bar. One to two hours, depending on curriculum, per year. Topic: Ethics and Professional Responsibility.
- Speaker at various Annual Meetings of the State Bar of Nevada, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker at various conventions, held in various locations within the United States and in Canada, sponsored by the Nevada Trial Lawyers Association (NTLA), which became the Nevada Justice Association (NJA), in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of the Federal Public Defender's Office held in both Las Vegas, NV and in Reno, NV, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2007. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of various law firms, including McDonald Carano, at both their Las Vegas, NV and Reno, NV offices, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker at various luncheon meetings held by the Southern Nevada Association of Women Attorneys (SNAWA), held in Las Vegas, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor at various annual Family Law seminars sponsored by the State Bar of Nevada in the State Bar's Family Law section, in both Tonopah, NV and Ely, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility, specifically applied to Family Law matters.
- Attendee and occasional Presenter at National Organization of Bar Counsel (NOBC) meetings held in conjunction with the American Bar Association Annual and Semi-Annual meetings, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2009. Topic: Ethics and Professional Responsibility.

- Attendee and Graduate of Special Court Jurisdiction: Advanced, Two-Week Course at the National Judicial College, Reno, NV, in capacity as Municipal Court Judge. An intense training given to lower court judges, including Ethics instruction relevant to the canons of judicial ethics. 2007.
- Instructor at State Bar of Alabama Annual Convention, held in Destin, FL, 2008. Topic: Ethics and Professional Responsibility, with primary focus on the ethics of lawyer advertising.
- Attendee and Graduate of General Court Jurisdiction Two-Week Course at the National Judicial College, Reno, NV, in capacity as District Court Judge. An intense training given to District Court judges, including Ethics instruction relevant to the canons of judicial ethics. 2011.
- Attendee at State Bar of Nevada 2011 Annual Meeting, Kauai, HI. June 2011. Continuing Legal Education seminar. This included 5.5 credit hours of Ethics.
- Attendee at Nevada Justice Association' 35<sup>th</sup> Annual Convention, San Francisco, CA. September 2011. This included 2 credit hours of Ethics.
- Attendee at Advanced Family Law Seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. December 2011. This included 2 credits hours of Ethics.
- Attendee at Nevada Judicial Leadership Conference, sponsored by the Nevada Administrative Office of Courts, Las Vegas, NV. May 2012. This included 5.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, San Diego, CA. June 2012. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 12.5 hours of instruction.
- Attendance at the 84<sup>th</sup> Annual Meeting of the State Bar of Nevada, San Diego, CA. June 2012.
- Attendance at the 36<sup>th</sup> Annual Convention of the Nevada Justice Association (NJA), San Diego, CA. October 2012. This included 2 credit hours of Ethics.
- Presenter and Ethics Continuing Legal Education Provider at event sponsored by the Washoe County Bar Association, entitled "Preventing Nevada Legal Malpractice", Reno, NV. March 2013. This included 4 credit hours of Ethics instruction.
- Attendee at Ethics in Trial and Appellate Practice seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. February 2013. This included 5 credit hours of Ethics.
- Attendee at Evidence in a Courtroom Setting seminar, sponsored by the National Judicial College (NJC). May 2013. This included 2.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, Lake Tahoe, NV. July 2013. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 17.5 credit hours of instruction.

- Instructor, along with attorney F. Lee Bailey, at the Organization of Bar Investigators Tenth Anniversary Seminar, Las Vegas, NV, October 2013.
- Instructor at Las Vegas Defense Lawyers seminar, “Civil Trial Practice Tips”, Las Vegas, NV. January 2014.
- Attendee at Inn of Court seminar, “The Wrong Man: Witness Identification”. February 2014.
- Attendee at District Court Judge training on Medical Malpractice cases. April 2014.
- Attendee at State Bar of Nevada 2014 Annual Meeting. July 2014.
- Attendee at National Judicial College seminar, “Today’s Justice: The Historic Bases”. July 2014.
- Attendee at Nevada Justice Association (NJA) Annual Convention/Seminar. October 2014. This included 2 credit hours of Ethics.
- Instructor at seminar sponsored by the State Bar of Nevada, “Ethics and Practice Tips in Trial and Appellate Practice”. October 2014. This included 6 credit hours of Ethics instruction.
- Attendee at the State Bar of Nevada, Young Lawyers Section, 2015 Annual Meeting. July 2015.
- Attendee at Nevada Justice Association 39<sup>th</sup> Annual Convention. October 2015. This included 2 credit hours of Ethics.
- Attendee at State Bar of Nevada seminar, “Top 10 Ethical Pitfalls for Nevada Attorneys”. April 2016. This included 3 credit hours of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Nevada Judicial Leadership Summit”. April 2016. This included 4 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 40<sup>th</sup> Annual Convention/Seminar. September 2016. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar, “Ethics”. February 2017. This included 8 credit hours of Ethics instruction.
- Instructor at event sponsored by the Nevada Attorney General’s Office, “Ethics in Litigation”. May 2017. This included 3 credit hours of Ethics instruction.
- Attendee at National Judicial College seminar, “Conducting the Trial”. June 2017. This included 1.5 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 41<sup>st</sup> Annual Convention/Seminar. October 2017. This included 1 credit hour of Ethics.
- Attendee at State Bar of Nevada seminar, “To Report or Not to Report, Save a Life”. November 2018.
- Instructor at Supreme Court of Nevada seminar, “2019 Nevada Limited Jurisdiction Judges, Winter Seminar”. January 2019. Instructed approximately 100 lower court judges on how to make an effective record to better substantiate court orders on appeal.

- Attendee at Eighth Judicial District Court seminar, “Judges Advance”. February 2019. This included 1.5 credit hours of Ethics.
- Attendee at Supreme Court of Nevada, Nevada District Judges Conference. May 2019. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar held at the Boyd School of Law, “Elements of Nevada Legal Theories”. In attendance were lawyers and law students. September 2019.
- Instructor at Nevada Justice Association seminar, “Entertaining Elements of Nevada Legal Theories”. November 2019.
- Attendee at State Bar of Nevada seminar, “Dealing with Adversity”. June 2020. This included 1 credit hour of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Ethics – Judges as Bosses”. August 2020. This included 1 credit hour of Ethics.
- Attendee at Eighth Judicial District Court AB 236 Training. September 2020.

#### **LEGAL MALPRACTICE CASES ASSIGNED TO ME AS DISTRICT JUDGE (2011-2021)**

A-10-627470-C - Company sued its former attorneys for alleged malpractice. After extensive motion practice, parties ultimately settled their case (after Defendants' motion to enforce the settlement agreement was granted).

A-11-650047-C – Personal Injury attorney's former client sued for malpractice after she received a smaller settlement than expected. Parties settled at the arbitration stage.

A-13-677618 - Former client sued her divorce attorney for malpractice. Parties stipulated to settle their case just after discovery commenced.

A-17-756039-C - Company sued its former attorney alleging that he had a conflict of interest due to ownership in a competing company. Defendant never appeared resulting in Plaintiff obtaining a default judgment.

A-17-759347-C - An elderly couple sued their former attorneys alleging that they stole their property and overbilled them.

A-17-760737-C - Several financial companies sued multiple firms alleging they failed to diligently represent them in their Nevada cases. The case included extensive motion practice.

A-17-763982-C – Doctor sued his former business attorney based on myriad of malpractice allegations. Numerous pre-trial motions.

A-18-768688-C - Plaintiffs sued their former construction defense attorney. Parties stipulated to dismiss their case.

A-18-785751-C - Attorney sued his former clients for breach of contract (representation on multiple properties on HOA foreclosure cases) and Defendant counterclaimed for legal malpractice. After some motion practice, parties stipulated to dismiss the case.

A-18-786655-C - Plaintiff is an inmate convicted of murder along with his father. Plaintiff alleged that attorney committed legal malpractice for failing to represent him after non-payment. Defendant's motion to dismiss was granted and that order was affirmed by the Nevada Supreme Court.

A-19-792712-C - Plaintiff sued his former personal injury attorney. Complaint was never served and thus the case was dismissed.

A-19-797290-C - Plaintiffs (estate and the widow) sued their attorney (who drafted the trust document in question) for malpractice alleging that the trust document incorrectly deprived them of their ownership of certain property.

A-19-799229-C - Plaintiff sued her former personal injury attorney. Parties stipulated to dismiss the case.

### **PROFESSIONAL ASSOCIATIONS**

Pennsylvania State Bar (Admitted 1989) (Inactive)  
State Bar of Nevada (1993- Present)  
National Organization of Bar Counsel (1993-2010)  
Clark County Bar Association (1994-2020)

### **NOTABLE PROFESSIONAL AWARDS/RATINGS**

- Recipient of the Pro Bono Award of Judicial Excellence, presented by the Legal Aid Center of Southern Nevada (2014)
- Martindale-Hubbell – AV Preeminent (The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for the legal expertise, communication skills, and ethical standards by their peers.)

# **EXHIBIT 2**

### **DOCUMENTS REVIEWED**

- Complaint, filed October 7, 2020
- Motion to Dismiss, filed November 2, 2020
- Opposition to Motion to Dismiss, filed November 17, 2020
- Order Denying Motion to Dismiss, filed December 2, 2020
- Verified Answer, filed December 16, 2020
- Order Appointing Formal Hearing Panel, filed January 29, 2021
- Notice of Formal Hearing, filed February 4, 2021
- Mr. Jimmerson's Initial Disclosures, served January 28, 2021, with the following exhibits:
  - o Exhibit A (JJJ0001-JJJ00002)
  - o Exhibit B (JJJ00003-JJJ00004)
  - o Exhibit C (JJJ00005)
  - o Exhibit G (JJJ00012-JJJ00015)
  - o Exhibit M (JJJ00028-JJJ00029)
  - o Exhibit N (JJJ00030-JJJ00034)
  - o Exhibit Q (JJJ00562)
  - o Exhibit R (JJJ00563-JJJ00565)
- Mr. Jimmerson's Supplemental Disclosures, served February 26, 2021, with the following exhibits:
  - o Exhibit Y (JJJ00593-JJJ00597)
  - o Exhibit Z (JJJ00598-JJJ00601)
  - o Exhibit AA (JJJ00602-JJJ00606)
  - o Exhibit BB (JJJ00607-JJJ00608)
  - o Exhibit CC (JJJ00609-JJ00610)

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
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*Attorneys for Respondent*  
James J. Jimmerson, Esq.



FILED

MAR 26 2021

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

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S MOTION FOR  
APPROVAL OF CONDITIONAL  
GUILTY PLEA**

Pursuant to Supreme Court Rule (SCR) 113 and Disciplinary Rule of Procedure (DRP) 25, Mr. Jimmerson moves to have the Hearing Panel ("Panel") approve his Conditional Guilty Plea in Exchange for a Stated Form of Discipline ("Plea"), a copy of which is attached as **Exhibit 1**. As explained below, Mr. Jimmerson may present his Plea to the Panel even though Bar Counsel has not agreed to it. Further, the Plea is fair and reasonable; includes a form of discipline recognized under Nevada law with conditions that are commensurate with the charged offenses and ensure that any misconduct (if any there be) will not reoccur; sends the appropriate message to Mr. Jimmerson while foregoing harm to his reputation and diminishing his standing in the legal community, particularly in light of his extensive contributions to the Bar over his 45-year career; follows the recommendations set forth in the ABA Standards for Imposing Lawyer Sanctions ("*ABA Standards*"); and harmonizes with disciplinary decisions from other states involving similar facts and circumstances.

1 This Motion is made and based on the papers and pleadings on file, the following  
2 Memorandum of Points and Authorities and supporting exhibits, and any oral argument as may be  
3 heard by the Chair.

4 DATED this 26<sup>th</sup> day of March, 2021.

5 BAILEY ♦ KENNEDY

6 By: /s/ Dennis L. Kennedy

7 DENNIS L. KENNEDY

8 JOSHUA P. GILMORE

9 *Attorneys for Respondent*

James J. Jimmerson, Esq.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Through this Motion, Mr. Jimmerson asks the Chair to find that the Panel may consider (and  
13 approve) his proposed Conditional Guilty Plea. Mr. Jimmerson reasonably and in good faith  
14 believes that the discipline and related conditions that he has offered to accept based on the  
15 allegations asserted against him are befitting of the errors that give rise to this proceeding.

16 The State Bar's objections to the Plea are two-fold: First, Mr. Jimmerson may not request to  
17 have the Panel consider his Plea because Bar Counsel has not agreed to it; and Second, Mr.  
18 Jimmerson has not, in fact, offered to accept a form of discipline through his Plea. Neither argument  
19 is supported in the law. As shown below, SCR 113 and DRP 25 permit an attorney to tender a  
20 proposed plea for review by a hearing panel even if Bar Counsel has not agreed to it. Further, a  
21 letter of caution *is* a form of discipline in Nevada. SCR 102(8).

22 Mr. Jimmerson seeks to avoid the time and expense of a contested hearing, which is the exact  
23 purpose of the "discipline by consent" process prescribed by SCR 113 and DRP 25, particularly  
24 when considering that Mr. Jimmerson has been a fully cooperative and compliant Respondent. For  
25 these reasons, as set forth more fully below, the Chair should grant this Motion in its entirety.

26 ///

27 ///

28 ///

## II. FACTS

### A. The Complaint.

This matter arises from a grievance filed by Nicole Cruz, a vindictive former employee who worked for The Jimmerson Law Firm, P.C. (“Jimmerson Law”), as a paralegal for seven (7) days. (Compl., filed Oct. 7, 2020, ¶ 3; Decl. of James J. Jimmerson, Esq., ¶ 5, attached as **Exhibit 2**.) Ms. Cruz did not have accounting or bookkeeping tasks as an employee of Jimmerson Law; thus, she did not assist in managing his client trust account. (Ex. 2, ¶ 5.) She worked for the firm for a total of seven days. (*Id.*) After firing her, Mr. Jimmerson discovered that she had lied about her background and qualifications. (*Id.*)

In her grievance to the State Bar, Ms. Cruz alleged that she had heard from the firm’s former bookkeeper, Leah Ballard, that Mr. Jimmerson had directed Ms. Ballard to “transfer unearned funds out of his client trust account to make payroll.” (Compl., filed Oct. 7, 2020, ¶¶ 3-5.) Ms. Cruz’s grievance was plainly based on hearsay, not firsthand knowledge. Nevertheless, the State Bar opened a formal grievance file and, as a part of its investigation, subpoenaed Mr. Jimmerson’s bank records—without prior notice to Mr. Jimmerson. (*Id.*, ¶¶ 6-7.)

Ms. Ballard worked for Jimmerson Law for 25 days in late 2019 as the firm’s bookkeeper. (Ex. 2, ¶¶ 6-8 & n.1.) She was trained over the course of two and a half weeks by Amanda Kahn, the firm’s then-bookkeeper, during which time she familiarized herself with working at the firm and the tasks associated with being the firm’s bookkeeper. (*Id.*; Decl. of Amanda Kahn, attached as **Exhibit 3**, ¶ 3.) She was reminded of the need to carefully track and monitor activity involving the firm’s bank accounts, including its client trust account. (Ex. 3, ¶ 3.) She was told of the importance of inputting time sheets on client matters on a daily basis to facilitate preparing monthly billing statements for clients. (*Id.*) She was also told to generate daily cash reports for the firm, reflecting all transactions involving the firm’s bank accounts. (*Id.*)

Even though Mr. Jimmerson maintained daily contact with Ms. Ballard, it turned out that she was not fit for the position despite her background and qualifications. (Ex. 2, ¶ 8.) Within less than two weeks of being on her own, she fell behind and was unable to complete all the tasks assigned to her. (*Id.*) In a text message to Mr. Jimmerson, she admitted that she was “overwhelmed” and had

1 “gotten unorganized and made a large mess.” (Ex. 2-A.) In a separate text message to Ms. Kahn  
2 (with whom she had maintained contact after completing her training), Ms. Ballard admitted that the  
3 position was “more than [she] c[ould] clearly handle” and “just too much for [her].” (Ex. 3-A.)

4 After Ms. Ballard resigned in early December 2019 (*see* Ex. 3-B), Mr. Jimmerson  
5 immediately rehired Ms. Kahn and directed her to complete the tasks that had been ignored or not  
6 timely handled by Ms. Ballard, including reconciling his firm’s books and records. (Ex. 2, ¶ 8.) She  
7 had everything in order by December 27, 2019. (*Id.*; Ex. 3, ¶ 6.) Importantly, no harm was done to  
8 any client as a result of Ms. Ballard’s shortcomings. (Ex. 2, ¶ 9(i).)

9 The errors and omissions by Ms. Ballard give rise to the State Bar’s allegations. As set forth  
10 in the Complaint, in late November 2019—while Ms. Ballard was working for Jimmerson Law as  
11 the firm’s bookkeeper—Mr. Jimmerson transferred funds out of his client trust account without  
12 those transfers being properly documented. (Compl., filed Oct. 7, 2020, ¶¶ 10-16.) Further, fees  
13 earned in client matters were withdrawn *one day before* all the funds from which those fees were to  
14 be paid were deposited in his client trust account. (*Id.*, ¶ 17.)

15 In reviewing the bank records and other documents produced by Mr. Jimmerson in response  
16 to Ms. Cruz’s grievance, the State Bar questioned whether he disbursed fees for representing a client  
17 before earning those fees. (*Id.*, ¶¶ 18-19.) Further, the State Bar determined that he mistakenly  
18 transferred money from his client trust account to an account belonging to his family trust—money  
19 that he promptly returned once he discovered the mistake. (*Id.*, ¶¶ 20-21.)

20 Based on the foregoing, the State Bar charged Mr. Jimmerson with violating RPC 1.15 and  
21 5.3. (*Id.*, ¶¶ 24-39.)

22 **B. The Plea.**

23 Rather than dispute the State Bar’s allegations (*see, e.g.*, Expert Report of Rob Bare, attached  
24 as **Exhibit 4**), Mr. Jimmerson decided to conditionally plead guilty to the State Bar’s allegations  
25 (Ex. 1 at 2:1-4:12), and to admit, for purposes of the Plea, that he violated RPC 1.15 and 5.3 (*id.* at  
26 1:23-26), in exchange for imposition of a **letter of caution** and the following conditions:

1           1.       For a period of twelve (12) calendar months following entry of an  
2       Order approving this Plea by the Formal Hearing Panel, Mr. Jimmerson shall submit  
3       a report to the State Bar, on a quarterly basis for a total of four (4) reports, which:

4                   i.       Identifies all credits to and debits from his law firm's  
5       client trust account, with the first report containing activity commencing from  
6       January 1, 2020, up until thirty (30) calendar days prior to submission of the report,  
7       and each subsequent report encompassing activity occurring for the ninety (90)  
8       calendar day period following issuance of the prior report;

9                   ii.       Includes copies of the monthly bank statements from  
10       his law firm's client trust account for the period of time addressed by the report; and

11                   iii.       Encloses a written verification from Mr. Jimmerson's  
12       certified public accountant, certifying that he or she has reviewed Mr. Jimmerson's  
13       client trust account records and that the information reported by Mr. Jimmerson is  
14       accurate and complete;

15           2.       Within twelve (12) calendar months of entry of an Order approving  
16       this Plea by the Formal Hearing Panel, Mr. Jimmerson shall obtain three (3) hours of  
17       continuing legal education in client trust account management, with proof of such  
18       attendance being reported, in writing, to the State Bar;<sup>1</sup> and

19           3.       Mr. Jimmerson shall pay an administrative cost of \$1,000, plus the actual  
20       costs of this proceeding, no later than thirty (30) calendar days following entry of an  
21       Order approving this Plea by the Formal Hearing Panel.

22       (*Id.* at 5:1-23.) Mr. Jimmerson included in his Plea a process by which Bar Counsel may request  
23       additional information related to his client trust account and, if necessary, seek a hearing to address  
24       any accounting irregularity or other issue identified by Bar Counsel in reviewing the information that  
25       is provided by Mr. Jimmerson. (*Id.* at 5:24-6:23.)

26       The Plea is expressly conditioned on its approval by the Panel. (*Id.* at 6:24-7:5.) It will  
27       become "null and void and inadmissible for any purpose" if the Panel rejects it or if the Panel  
28       proposes modifications that are not acceptable to Mr. Jimmerson. (*Id.*)

29       On February 23, 2021, Mr. Jimmerson proposed to enter into the Plea with the State Bar.  
30       (Decl. of Joshua P. Gilmore, ¶ 2, attached as **Exhibit 5**.) On March 3, 2021, Assistant Bar Counsel  
31       Daniel T. Young indicated that the State Bar did not approve the Plea. (*Id.*, ¶ 3.) On March 12,  
32       2021, Mr. Jimmerson's counsel, Joshua P. Gilmore, requested that the State Bar file the Plea so that  
33       a hearing could be scheduled for the Panel to consider it. (*Id.*, ¶ 4.) On March 16, 2021, Mr. Young

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34       <sup>1</sup>       This condition is in addition to the annual CLE requirements imposed by SCR 210.

1 informed Mr. Gilmore that the Plea “does not meet the requirements of SCR 113 to be presented to a  
2 Panel without the acceptance of Bar Counsel.” (*Id.*, ¶ 5.) During a subsequent call between them,  
3 Mr. Young indicated that the Plea is unacceptable because it does not include actual discipline. (*Id.*,  
4 ¶ 6.) According to Mr. Young, a letter of caution is not a form of discipline in Nevada. (*Id.*) Upon  
5 inquiry by Mr. Gilmore, Mr. Young indicated that Mr. Jimmerson should also set forth in his motion  
6 the basis for asking the Panel to consider his Plea despite Bar Counsel’s objection to it.<sup>2</sup> (*Id.*)

7 **C. Aggravating and Mitigating Factors.**

8 “Not every violation of the Rules of Professional Conduct warrants the imposition of formal  
9 discipline.” *In re Dalton*, 18 So. 3d 743, 747 (La. 2009); *see also In re: Grievance Proceeding*, 171  
10 F. Supp. 2d 81, 85 (D. Conn. 2001) (refusing to discipline a lawyer for technically violating the  
11 RPCs, saying that it was “an unrepeatable and relatively minor violation of the Rules that did not  
12 actually harm the public,” and therefore, imposing discipline “would not serve a legitimate  
13 purpose”). When adopting the RPCs, the Nevada Supreme Court contemplated that discipline may  
14 be inappropriate in certain cases even if an RPC violation was committed. RPC 1.0A(c) (“[T]he  
15 Rules presuppose that whether or not discipline should be imposed for a violation, and the severity  
16 of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the  
17 violation, extenuating factors and whether there have been previous violations.”).

18 In deciding the appropriate form of discipline, if any, the Panel considers aggravating and  
19 mitigating factors. *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008);  
20 *see also* DRP 34(b). As set forth in the Plea (Ex. 1 at 4:13-26), the following factors are relevant to  
21 this proceeding:

22 In aggravation, Mr. Jimmerson has:

- 23 • A prior disciplinary offense, SCR 102.5(1)(a). Mr. Jimmerson was reprimanded in  
24 1992. (Ex. 2, ¶ 10(a).)

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27 <sup>2</sup> During their call, Mr. Gilmore informed Mr. Young of a prior ruling in an unrelated disciplinary proceeding in  
28 which the panel chair held that the attorney could present a conditional guilty plea for review and approval despite Bar  
Counsel’s refusal to stipulate to it. (Ex. 5, ¶ 6.) The decision is discussed further below.

1           •       Substantial experience in the practice of law, SCR 102.5(1)(i). Mr. Jimmerson has  
2 been practicing law in Nevada since 1976. (Ex. 2, ¶¶ 2, 10(b).)

3           In mitigation, Mr. Jimmerson has:

4           •       An absence of a dishonest or selfish motive, SCR 102.5(2)(b). Mr. Jimmerson did  
5 not try to take advantage of a client; he made the transfers from his client trust account based on the  
6 good faith belief that he was able to do so. (Ex. 2, ¶ 10(c).)

7           •       Personal or emotional problems, SCR 102.5(2)(c). In 2019, Mr. Jimmerson's son,  
8 Jacob L. Jimmerson, had recently passed away at the age of 25. (Ex. 2, ¶ 10(d).)

9           •       Timely good faith effort to make restitution or to rectify consequences of his  
10 misconduct, SCR 102.5(2)(d). After learning that Ms. Ballard was not fit to serve as his firm's  
11 bookkeeper, Mr. Jimmerson immediately rehired Ms. Kahn and asked her to prioritize getting his  
12 firm's books and records back in order. (Ex. 2, ¶ 10(e).)

13           •       Full and free disclosure to the State Bar and cooperative attitude toward this  
14 proceeding, SCR 102.5(2)(e). In response to the State Bar's letter of investigation, Mr. Jimmerson  
15 provided a detailed explanation of the events giving rise to this proceeding and in excess of 500  
16 pages of supporting documents. (Ex. 2, ¶ 10(f).)

17           •       Character or reputation, SCR 102.5(2)(g). Mr. Jimmerson prides himself on having  
18 an excellent reputation in the legal community. (Ex. 2, ¶ 10(g).) He previously served on the  
19 Board of Governors for eight (8) years, as a member of the Disciplinary Board for many years, as a  
20 member of the ABA Board of Governors, and as a lawyer representative for the Ninth Circuit  
21 Judicial Conference. (*Id.*) He regularly speaks at family law conferences and has, for a large  
22 number of years, served as a mediator for the Nevada Supreme Court Settlement Program. (*Id.*)

23           •       Remorse, SCR 102.5(2)(m). Mr. Jimmerson has had countless sleepless nights  
24 thinking about this matter. (Ex. 2, ¶ 10(h).) He strives to practice at the highest level and has not  
25 previously had a complaint involving his client trust account. (*Id.*)

26           •       Remoteness of prior offense, SCR 102.5(2)(n). Mr. Jimmerson's prior discipline is  
27 nearly 30 years old. (Ex. 2, ¶ 9(a).)

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1 Additional mitigating factors—those listed under SCR 102.5(2) are “illustrative” and “not  
2 exclusive”— include:

3 • Lack of client harm, ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, ANNOTATED  
4 STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 540 (2d. ed. 2019) [hereinafter, “ANNOTATED  
5 STANDARDS”]. The accounting errors giving rise to this matter did not cause any harm (actual or  
6 potential) to any client. (Ex. 2, ¶ 10(i).)

7 • Any form of public discipline would unfairly impact Mr. Jimmerson’s family,  
8 ANNOTATED STANDARDS at 541. Mr. Jimmerson’s son, James M. Jimmerson, has been practicing  
9 law in Nevada since 2012. (Ex. 2, ¶ 3.) Given that he and his son share the same first and last  
10 names, Mr. Jimmerson reasonably fears that public discipline may be wrongfully and unfairly  
11 attributed to his son (who also works at Jimmerson Law). (*Id.*, ¶ 10(j).)

### 12 III. ARGUMENT

#### 13 A. The Panel May Consider the Plea.

14 The State Bar doubts that Mr. Jimmerson may tender the Plea for review by the Panel  
15 without securing its approval from Bar Counsel. (Ex. 5, ¶ 6.) This process, known as “discipline by  
16 consent,” is specifically contemplated by the governing rules.

17 “An attorney against whom a . . . complaint has been made may tender a conditional guilty  
18 plea to the charge(s) in exchange for a stated form of discipline.” SCR 113(1). The attorney may  
19 tender a plea “[a]t any point prior to the commencement of the formal hearing.” DRP 25. “The  
20 tendered plea shall be filed with bar counsel’s office and approved, modified or rejected by a hearing  
21 panel,” provided that any modification must be presented to and approved by the attorney given that  
22 the rule says that the plea is tendered in exchange for a “stated” form of discipline. SCR 113(1).

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1        *Neither SCR 113 nor DRP 25 requires Bar Counsel to approve a tendered plea.*<sup>3</sup> Based on  
2 the plain language of each rule, once an attorney has tendered a conditional guilty plea, the panel  
3 decides whether the stated form of discipline is consistent with what the panel would ultimately  
4 decide or recommend if the State Bar proved the allegations in its complaint (by clear and  
5 convincing evidence) at the formal hearing. In other words, because Bar Counsel does not decide  
6 what discipline, if any, to be imposed against an attorney who is found to have committed one or  
7 more RPC violations, the panel may determine whether to accept the stated form of discipline in the  
8 tendered plea upon the attorney accepting as true (solely for purposes of the plea) that he committed  
9 the alleged wrongful acts in the complaint. *Cf. Hafter v. Clark*, 992 F. Supp. 2d 1063, 1069 (D. Nev.  
10 2014) (noting that a hearing panel “prepares a written decision on whether to impose or recommend  
11 discipline” against an attorney facing disciplinary charges) (citing SCR 105(2)(d)-(e)).

12        In effect, through a tendered plea, an attorney bypasses the trial phase of a formal hearing  
13 and asks to proceed with the sentencing phase.<sup>4</sup> See Donald R. Lundbergh, *Two Case Studies in the*  
14 *Exercise of Discretion in Lawyer Discipline Systems*, 2009 J. PROF. LAW. 107, 119-20 (2009) (citing  
15 Rule 21 of the ABA Model Rules for Lawyer Disciplinary Enforcement), attached as **Exhibit 6**.  
16 Doing so allows the attorney (and the hearing panel) to avoid the time and expense of a contested  
17 hearing. ANNOTATED STANDARDS at 32-34 (“The appropriate use of ‘discipline by consent’ . . .

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20        <sup>3</sup> Neither SCR 113 nor DRP 25 contains phrases like “negotiated agreement” or “plea bargain,” either of which  
21 might indicate the need for Bar Counsel’s approval of a tendered plea. By contrast, rules in other states governing  
22 discipline by consent require an attorney to obtain bar counsel’s approval of a tendered plea. See, e.g., *In re Procedures*  
23 *of the Arkansas Sup. Ct. Regulating Prof’l Conduct of Attorneys at Law*, 963 S.W.2d 562, § 8(C)(1)(a) (Ark. 1998)  
24 (“With service of a complaint the attorney will be advised that if a negotiated disposition by consent is contemplated that  
25 the respondent attorney should contact the Executive Director to undertake good faith discussion of a proposed  
26 disposition. Upon a proposed disposition acceptable to the respondent and to the Executive Director, the respondent  
27 shall execute and submit a consent to discipline on a document prepared by the Executive Director setting out the  
28 necessary factual circumstances, admission of violation of the Model Rules, and the proposed sanction.”); New Jersey  
Rules Governing the Courts of the State of New Jersey, R. 1:20-10(b)(1) (“At any time during the investigation or  
hearing of a disciplinary matter, but prior to the issuance of the hearing report, the respondent may agree with the  
investigator or presenter to submit an affidavit of discipline by consent in exchange for a specific recommendation for  
discipline.”); Ohio Supreme Court Rules for the Gov. of the Bar of Ohio, R. V., § 16(a) (“The relator and respondent  
may enter into a written agreement wherein the respondent admits to alleged misconduct and the relator and respondent  
agree upon a sanction, other than an indefinite suspension or disbarment, to be imposed for that misconduct.”).

<sup>4</sup> It is common in disciplinary proceedings to bifurcate the formal hearing, whereby the panel initially decides  
whether any RPCs were violated and, if so, the appropriate discipline, if any, to be imposed for such RPC violations.

1 allows the respondent lawyer to avoid the trauma and cost of a public proceeding and allows the  
2 disciplinary agency to preserve resources.”<sup>5</sup>

3 The precise issue presented by this Motion—whether an attorney charged with violating the  
4 RPCs may stipulate to the allegations in the complaint and then tender a plea for review and  
5 approval by a hearing panel despite Bar Counsel’s objection to it—has been addressed in a prior,  
6 unrelated disciplinary proceeding. There, following extensive briefing by the parties, in which the  
7 State Bar argued that a tendered plea may only be considered by a hearing panel if it has been  
8 approved by Bar Counsel, the Chair (Dan R. Waite, Esq.) held that SCR 113 and DRP 25 permit a  
9 hearing panel to consider a plea that “has been offered by [the respondent] but not stipulated to by  
10 the State Bar.” (June 23, 2017 Order at 2:3-11, attached as **Exhibit 7**.) Mr. Waite considered, and  
11 then rejected, the State Bar’s various arguments to the contrary, saying that they “would be (a)  
12 contrary to the plain language of the applicable rules and when construed as a whole, as they must,  
13 (b) contrary to common sense, and (c) contrary to fundamental fairness (due process).” (*Id.* at 2:18-  
14 22.) Instead, Mr. Waite held that “the State Bar’s role in the Conditional Guilty Plea hearing, on  
15 these circumstances ... is to offer whatever evidence and arguments it deems appropriate to persuade  
16 the Panel that a form of discipline other than that stated in the [Plea] is warranted[.]”<sup>6</sup> (*Id.* at 2:5-9.)

17 For these reasons, the Chair should find that the Panel may consider Mr. Jimmerson’s Plea  
18 despite Bar Counsel’s refusal to agree to it.

19 **B. Mr. Jimmerson Offers to Accept a Letter of Caution, Which is a Form of**  
20 **Discipline in Nevada.**

21 The State Bar denies that this Plea includes a form of discipline. (Ex. 5, ¶ 6.) More  
22 precisely, because Mr. Jimmerson has offered to accept a letter of caution, he has not—according to  
23 Bar Counsel—offered to accept a “form of discipline” as required under SCR 113(1). (*Id.*) The  
24 State Bar’s argument presupposes that a letter of caution is not a form of discipline in Nevada. The  
25 law is otherwise.

26 <sup>5</sup> The Nevada Supreme Court consults the ANNOTATED STANDARDS in assessing the appropriate form of  
27 discipline for attorney misconduct. *See, e.g., In re Discipline of Colin*, 135 Nev. Adv. Op. 43, 448 P.3d 556, 563 (2019).

28 <sup>6</sup> Despite having full and fair opportunity to do so, the State Bar did not seek review from the Nevada Supreme  
Court (by writ petition) of Mr. Waite’s Order.

SCR 102 identifies the “types of discipline” that may be imposed or recommended by a hearing panel for attorney misconduct. They include, among other “types of discipline,” a public reprimand or letter of reprimand, SCR 102(6), and a letter of caution, SCR 102(8). SCR 102 must be construed as a whole, with reference to each subpart.<sup>7</sup> *S. Nev. Homebuilders Ass’n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (indicating that a rule will be interpreted “as a whole” and in such a way as to avoid rendering certain words or phrases “superfluous” or making them “nugatory”). As a result, by its plain terms, SCR 102 permits a hearing panel to issue a letter of caution as a form of discipline for attorney misconduct.

This interpretation of SCR 102 is supported by reference to SCR 102(1)(a), which defines, during the investigation stage of a grievance, the recommendations to be made by Bar Counsel to a screening panel, including, among other options, dismissal of the grievance “with or without prejudice” or issuance of “a letter of caution.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 722 (1993) (indicating that a rule should be interpreted “in harmony with other rules”). Even though a letter of caution operates as a dismissal, it still “cautions the attorney regarding specific conduct and/or disciplinary rules.” SCR 102(8). No such caution is given when a grievance is simply dismissed by a screening panel at Bar Counsel’s recommendation.

***Importantly, the Nevada Supreme Court has recognized that a letter of caution is a form of discipline that may be imposed for an RPC violation. See In re Discipline of Haley***, 2016 Nev. Unpub. LEXIS 259, \*1 n.1 (Nev. Apr. 22, 2016) (noting that a hearing panel had ordered the State Bar to issue a letter of caution to the respondent in response to his RPC 1.5(c) violation) (citing SCR 102(8)). ***So, too, have the Disciplinary Boards for the State Bar of Nevada. See 16 NEVADA LAWYER 47, Letter of Caution***, File No. 07-148-0349 (May 2008) (issuing a letter of caution for a lawyer’s violation of RPC 1.15); 9 NEVADA LAWYER 18, *Letter of Caution*, File No. N00-35-856 (Nov. 2001) (issuing a letter of caution for actions resulting in the dismissal of a client’s lawsuit without prejudice); *see also* 13 NEVADA LAWYER 37, *Private Reprimand*, File No. 04-073-0520

<sup>7</sup> The Nevada Supreme Court applies traditional rules of statutory interpretation when interpreting the RPCs. *See, e.g., Agwara v. State Bar of Nev.*, 133 Nev. 783, 786, 406 P.3d 488, 491 (2017).

(Mar. 2005) (indicating that the attorney “was given the option of receiving a Private Reprimand or [] a lesser discipline of a Letter of Caution” for violating former SCR 153, 154, and 200).

In reference to the *ABA Standards*, a letter of caution is akin to an admonishment.<sup>8</sup> *See id.* § 2.6 (describing an admonishment as a “private reprimand” and a form of “non-public discipline,” which “declares the conduct of the lawyer improper, but does not limit the lawyer’s right to practice”). An admonishment is “the least serious of the formal disciplinary sanctions” and is appropriate “in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and where there is little or no likelihood of repetition.” ANNOTATED STANDARDS at 83-87. *An admonishment “protect[s] the public while, at the same time, avoid[s] damage to a lawyer’s reputation when future ethical violations are unlikely.” Id.* at 86 (emphasis added).

The Nevada Supreme Court has previously held that non-public discipline is warranted where a lawyer “engages in an isolated instance of nonwillful misconduct that causes little or no actual or potential injury.” *In re Discipline of Lerner*, 124 Nev. at 1246, 197 P.3d at 1077. Because all reprimands are “public” in Nevada following adoption of the 2015 amendments to SCR 102 (*see* ADKT No. 506), the appropriate form of discipline to impose for an isolated instance of non-willful misconduct that causes little or no injury to a client, the public or the profession is a letter of caution.

Finally, in the context of discipline by consent, the *ABA Standards* provide that an attorney may offer to receive private (as opposed to public) discipline through a tendered plea. ANNOTATED STANDARDS at 32. That is hardly surprising—as shown above, the *ABA Standards* approve the imposition of private discipline in certain cases. *Id.* at 29-31 (“Private admonitions may be imposed for cases of minor misconduct; where there is little or no injury to a client, the public, the legal system, or the profession; and when there is little or no likelihood of repetition.”).

For these reasons, the Chair should find that the Plea, as written, may be considered by the Panel because it contains a form of discipline under Nevada law (*i.e.*, a letter of caution).

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<sup>8</sup> The Nevada Supreme Court consults the *ABA Standards* in disciplinary proceedings. *See, e.g., In re Discipline of Reade*, 133 Nev. 711, 716, 405 P.3d 105, 109 (2017).

1           **C.     Because the *Lerner* Factors, the Annotated Standards for Imposing Lawyer**  
2           **Sanctions, and Caselaw from Other Jurisdictions Recommend Admonishing Mr.**  
3           **Jimmerson—Not Suspending Him—the Panel Should Approve the Plea.**

4           “In determining the proper disciplinary sanction, [the Panel] consider[s] four factors: (1) the  
5           duty violated, (2) the lawyer’s mental state, (3) the potential or actual injury caused by the lawyer’s  
6           misconduct, and (4) the existence of aggravating or mitigating circumstances.” *In re Discipline of*  
7           *Serota*, 129 Nev. 631, 634, 309 P.3d 1037, 1039 (2013). The purpose of attorney discipline is to  
8           protect the public, the courts, and the legal profession—***not to punish the lawyer***. *State Bar of Nev.*  
9           *v. Claiborne*, 104 Nev. 115, 213, 756 464, 527-28 (1988); *see also* ANNOTATED STANDARDS at 11-13  
10          (“It is a well-established principle that the punishment of lawyers is not the purpose of lawyer  
11          disciplinary sanctions.”).

12          The State Bar intends to argue that Mr. Jimmerson should be suspended for his actions. As  
13          will be shown at the Conditional Guilty Plea hearing, the discipline proposed by Mr. Jimmerson (*i.e.*,  
14          a letter of caution) and related conditions are appropriate and should be adopted by the Panel.

15                   1.       Suspension v. Admonishment.

16          A suspension is “the removal of a lawyer from the practice of law for a specified minimum  
17          period of time.” *ABA Standards* § 2.3. It is an “intermediate level of discipline.” ANNOTATED  
18          STANDARDS at 61. Relevant to this proceeding, a suspension may be appropriate as the baseline  
19          sanction—before considering aggravating and mitigating factors—where a lawyer knows<sup>9</sup> or should  
20          know that he “is dealing improperly with client property and causes injury<sup>10</sup> or potential injury<sup>11</sup> to a  
21          client,” *ABA Standards* § 4.12; or where a lawyer knowingly fails to supervise a nonlawyer  
22          employee and causes injury or potential injury to a client, the public, or the legal profession, *id.* §  
23          7.2; ANNOTATED STANDARDS at 383.

24          An admonishment is a form of “nonpublic discipline which declares the conduct of the  
25          lawyer improper, but does not limit the lawyer’s right to practice.” *ABA Standards* § 2.6. It is

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26          <sup>9</sup>       “Knowledge” denotes the “conscious awareness of the nature or attendant circumstances of the conduct but  
27          without the conscious objective or purpose to accomplish a particular result.” ANNOTATED STANDARDS at xxi.

28          <sup>10</sup>       “Injury” involves harm at any level greater than “little or no” injury. ANNOTATED STANDARDS at xxi.

<sup>11</sup>       “Potential injury” involves harm that is “reasonably foreseeable” and which “would probably have resulted  
            from the lawyer’s misconduct” but for “some intervening factor or event.” ANNOTATED STANDARDS at xxi.

appropriate for an isolated instance of misconduct where there is “little or no likelihood of repetition” and “little or no injury to a client, the public, the legal system, or the profession.” ANNOTATED STANDARDS at 84. Relevant to this proceeding, an admonishment is appropriate where a lawyer is “negligent<sup>12</sup> in dealing with client property and causes little or no actual or potential injury to the client.” *ABA Standards* § 4.14. Further, an admonishment is appropriate where a lawyer’s violation of a duty as a professional (e.g., the duty to supervise nonlawyer employees) “involves just one incident,” the lawyer acted negligently, and “the misconduct results in little demonstrable or potential injury.” *Id.* § 7.4; ANNOTATED STANDARDS at 401-02.

2. The Panel Should Admonish—Not Suspend—Mr. Jimmerson.

An analysis of the *Lerner* factors in conjunction with the *ABA Standards* and caselaw from other states leads to a singular conclusion: Mr. Jimmerson has conditionally agreed to accept an appropriate form of discipline (*i.e.*, a letter of caution) for the misconduct at issue in this matter. *In re Discipline of Reade*, 133 Nev. at 716, 405 P.3d at 109 (assessing whether recommended discipline is “consistent with the purpose of attorney discipline and is supported by the ABA and other jurisdictions”). A suspension, as advocated by the State Bar, would be “excessive and unnecessary.” *In re Discipline of Bumgarner*, No. 70426, 2016 Nev. Unpub. LEXIS 900, at \*3 (Nev. Oct. 21, 2016) (rejecting a six month suspension as “excessive and unnecessary”).

a. *The Lerner Factors and ABA Standards Favor an Admonishment in This Proceeding.*

The Panel should find, upon review of the *Lerner* factors and *ABA Standards*, that the discipline proposed by Mr. Jimmerson in his Plea is appropriate.

**First**, Mr. Jimmerson is alleged to have violated a duty owed to his clients (*i.e.*, to safeguard client property) and a duty owed to the legal profession (*i.e.*, to supervise nonlawyer employees). With regard to his RPC 1.15 obligation, even though Mr. Jimmerson is accused of disbursing fees from his client trust account before depositing the funds from which those fees were earned (arising

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<sup>12</sup> “Negligence” denotes “the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.” ANNOTATED STANDARDS at xxi.

1 from errant bookkeeping by a nonlawyer employee who admitted, in writing, that she was not fit for  
2 the position following several weeks of hands-on training), none of his clients risked a loss of their  
3 property. Further, the bookkeeping errors in this matter were immediately rectified once discovered.  
4 With regard to his RPC 5.3 obligation, Mr. Jimmerson did all that he could to ensure that his firm's  
5 new bookkeeper was competent and capable of managing the firm's books and records. As soon as  
6 Mr. Jimmerson discovered that Ms. Ballard could not competently handle the tasks assigned to her,  
7 he took immediate action to address the situation, including rehiring his former bookkeeper to  
8 reconcile his client trust account.

9 *Second*, Mr. Jimmerson did not knowingly violate any duty owed to his client or the legal  
10 profession—an absolute requirement for imposing any form of a suspension under the *ABA*  
11 *Standards*. He has procedures in place at his firm to carefully manage his client trust account and  
12 sought to ensure that his bookkeeper was properly trained to assist in overseeing the firm's books  
13 and records. (Ex. 2, ¶¶ 7, 9.) Generally speaking, he is present every day to manage and oversee his  
14 firm; he is not an absentee owner. (*Id.*, ¶ 4.) He has never had an experience like he had with Ms.  
15 Ballard; nor has he ever had a client complain about missing money. (*Id.*, ¶ 10(h).) In sum, the  
16 failures on Mr. Jimmerson's part were the result of mere negligence—nothing more.

17 *Third*, no injury (actual or potential) to any client, the public, or the legal profession resulted  
18 from Mr. Jimmerson's actions.<sup>13</sup> (Ex. 2, ¶ 10(i).) Most importantly, Mr. Jimmerson was able to  
19 promptly rectify his client trust account once he discovered Ms. Ballard's mistakes. (*Id.*, ¶ 8.)  
20 Further, within weeks of rehiring Ms. Kahn, Mr. Jimmerson was able to account in each client  
21 matter for services rendered and expenses incurred by the firm in representing the client. (*Id.*)

22 *Finally*, myriad mitigating factors substantially outweigh the applicable aggravating factors.  
23 As noted above, Mr. Jimmerson did not act with a dishonest or selfish motive; he was suffering from  
24 personal or emotional problems in 2019; he made timely good faith effort to reconcile his client trust  
25 account; he made full and free disclosure to the State Bar and has been cooperative throughout  
26 the disciplinary process; he has an excellent reputation in the legal community; he is remorseful; and

27  
28 <sup>13</sup> Speculation or conjecture regarding potential harm that may have occurred is not entitled to any weight. *In re Lerner*, 124 Nev. at 1246, 197 P.3d at 1078.

1 his prior disciplinary offense is dated and largely irrelevant. Mr. Jimmerson is not a recidivist of  
2 whom the State Bar needs to make an example. The fact that thousands of clients over the years  
3 have not complained to the State Bar about Mr. Jimmerson's services proves that this proceeding is  
4 the exception and not the norm.

5 Based on the foregoing, assuming, solely for purposes of this Plea, that Mr. Jimmerson  
6 negligently violated RPC 1.15 and 5.3 in late 2019, a letter of caution (with conditions), pursuant to  
7 SCR 102(8), would best serve to promote the policies underlying attorney discipline. *See also*  
8 ANNOTATED STANDARDS at 161 (stating that an admonishment is appropriate for "sloppy  
9 bookkeeping" that does not result in harm to a client).

10 b. *It Would be Consistent with Caselaw from Other Jurisdictions to*  
11 *Admonish Mr. Jimmerson.*

12 The *ABA Standards* are designed "to promote consistency in the imposition of sanctions for  
13 the same or similar offenses within and among jurisdictions." ANNOTATED STANDARDS at 38-39.  
14 The Nevada Supreme Court has echoed the need for maintaining consistency in the imposition of  
15 attorney discipline. *In re Discipline of Drakulich*, 111 Nev. 1556, 1571, 908 P.2d 709, 718 (1995)  
16 ("Imposition of a 90-day suspension under the instant questionable circumstances occurring in 1988  
17 would be wholly inconsistent with the far less harsh anonymous discipline issued by this court  
18 subsequently in August 1992. It would also be abhorrent to this court's desire to encourage  
19 consistency in the imposition of disciplinary sanctions.").

20 Not only would issuing a letter of caution be warranted based on the *Lerner* factors and the  
21 *ABA Standards*, it would harmonize with disciplinary decisions entered in other jurisdictions for  
22 lawyers who engaged in comparable misconduct. *See, e.g., Matter of Anonymous Member of South*  
23 *Carolina Bar*, 844 S.E.2d 374, 377-78 (S.C. 2020) (holding that an admonition was appropriate for a  
24 lawyer who allowed non-lawyers to access his client trust account and failed to properly ensure that  
25 monthly reconciliations were performed of his trust account); *In re PRB No. 2013-145*, 165 A.3d  
26 130, 140-42 (Vt. 2017) (affirming entry of an admonition for a lawyer who failed to timely perform  
27 trust account reconciliations and did not maintain accurate trust account records); *In re Anonymous*,  
28 876 N.E.2d 333, 334-35 (Ind. 2007) (ordering a lawyer to receive a private reprimand for negligently

1 supervising his trust account); *Lawyer Disciplinary Bd. v. Beveridge*, 459 S.E.2d 542, 550 (W. Va.  
2 1995) (finding that an admonishment was appropriate for deficiencies associated with a lawyer's  
3 management of his law firm); *see also Matter of Respondent F*, No. 87-O-15284, 1992 WL 20333,  
4 \*13-14 (Cal. State Bar Ct. Feb. 4, 1992) (unpublished disp.) (imposing a "private reproof" for an  
5 attorney who committed a technical violation of California's equivalent to RPC 1.15).

6 Here, the State Bar has charged Mr. Jimmerson with violating RPC 1.15 and 5.3.  
7 Consistency demands that he receive comparable discipline as attorneys who have committed  
8 comparable rule violations.<sup>14</sup> A suspension would be unwarranted and, in all likelihood, rejected by  
9 the Nevada Supreme Court if recommended—at the State Bar's behest—by the Panel. A suspension  
10 would serve no purpose other than to punish Mr. Jimmerson. Therefore, the Panel should reject the  
11 idea of a suspension and find that Mr. Jimmerson should be admonished through a letter of caution.

12 **D. The Conditions Set Forth in the Plea Resolve the State Bar's Concerns.**

13 The *ABA Standards* indicate that a hearing panel should be flexible and creative in  
14 determining the appropriate type of discipline in a particular case. *Id.* § 1.3 ("The Standards  
15 constitute a model, setting forth a comprehensive system for determining sanctions, permitting  
16 flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct."). Mr.  
17 Jimmerson's Plea achieves that purpose by not only recommending a letter of caution but including  
18 various conditions. Specifically, the Plea requires Mr. Jimmerson to self-report to the State Bar on a  
19 quarterly basis for a 12-month period all activity in and out of his client trust account dating back to  
20 January 1, 2020; to provide bank statements with each report; and to include a verification from his  
21 certified public accountant as to the accuracy and completeness of the information contained in each  
22 report. Through those conditions, Mr. Jimmerson will show the State Bar that the accounting issues  
23 in this matter are once-in-a-career aberrations.

24  
25  
26 <sup>14</sup> Notwithstanding, the stated form of discipline in the Plea is greater than that imposed in the cases cited above  
27 because Mr. Jimmerson agrees to self-report all activity involving his client trust account, dating back to January 1,  
28 2020, for a period of twelve (12) months following entry of an Order approving his Plea. By doing so, Mr. Jimmerson  
will afford the State Bar an opportunity to scrutinize each and every credit to and debit from his client trust account and,  
if issues are identified, the State Bar may bring those to the Panel's attention.

1 In addition, the Plea requires Mr. Jimmerson to secure three hours of continuing legal  
2 education (beyond the 13 hours required each year of every attorney licensed to practice law in  
3 Nevada) in client trust account management. Further, the Plea requires Mr. Jimmerson to pay the  
4 actual costs of this proceeding plus “an administrative cost of \$1,000.”

5 Because the conditions in the Plea ensure that Mr. Jimmerson will not be back before this  
6 Panel for the same or similar RPC violations in the future, they should be accepted by the Panel.

#### 7 IV. CONCLUSION

8 Lawyers who negligently violate the RPCs on isolated instances without causing harm to  
9 their clients, the public, or the legal profession should be admonished, not suspended. It would defy  
10 common sense and existing jurisprudence on attorney discipline for the Panel to suspend Mr.  
11 Jimmerson for the acts alleged in the Complaint.

12 The State Bar’s unyielding resolve to convince the Panel to suspend Mr. Jimmerson is  
13 shortsighted. Considering the nature of the alleged offenses relative to the issues that Mr.  
14 Jimmerson was facing in 2019, including those involving his firm’s former bookkeeper, a  
15 suspension would unfairly punish him and unfairly preclude him from pursuing his chosen  
16 profession. Worse, a suspension would irresponsibly jeopardize the livelihood of the individuals  
17 who work for his firm. So, too, it would likely result in substantial harm to his clients.

18 For that matter, public discipline would be disproportionate to the misconduct. It would not  
19 only diminish Mr. Jimmerson’s reputation but risk tarnishing his son’s reputation.

20 Mr. Jimmerson has agreed to accept a form of discipline recognized under SCR 102 and  
21 consistent with the *ABA Standards* for the wrongs alleged in the Complaint. He does not pose a  
22 threat to his clients, the legal profession, or the public such that public discipline is appropriate. He  
23 recognizes the need to be meticulous about who he hires to act as his firm’s bookkeeper and, make  
24 no mistake, he will not have another problem with his client trust account in the future.

25 The State Bar has no basis – in law or in fact – to seek a suspension for Mr. Jimmerson. Bar  
26 Counsel’s refusal to accept the Plea (even though it is inherently fair and reasonable) is ultimately  
27 irrelevant for purposes of SCR 113 and DRP 25 because the Panel—not the State Bar—decides Mr.  
28

1 Jimmerson's fate. A letter of caution with conditions akin to those set forth in the Plea is befitting  
2 under these circumstances and should be adopted.

3 For these reasons, the Panel should grant this Motion in its entirety.

4 DATED this 26<sup>th</sup> day of March, 2021.

5 BAILEY ♦ KENNEDY

6 By: /s/ Dennis L. Kennedy

7 DENNIS L. KENNEDY

8 JOSHUA P. GILMORE

9 *Attorneys for Respondent*

10 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 26<sup>th</sup> day of March, 2021, service of the foregoing **RESPONDENT'S MOTION FOR APPROVAL OF CONDITIONAL GUILTY PLEA** was made by email to the following at their last known address:

DANIEL M. HOOG  
BAR COUNSEL  
DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniel@nvbar.org  
kristif@nvbar.org  
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*Attorneys for Complainant*  
STATE BAR OF NEVADA

THOMAS EDWARDS, Esq.  
Panel Chair

Email: tedwards@nevadafirm.com

---

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

# **EXHIBIT 1**

# **EXHIBIT 1**

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*Attorneys for Respondent*  
James J. Jimmerson, Esq.

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**CONDITIONAL GUILTY PLEA IN  
EXCHANGE FOR A STATED FORM OF  
DISCIPLINE**

Pursuant to SCR 113(1) and DRP 25, Respondent James J. Jimmerson, Esq., by and through his counsel, tenders to the Office of Bar Counsel for the State Bar of Nevada this Conditional Guilty Plea ("Plea") in exchange for the imposition of a stated form of discipline and other conditions as more fully set forth herein. The Southern Nevada Disciplinary Board has jurisdiction over Mr. Jimmerson and the subject matter of this proceeding pursuant to SCR 99.

**I. CONDITIONAL GUILTY PLEA**

Through this Plea, Mr. Jimmerson agrees and admits as follows:

Mr. Jimmerson pleads guilty and admits that he violated Rules 1.15 and 5.3 of the Nevada Rules of Professional Conduct (RPC) as set forth in the Complaint filed October 7, 2020, and in accordance with the Admitted Facts set forth in Section II of this Plea.

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II. ADMITTED FACTS

The facts as admitted by Mr. Jimmerson solely for purposes of this Plea are as follows:

1. Mr. Jimmerson is currently an active member of the State Bar of Nevada (No. 0264) and at all times pertinent to this Plea had his principal place of business for the practice of law located in Clark County, Nevada.

2. As Mr. Jimmerson understands it, on February 5, 2020, Nicole Cruz, who worked for Mr. Jimmerson's law firm, sent a grievance to the State Bar and alleged that Mr. Jimmerson made his office manager, Leah Ballard, transfer unearned funds out of his client trust account to make payroll.

3. As Mr. Jimmerson understands it, Ms. Cruz claimed that Mr. Jimmerson told Ms. Ballard to look the other way or she would be fired.

4. As Mr. Jimmerson understands it, Ms. Cruz stated that she had no first-hand knowledge of Mr. Jimmerson giving these instructions, but she allegedly saw texts that he sent to Ms. Ballard.

5. In his response to the State Bar's letter of investigation, Mr. Jimmerson provided a current trust account reconciliation, which included his account ledgers and current account statement.

6. As Mr. Jimmerson understands it, on February 6, 2020, the State Bar issued a subpoena to Nevada State Bank requesting Mr. Jimmerson's trust and business account records.

7. As Mr. Jimmerson understands it, after receiving the records from Nevada State Bank, Louise Watson, an investigator for the State Bar, reviewed Mr. Jimmerson's IOLTA, corporate and payroll accounts for any instances in which it appeared that Mr. Jimmerson would not have had sufficient funds to make payroll but for a withdrawal from his IOLTA account.

8. As Mr. Jimmerson understands it, Ms. Watson identified an instance in which payroll and related taxes disbursed from Mr. Jimmerson's payroll account between November 22, 2019, and November 27, 2019, would not have been possible without funds being deposited into that account, whether from his IOLTA account or otherwise, which was around the time referenced by Ms. Cruz.

- 1           9.     On November 20, 2019, Mr. Jimmerson's payroll account closed with a balance of  
2 \$2,513.15.
- 3           10.    On November 20, 2019, Mr. Jimmerson's corporate account closed with a balance of  
4 \$19,758.19.
- 5           11.    On November 21, 2019, Mr. Jimmerson made an unidentified transfer in the amount  
6 of \$45,000 from his IOLTA account to his corporate account.
- 7           12.    On November 21, 2019, Mr. Jimmerson transferred \$46,958.87 from his corporate  
8 account to his payroll account.
- 9           13.    On November 21, 2019, Mr. Jimmerson disbursed \$46,772.53 from his payroll  
10 account before another deposit was made.
- 11          14.    The subsequent disbursements from Mr. Jimmerson's payroll account were as  
12 follows:
- 13               a.     On November 22, 2019, Mr. Jimmerson debited \$30,025.00 from his payroll  
14 account and also issued \$5,861.26 in payroll checks;
- 15               b.     On November 26, 2019, Mr. Jimmerson issued a check in the amount of  
16 \$703.47 from his payroll account; and
- 17               c.     On November 27, 2019, Mr. Jimmerson debited \$10,182.80 from his payroll  
18 account to the IRS.
- 19          15.    On November 14, 2019, Mr. Jimmerson transferred \$40,000 from his IOLTA account  
20 to his corporate account, a portion of which came from funds that were not on deposit in his IOLTA  
21 account until after the transfer was made.
- 22          16.    On November 25, 2019, Mr. Jimmerson transferred \$60,000 from his IOLTA account  
23 to his corporate account, a portion of which came from funds that were not on deposit in his IOLTA  
24 account until after the transfer was made.
- 25          17.    On December 19, 2019, Mr. Jimmerson transferred \$10,000 from his IOLTA account  
26 to his corporate account, claiming that it was a transfer from Jay Nady's trust funds for work  
27 associated with his case.
- 28

1 18. The January 25, 2020, invoice that Mr. Jimmerson provided in support of this  
2 transaction showed that all of the work on Jay Nady's case was not performed until January 2020.

3 19. On December 20, 2019, Mr. Jimmerson transferred \$15,000 from his IOLTA account  
4 to a checking account belonging to the Jimmerson Family Trust.

5 20. On December 27, 2020, the \$15,000 was transferred back into Mr. Jimmerson's  
6 IOLTA account from his corporate account.

7 21. In responding to the grievance, Mr. Jimmerson stated that Ms. Ballard worked for  
8 him for less than a month and managed to turn his books into a complete mess by the time she  
9 resigned on December 2, 2019.

10 22. Mr. Jimmerson also stated that Ms. Ballard was absent several days during her  
11 employment for health and other reasons and as a result, he had to personally make these transfers  
12 from his IOLTA account to this corporate account.

### 13 III. AGGRAVATING AND MITIGATING FACTORS

14 In aggravation, Respondent has:

- 15 • Prior disciplinary offenses, SCR 102.5(1)(a); and  
16 • Substantial experience in the practice of law, SCR 102.5(1)(i).

17 In mitigation, Respondent has:

- 18 • Absence of a dishonest or selfish motive, SCR 102.5(2)(b);  
19 • Personal or emotional problems, SCR 102.5(2)(c);  
20 • Timely good faith effort to make restitution or rectify consequences of his  
21 misconduct, SCR 102.5(2)(d);  
22 • Full and free disclosure to the State Bar and cooperative attitude toward the  
proceeding, SCR 102.5(2)(e);  
• Character or reputation, SCR 102.5(2)(g);  
• Remorse, SCR 102.5(2)(m); and  
• Remoteness of prior offenses, SCR 102.5(2)(n).

23 Additional mitigating factors—those listed under SCR 102.5(2) are “illustrative” and “not  
24 exclusive”—include:

- 25 • Lack of client harm, *see* AM. BAR ASS'N, *Annotated Standards for Imposing Lawyer*  
*Sanctions* 540 (2d ed. 2019); and  
26 • Any form of public discipline would unfairly impact Mr. Jimmerson's family,  
including his son who is a practicing attorney, *see id.* at 541.

27 ///

28 ///

1 **IV. STATED FORM OF DISCIPLINE**

2 Pursuant to this Plea, Mr. Jimmerson agrees to the following imposition of discipline: Letter  
3 of Caution, pursuant to SCR 102(8), to be issued within thirty (30) calendar days after his  
4 completion of the following conditions:

5 1. For a period of twelve (12) calendar months following entry of an Order approving  
6 this Plea by the Formal Hearing Panel, Mr. Jimmerson shall submit a report to the State Bar, on a  
7 quarterly basis for a total of four (4) reports, which:

8 i. Identifies all credits to and debits from his law firm's client trust  
9 account, with the first report containing activity commencing from January 1, 2020, up until thirty  
10 (30) calendar days prior to submission of the report, and each subsequent report encompassing  
11 activity occurring for the ninety (90) calendar day period following issuance of the prior report;

12 ii. Includes copies of the monthly bank statements from his law firm's  
13 client trust account for the period of time addressed by the report; and

14 iii. Encloses a written verification from Mr. Jimmerson's certified public  
15 accountant, certifying that he or she has reviewed Mr. Jimmerson's client trust account records and  
16 that the information reported by Mr. Jimmerson is accurate and complete;

17 2. Within twelve (12) calendar months of entry of an Order approving this Plea by the  
18 Formal Hearing Panel, Mr. Jimmerson shall obtain three (3) hours of continuing legal education in  
19 client trust account management, with proof of such attendance being reported, in writing, to the  
20 State Bar;<sup>1</sup> and

21 3. Mr. Jimmerson shall pay an administrative cost of \$1,000, plus the actual costs of this  
22 proceeding, no later than thirty (30) calendar days following entry of an Order approving this Plea  
23 by the Formal Hearing Panel.

24 **V. BREACH PROCEDURE**

25 If Bar Counsel determines that Mr. Jimmerson has breached this Plea and/or identifies an  
26 accounting irregularity in any report submitted by Mr. Jimmerson to the State Bar pursuant to  
27

28 <sup>1</sup> This condition is in addition to the annual requirements imposed by SCR 210.

1 Section IV of this Plea, Bar Counsel shall notify Mr. Jimmerson, in writing, of the alleged breach  
2 and/or accounting irregularity (the "Notice"), with a courtesy copy sent to Mr. Jimmerson's counsel.  
3 Mr. Jimmerson shall have fourteen (14) calendar days within which to respond, in writing, to the  
4 Notice (the "Response"). Bar Counsel may withdraw the Notice after receiving the Response and any  
5 related communications. If the Notice is not withdrawn, Bar Counsel shall seek to reconvene the  
6 Formal Hearing Panel in this matter to consider the Notice and Response and any related  
7 communications (the "Request"). If any member of the Formal Hearing Panel is unavailable, Bar  
8 Counsel shall request the Chair or Vice Chair of the Disciplinary Board to assign a replacement  
9 member to preside on the panel. Bar Counsel shall notify Mr. Jimmerson of the Request by serving  
10 a copy of the Request on Mr. Jimmerson, with a courtesy copy sent to Mr. Jimmerson's counsel.

11 The hearing shall convene within 30 days of the Request unless extended by mutual  
12 agreement of the parties. At the hearing, Bar Counsel shall have the burden of proof, by a  
13 preponderance of the evidence, to establish a breach of this Plea and/or accounting irregularity. Mr.  
14 Jimmerson shall have the burden of proof, by a preponderance of the evidence, to establish  
15 justification for any breach and/or accounting irregularity.

16 If the Formal Hearing Panel finds a breach and/or accounting irregularity to be material and  
17 without justification, this Plea shall be rendered null and void and this matter shall be reactivated  
18 (e.g., any deadlines suspended by virtue of acceptance of this Plea by the Formal Hearing Panel shall  
19 be immediately reinstated). Further, the State Bar shall be permitted to amend its Complaint to  
20 assert new claims related to the breach and/or accounting irregularity.

21 If the Formal Hearing Panel finds that no breach and/or accounting irregularity occurred, or  
22 that the breach and/or accounting irregularity was immaterial or with justification, the panel may  
23 modify this Plea or direct the parties to proceed in accordance with it.

#### 24 VI. CONDITIONAL AGREEMENT BY RESPONDENT

25 Mr. Jimmerson agrees to the terms of this Plea on the express condition that the Formal  
26 Hearing Panel does not increase the level of discipline (e.g., Mr. Jimmerson is agreeable to the  
27 Formal Hearing Panel imposing additional conditions but not to the Formal Hearing Panel  
28 recommending a letter of reprimand, a public reprimand, or a suspension of any type or duration). If

1 this Plea is accepted and the Formal Hearing Panel adopts the stated form of discipline and  
2 associated conditions, no review by the Nevada Supreme Court will be required because the stated  
3 form of discipline "includes neither a suspension nor disbarment." SCR 113(4).

4 If this Plea is rejected by the Formal Hearing Panel, it shall become null and void and  
5 inadmissible for any purpose, whether in this matter or in any other matter involving Mr. Jimmerson.

6 **VII. APPROVAL BY RESPONDENT**


7 Having read this Plea and being satisfied with it, this Plea is hereby approved by Mr.  
8 Jimmerson.

9 Mr. Jimmerson has had the opportunity to discuss this Plea with counsel of his own choosing  
10 and fully understands the conditions set forth herein. Mr. Jimmerson further understands that his  
11 failure to substantially adhere to any of the conditions of this Plea shall constitute grounds upon  
12 which the State Bar may commence disciplinary proceedings against him for such noncompliance.

13 DATED this 12<sup>th</sup> day of March, 2021.

DATED this 12<sup>th</sup> day of March, 2021.

14 BAILEY ♦ KENNEDY

15 By:   
16 DENNIS L. KENNEDY  
17 JOSHUA P. GILMORE

By:   
James J. Jimmerson

18 *Attorneys for Respondent,*  
19 James J. Jimmerson, Esq.

# **EXHIBIT 2**

# **EXHIBIT 2**

DENNIS L. KENNEDY  
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James J. Jimmerson, Esq.

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**DECLARATION OF JAMES J.  
JIMMERSON**

1 I, James J. Jimmerson, declare as follows:

2 1. I am over 18 years of age and a resident of Clark County, Nevada. I am the  
3 Respondent named in the above-captioned matter. I am competent to testify to the facts stated  
4 herein, which are based on personal knowledge unless otherwise indicated, and would do so if  
5 requested. I make this Declaration in support of Respondent's Motion for Approval of Conditional  
6 Guilty Plea (the "Motion").

7 2. I am an attorney and have been licensed to practice law in Nevada since 1976 (Bar  
8 No. 264).

9 3. I am the sole owner, officer, and director of The Jimmerson Law Firm, P.C.  
10 ("Jimmerson Law"). My son, James M. Jimmerson, works with me at the firm and has been  
11 licensed to practice law in Nevada since 2012.

12 4. Generally speaking, I am in the office every day to oversee operations.

13 5. In or around October 2019, I hired Nicole Cruz (the grievant in this matter) to work  
14 as a paralegal for Jimmerson Law. During the interview process, she represented that she was a  
15 third year law student at the William S. Boyd School of Law at UNLV. As a paralegal, she did not  
16 have accounting or bookkeeping tasks and did not assist in managing the firm's client trust account.  
17 Within a few days, I discovered that Ms. Cruz was not capable of handling even the simplest of tasks  
18 and had misled me concerning her background and qualifications. I fired her once I determined that  
19 she was not fit for the position. In total, she worked for the firm for seven days. I later learned that  
20 she had lied about being a law student.

21 6. In or around October 2019, I hired Leah Ballard to work as the firm's bookkeeper to  
22 replace Amanda Kahn (f/k/a Amanda Fisher). Ms. Kahn and my then secretary, Kim Stewart,  
23 recommended Ms. Ballard to me for the position after interviewing her. I interviewed her and, as a  
24 result of the interview and based on her prior bookkeeping experience, I offered her the position,  
25 which she accepted.

26 7. I tasked Ms. Kahn with training Ms. Ballard, which lasted for two and a half weeks.  
27  
28

1           8.       I maintained daily contact with Ms. Kahn once she started working on her own as the  
2 firm's bookkeeper. Within less than two weeks, she fell behind in her work and I realized that she  
3 was unable to complete the various tasks assigned to her. Alongside trying to address the situation  
4 with her, I contacted Ms. Kahn and asked her if she would speak to Ms. Ballard and find out what  
5 had occurred. Ms. Ballard resigned a few days later.<sup>1</sup> I immediately reached out Ms. Kahn and  
6 asked her to return as the firm's bookkeeper. She agreed to do so. I asked her to prioritize the tasks  
7 that had been ignored or not timely handled by Ms. Ballard, including organizing the firm's books  
8 and records and inputting time to prepare billing statements for clients. She did, and everything was  
9 back in order by December 27, 2019.

10           9.       I have policies and procedures in place at my firm to ensure proper management and  
11 oversight of the firm's client trust account.

12           10.       For purposes of SCR 102.5:

13               a.       In or around 1992, I received a public reprimand for conduct not involving  
14 trust account management or supervision of nonlawyer employees;

15               b.       I have been practicing law in Nevada for approximately 45 years;

16               c.       I did not act with a selfish or dishonest motive in this matter. I did not try to  
17 take advantage of any client when making the transfers from my client trust account. I made  
18 them based on the good faith belief that I was able to do so;

19               d.       In April 2019, my son, Jacob L. Jimmerson, passed away at the age of 25;

20               e.       Upon learning that Ms. Ballard was not fit to work as the firm's bookkeeper, I  
21 immediately reached out to and rehired Ms. Kahn and asked her to prioritize the tasks that  
22 had been neglected by Ms. Ballard. She did and had everything back in order by December  
23 27, 2019;

24               f.       I directed Ms. Kahn to respond to the State Bar's March 10, 2020, letter of  
25 investigation that same day with pertinent documents and information. I followed up with a  
26 lengthier, substantive response on April 21, 2020, and included approximately 500 pages of  
27

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28 <sup>1</sup> In total, Ms. Ballard worked at Jimmerson Law for 25 days.

1 supporting documents, including an accounting, copies of checks, text messages and other  
2 correspondence, and client invoices;

3 g. I have worked very hard over the course of my 45-year career to build and  
4 maintain an excellent reputation in the legal community. I previously served on the Board of  
5 Governors for eight years, as a member of the Disciplinary Board for many years, as a  
6 member of the ABA Board of Governors, and as a lawyer representative for the Ninth Circuit  
7 Judicial Conference. I regularly speak at family law conferences and at other conferences  
8 and have, for a large number of years, served as a mediator for the Nevada Supreme Court  
9 Settlement Program. Further, I give back to the community with my time and through  
10 charitable contributions;

11 h. This matter keeps me up at night. I strive to practice law at the highest level  
12 and have not previously had a complaint involving my client trust account nor a similar  
13 negative experience with my firm's bookkeeper;

14 i. The issues in this matter did not cause any harm (actual or potential) to any  
15 client of Jimmerson Law. They were immediately rectified and at no time did any client risk  
16 the loss of their property; and

17 j. I am reasonably concerned that any form of public discipline that I may  
18 receive in this matter will wrongfully and unfairly be attributed to my son who, as noted  
19 above, works with me at Jimmerson Law.

20 11. Attached to the Motion as Exhibit 2-A is a true and correct copy of a text message  
21 that I received from Ms. Ballard on November 26, 2019.

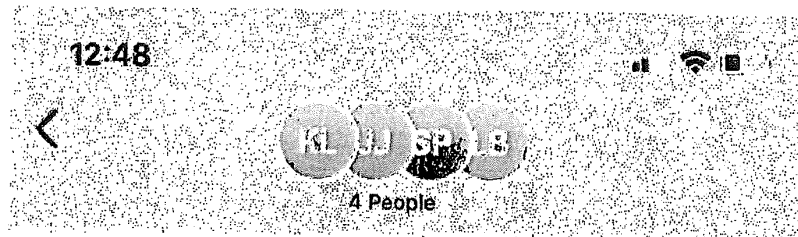
22 I declare under penalty of perjury that the foregoing is true and correct.

23 EXECUTED this 26<sup>th</sup> day of March, 2021.

24  
25 /s/ James J. Jimmerson  
JAMES J. JIMMERSON  
26  
27  
28

# **EXHIBIT 2-A**

# **EXHIBIT 2-A**



Text Message  
Tue, Nov 26, 4:11 AM

Jim Jimerson on Law firm

Hi Jim and Shahana, Want to update to both of you. I found out there are so many timesheets didn't enter. JJJ's timesheets still have 16 days need to be entered. JMJ still have 18 days need to entered. Shahana has 4 days need to entered. Amanda has 6 days need to entered. Andrew has 10 days need to entered.

I have been trying to enter all the timesheets in the car and will stay up and try to do my best.

Leah:

How did this happen? The failure to enter there timesheets is holding up our billing. That is our lifeblood.

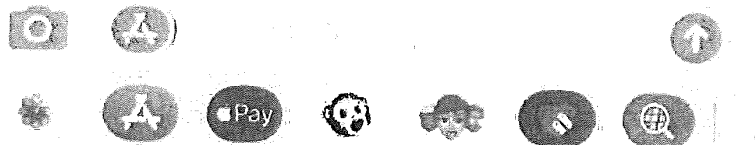
This cannot repeat itself. Period.



JJJ

Leah Rabinowitz

Mr. Jimmerson,  
It is my complete failure. I got myself overwhelmed and did not communicate that. I have gotten



JLF000016

JJJ00031

12:48



4 People

Leah Ballard

Mr. Jimmerson,  
It is my complete failure. I got myself overwhelmed and did not communicate that. I have gotten unorganized and made a large mess. I take the responsibility for it. I am willing to work to clean it up and help get it in order to the best of my ability. I apologize and it will not happen again.



Jim Jimmerson

I don't like the concealment. You never told me you were "overwhelmed" or behind. You hid it from me. You have done a poor job. I am not certain what I am going to do. The lack of candor is the most alarming. We cannot have that.



Leah Ballard



I understand

I will need a check and it to be signed for the Goetle bill to pay but otherwise I have the rest. I will get them all paid as previously discussed. My father can drive me in to print the check for Goetle air conditioning and I will be in



2:48 PM

iPhone 11

JLF000017

JJJ00032

# **EXHIBIT 3**

# **EXHIBIT 3**

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
Facsimile: 702.562.8821  
DKennedy@BaileyKennedy.com  
JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**DECLARATION OF AMANDA KAHN**

1 I, Amanda Kahn, declare as follows:

2 1. I am over 18 years of age and a resident of Clark County, Nevada. I am competent to  
3 testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated,  
4 and would do so if requested. I make this Declaration in support of Respondent's Motion for  
5 Approval of Conditional Guilty Plea (the "Motion").

6 2. I am the Bookkeeper/Office Manager of The Jimmerson Law Firm, P.C. ("Jimmerson  
7 Law"). I have worked for Jimmerson Law for a few years. Prior to working for the firm, I worked  
8 as an accountant for many years for other businesses owned by James J. Jimmerson, Esq.

9 3. In or around October 2019, I interviewed Leah Ballard to potentially assume my role  
10 as bookkeeper for Jimmerson Law. Based on the interview and her background and qualifications, I  
11 recommended her to Mr. Jimmerson. After he agreed to hire her, I trained her over the course of two  
12 and a half weeks, during which time I familiarized Ms. Ballard with working at the firm, including  
13 understanding the administrative tasks associated with serving as the firm's bookkeeper. I  
14 consistently reminded her of the need to carefully track and monitor activity involving the firm's  
15 bank accounts, including its client trust account. I told her of the importance of inputting time sheets  
16 on client matters daily to facilitate preparing monthly billing statements for clients. Further, I told  
17 her to generate daily cash reports for the firm for Mr. Jimmerson's review, reflecting all transactions  
18 involving the firm's bank accounts.

19 4. In or around November 2019, I resigned from Jimmerson Law after I finished training  
20 Ms. Ballard. Nevertheless, I stayed in touch with Ms. Ballard to answer any questions that she had  
21 and ensure that she was keeping up with the position.

22 5. On or about the last week of November 2019, I was informed by Mr. Jimmerson that  
23 the prebills for clients were not completed. I learned that Ms. Ballard did not disclose to Mr.  
24 Jimmerson that she was behind with the prebills, which required me immediately to assist. I worked  
25 remotely to enter all the timesheets and the costs to complete the bills for the month of November  
26 2019.

27 6. On or about December 2, 2019, Mr. Jimmerson asked me to return to Jimmerson Law  
28 as the firm's bookkeeper to replace Ms. Ballard. I agreed to do so. I was immediately tasked with

1 organizing the firm's books and records and otherwise completing the work that Ms. Ballard had  
2 failed to complete, such as inputting time to assist in preparing billing statements for clients. I had  
3 everything back in order by December 27, 2019.

4 7. Attached to the Motion as Exhibit 3-A is a true and correct copy of a text message  
5 that I received from Ms. Ballard on November 26, 2019.

6 8. Attached to the Motion as Exhibit 3-B is a true and correct copy of a text message  
7 that I received from Ms. Ballard on December 2, 2019.

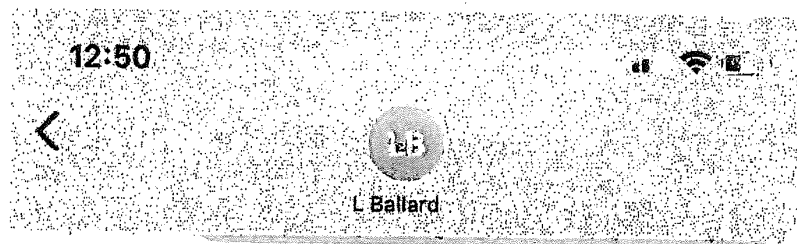
8 I declare under penalty of perjury that the foregoing is true and correct.

9 EXECUTED this 26<sup>th</sup> day of March, 2021.

10  
11 /s/ Amanda Kahn  
12 AMANDA KAHN  
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# **EXHIBIT 3-A**

# **EXHIBIT 3-A**



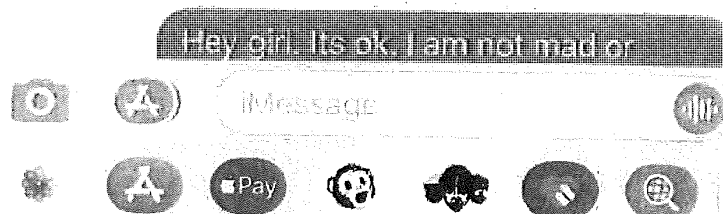
Mon, Nov 25 10:44 PM

Leah, I found out there are still a lot of timesheets didn't enter. I thought you said you almost finished all the times. Only missing few days. But there are a lot didn't enter.

Tue, Nov 26 11:50 AM

Hi amanda. I'm sorry to leave you with so much. I didn't realize there were so many timesheets not entered. To be honest I got so overwhelmed. My personal life has fallen apart and my husband is causing me a lot of problems. He is divorcing me. It's over really dumb stuff that is not even true, but there isn't anything I can do. I'm not sure if I should just put my resignation in and quit at the law firm. I really have made a mess. I got so disorganized and I got stuff working on the building stuff with all the failures of the phone system and all that. I feel unprepared and completely failed. I'm not sure what to do at this point

Sorry for the early text



JLF000018

JJJ00033

# **EXHIBIT 3-B**

# **EXHIBIT 3-B**

8:42



L Ballard >

Mon, Dec 2 8:32 AM

Hi Amanda wanted to thank u for helping so much. I wanted you to know I am giving my notice here. I haven't told them yet, but I am typing it up and giving it to time. This is more than I can clearly handle and it's really an unhappy environment. I think it's better if I go somewhere else. I hope you had a happy thanksgiving. On top of everything I'm very sick. So I may go home. I hope you can tell them no to the work. I will help find someone if they need it. This is just too much for me.

JLF000019

JJJ00034

# **EXHIBIT 4**

# **EXHIBIT 4**

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
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*Attorneys for Respondent*  
James J. Jimmerson, Esq.



STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S EXPERT  
DISCLOSURES**

Pursuant to the Scheduling Order entered in this matter, Respondent James J. Jimmerson, Esq., by and through his counsel, makes the following disclosure of expert witness:

1. Rob Bare  
150 Las Vegas Boulevard North  
Las Vegas, NV 89101

Mr. Bare's expert report is attached hereto as Exhibit A. Mr. Bare's training, qualifications, and experience are discussed in his report and detailed further in Exhibit 1 attached to his report. He has not previously testified as an expert witness. A list of documents reviewed by Mr. Bare for this matter is set forth in Exhibit 2 attached to his report.

///

///

///

1 His hourly fee for services rendered in this matter is also set forth in his report.

2 DATED this 26<sup>th</sup> day of February, 2021.

3 BAILEY ♦ KENNEDY

4 By: /s/ Joshua P. Gilmore

5 DENNIS L. KENNEDY

6 JOSHUA P. GILMORE

7 *Attorneys for Respondent*

8 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 26<sup>th</sup> day of February, 2021, service of the foregoing **RESPONDENT'S EXPERT DISCLOSURES** was made via email addressed to the following at their last known email addresses:

DANIEL M. HOOGE  
BAR COUNSEL

DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniely@nvbar.org  
kristif@nvbar.org  
sbnnotices@nvbar.org

*Attorneys for Complainant*  
STATE BAR OF NEVADA

---

/s/ Susan L. Russo  
Employee of BAILEY ♦ KENNEDY

# **EXHIBIT A**

# **EXHIBIT A**

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No.: OBC20-0163

**EXPERT REPORT OF ROB BARE**

**INTRODUCTION**

1. I have been retained by James J. Jimmerson, Esq. in connection with the above-captioned matter (the “Matter”). I have been asked to address certain legal ethics and professional responsibility issues presented in the Matter. The opinions expressed in this Report are solely my own. I reserve the right to reconsider, modify, revise, and/or supplement my opinions if other evidence or documents are presented to me.

**BACKGROUND & QUALIFICATIONS**

2. I am an attorney and have been licensed to practice law in the State of Nevada since 1993. Prior to admission to practice in Nevada, I was admitted to practice in the State of Pennsylvania in 1989. From October 1989 through August 1993, I served as a trial attorney in the United States Army Judge Advocate General’s Corps. Once I moved to Nevada, I served as an Assistant Bar Counsel to the State Bar of Nevada from August 1993 to early 1995, and thereafter served as the Bar Counsel to the State Bar of Nevada, with the exception of a six-month Municipal Judicial term, until becoming a District Court Judge in January 2011. I served as a judge in the Las Vegas Municipal Court from January through July of 2007, as well as a judge in the Eighth Judicial District Court, Department 32, for ten years, from January 2011 until January 2021. All of this is set forth in my curriculum vitae, which is attached hereto as Exhibit 1. I am charging \$650 per hour for my work in this Matter. Given my experience, I believe this is a reasonable rate for my expert work in the areas of legal malpractice and other ethics-related areas, such as the instant task.

**MATTERS REVIEWED**

3. The list of documents that I reviewed in preparing this Report, and upon which I am basing my opinions expressed in this Report, is attached hereto as Exhibit 2. In preparing this Report, I also spoke to Mr. Jimmerson to gather those facts underlying the Matter that are pertinent to this Report and am relying upon the information that he provided as further discussed in this Report. I am also relying on testimony that I understand will be given at the hearing by Amanda Fisher. In addition, I regularly review legal ethics treatises as well as court

decisions, periodicals, and other writings pertaining to legal ethics and professional responsibility and incorporate such knowledge in my opinions expressed in this Report. Further, I am basing my opinions upon my experience as a former District Court Judge for the Eighth Judicial District and as a member of the Office of Bar Counsel for the State Bar of Nevada, including as Bar Counsel.

#### **MATERIAL FACTS**

4. The following facts are either uncontested or not subject to reasonable dispute and are derived from the documents that I reviewed in preparing this Report, my discussions with Mr. Jimmerson concerning the Matter, and anticipated testimony from Ms. Fisher.

##### ***Nicole Cruz Works - for Seven Days - For Jimmerson Law***

5. In or around November 2019, Mr. Jimmerson posted a position for a paralegal to work at his law firm, The Jimmerson Law Firm, P.C. ("Jimmerson Law"). Nicole Cruz applied for the position. Among her stated qualifications, she represented that she was a third-year law student at the William S. Boyd School of Law at UNLV. Mr. Jimmerson interviewed Ms. Cruz and, based on the interview, offered her the position, which she accepted.

6. Within days of commencing her employment, Mr. Jimmerson realized that Ms. Cruz was not qualified for the position. For example, she did not comprehend basic legal terms and her work product was extremely poor. Mr. Jimmerson immediately questioned Ms. Cruz's background and, doubting her prior representations, terminated her employment. He later learned that she lied about being a law student.

7. Relevant to this Matter, as a seven-day, non-accounting, non-bookkeeping employee, there is no evidence that Ms. Cruz knew or could have known of the reasonable efforts taken by Mr. Jimmerson's law firm, through the efforts of Mr. Jimmerson himself, his veteran bookkeeper Amanda Fisher, and his longtime legal secretary Kim Stewart, to train and supervise Ms. Ballard. Nevertheless, months after her termination, and after becoming aware that her misrepresentation concerning Boyd Law School was discovered by Mr. Jimmerson, Ms. Cruz submitted the Bar grievance, which focused on her alleged concerns over accounting and bookkeeping matters even though she was not involved, at all, with Jimmerson Law's books and records.

##### ***Leah Ballard Works - for Twenty-Five Days - For Jimmerson Law***

8. In or around October 2019, Mr. Jimmerson posted a position for a bookkeeper to work at Jimmerson Law. Ms. Fisher was serving as his bookkeeper at the time and had served in that position for over one year after having served as an accountant for many years for Mr. Jimmerson's other businesses. She was interested in taking time away from work due to personal, non-work-related reasons, which Mr. Jimmerson respected, and which prompted him to look for a replacement.

9. Ms. Ballard applied for the position. She was initially interviewed by Ms. Fisher and Ms. Stewart. Ms. Ballard was thereafter recommended to Mr. Jimmerson. Mr. Jimmerson

met with Ms. Ballard for approximately 15-30 minutes and, as a result of the interview, and after noting her prior bookkeeping experience, offered her the position, which she accepted.<sup>1</sup>

10. Mr. Jimmerson tasked Ms. Fisher with training Ms. Ballard. The training took place over the course of two and a half weeks, during which time Ms. Ballard familiarized herself with working at Jimmerson Law, including understanding the administrative tasks associated with serving as the firm's bookkeeper. She was consistently reminded of the need to carefully track and monitor activity involving the firm's bank accounts, including its client trust account. She was also told of the importance of inputting time sheets on client matters daily to facilitate preparing monthly billing statements for clients. Further, she was told to generate daily cash reports for the firm, reflecting all transactions involving the firm's bank accounts.

11. Ms. Fisher was satisfied that Ms. Ballard knew what she was doing. After her training concluded, she assumed the position in place of Ms. Fisher.

12. Mr. Jimmerson maintained daily contact with Ms. Ballard to make sure that she was comfortable in her position and was keeping up with the job. Likewise, even after Ms. Fisher's last day at the firm on November 7, 2019, she continued to communicate with Ms. Ballard and answer any questions that she had. Notwithstanding this, Ms. Ballard started falling behind in preparing daily cash reports for the firm. By the end of November 2019, only 11 days after she finished training and started working on her own, it became clear that she had fallen behind in her work and was unable to complete the various tasks assigned to her.<sup>2</sup>

13. On or about November 25, 2019, Mr. Jimmerson learned that Ms. Ballard was behind in inputting daily timesheets for members of the firm. He immediately reached out to Ms. Fisher and asked her to speak with Ms. Ballard about the matter.

14. On or about November 26, 2019, Ms. Ballard admitted to Mr. Jimmerson, in writing, that she was behind in inputting daily timesheets for members of the firm. When he asked, "How did this happen?", she responded: "It is my complete failure. I got myself overwhelmed and did not communicate that. I have gotten unorganized and made a large mess. I take the responsibility for it. I am willing to work to clean it up and help it in order to the best of my ability. I apologize and it will not happen again."

15. Also, on or about November 26, 2019, in a separate text message to Ms. Fisher, with whom Ms. Ballard had maintained contact, Ms. Ballard apologized for being behind in her work, indicated that she had "made a mess," and disclosed that she was having personal problems at home with her husband.

16. These text messages of on or about November 26, 2019, evidence that Ms. Ballard, upon reflection, took time to type out and memorialize the truth concerning perhaps the most salient fact in this Matter as it relates to the Nevada RPC 5.3 allegation: Ms. Ballard

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<sup>1</sup> According to Mr. Jimmerson, either he or Ms. Fisher contacted Ms. Ballard's prior employer to verify her employment history and received high remarks concerning her credentials.

<sup>2</sup> During her brief tenure with the firm, Ms. Ballard was out of the office for several days due to personal reasons.

concealed the impact of her personal problems and professional shortcomings while remaining employed at the firm, especially during the 11 days of capacity as the sole bookkeeper, only to admit everything after the fact in these text writings.

17. On or about December 2, 2019, Ms. Ballard tendered her resignation to Jimmerson Law. In a text message that she sent to Ms. Fisher, she indicated that the job “is more than I can clearly handle” and “just too much for me.”

18. After accepting Ms. Ballard’s resignation, Mr. Jimmerson took immediate and swift remedial measures. He quickly reached out to Ms. Fisher to request that she return as his firm’s bookkeeper. She agreed (albeit for higher pay) and, at Mr. Jimmerson’s direction, she immediately took steps to address the tasks that had been ignored or not timely handled by Ms. Ballard. According to Mr. Jimmerson, by December 27, 2019, the firm’s books and records were back in order. Notably, and perhaps practically most important, Mr. Jimmerson has relayed that no actual harm was done to any client as a result of Ms. Ballard’s activities, or inactivities, as the case may be.

#### ***Ms. Cruz Files a Grievance Against Mr. Jimmerson***

19. On February 5, 2020, Ms. Cruz filed a grievance against Mr. Jimmerson with the State Bar, alleging that she had heard from Ms. Ballard that Mr. Jimmerson had allegedly instructed Ms. Ballard to pay payroll using funds from his client trust account.

20. The State Bar opened an investigation of Ms. Cruz’s grievance and promptly issued a subpoena for Mr. Jimmerson’s bank account records. In response to the State Bar’s request, Mr. Jimmerson immediately cooperated by producing bank records and client statements, together with an explanation regarding what occurred with his firm’s employment of Ms. Cruz and Ms. Ballard.<sup>3</sup>

#### ***The State Bar Initiates this Disciplinary Proceeding Against Mr. Jimmerson***

21. On October 7, 2020, the State Bar filed its Complaint against Mr. Jimmerson, claiming that he violated Nevada RPC 1.15 (Count I) and Nevada RPC 5.3 (Count II).

22. The State Bar’s allegations underlying Count II may be summarized as follows:

a. Mr. Jimmerson was not reasonable in his efforts to train Ms. Cruz and Ms. Ballard to assist him in managing his firm’s client trust account;

b. Mr. Jimmerson was not reasonable in his efforts to supervise Ms. Cruz and Ms. Ballard to ensure that they appropriately assisted him in managing his firm’s client trust account; and

---

<sup>3</sup> As I understand it, Mr. Jimmerson produced more than 500 pages of documents in response to the State Bar’s request.

c. Mr. Jimmerson knew or should have known that his conduct (in training and supervising these two employees) was improper (or not reasonable).

23. On November 2, 2020, Mr. Jimmerson filed a Motion to Dismiss, arguing that the State Bar failed to allege facts supporting a Nevada RPC 5.3 violation.

24. On November 17, 2020, the State Bar filed an Opposition to the Motion to Dismiss, arguing that Mr. Jimmerson's nonlawyer employees (Ms. Cruz and Ms. Ballard) engaged in "improper trust account actions" at Mr. Jimmerson's direction and that Mr. Jimmerson "failed to, *inter alia*, properly train, instruct, and/or supervise his new employee or verify that she was conducting his trust account transactions properly."

25. On December 2, 2020, the Disciplinary Chair entered an Order denying the Motion to Dismiss, finding that it was fair to infer from the allegations in the Complaint (which were accepted by the Chair as true solely for purposes of the Motion to Dismiss) that they alleged that Mr. Jimmerson did not properly train or supervise his non-lawyer employees and directed them to make improper withdrawals from his client trust account.

26. On December 16, 2020, Mr. Jimmerson filed his Verified Answer to the Complaint.

#### **ISSUES PRESENTED**

27. The legal ethics and professional responsibility issues presented in the Matter that I have been asked to address are as follows:

a. Whether Mr. Jimmerson – as the managing attorney of Jimmerson Law – failed to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that nonlawyer employees will act in a manner that is compatible with Mr. Jimmerson's professional obligations, *see* Nevada RPC 5.3(a) and (b); and

b. Whether Mr. Jimmerson ordered his non-lawyer employees to engage in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson or failed to take reasonable remedial action upon learning that his non-lawyer employees had engaged in conduct that would be a violation of the Rules of Professional Conduct if committed by Mr. Jimmerson, *see* Nevada RPC 5.3(c).<sup>4</sup>

#### **SUMMARY OF OPINIONS**

28. It is my opinion that Mr. Jimmerson satisfied his professional obligations under Nevada RPC 5.3. Specifically:

a. Mr. Jimmerson had and has policies and procedures in place to ensure that nonlawyer employees at his firm act in a manner that is compatible with his professional obligations. As it pertains to the conduct of Ms. Ballard, as described previously herein,

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<sup>4</sup> I was not asked to address whether Mr. Jimmerson satisfied his professional obligations under Nevada RPC 1.15.

the procedure used to hire her was reasonable. Likewise, the procedure used to train her was reasonable. She was trained—at Mr. Jimmerson’s direction—for two and a half weeks before assuming the role of bookkeeper for his law firm. Mr. Jimmerson ensured that she had the appropriate background, training, and experience for the position and checked with her daily to ensure that she was performing her duties and responsibilities.

b. Once Mr. Jimmerson learned that Ms. Ballard was incapable of serving as his firm’s bookkeeper—a fact that she admitted in writing—and had failed to properly input time on client matters and maintain his firm’s books and records, Mr. Jimmerson immediately took steps to correct these errors, including rehiring his former bookkeeper, Ms. Fisher.

c. Nevada RPC 5.3 does not impose strict liability on a lawyer for errors or mistakes committed by a nonlawyer. Based on the facts and circumstances presented, it is clear to me that Mr. Jimmerson neither ordered Ms. Ballard to neglect her duties and responsibilities as the firm’s bookkeeper, nor did he turn a blind eye toward her shortcomings once he discovered that she was not fit for the position, especially when considering the short period of time between her hiring, the discovery of her deficiencies, and the efforts undertaken to remediate those deficiencies, all without harm to any client.

#### ANALYSIS

29. The Nevada Rules of Professional Conduct (RPCs) are evidence of the standard of care to which Nevada-licensed attorneys are held. Nevada RPC 1.0A(d); *Mainor v. Nault*, 120 Nev. 750, 768-69, 101 P.3d 308, 320-21 (2004). Whether an attorney met the standard of care is generally established through expert testimony. *Mainor*, 120 Nev. at 767-69, 101 P.3d at 320-21; *see also Allyn v. McDonald*, 112 Nev. 68, 71, 910 P.2d 263, 266 (1996). This is true in the context of a disciplinary proceeding. *See, e.g., In re Disciplinary Proceeding Against Rodriguez*, 306 P.3d 893, 900 (Wash. 2013); *accord In re Assad*, 124 Nev. 391, 393, 402-03, 185 P.3d 1044, 1045, 1051 (2008). An expert is someone who is qualified by virtue of special knowledge, skill, experience, training, or education to express an opinion on matters within the scope of such knowledge, NRS 50.275, and is permitted to submit an opinion relating to the ultimate issue in a case, NRS 50.295.<sup>5</sup>

30. In the context of a disciplinary proceeding, the State Bar must prove the alleged Nevada RPC violations by clear and convincing evidence. SCR 105(2)(f); *In re Discipline of Reade*, 133 Nev., Adv. Op. 87, 405 P.3d 105, 106 (2017).

#### ***Mr. Jimmerson Properly Trained and Supervised Ms. Ballard and Appropriately Oversaw Her Work as His Firm’s Bookkeeper***

31. Nevada RPC 5.3(a) states that a lawyer who possesses managerial authority within a law firm “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that [a nonlawyer employee]’s conduct is compatible with the professional obligations of the lawyer.” Similarly, Nevada RPC 5.3(b) states that a lawyer who

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<sup>5</sup> The Nevada Rules of Evidence apply in this Matter. SCR 105(2)(f).

has “direct supervisory authority” over a non-lawyer employee “shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” It is my professional opinion that the word “reasonable,” in appearing so often in this ethical mandate, is ultimately the key to this whole scenario in assessing any disciplinary exposure of Mr. Jimmerson’s conduct as the guidelines contained in Nevada RPC 1.0A(c) clearly mandate. This is reflected more specifically by the guidance in interpreting the Rules of Professional Conduct provided by Nevada RPC 1.0A(c), that disciplinary assessment of a lawyer’s conduct will be made on the basis of facts and circumstances as they existed at the time. This is further the reason why elements of willfulness and knowledge, in addition to whether remedial measures were taken to mitigate, are so incredibly important in disciplinary cases.

32. Nevada RPC 5.3(a) and (b) make clear that a lawyer with managerial or supervisory authority is responsible for “ensuring that nonlawyers perform their duties in a manner compatible with the lawyer’s own ethical obligations,” irrespective of the lawyer’s ability to delegate certain tasks to the non-lawyer employees to assist the lawyer in rendering legal services to a client. AMERICAN BAR ASS’N, *Annotated Model Rules of Prof’l Conduct* 511 (9th ed. 2019) [hereinafter, “*Annotated Model Rules*”]; see also *id.* at 273 (noting that a lawyer may delegate recordkeeping tasks to a nonlawyer employee so long as the lawyer remains “ultimately responsible for compliance”). Thus, lawyers who hire nonlawyers “to help discharge their fiduciary duties ... must provide adequate training and supervision” to such nonlawyers. See *id.* at 513.

33. The State Bar alleges that Mr. Jimmerson did not properly train, supervise, and oversee Ms. Ballard.<sup>6</sup> In my opinion, the facts prove otherwise.

34. Mr. Jimmerson relied on Ms. Fisher and Ms. Stewart to conduct the initial interview of Ms. Ballard since she would be assuming Ms. Fisher’s role as the firm’s bookkeeper. As I understand it, Ms. Ballard’s background and qualifications fit the criteria necessary for serving as Jimmerson Law’s bookkeeper. After the interview, Ms. Fisher and Ms. Stewart recommended to Mr. Jimmerson that he hire Ms. Ballard. Mr. Jimmerson then met with Ms. Ballard to assure himself that she had the necessary skill set and, after the meeting, was satisfied that she was a qualified candidate and hired her.

35. Ms. Ballard was not thrust into the proverbial deep end upon being hired. Rather, she worked closely with Ms. Fisher for two and a half weeks, during which time she was trained on the duties and responsibilities associated with the firm’s bookkeeper. During that time, Mr. Jimmerson would check in with Ms. Ballard to make sure that she was familiarizing herself with the position and answer any questions that she had. He also spoke with Ms. Fisher to make sure that she was comfortable with Ms. Ballard acting as the firm’s bookkeeper.

36. After her training was complete, Ms. Ballard began working independent of Ms. Fisher who, as noted above, had decided to take some time away from the firm. Mr. Jimmerson checked in with Ms. Ballard daily to ensure that she had everything under control. He would relay to her the importance of promptly depositing funds in his client trust account, paying

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<sup>6</sup> Ms. Cruz was not involved with Mr. Jimmerson’s client trust account, and therefore, I focus my discussion on the training, supervision, and oversight undertaken by Mr. Jimmerson for Ms. Ballard.

vendors, and inputting timesheets on client matters to assist in preparing monthly statements. Each time that they spoke, Ms. Ballard assured Mr. Jimmerson that she was knowledgeable and capable of handling the job. Further, as I understand it, Ms. Fisher maintained contact with Ms. Ballard to answer her questions, remind her of the importance of documenting transactions involving the trust account, and ensure that she communicated with Mr. Jimmerson on matters relating to the trust account.

37. It was not until the end of November 2019 when Mr. Jimmerson learned that Ms. Ballard was incapable of being the firm's bookkeeper. Despite her prior assurances, Mr. Jimmerson realized that within 11 days, Ms. Ballard had fallen behind in managing the firm's books and records and inputting time sheets for client matters. He immediately took the appropriate steps to address the situation.

38. Mr. Jimmerson had then, and still has now, policies and procedures in place for properly maintaining his firm's books and records and tracking time on client matters. He instructs his bookkeeper to input time from attorneys and non-attorneys at the firm working on client matters daily so that invoices may be timely prepared and sent to clients. Further, he instructs his bookkeeper to carefully track activity associated with his bank accounts, including his client trust account, daily to ensure that the accounts are balanced and reconciled. My impression, after having spoken with Mr. Jimmerson, is that he takes his obligation to manage his client trust account very seriously—he is not indifferent toward his duty to keep complete and accurate records of activity involving his client trust account.

39. The Nevada Supreme Court has said, “The mere fact that an employee acted improperly does not necessarily result in lawyer discipline; the lawyer is not per se vicariously responsible for an employee's misconduct.” *See In re Discipline of Lerner*, 124 Nev. 1232, 1243, 197 P.3d 1067, 1075 (2008).<sup>7</sup> That statement rings true here, where Ms. Ballard fell short in her duties and responsibilities as the firm's bookkeeper despite reasonable efforts undertaken by Mr. Jimmerson to ensure that she was qualified for the position. He maintained regular contact with her to assure himself that she was acting in a manner that was compatible with his professional obligations; nevertheless, it turned out that she was not fit for the job.

40. It must be remembered that a disciplinary assessment of Mr. Jimmerson's conduct must be made “on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation.” Nevada RPC 1.0A(c). Stated differently, the State Bar may not use the benefit of hindsight to assess whether Mr. Jimmerson properly trained, supervised, and oversaw Ms. Ballard. *See Mainor*, 120 Nev. at 775, 101 P.3d at 325.

41. At the time, Mr. Jimmerson neither knew nor had reason to believe that Ms. Ballard was incapable of serving as his firm's bookkeeper until she came forward and disclosed that she had fallen behind in her work. That discovery does not, however, mean that Ms.

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<sup>7</sup> Although the Nevada Supreme Court was not addressing a Nevada RPC 5.3 violation in *In re Lerner*, see *id.* at 1236 n.1, 197 P.3d at 1070 n.1, the Court cited as support for this statement a disciplinary case from the Arizona Supreme Court analyzing Arizona's counterpart to Nevada RPC 5.3. See *id.* at 1243, 197 P.3d at 1075 (citing *Matter of Galbasini*, 786 P.2d 971, 975 (Ariz. 1990)).

Ballard's shortcomings were the direct result of an alleged failure to properly train, supervise, and oversee Ms. Ballard.

42. According to Mr. Jimmerson, he has not had issues with his client trust account in the past (over forty years of practice), and no client suffered any harm as a result of what happened, which further affirms my opinion that Ms. Ballard's mishaps were not due to a systemic failure on Mr. Jimmerson's part in discharging his duties as the managing attorney of Jimmerson Law.

43. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(a) and (b).

***Mr. Jimmerson Neither Ordered Ms. Ballard to Engage in Misconduct nor Failed to Take Reasonable Remedial Action Once He Learned of Ms. Ballard's Shortcomings***

44. Nevada RPC 5.3(c) states that a lawyer "shall be responsible for [the] conduct" of a non-lawyer employee "that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer" if either of the following conditions is met:

- a. The lawyer orders the conduct or ratifies it upon its discovery; or
- b. The lawyer is in a managerial position within the firm, or has direct supervisory authority over the person, and knows of the conduct at a time "when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

45. This rule imposes vicarious liability on a lawyer for non-lawyer misconduct under "certain circumstances." *Attorney Grievance Comm'n v. McDowell*, 93 A.3d 711, 721-22 & n.11 (Md. 2014); *see also* MODEL R. PROF'L CONDUCT, R. 5.3 cmt. [1] (stating that Rule 5.3(c) "specifies the circumstances in which a lawyer is responsible for the conduct of ... nonlawyers"). As noted above, "the mere fact of employee misconduct, without more, does not necessarily denote a violation of Rule 5.3." *Annotated Model Rules* at 517; *see also In re Discipline of Lerner*, 124 Nev. at 1243, 197 P.3d at 1075.

46. The State Bar alleges that Mr. Jimmerson violated Nevada RPC 5.3(c) in two ways: First, by ordering Ms. Ballard to transfer funds purportedly representing attorney's fees out of his client trust account that had not yet been earned; and Second, by failing to take "reasonable remedial action" upon learning that Ms. Ballard had "turn[ed] his books into a complete mess."<sup>8</sup> In my opinion, neither allegation is supported by the facts.

47. As it relates to the transactions involving Mr. Jimmerson's client trust account, according to Mr. Jimmerson, he handled those transactions, not Ms. Ballard, and he reasonably and in good faith believed that the funds in question had been earned and could be withdrawn. Setting aside that Mr. Jimmerson disputes the alleged violation of Nevada RPC 1.15, the fact that

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<sup>8</sup> As noted above, Ms. Cruz was not involved with Mr. Jimmerson's client trust account, and therefore, I focus my discussion on Mr. Jimmerson's interactions with Ms. Ballard.

he directed the transfers based on information available to him at the time means that Nevada RPC 5.3(c) does not apply.

48. As it relates to the handling of Jimmerson Law's books and records, it is clear to me that Mr. Jimmerson fully expected Ms. Ballard to input timesheets for client matters daily and to log activity involving his client trust account. Mr. Jimmerson did not order Ms. Ballard to mishandle his client trust account; nor did he direct her to be careless in terms of tracking credits to and debits from his client trust account. Absent such evidence, there is nothing that leads me to believe that Mr. Jimmerson violated Nevada RPC 5.3(c)(1).


49. Mr. Jimmerson was not indifferent toward the administrative issues created by Ms. Ballard once they were brought to his attention. To the contrary, he confronted her about what had occurred and, upon accepting her resignation, immediately took steps to rehire his former bookkeeper, Ms. Fisher. He then instructed Ms. Fisher to complete all the tasks that had been disregarded or overlooked by Ms. Ballard. She did so within a few weeks (specifically, by December 27, 2019), even in light of this being the holiday season and Mr. Jimmerson having to deal with a recent personal tragedy, at which time Jimmerson Law's books and records were in order. Mr. Jimmerson did exactly what he was supposed to do in this scenario; thus, he did not violate Nevada RPC 5.3(c)(2).

50. For these reasons, it is my opinion that Mr. Jimmerson complied with Nevada RPC 5.3(c).

51. In sum, Mr. Jimmerson acted reasonably regarding all hiring, training and supervising issues presented here, as well as demonstrated extreme and commendable professionalism in swiftly and immediately employing remedial measures to remedy the errors that are the subject of this Matter.

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DATED this \_\_\_\_ day of February, 2021.

DocuSigned by:  
  
720B309B9BEA4A3  
ROB BARE

# **EXHIBIT 1**

**ROB BARE**  
**CURRICULUM VITAE**

150 Las Vegas Boulevard North #1812  
Las Vegas, NV 89101  
RobBare32@gmail.com  
(702) 909-7732  
(702) 250-3392 (c)

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**EDUCATION**

Pennsylvania State University, State College, PA, B.A., Pre-Law (Highest Distinction), 1985  
University of Pittsburgh School of Law, Pittsburgh, PA, J.D., 1988  
The Judge Advocate General's School, Charlottesville, VA, 1989  
National Judicial College, Special Court Jurisdiction, Advanced, Reno, NV 2007  
National Judicial College, General Court Jurisdiction, Reno, NV 2010

**ADMISSIONS TO PRACTICE LAW**

Pennsylvania, 1989 (Inactive)  
United States Army Court of Military Review, 1989  
Nevada, 1993  
United States District Court, District of Nevada, 1996  
United States Supreme Court, 1997  
United States Court of Appeals for the Ninth Circuit, 1998

**LEGAL EXPERIENCE**

**JUDICIAL**

**Judge.** Eighth Judicial District Court, Clark County, NV, Department 32  
(January 3, 2011 to January 3, 2021) Civil/Criminal Court.

Elected in November 2010. Re-elected in November 2014.

**Judge.** Las Vegas, NV, Municipal Court, Department 6  
(January 1, 2007 to July 1, 2007) Criminal Court.

Unanimously appointed by Mayor Oscar Goodman and the Las Vegas City Council to fill the unexpired term of Judge Abbi Silver until the general election.

## **BAR COUNSEL TO THE STATE BAR OF NEVADA**

**Bar Counsel.** State Bar of Nevada (August 1993 to January 2011, with exception of Municipal Judicial term).

Chief attorney for the State Bar of Nevada (Beginning in 1995). Responsibilities included prosecution of all aspects of the attorney professional discipline process in the state of Nevada for both the northern and southern regions; hearings from the informal to the formal level; Continuing Legal Education speaker; supervisory duties over a ten-member staff, including three (3) attorneys and four (4) Certified Legal Assistants.

- Tried or presented to conclusion approximately 870 hearings on behalf of the State Bar of Nevada before either the Southern or Northern Nevada Disciplinary Boards.
- Presented a total of fifteen (15) matters to the en banc Nevada Supreme Court, including disciplinary cases and administrative docket hearings.

## **HIGHLIGHTS OF SEVENTEEN YEAR TENURE AS BAR COUNSEL**

**Ethics Hotline:** Personally and professionally responsible for establishing what now, for years, has been known as the “Ethics Hotline” maintained by the Office of Bar Counsel at the State Bar of Nevada. The genesis of the Ethics Hotline began in 1994 after recommendation by me to the Board of Governors of the State Bar, and since then has evolved into an incredibly important aspect of the services offered by the State Bar. I am extremely proud that literally thousands upon thousands of attorneys have utilized the hotline over the years in order to practice better, and at times, avoid ethical pitfalls. The practical application of the Ethics Hotline is now described by the State Bar as follows: “Nevada-licensed attorneys with questions regarding their professional responsibilities can contact the Office of Bar Counsel for informal guidance during any business day. Each day, a State Bar attorney is assigned to take calls from Nevada-licensed attorneys with questions about their professional responsibilities. Although the Office of Bar Counsel makes every effort to return all calls by the end of the day, our attorneys try to take calls as they come in or, if a message is left, to call back within an hour.” During my time as Bar Counsel, I personally fielded and answered thousands of calls.

**ADKT 370 “E2K” Complete Overhaul of Supreme Court Rules 150-203.5 Adopting the Nevada Rules of Professional Conduct:** With oversight and direction from the Supreme Court of Nevada, and specific appointment by the Board of Governors of the State Bar of Nevada, I served as the Reporter to the committee tasked with review of each and every rule of professional conduct or ethics rule. This resulted in a lengthy submission to the Supreme Court, after numerous committee meetings and public hearings in 2003-2004, which dissected and ultimately

led to the adoption of the current version of the Nevada Rules of Professional Conduct. As Reporter, the pleading submitted and filed with the Supreme Court was my responsibility. Further, along with select committee members, I presented the petition to the en banc Supreme Court in Carson City, NV. This effort, in ADKT 370, affectionately referred to as “Ethics 2000”, resulted in transforming the prior set of Supreme Court Rules into the Nevada Rules of Professional Conduct, which have essentially been in place as of the effective date May 1, 2006. Significant changes as a result of this effort were the establishment of interpretive guidelines as to how the Rules of Professional Conduct should be applied, as well as substantive changes concerning lawyer fees, confidentiality, duties to prospective clients, conflict waivers, sex with client prohibition and disqualification and screening in hiring of lawyers.

**NRS 7.285 Unlawful Practice of Law: Initiation of Civil Action by State Bar of Nevada:**

Personally and professionally instrumental, following lobbying efforts and presentation to both the Nevada Assembly and Nevada Senate, in what is now the entirety of NRS 7.285, Unlawful Practice of Law. With approval from the Board of Governors for the State Bar of Nevada and the Unauthorized Practice of Law Committee of the State Bar, I presented multiple live witnesses to the Nevada Legislature in Carson City, NV. These witnesses had been victimized by business-like predators engaged in the unauthorized practice of law. This resulted in the current version of NRS 7.285, which includes recidivist provisions, and perhaps most importantly, Section 3, which specifically provides that the State Bar of Nevada may bring a civil action to secure an injunction and any other appropriate relief against a person who violates this section.

**SCR 106.5(4) Lawyer Wellness Program, Limited Use Policy:** Personally and professionally responsible for the recommendation and draft of what is now SCR 106.5(4) Limited Use Policy, which states in relevant part that all information obtained by the Lawyers Concerned for Lawyers Program, or as a result of voluntary services sought from the Nevada Lawyer Assistance Program, including the initial report and any subsequent report to the program thereafter, shall be confidential and shall not be admissible in any State Bar disciplinary, admission, administrative, or other State Bar proceeding. My idea for this vitally important rule, which allows attorneys affected by drug and alcohol abuse to get help without fear of disciplinary exposure, was actually taken from what is now Army regulation 600-85, a United States Army provision which I was familiar with in my time in the service, likewise known in the Army as the Limited Use Policy, which enables soldiers to get help with drug and alcohol abuse without retribution.

**Lawyer Advertising:** As Bar Counsel, I played a prominent role in the development of what is now a full set of lawyer-advertising Rules of Professional Conduct.

**SCR 102(1) Irrevocable (Permanent) Disbarment:** After some time of prosecuting cases as Bar Counsel to the State Bar, I formed an opinion that an option that should be available to both Disciplinary Panels and ultimately the Supreme Court, in appropriate cases, is permanent disbarment. After recommendation to the Board of Governors and approval by them, and adoption by the Supreme Court, ultimately an irrevocable disbarment became an option pursuant to SCR 102(1).

**Attorney Specialization:** Played an integral role in the drafting of and presentation to the Nevada Supreme Court of what now are Attorney Specialization Rules of Professional Conduct, which allows Nevada attorneys to communicate specialty areas of practice, provided the Certifying Organization has approved and certain conditions precedent are met. Over the years, this effort has resulted in Nevada lawyers having the ability to be approved as specialists in the areas of business bankruptcy, child welfare, civil trial advocacy, criminal trial advocacy, elder law, estate planning law, family law, personal injury and workers' compensation.

**SCR 105.5 Diversion and Mentoring:** Played an integral role in what became SCR 105.5 Diversion and Mentoring Program. Here, as an alternative to, or in conjunction with disciplinary sanctions, an attorney deemed eligible by the appropriate disciplinary board panel may participate in an approved diversion and/or mentoring program, designed to assist with or improve management or behavior problems that resulted in, or are expected to result in, minor misconduct.

**Justice Nancy Saitta's Professionalism Summits:** Honored to have been asked by then Justice of the Supreme Court Nancy Saitta to lead in the creation of a number of professionalism summits, 2005-2007, which were ethics programs conducted under the direction of Justice Saitta and sponsored by the State Bar of Nevada, the Clark County Bar Association, the Washoe County Bar Association, the Nevada Justice Association, and lawyers and law firms throughout the state of Nevada.

**Gardner v. State Bar of Nevada, 284 F.3d 1040 (2002):** Sole counsel for the State Bar of Nevada and all its Board of Governors. Following argument at the US District Court level and to the Ninth Circuit Court of Appeals, the case resulted in a reported decision from the United States Court of Appeals, Ninth Circuit. The Court upheld the State Bar of Nevada's efforts to publicize to and to educate the public concerning our system of justice, the role of lawyers, and to make the law work for everyone. In relevant part, the Ninth Circuit found that the work of the State Bar to foster public understanding of the adversary nature of law is vital to the Bar's function. The court went on to find that in our real world, lawyers are not merely a necessity, but a blessing. (Emphasis added).

### **AUTHORED PUBLICATIONS**

*Nevada Lawyer*. November 2008. "Operational Law."

*Nevada Lawyer*. November 2006. "Civilian Lawyers Defending Military Personnel at a Trial by Court-Martial."

*Nevada Lawyer*. January 2006. "The Professional Independence of a Lawyer."

*Nevada Lawyer*. November 2005. "State Bar Counsel Reflects on JAG Career."

*Nevada Lawyer*. June 2005. "Top 10 Bar Complaints and How to Avoid Them."

*Nevada Lawyer*. January 2002. "Lawyers who Serve their Country."

*Nevada Lawyer*. September 1996. "Some Thoughts on Ethics and Lawyer Advertising."

*Nevada Lawyer*. December 1995. "Avoid Business Transactions with Clients...But if you must, Know the Rules."

*Nevada Lawyer*. November 1995. "Look at the Less Serious Side of Bar Discipline: The Names have Been Changed."

### **US ARMY JUDGE ADVOCATE GENERAL'S CORPS**

**Senior Defense Trial Lawyer.** (Captain) U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Irwin, California (May 1991 to August 1993).

Attorney Responsible for managing all defense functions for clients stationed at Fort Irwin and all of southern California, including:

**Criminal Accused Trial Representation.** Represented as the trial attorney and assigned other lawyers to represent soldiers accused of criminal offenses at Court-Martial proceedings. This included all stages of the Court-Martial process: formal preliminary investigation, extensive motion practice (including written briefs) in front of the military judge, and in-court trial advocacy before military juries.

**Supervisor, Trainer, Rater.** Supervised two (2) criminal defense lawyers and two (2) paralegals. Supervisory duties included primary responsibility for staff training in all aspects of client representation. Prepared written ratings (Officer Evaluation Reports) for the two (2) other attorneys in the office.

\* Selected for Senior Defense Lawyer position in first tour of duty.

(This position is usually given to a Major or senior Captain).

**Trial Defense Lawyer.** U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Ord, California (October 1989 to May 1991).

Represented clients accused of criminal offenses and facing trial by Court-Martial. Carried an average case load of 25 concurrent Court-Martial clients. Deployed with units from Fort Ord to Panama from December 19, 1989 to February 6, 1990, in removal of General Noriega from Panama; advised commanders of various legal aspects of armed conflict scenario.

As a lawyer in the Judge Advocate General Corps, I have:

- Tried approximately 150 jury and bench trials representing clients accused of murder, attempted murder, rape, larceny, aggravated assault, and various other serious alleged felony cases.
- Litigated approximately 100 hearings concerning the command's attempts to discharge a soldier for alleged administrative misconduct.

**Speaking/Instructor Experience in the Military of Notable Mention.** Speaker and instructor at the Judge Advocate General's School, Charlottesville, VA, 1990. Instructed students on operational law, as well as ethics and professional responsibility.

**TEACHING AND INSTRUCTION EXPERIENCE/ATTENDANCE AT RELEVANT  
EDUCATIONAL SEMINARS**

- Adjunct Professor at Community College of Southern Nevada, which became the College of Southern Nevada, teaching Legal Research from 2001-2009. Instructor within College's Paralegal Studies Program teaching substantive law and legal ethics to college students two semesters per year. Total of sixteen semesters.
- Speaker at various Bridge the Gap Continuing Legal Education Programs, beginning in 1993, held in both Las Vegas, NV and in Reno, NV, sponsored by the State Bar of Nevada, provided to new admittees to the Nevada State Bar. One to two hours, depending on curriculum, per year. Topic: Ethics and Professional Responsibility.
- Speaker at various Annual Meetings of the State Bar of Nevada, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker at various conventions, held in various locations within the United States and in Canada, sponsored by the Nevada Trial Lawyers Association (NTLA), which became the Nevada Justice Association (NJA), in capacity as Bar Counsel to the State Bar of Nevada. Topic: Ethics and Professional Responsibility. 1994-2010.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of the Federal Public Defender's Office held in both Las Vegas, NV and in Reno, NV, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2007. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor to attorney and non-attorney members of various law firms, including McDonald Carano, at both their Las Vegas, NV and Reno, NV offices, in capacity as Bar Counsel to the State Bar of Nevada. Various times, 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker at various luncheon meetings held by the Southern Nevada Association of Women Attorneys (SNAWA), held in Las Vegas, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility.
- Speaker and Continuing Legal Education Instructor at various annual Family Law seminars sponsored by the State Bar of Nevada in the State Bar's Family Law section, in both Tonopah, NV and Ely, NV, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2010. Topic: Ethics and Professional Responsibility, specifically applied to Family Law matters.
- Attendee and occasional Presenter at National Organization of Bar Counsel (NOBC) meetings held in conjunction with the American Bar Association Annual and Semi-Annual meetings, held in various locations throughout the United States, in capacity as Bar Counsel to the State Bar of Nevada. 1994-2009. Topic: Ethics and Professional Responsibility.

- Attendee and Graduate of Special Court Jurisdiction: Advanced, Two-Week Course at the National Judicial College, Reno, NV, in capacity as Municipal Court Judge. An intense training given to lower court judges, including Ethics instruction relevant to the canons of judicial ethics. 2007.
- Instructor at State Bar of Alabama Annual Convention, held in Destin, FL, 2008. Topic: Ethics and Professional Responsibility, with primary focus on the ethics of lawyer advertising.
- Attendee and Graduate of General Court Jurisdiction Two-Week Course at the National Judicial College, Reno, NV, in capacity as District Court Judge. An intense training given to District Court judges, including Ethics instruction relevant to the canons of judicial ethics. 2011.
- Attendee at State Bar of Nevada 2011 Annual Meeting, Kauai, HI. June 2011. Continuing Legal Education seminar. This included 5.5 credit hours of Ethics.
- Attendee at Nevada Justice Association' 35<sup>th</sup> Annual Convention, San Francisco, CA. September 2011. This included 2 credit hours of Ethics.
- Attendee at Advanced Family Law Seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. December 2011. This included 2 credits hours of Ethics.
- Attendee at Nevada Judicial Leadership Conference, sponsored by the Nevada Administrative Office of Courts, Las Vegas, NV. May 2012. This included 5.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, San Diego, CA. June 2012. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 12.5 hours of instruction.
- Attendance at the 84<sup>th</sup> Annual Meeting of the State Bar of Nevada, San Diego, CA. June 2012.
- Attendance at the 36<sup>th</sup> Annual Convention of the Nevada Justice Association (NJA), San Diego, CA. October 2012. This included 2 credit hours of Ethics.
- Presenter and Ethics Continuing Legal Education Provider at event sponsored by the Washoe County Bar Association, entitled "Preventing Nevada Legal Malpractice", Reno, NV. March 2013. This included 4 credit hours of Ethics instruction.
- Attendee at Ethics in Trial and Appellate Practice seminar, sponsored by the State Bar of Nevada, Las Vegas, NV. February 2013. This included 5 credit hours of Ethics.
- Attendee at Evidence in a Courtroom Setting seminar, sponsored by the National Judicial College (NJC). May 2013. This included 2.5 credit hours of Ethics.
- Instructor to Young Lawyers at the Trial Academy, sponsored by the State Bar of Nevada, Lake Tahoe, NV. July 2013. Hands-on, individualized instruction, as a District Judge, to lawyers, covering all aspects of the litigation and trial process. This included 17.5 credit hours of instruction.

- Instructor, along with attorney F. Lee Bailey, at the Organization of Bar Investigators Tenth Anniversary Seminar, Las Vegas, NV, October 2013.
- Instructor at Las Vegas Defense Lawyers seminar, “Civil Trial Practice Tips”, Las Vegas, NV. January 2014.
- Attendee at Inn of Court seminar, “The Wrong Man: Witness Identification”. February 2014.
- Attendee at District Court Judge training on Medical Malpractice cases. April 2014.
- Attendee at State Bar of Nevada 2014 Annual Meeting. July 2014.
- Attendee at National Judicial College seminar, “Today’s Justice: The Historic Bases”. July 2014.
- Attendee at Nevada Justice Association (NJA) Annual Convention/Seminar. October 2014. This included 2 credit hours of Ethics.
- Instructor at seminar sponsored by the State Bar of Nevada, “Ethics and Practice Tips in Trial and Appellate Practice”. October 2014. This included 6 credit hours of Ethics instruction.
- Attendee at the State Bar of Nevada, Young Lawyers Section, 2015 Annual Meeting. July 2015.
- Attendee at Nevada Justice Association 39<sup>th</sup> Annual Convention. October 2015. This included 2 credit hours of Ethics.
- Attendee at State Bar of Nevada seminar, “Top 10 Ethical Pitfalls for Nevada Attorneys”. April 2016. This included 3 credit hours of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Nevada Judicial Leadership Summit”. April 2016. This included 4 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 40<sup>th</sup> Annual Convention/Seminar. September 2016. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar, “Ethics”. February 2017. This included 8 credit hours of Ethics instruction.
- Instructor at event sponsored by the Nevada Attorney General’s Office, “Ethics in Litigation”. May 2017. This included 3 credit hours of Ethics instruction.
- Attendee at National Judicial College seminar, “Conducting the Trial”. June 2017. This included 1.5 credit hours of Ethics.
- Attendee at Nevada Justice Association (NJA) 41<sup>st</sup> Annual Convention/Seminar. October 2017. This included 1 credit hour of Ethics.
- Attendee at State Bar of Nevada seminar, “To Report or Not to Report, Save a Life”. November 2018.
- Instructor at Supreme Court of Nevada seminar, “2019 Nevada Limited Jurisdiction Judges, Winter Seminar”. January 2019. Instructed approximately 100 lower court judges on how to make an effective record to better substantiate court orders on appeal.

- Attendee at Eighth Judicial District Court seminar, “Judges Advance”. February 2019. This included 1.5 credit hours of Ethics.
- Attendee at Supreme Court of Nevada, Nevada District Judges Conference. May 2019. This included 2 credit hours of Ethics.
- Instructor at Nevada Justice Association seminar held at the Boyd School of Law, “Elements of Nevada Legal Theories”. In attendance were lawyers and law students. September 2019.
- Instructor at Nevada Justice Association seminar, “Entertaining Elements of Nevada Legal Theories”. November 2019.
- Attendee at State Bar of Nevada seminar, “Dealing with Adversity”. June 2020. This included 1 credit hour of Ethics.
- Attendee at Supreme Court of Nevada seminar, “Ethics – Judges as Bosses”. August 2020. This included 1 credit hour of Ethics.
- Attendee at Eighth Judicial District Court AB 236 Training. September 2020.

#### **LEGAL MALPRACTICE CASES ASSIGNED TO ME AS DISTRICT JUDGE (2011-2021)**

A-10-627470-C - Company sued its former attorneys for alleged malpractice. After extensive motion practice, parties ultimately settled their case (after Defendants' motion to enforce the settlement agreement was granted).

A-11-650047-C – Personal Injury attorney's former client sued for malpractice after she received a smaller settlement than expected. Parties settled at the arbitration stage.

A-13-677618 - Former client sued her divorce attorney for malpractice. Parties stipulated to settle their case just after discovery commenced.

A-17-756039-C - Company sued its former attorney alleging that he had a conflict of interest due to ownership in a competing company. Defendant never appeared resulting in Plaintiff obtaining a default judgment.

A-17-759347-C - An elderly couple sued their former attorneys alleging that they stole their property and overbilled them.

A-17-760737-C - Several financial companies sued multiple firms alleging they failed to diligently represent them in their Nevada cases. The case included extensive motion practice.

A-17-763982-C – Doctor sued his former business attorney based on myriad of malpractice allegations. Numerous pre-trial motions.

A-18-768688-C - Plaintiffs sued their former construction defense attorney. Parties stipulated to dismiss their case.

A-18-785751-C - Attorney sued his former clients for breach of contract (representation on multiple properties on HOA foreclosure cases) and Defendant counterclaimed for legal malpractice. After some motion practice, parties stipulated to dismiss the case.

A-18-786655-C - Plaintiff is an inmate convicted of murder along with his father. Plaintiff alleged that attorney committed legal malpractice for failing to represent him after non-payment. Defendant's motion to dismiss was granted and that order was affirmed by the Nevada Supreme Court.

A-19-792712-C - Plaintiff sued his former personal injury attorney. Complaint was never served and thus the case was dismissed.

A-19-797290-C - Plaintiffs (estate and the widow) sued their attorney (who drafted the trust document in question) for malpractice alleging that the trust document incorrectly deprived them of their ownership of certain property.

A-19-799229-C - Plaintiff sued her former personal injury attorney. Parties stipulated to dismiss the case.

### **PROFESSIONAL ASSOCIATIONS**

Pennsylvania State Bar (Admitted 1989) (Inactive)  
State Bar of Nevada (1993- Present)  
National Organization of Bar Counsel (1993-2010)  
Clark County Bar Association (1994-2020)

### **NOTABLE PROFESSIONAL AWARDS/RATINGS**

- Recipient of the Pro Bono Award of Judicial Excellence, presented by the Legal Aid Center of Southern Nevada (2014)
- Martindale-Hubbell – AV Preeminent (The highest peer rating standard. This is given to attorneys who are ranked at the highest level of professional excellence for the legal expertise, communication skills, and ethical standards by their peers.)

# **EXHIBIT 2**

### **DOCUMENTS REVIEWED**

- Complaint, filed October 7, 2020
- Motion to Dismiss, filed November 2, 2020
- Opposition to Motion to Dismiss, filed November 17, 2020
- Order Denying Motion to Dismiss, filed December 2, 2020
- Verified Answer, filed December 16, 2020
- Order Appointing Formal Hearing Panel, filed January 29, 2021
- Notice of Formal Hearing, filed February 4, 2021
- Mr. Jimmerson's Initial Disclosures, served January 28, 2021, with the following exhibits:
  - o Exhibit A (JJJ0001-JJJ00002)
  - o Exhibit B (JJJ00003-JJJ00004)
  - o Exhibit C (JJJ00005)
  - o Exhibit G (JJJ00012-JJJ00015)
  - o Exhibit M (JJJ00028-JJJ00029)
  - o Exhibit N (JJJ00030-JJJ00034)
  - o Exhibit Q (JJJ00562)
  - o Exhibit R (JJJ00563-JJJ00565)
- Mr. Jimmerson's Supplemental Disclosures, served February 26, 2021, with the following exhibits:
  - o Exhibit Y (JJJ00593-JJJ00597)
  - o Exhibit Z (JJJ00598-JJJ00601)
  - o Exhibit AA (JJJ00602-JJJ00606)
  - o Exhibit BB (JJJ00607-JJJ00608)
  - o Exhibit CC (JJJ00609-JJ00610)

# **EXHIBIT 5**

# **EXHIBIT 5**

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302  
Telephone: 702.562.8820  
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JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**DECLARATION OF JOSHUA P.  
GILMORE**

1 I, Joshua P. Gilmore, declare as follows:

2 1. I am over 18 years of age and a resident of Clark County, Nevada. I am a partner at  
3 the law firm Bailey ♦ Kennedy, counsel of record for James J. Jimmerson in the above-captioned  
4 matter. I am competent to testify to the facts stated herein, which are based on personal knowledge  
5 unless otherwise indicated, and would do so if requested. I make this Declaration in support of  
6 Respondent's Motion for Approval of Conditional Guilty Plea (the "Motion").

7 2. On February 23, 2021, I sent a letter to Assistant Bar Counsel Daniel T. Young,  
8 enclosing a draft Conditional Guilty Plea in Exchange for a Stated Form of Discipline (the "Plea")  
9 and asking if he would approve it on behalf of the State Bar.<sup>1</sup>

10 3. On March 3, 2021, I received an email from Mr. Young, indicating that the State Bar  
11 declined to accept the Plea.

12 4. On March 12, 2021, I sent a letter to Mr. Young, asking if he would file the Plea  
13 pursuant to SCR 113 so that the parties could request a status conference with the Chair to schedule  
14 a date and time for the Hearing Panel to consider the Plea (and address any related scheduling  
15 matters).

16 5. On March 16, 2021, I received an email from Mr. Young, indicating that it was his  
17 position that the Plea "does not meet the requirements of SCR 113 to be presented to a Panel without  
18 the acceptance of Bar Counsel. Therefore, if you wish to have this 'Conditional Guilty Plea'  
19 considered by a Panel you should file an appropriate motion and make such a request."

20 6. On March 16, 2021, I called and spoke to Mr. Young about his email. Upon inquiry,  
21 Mr. Young indicated that Mr. Jimmerson may not present the Plea to the Panel pursuant to SCR 113  
22 because it does not include a form of discipline. Based on his position, I told him that I would  
23 prepare and file a motion. I separately discussed with Mr. Young how my firm had handled a  
24 disciplinary proceeding in the past where the attorney was allowed to tender a plea to the hearing  
25 panel for review despite Bar Counsel's objection to it and referenced the June 23, 2017 Order that is  
26 attached as Exhibit 7 to the Motion. Mr. Young did not necessarily agree or disagree with the prior

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28 <sup>1</sup> The Plea enclosed with my February 23, 2021 letter replicates the Plea that is attached as Exhibit 1 to the  
Motion, with one exception—the version attached to the Motion as Exhibit 1 contains two additional mitigating factors.

1 decision. With that in mind, I asked him if I needed to include in the motion the basis for asking the  
2 Panel to consider the Plea since Bar Counsel has not approved it. He told me to do so; that way, the  
3 issue is fully briefed for purposes of a complete record in this case.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 EXECUTED this 26<sup>th</sup> day of March, 2021.

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7 /s/ Joshua P. Gilmore  
JOSHUA P. GILMORE  
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# **EXHIBIT 6**

# **EXHIBIT 6**

## Two Case Studies in the Exercise of Discretion in Lawyer Discipline Systems

Donald R. Lundberg\*

### Introduction

Discretion in discipline: The obvious short answer is, “but of course!” Any system of finite resources, structured to regulate human behavior in all of its complexity on the basis of a set of rules, will inevitably incorporate the exercise of discretion. There’s nothing particularly interesting about that. Several subsidiary questions are interesting: At what points is discretion exercised? Who exercises that discretion? What criteria limit the exercise discretion? What checks and balances exist to assure that relevant actors are discharging their discretion responsibly and with integrity?

This brief paper will examine the points within two lawyer discipline systems where discretion is exercised. One system is hypothetical—one governed by the ABA Model Rules for Lawyer Disciplinary Enforcement (Model Rules).<sup>1</sup> The other is the system best known to the author—Indiana’s.<sup>2</sup>

### Intake and Facial Screening for Merit

#### Model Rules

Central Intake Model: Model Rule 1(B)(4)—“There is hereby established a central intake office, which shall determine whether the facts stated in a complaint or other information regarding the conduct of a lawyer provide grounds for further

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\* Executive Secretary, Indiana Supreme Court Disciplinary Commission.

1. The ABA Model Rules for Lawyer Disciplinary Enforcement are available on-line at: <http://www.abanet.org/cpr/disenf/contents.html> (last visited April 14, 2009). So far as I am aware, no jurisdiction has adopted the pure ABA Model Rules for Lawyer Disciplinary Enforcement. Louisiana may be the closest. Throughout this paper, the ABA Model Rules for Lawyer Disciplinary Enforcement will be referred to as the Model Rules. Reference to the ABA Model Rules of Professional Conduct will be as the Model Prof. Cond. Rules.

2. The procedures governing Indiana’s lawyer discipline system are set out in Indiana Admission and Discipline Rule 23. [http://www.in.gov/judiciary/rules/ad\\_dis/index.html#\\_Toc202257372](http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc202257372) (last visited April 14, 2009). As one might expect, most state lawyer discipline systems are quite similar broadly speaking. Having been designed by judges and lawyers, it should come as no surprise that they reflect a strong commitment to the basic due process principles of notice and an opportunity to be heard. But in the details, there is great diversity in how systems differ, including the ability to investigate absent a third party complaint, the role of probable cause bodies, reliance on volunteers, the use of multiple- or single-member hearing bodies, formality of hearings, direct involvement by state high courts, availability of consent discipline, etc. For example, Indiana’s system has more direct high court involvement than the Model Rules contemplate.

action by any agency designated by the court under Rule 1(A)<sup>3</sup> and (a) dismiss the complaint; or (b) forward it to the appropriate agency or agencies.”

Model Rule 1(B)(5)(1) pre-supposes the existence of “written guidelines for dismissal of complaints,” although the Model Rules themselves do not specify the content of such guidelines. The guidelines are to be issued by disciplinary counsel.<sup>4</sup> Consultation requirements and the process for developing the guidelines are not addressed in the rules. Model Rule 1(B)(5)(b) requires that, in addition to a copy of the dismissal guidelines, the central intake office will provide a complainant whose complaint is dismissed “a concise written statement of the facts and reasons for referral of the complaint to an agency other than the disciplinary agency.”

Model Rule 3(A) establishes appeal procedures when central intake disposes of a complaint in a way that is not satisfactory to the complainant. The appeal must be taken within thirty days of notice of the disposition decision to a hearing committee chair, “who may approve, modify or disapprove the dismissal, or direct that the matter be investigated by disciplinary counsel.”<sup>5</sup> Disciplinary counsel may appeal the review decision of a hearing committee chair to a second hearing committee chair, whose decision is final.<sup>6</sup>

Whether coming from central intake or from some other source, disciplinary counsel must evaluate information alleging lawyer misconduct. In addition to the authority to make referrals to other appropriate agencies, disciplinary counsel may dismiss if “the information, if true, would not constitute misconduct or incapacity.”<sup>7</sup> Otherwise, disciplinary counsel must conduct an investigation. There is no provision for complainant appeal if disciplinary counsel decides to dismiss a complaint on its face.

### **Indiana**

The Indiana Supreme Court Disciplinary Commission is an agency of the Indiana Supreme Court charged with investigative and prosecutorial responsibilities. The Disciplinary Commission is a board of nine Supreme Court-appointed members that meets monthly and acts as a board of directors and a probable cause body. The administrator and chief disciplinary counsel is the Executive Secre-

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3. Those agencies include “a lawyer discipline and disability system, a client protection fund, mandatory arbitration of fee disputes, voluntary arbitration of lawyer malpractice claims and other disputes, mediation, lawyer practice assistance, and lawyer substance abuse counseling.” Model Rule 1(A).

4. Model Rule 4(B)(7).

5. A disciplinary board of nine members is appointed by the state high court to oversee the discipline process. See generally, Model Rule 2. The disciplinary board, in turn, appoints three or more hearing committees by geographic region, designating a chair for each committee. Model Rule 2(B)(3). For a description of the hearing committee chair’s review authority, see Model Rule 3(E)(1).

6. Model Rule 3(E)(1).

7. Model Rule 11(A).

tary. An initial claim of misconduct presented for investigation is known as a “grievance.”<sup>8</sup>

A grievance is initially screened by the Executive Secretary or a staff attorney and is subject to facial dismissal by the Executive Secretary if “it raises no substantial question of misconduct.”<sup>9</sup> The Executive Secretary’s dismissal decision is subject to the “approval of the Commission.”<sup>10</sup> Both grievant and respondent are notified of the dismissal.

No grievant appeal of the Executive Secretary’s dismissal decision is contemplated by rule. In practice, a dismissal decision will be re-scrutinized by the Executive Secretary if the grievant complains about a dismissal. In appropriate cases, further consultation occurs between the Executive Secretary and the Commission and may result in re-opening a dismissed case for investigation.

Even in the absence of a third party grievance, the Executive Secretary can initiate an investigation by preparing a grievance on the authority of any member of the Disciplinary Commission or the Commission as a body.<sup>11</sup>

“Misconduct” is not formally defined. Implicitly, it is, “[a]ny conduct that violates the Rules of Professional Conduct or the Code of Judicial Conduct heretofore adopted or as hereafter amended by this Court or any standards or rules of legal and judicial ethics or professional responsibility then in effect or hereafter adopted by this Court. . . .”<sup>12</sup>

If a grievance is not dismissed under this standard, it is opened for investigation, with notice to the respondent, who has an obligation to respond and otherwise cooperate.

**Discussion:** The lawyer discipline system is not blessed (cursed?) with infinite resources. In light of limited resources, there is always a need to allocate finite resources in a reasonable way so as to optimize the public protection function of the lawyer discipline process. Initial complaint screening is an important point in the process where resource allocation decisions come into play. According to the statistics kept by the ABA Center for Professional Responsibility in its annual Survey on Lawyer Discipline Systems, 4.06% percent of complaints coming into disciplinary system nationally result in a formal charge of misconduct.<sup>13</sup> The system is like a funnel with a very wide top and a fairly narrow bottom. Between the two, claims of lawyer misconduct are eliminated, either on their face or following an investigation, that are viewed as being non- or less-meritorious. Because the human and financial resources of the disciplinary system are not very elastic,

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8. Proceedings involving lawyer disability are also contemplated under Indiana’s lawyer regulatory regime. Ind. Admis. Disc. R. 23(25). This paper will not discuss those proceedings.

9. Ind. Admis. Disc. R. 23(10)(a)(1).

10. *Id.*

11. Ind. Admis. Disc. R. 23(10)(a).

12. Ind. Admis. Disc. R. 23(2)(a).

13. See 2007 Survey on Lawyer Discipline Systems, Chart I, available at <http://www.abanet.org/cpr/discipline/sold/chart-1.pdf> (last visited April 14, 2009).

every hour spent saying “no” to a complaint is roughly an hour less time to spend pursuing a (more) meritorious case to a conclusion that protects the public. Taken to the extreme, lavishing resources on lengthy and customized explanations to non-meritorious complainants about why their complaints were dismissed might result in marginally fewer discontented, unsuccessful complainants, but it will be at the cost of scant remaining resources to effectively pursue serious, meritorious claims of lawyer misconduct. This is not meant to downplay the value of articulating reasons for dismissal as an internal means of reserving facial dismissal for truly non-meritorious cases. It is often a balancing act between the two: responsibly, but efficiently, disposing of low-merit complaints in a way that maximizes the resources available for investigating cases with probable merit and prosecuting cases of true merit.

The threshold dismissal standard under the Model Rules is whether “the information alleges facts which, if true, would constitute misconduct or incapacity.” This is roughly the typical standard for dismissal of civil complaints for failure to state a claim upon which relief can be granted.<sup>14</sup> This standard, while seemingly allowing little discretion, inevitably brings disciplinary counsel discretion into play at two, perhaps three, levels. The first level is factual. This standard suggests that disciplinary counsel has no discretion to make any credibility determinations on the face of a complaint no matter how fabulous the allegations. This author would suggest that in the real world of screening complaints, some degree of discretion is exercised to eliminate outlying cases on the basis of complainant credibility when, for example, the complaint makes outrageous factual claims that would, in the ordinary course, tend to have documentary support, yet none is present.

The second level of exercising discretion is whether a given set of facts constitutes a violation of the Rules of Professional Conduct. Consider the following two examples: Model Prof. Cond. Rule 1.1 states: “A lawyer shall provide competent representation to a client. Competent representation requires the knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” The rule’s reference to reasonableness suggests that it contemplates a negligence standard.<sup>15</sup> In the civil liability arena, the doctrine of proximate cause acts to limit the cases that are worth pursuing as civil claims for damages due to professional negligence. The disciplinary system is generally not a substitute for private compensation mechanisms. Rather, it is forward-looking, with the goal of protecting future clients and others from harm as a result of, as in this example, lawyer incompetence. Because of this, the fact that a lawyer’s incompetence in the case at issue caused no harm is not controlling over the analysis of whether the public needs protection from similar incompetence in the future that may cause significant harm. In other words, the doctrine of proximate cause is not significantly operative in a lawyer discipline regime. In this sense, a strict reading of Model Prof.

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14. See Fed. R. Civ. P. 12(b)(6) and its state counterparts.

15. See Model Prof. Cond. R. 1.0(h) (“reasonable” defined).

Cond. R. 1.1 would capture significantly more cases than would be attractive as civil malpractice cases.

If every complaint, liberally construed, were to be investigated on a claim of simple negligence without regard to the harm it caused or other considerations, there would be very few complaints dismissed at the initial screening stage. Yet, in the real world of case screening, the author would suggest that criteria beyond a theoretical violation of Model Prof. Cond. R. 1.1 come into play that result in screening out complaints at the outset. Some of these considerations, none of which are controlling, include: (1) whether the respondent lawyer has a pattern of prior, similar complaints or whether it is an isolated situation; (2) whether the underlying representation had merit; (3) the materiality of the incompetence—whether it was purely procedural or collateral to the matter on its merits versus threatening to the merits; and (4) whether the harm was cured.

Similar considerations could come into play with complaints about diligence under Model Prof. Cond. R. 1.3, which also incorporates a negligence standard, and complaints about communication under Model Prof. Cond. R. 1.4, which also incorporates a negligence standard.

Take the specific example of a lawyer who allows a statute of limitations run. One could argue that this is a violation of Model Prof. Cond. R's. 1.1 and 1.3 because it is not competent or reasonably diligent lawyering to allow a jurisdictional time limit to pass while a case is entrusted to a lawyer. As a matter of civil liability, the case would be fairly straight-forward, its viability limited only by value of the case within the case. As a disciplinary matter, surrounding circumstances would likely dictate whether the matter is summarily dismissed or moves further into the system. Some of those considerations would be: (1) whether the lawyer was forthcoming and candid with the client about the missed deadline; (2) whether the lawyer is insured or otherwise in a position to satisfy a civil liability judgment; (3) whether the lawyer has a history of previous discipline, especially discipline for incompetence or non-diligence; (4) whether the lawyer has been the subject of previous complaints raising questions about incompetence or non-diligence, even if those cases were dismissed. The value of the client's underlying case would normally play an insignificant role in evaluating the client's complaint. Properly handled by the lawyer (except for the error of having missed the deadline in the first place), the disciplinary complaint might well be dismissed and the complainant relegated to his or her civil remedies.

A second example pertains to complaints over fees. Any unreasonable fee violates Model Prof. Cond. R. 1.5(a). Client complaints about fees will usually state a facial claim under Model Prof. Cond. R. 1.5(a). Until fully investigated, it is difficult for disciplinary counsel to be able to distinguish between an unreasonable fee and an unreasonable reaction by a client to a bill for a reasonable fee. Many bar counsel have established formal or informal criteria for identifying fee disputes that are relegated to civil litigation or some alternative form of fee dispute arbitration or mediation. In theory, armed with a favorable civil judgment, the complainant could return to disciplinary counsel and renew the unreasonable fee complaint. However,

it is unusual for disciplinary counsel to reconsider a matter for disciplinary action after it is resolved civilly unless the civil judgment demonstrates that the lawyer's conduct involved elements of fraud or dishonesty that would implicate other rule prohibitions. On other hand, bar counsel may be inclined to exercise discretion to more closely examine, and in appropriate cases, prosecute unreasonable fee cases that present questions about the reasonableness of wide-spread or institutionalized fee practices within a particular segment of the legal community.

By formal or informal policy, some disciplinary counsel take certain categories of complaints arising from criminal representations off the table. There are two such primary complaint types. One involves the handling of a criminal defense representation by current, usually appointed, counsel. The other involves complaints about effectiveness of defense counsel (typically, but surprisingly not always, following the client's conviction). With respect to the former, many disciplinary counsel take a policy stance that it is inappropriate to intercede in an on-going representation; that concerns about the performance of current counsel should be addressed to the appointing court or administrative office. With respect to the latter, many disciplinary counsel apply a type of exhaustion analysis holding that a complaint about effectiveness of counsel is not ripe for consideration as a discipline matter until the complainant has exhausted direct appeals and post-conviction remedies.

If the Model Rule screening standard were honored to the letter, these policies for screening out complaints would violate it. One could argue that it is not adequately protective of the rights of other or future clients if disciplinary counsel turn a blind eye to incompetence by criminal defense counsel until a complaining party has been convicted and has also exhausted direct appeals and collateral attacks on judgment raising ineffective assistance of counsel. Moreover, to the extent disciplinary counsel look to the complaining client to return only after successfully overturning a conviction, the system will have disregarded many cases of poor performance by defense counsel where the ineffectiveness was found to be harmless error. That said, in a world of finite resources, there is something to be said for relegating the complaining criminal defendant to his or her post-conviction relief options, not so much for the purpose of returning only if the conviction is overturned, but after the record of alleged ineffectiveness is fully developed in that context so as to conserve resources that would otherwise be spent developing that record so the complaint can be properly evaluated.

Comparatively, the Model Rules seem to impose a relatively strict standard on disciplinary counsel for moving complaints into investigation, whereas the Indiana rules seem to recognize a greater degree of disciplinary counsel discretion by including the word "substantial" in the initial screening standard. On the other hand, oversight of disciplinary counsel discretion to dismiss cases appears to be more rigorous in Indiana than under the Model Rules. Under the Model Rules, disciplinary counsel's decision to dismiss without investigation is not subject to review, whereas in Indiana, disciplinary counsel's facial dismissals are subject to approval of the Disciplinary Commission.

## Investigation

### Model Rules

Disciplinary counsel must conduct an investigation if “the information alleges facts which, if true, would constitute misconduct or incapacity.”<sup>16</sup> The Model Rules are silent on whether a respondent has any appeal rights from disciplinary counsel’s decision to investigate a matter rather than dismiss it on its face. Presumably, there are no appeal rights or other mechanisms to challenge that decision. Indeed, it is unlikely that the respondent will even be aware that disciplinary counsel is screening a complaint when it is at the initial evaluation stage. “Misconduct” is not a defined term, as such. The term is implicitly defined in Model Rule 9(A)(1): “It shall be a ground for discipline for a lawyer to violate or attempt to violate the [State Rules of Professional Conduct], or any other rules of this jurisdiction regarding professional conduct of lawyers.”

Disciplinary counsel appears to have complete discretion to formally investigate on the basis of information coming to his or her attention by a method other than third-party complaint, or to investigate additional allegations of misconduct that come to light during an investigation into an unrelated matter. Indeed, disciplinary counsel has an affirmative duty to “evaluate” all information for possible investigation, whether it comes from third-party complaints or other channels. “The disciplinary counsel shall evaluate all information coming to his or her attention by complaint or from other sources alleging lawyer misconduct or incapacity.”<sup>17</sup> As a procedural matter, if further action beyond dismissal or holding a matter in abeyance is contemplated, disciplinary counsel must provide notice and an opportunity to be heard (presumably by a written response) if matters not previously disclosed to a respondent will be relied upon as the basis for a charge of misconduct.<sup>18</sup>

### Indiana

Grievances that raise a “substantial question of misconduct” are formally investigated.<sup>19</sup> The respondent has no appeal rights from the Executive Secretary’s decision to investigate.

In investigating a matter, the Executive Secretary is not limited to the allegations raised in the grievance. Instead, he “shall be permitted to inquire into the professional conduct of the attorney generally.”<sup>20</sup> However, if the Commission is to consider formally charging a respondent with misconduct that was not raised in the initial grievance, the respondent must be notified of the additional charges under consideration and given an opportunity to respond in writing.<sup>21</sup>

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16. Model Rule 11(A).

17. Model Rule 11(A).

18. Model Rule 11(B)(2).

19. Ind. Admis. Disc. R. 23(10)(a)(2).

20. Ind. Admis. Disc. R. 23(10)(d).

21. *Id.*

## Post-Investigation Screening

### Model Rules

After investigation, disciplinary counsel has three options: dismiss, refer to an alternatives to discipline program, or recommend some type of discipline, including probation, admonition, filing of formal charges, transfer to disability inactive status or a stay.<sup>22</sup> The respondent has no right to have disciplinary counsel's post-investigation dispositional decision reviewed. Disciplinary counsel's decision to do anything other than dismiss or refer to an alternatives to discipline program must be in the form of a recommendation to the chair of a hearing committee. The complainant has a right of appeal to the chair of a hearing committee to have disciplinary counsel's disposition decision, typically one to dismiss, reviewed. Disciplinary counsel's recommendation or the complainant's appeal may be approved, disapproved or modified by the hearing committee chair. Disciplinary counsel may appeal any hearing committee chair's decision to a second hearing committee chair, whose decision is final.<sup>23</sup> Interestingly, the Model Rules do not set forth any specific standard for disciplinary counsel to use in making a dismissal decision or a charging recommendation. And the Model Rules do not set forth a specific standard for the hearing committee chair to use in reviewing disciplinary counsel's recommendation to charge or a complainant's appeal of a dismissal decision.

Once a complaint is investigated, it appears that disciplinary counsel has unfettered discretion to dismiss a matter, subject to standard-less review of a complainant's appeal to a hearing committee chair, and standard-less authority to recommend charging, subject to unfettered review discretion by a hearing committee chair.

### Indiana

After preliminary investigation, including receipt of a written response from the respondent, the Executive Secretary shall dismiss "with the approval of the Commission" if he determines that there is "no reasonable cause to believe that the respondent is guilty of misconduct."<sup>24</sup> Otherwise, the matter is docketed for further investigation and review by the Disciplinary Commission.

**Discussion:** Many of the considerations discussed in connection with initial screening apply at the stage of screening after investigation. The difference, of course, is that there is less of a need to read between the lines of a sometimes-inarticulate complaint. Often, the lawyer's response sheds considerable new light on the situation or provides a clarification of issues sufficient to make a well-informed decision whether to dismiss or move the file further along in the process.

Under the Model Rules, discretion in making that judgment rests in the first instance with disciplinary counsel if the matter is to be dismissed, subject to the complainant's right to seek review by a hearing committee chair. There is no spe-

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22. Model Rule 11(B)(1).

23. See generally Model Rule 11(B)(3).

24. Ind. Admis. Disc. R. 23(10)(b).

cific standard to guide disciplinary counsel or the hearing committee chair in deciding to dismiss a complaint. Presumably it is the same standard as used at the outset: do the facts (as now established by investigation) constitute misconduct?<sup>25</sup> This standard clearly leaves considerable room for discretion on disciplinary counsel's or the reviewing committee chair's part in evaluating the provability of the material facts by the applicable standard of proof.<sup>26</sup> It seemingly leaves less room to exercise prosecutorial discretion to dismiss cases that present meritorious, but *de minimus* claims, or to dismiss for other sound policy reasons.

Under the Indiana rules, the standard for dismissal after investigation is roughly the same as under the Model Rules with the similar procedural check and balance of Commission approval. What is especially curious under Indiana's rule is that the threshold screening standard "substantial question of misconduct" arguably allows for greater exercise of prosecutorial discretion than the standard for screening after investigation: whether the respondent is guilty of misconduct. While, as noted, misconduct has been implicitly defined as a violation of a Rule of Professional Conduct, perhaps the use of the word "guilt," a word we normally associate with the criminal justice system, suggests the availability of prosecutorial discretion similar to that exercised by prosecutors in the criminal system.

## Formal Charging Decision

### Model Rules

After investigation, disciplinary counsel may determine that a formal charge of misconduct should be filed.<sup>27</sup> This is in the form of a recommendation to the chair of a hearing committee "selected in order from the roster established by the board."<sup>28</sup> The chair may approve, disapprove, or modify the recommendation.<sup>29</sup> If disciplinary counsel disagrees with the reviewing chair's action, he or she may appeal to a second hearing committee chair who either approves disciplinary counsel's recommendation or ratifies the first hearing chair's action.<sup>30</sup> That decision is final. If the hearing chair's review results in approval of a recommendation to file a formal charge, disciplinary counsel is to prepare and file a formal charging complaint.<sup>31</sup>

### Indiana

After such additional investigation as is appropriate, the Executive Secretary submits a report of the investigation and recommendation to the Disciplinary Commission.<sup>32</sup> "If the Commission determines that there is not reasonable cause to be-

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25. See Model Rule 11(A).

26. "Clear and convincing evidence." Model Rule 18(C).

27. Model Rule 11(B)(3).

28. *Id.*

29. *Id.*

30. *Id.*

31. Model Rule 11(D).

32. Ind. Admis. Disc. R. 23(10)(c).

lieve that the respondent is guilty of misconduct, the grievance shall be dismissed,” with notice to the grievant and respondent.<sup>33</sup> If the Commission determines that there is “reasonable cause to believe the respondent is guilty of misconduct which would warrant disciplinary action,” the Executive Secretary prepares and files a formal complaint charging misconduct.<sup>34</sup> The Executive Secretary has no authority to formally charge a lawyer with misconduct in the absence of a finding of reasonable cause by the Disciplinary Commission.

There is an interesting gap between the Commission’s dismissal standard and its standard for authorizing a formal charge of misconduct: the “which would warrant disciplinary action” language. In theory, the Commission could be hamstrung by a finding that there is reasonable cause to believe the respondent is guilty of misconduct, but not misconduct that would warrant disciplinary action. In practice, the Commission has viewed itself as having the discretion to dismiss a grievance in cases where there are considerations warranting no formal disciplinary action, notwithstanding that there is reasonable cause to believe the lawyer technically violated a Rule of Professional Conduct.

**Discussion:** The Model Rules and the Indiana rules differ considerably both procedurally and substantively in the exercise of discretion to formally charge misconduct. Procedurally, under the Model Rules, the decision to charge belongs to disciplinary counsel subject to a review by a single hearing committee chair. If disciplinary counsel wishes to charge but strikes out with the reviewing chair, he or she has a second bite at the apple by appealing to a second reviewing chair. By contrast, in Indiana, the Executive Secretary may charge only after consideration of the matter by the full Disciplinary Commission. If the Commission makes a no-charge decision, the Executive Secretary may not charge and has no further right of review or appeal.

The substantive standard for charging under the Model Rules is essentially non-existent. Obviously, the merits of a formal charge would ordinarily be considered, but the rules do not give any guidance other than to state that disciplinary counsel may recommend filing a formal charge. There is likewise no standard for review by the hearing officer chair. In Indiana, the standard that guides the Disciplinary Commission is “reasonable cause to believe the grievance is guilty of misconduct which would warrant disciplinary action.” This standard implies that there are matters where there is reasonable cause to believe that some rule was violated, but nonetheless disciplinary action is not warranted. This clearly recognizes prosecutorial discretion, albeit discretion that has no detailed guiding standards. Presumably, the check on the integrity of the process is more procedural than substantive: the charging decision must be made by a committee of court-appointed members of the bar and lay public exercising their collective judgment.

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33. Ind. Admis. Disc. R. 23(11)(a).

34. Ind. Admis. Disc. R. 23(11)(b) and (12)(c).

## Referral to Diversion

### Model Rules

In “lesser misconduct” matters<sup>35</sup>, disciplinary counsel may, with the respondent’s consent, refer a respondent to an Alternatives to Discipline Program<sup>36</sup> in lieu of filing a disciplinary action.<sup>37</sup> Criteria for making a referral include: whether the referral is likely to benefit the respondent and accomplish the goals of the diversion program, consideration of aggravating or mitigating factors, and previous use of diversion.<sup>38</sup> The disciplinary matter is held in abeyance pending successful completion of the diversion program or termination in the event of material breach, with the disciplinary proceeding going forward.<sup>39</sup>

Disciplinary counsel is not required to offer diversion and the respondent has no right to access diversion as an alternative to discipline. The complainant must be notified of the decision to refer a respondent to diversion and has a right to tender a statement in response to that decision for further consideration, but disciplinary counsel is not required to give the complainant’s views any particular weight.

### Indiana

Indiana does not have a formalized diversion or deferral program. Indiana does have a consent sanction for minor misconduct that results in a private administrative reprimand.<sup>40</sup> It is an available sanction only if the respondent consents and if the full Disciplinary Commission authorizes it. It cannot be finalized until the Supreme Court is notified of the plan to dispose of the matter in that fashion and does not register an objection within thirty days.

## Interim Suspension for Threat of Harm

### Model Rules

Disciplinary counsel may, and is seemingly required by the governing Model Rule, to seek emergency interim suspension “[u]pon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of this court has committed a violation of the [state Rules of Professional Conduct] or is under

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35. Defined as not likely warranting suspension and not involving misappropriation, substantial prejudice, public discipline in the past three years, prior discipline for misconduct of the “same nature” in the past five years, dishonesty, deceit, fraud, misrepresentation, serious criminal conduct, or part of a pattern of similar misconduct. Model Rule 9(B).

36. Alternatives to discipline include fee arbitration, arbitration, mediation, law office management assistance, lawyer assistance programs, psychological counseling, continuing legal education, ethics school or any other court authorized program. Model Rule 9(G)(1).

37. Model Rule 11(G)(1).

38. Model Rule 11(G)(3).

39. Model Rule 11(G)(6) and (7).

40. Ind. Admis. Disc. R. 23(12)(a).

a disability as herein defined and poses a substantial threat of serious harm to the public. . . .”<sup>41</sup>

### **Indiana**

The Executive Secretary may only act to seek interim relief due to threat of harm upon a two thirds vote of the Disciplinary Commission. “If it appears to the Disciplinary Commission upon the affirmative vote of two-thirds of its membership, that: (i) the continuation of the practice of law by an attorney during the pendency of a disciplinary investigation or proceeding may pose a substantial threat of harm to the public, clients, potential clients, or the administration of justice, and (ii) the alleged conduct, if true, would subject the respondent to sanctions under this Rule, the Executive Secretary shall petition the Supreme Court for an order of interim suspension from the practice of law or imposition of temporary conditions of probation on the attorney.”<sup>42</sup>

However, if a lawyer is found guilty of a “crime punishable as a felony,” the Executive Secretary, without any required approval of the Disciplinary Commission must file a notice of the guilty finding and a request for interim suspension with the Supreme Court.<sup>43</sup> The Court has discretion whether to enter an order of interim suspension, but the Executive Secretary has no discretion over requesting the suspension.

**Discussion:** There is little significant difference between the Model Rules and the Indiana rules in the substantive standard to be applied in seeking an interim suspension of a lawyer’s law license. What is quite extraordinary is the contrast in the procedural protections. Keeping in mind that this process will often result in the suspension of a lawyer’s license before there is a full adjudication on the merits, under the Model Rules, disciplinary counsel has the authority, maybe even the mandate, to seek interim suspension on his or her own say-so without any oversight of that decision. In Indiana, the Executive Secretary may seek interim suspension for threat of harm only upon approval of a super-majority of the Disciplinary Commission.

### **Discipline by Consent**

#### **Model Rules**

If disciplinary counsel believes that it would be appropriate to resolve a matter by admonition or probation, and upon approval by a hearing committee chair, disciplinary counsel must give the respondent written notice and an opportunity to demand a hearing. If the respondent does not demand a hearing within fourteen days of the notice, he or she is deemed to have consented to the tendered proposal to resolve the matter with admonition or probation. If the respondent demands a

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41. Model Rule 20(A).

42. Ind. Admis. Disc. R. 23(11.1)(b).

43. Ind. Admis. Disc. R. 23(11.1)(a)(3).

hearing, a complaint is filed and the matter goes through the formal adjudication process.<sup>44</sup>

Discipline by consent (on admitted facts and discipline) appears to by-pass disciplinary counsel and go to the disciplinary board for review and approval or rejection. It is not clear, what, if any, role disciplinary counsel plays in the process beyond transmitting a respondent's offer. The board is to take account of the views of the hearing committee if the matter has been assigned for hearing. If the matter involves discipline at a level of suspension or greater, it is subject to approval by the court.<sup>45</sup>

### Indiana

Without filing a formal charging complaint, discipline for minor misconduct<sup>46</sup> in the form of a letter of private administrative admonition from the Executive Secretary may be administered upon a finding by the Disciplinary Commission that there is reasonable cause to believe the respondent is guilty of misconduct and if the Commission and the respondent both agree.<sup>47</sup> Before finalizing the admonition, though, notice must be given to the Supreme Court. The admonition is finalized if thirty days pass and the Supreme Court does not set aside the proposed admonition.<sup>48</sup>

As to other discipline, the Disciplinary Commission and the respondent may agree to the discipline to be imposed by submitting an agreement for discipline to the Supreme Court containing stipulated facts, an agreement to charges, and agreed disciplinary sanction. The Supreme Court may accept the agreement as tendered and issue a final order of discipline based on it, counter-propose an alternate disciplinary sanction which the parties may accept or reject, or reject the agreement altogether. An agreement cannot be used in evidence in the event the matter goes to contested hearing.<sup>49</sup>

**Discussion:** Discipline involving admonition or probation may be offered under the Model Rules by disciplinary counsel upon review and approval of a hearing committee chair. The proposed admonition or probation becomes final if the lawyer does not affirmatively request formal charges and a hearing. The Model Rules contain no standards to govern disciplinary counsel's exercise of discretion to offer resolution by way of admonition or probation, and the respondent has no

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44. Model Rule 11(c).

45. Model Rule 21(A).

46. Minor misconduct is defined to exclude misappropriation, actual or likely material prejudice (loss of money, legal rights or valuable property rights) of a client or third person, public discipline in past three years, discipline for misconduct of the "same nature" in past five years, dishonesty, misrepresentation, deceit, fraud or conduct that would be a felony. Ind. Admis. Disc. R. 23(12)(a). This is a form of discipline, albeit procedurally stream-lined, and not a diversion or other alternative to discipline.

47. Ind. Admis. Disc. R. 23(12)(a).

48. Ind. Admis. Disc. R. 23(12)(b).

49. Ind. Admis. Disc. R. 23(11)(c).

rights to seek review of the disciplinary counsel's decision not to make such an offer.

After formal charges are filed, discipline by consent on an admitted case is in the form of a respondent's proposal to the board. The rule does not recognize a particular role for bar counsel in deciding whether the board should accept a respondent's proposal. There are no standards to guide the board in deciding to accept or reject a proposal for discipline on consent other than case precedent and, under a complete Model Rules regime, the ABA Standards for Imposing Lawyer Sanctions. A final check in cases of license suspension is the requirement of approval by the state supreme court.

Indiana has a similar consent procedure for minor discipline (applicable only to admonitions, not probation). The Executive Secretary has little formal decision-making authority in this context. The decision to offer a consent admonition rests with the Disciplinary Commission, guided by a fairly detailed definition of what does not constitute minor misconduct. A further check on the exercise of the Commission's discretion is a thirty-day period during which the Supreme Court may veto a decision to resolve a matter by administrative admonition.

Agreed discipline, other than administrative admonition, must be approved by the Disciplinary Commission. The Executive Secretary has no authority to make a binding agreement for discipline. All agreements for discipline are submitted to the Indiana Supreme Court for its review and approval—even those that call for reprimand or probation not involving suspension.

# **EXHIBIT 7**

# **EXHIBIT 7**

Case Nos.: [REDACTED]

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

Nevada Bar No. [REDACTED]

Respondent.

**ORDER REGARDING RESPONDENT'S  
RENEWED MOTION FOR APPROVAL OF  
CONDITIONAL GUILTY PLEA**

The Panel Chair having fully read and considered (1) Respondent's Renewed Motion for Approval of Conditional Guilty Plea (the "Motion") filed June 19, 2017, (2) the State Bar of Nevada's Conditional Opposition to Respondent's Motion for Approval of Conditional Guilty Plea (the "Opposition") filed June 21, 2017, and (3) the Respondent's Reply in Support of His Renewed Motion for Approval of Conditional Guilty Plea (the "Reply"), filed June 23, 2017, and being fully advised of the premises, and for good cause appearing, it is **HEREBY ORDERED THE MOTION IS GRANTED**, as indicated below:

1. The hearing scheduled for June 27, 2017, at 9:00 a.m., will be for the sole purpose of considering Respondent's Conditional Guilty Plea In Exchange For A Stated Form Of Discipline, filed on June 15, 2017 (the "Amended CGP").

2. At the Conditional Guilty Plea hearing, the parties may offer whatever evidence they deem appropriate as in any other Conditional Guilty Plea hearing, including (and the Chair requests)

1 evidence and argument regarding aggravating and mitigating circumstances (SCR 102.5), including,  
2 but not limited to, prior disciplinary offenses (SCR 102.5(1)(a)), if any (SCR 102.5(2)(a)).

3         3.       The Chair finds that the Amended CGP may be “approved, modified or rejected” by  
4 the Panel. (SCR 113(1)). More specifically, the Amended CGP may be approved or rejected by the  
5 Panel on its own, or may be modified by the Panel with the consent of the Respondent. The Chair  
6 believes the State Bar’s role in the Conditional Guilty Plea hearing, on these circumstances where  
7 the Amended CGP has been offered by Respondent but not stipulated to by the State Bar, is to offer  
8 whatever evidence and arguments it deems appropriate to persuade the Panel that a form of discipline  
9 other than that stated in the Amended CGP is warranted here. Otherwise, the Panel need not obtain  
10 the State Bar’s consent to a modified form of discipline, compared to that stated/offered in the  
11 Amended CGP, if Respondent consents to the modified form of discipline.

12         4.       If the Amended CGP is either rejected by the Panel or modified in a manner that is  
13 not accepted by the Respondent, the Panel will thereafter be disqualified from any future  
14 consideration of the allegations asserted herein. Instead, the matter will proceed in front of a new  
15 hearing panel.

16         5.       Due to a lack of time, a more reasoned decision is not practical (and the Chair has  
17 instead opted to advise the parties of this decision before the weekend so that counsel has more time  
18 to prepare for the June 27th hearing as they deem best in light of the rulings made herein). Suffice  
19 to say, the Chair finds the arguments of Respondent persuasive and that adopting the State Bar’s  
20 positions would be (a) contrary to the plain language of the applicable rules and when construed as a  
21 whole, as they must, (b) contrary to common sense, and (c) contrary to fundamental fairness (due  
22 process).

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1           6. All other relief requested in the Motion not addressed herein is denied.  
2 Notwithstanding the foregoing, the Chair states what is probably obvious to the parties—i.e., this  
3 Order was prepared in a very short amount of time following receipt of the Reply. Accordingly, the  
4 Chair reserves the right to modify or clarify this order.

5           **SO ORDERED.**

6           DATED this 23<sup>rd</sup> day of June, 2017.

7  
8 By:   
9           Dan R. Waite, Esq.  
10           Chair Formal Hearing Panel  
11           Southern Nevada Disciplinary Board  
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FILED

APR 07 2021

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

Case No: OBC20-0163

**STATE BAR OF NEVADA**  
**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
 )  
Complainant, )  
vs. )  
 )  
JAMES J. JIMMERSON, ESQ. )  
Nevada Bar No. 0264 )  
 )  
Respondent. )

**STATE BAR OF NEVADA'S**  
**OPPOSITION TO RESPONDENT'S MOTION**  
**FOR APPROVAL OF**  
**CONDITIONAL GUILTY PLEA**

COMES NOW the State Bar of Nevada, through Assistant Bar Counsel, Daniel T. Young, and submits this Opposition to James J. Jimmerson's ("Respondent's") "Motion for Approval of Conditional Guilty Plea." This opposition is based on the pleadings and papers filed herein, the Points and Authorities which follow, the attached Exhibits, and upon such further evidence and argument of counsel as the Chair may require or allow.

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1 **POINTS AND AUTHORITIES**

2 **I. Statement of Facts**

3 Respondent is charged, *inter alia*, with serious violations of the Rule of Professional  
4 Conduct (RPC) 1.15 (Safekeeping) due to misappropriation of client trust funds as more fully  
5 set forth in the Complaint attached as **Exhibit A**. It is alleged that Respondent  
6 misappropriated trust funds in order to pay his law firm payroll. It is further alleged that  
7 Respondent withdrew trust funds before he had trust on deposit to withdraw. *Id.*

8 On or about March 12, 2021, Respondent presented a proposed conditional guilty plea  
9 to the State Bar for the State Bar's approval, which proposed to resolve the instant matter with  
10 a letter of caution. This proposed negotiation was rejected by the State Bar due to the serious  
11 nature of the allegations against Respondent and the fact that proposed plea was in exchange  
12 for a dismissal of the charges.

13 On March 26, 2021, Respondent filed the instant motion for approval of conditional  
14 guilty plea asserting that he should be entitled to plead guilty without the consideration of the  
15 State Bar for a stated form of discipline which was not agreed to by the State Bar.

16 **II. Presentment of a Conditional Guilty Plea requires Bar Counsel's**  
17 **Approval.**

18 Respondent argues that he may tender a conditional guilty plea in exchange for a letter  
19 of caution for review by the Panel without securing its approval from Bar Counsel. Respondent  
20 notes that this process is known as "discipline by consent" and relies upon SCR 113 to support  
21 his argument. Resp.'s Mot. at 8:14-16. Respondent contends that "neither SCR 113 nor DRP 25  
22 requires Bar Counsel to approve a tendered plea." *Id.*

23 Respondent finds support for his position by citing to an article by Donald R. Lundburgh  
24 and attaches the article as exhibit 6 to his motion. Lundburgh concludes that the ABA model

1 rule addressing discipline by consent bypasses disciplinary counsel. However, Lundburgh's  
2 conclusion misstates ABA rule 21 addressing discipline by consent.

3 ABA Rule 21 for lawyer disciplinary enforcement provides that:

4 A lawyer against whom formal charges have been made *may tender to*  
5 *disciplinary counsel* a conditional admission to the petition or to a particular  
6 count thereof in exchange for a stated form of discipline. The tendered conditional  
7 admission shall be approved or rejected by the board [considering the  
8 recommendation of the hearing committee if the matter has already been assigned  
9 for hearing, and] subject to final approval or rejection by the court if the stated  
10 form of discipline included disbarment, suspension or transfer to disability  
11 inactive status pursuant to Rule 11(F). If the stated form of discipline is rejected  
12 by the [adjudicative body] [board], the admission shall be withdrawn and cannot  
13 be used against the respondent in any subsequent proceedings. (Emphasis Added)

14 Lundburgh clearly misapplies ABA Rule 21 in concluding that "Discipline by consent (on  
15 admitted facts and discipline) appears to by-pass disciplinary counsel and go to the disciplinary  
16 board for review and approval or rejection." See Mot. exhibit 6 at 119. The plain language of  
17 ABA model Rule 21 clearly states that a lawyer against whom disciplinary charges have been  
18 made *may tender to disciplinary counsel* a conditional admission to the petition or to a  
19 particular count thereof in exchange for a stated form of discipline. ABA Rule 21 for lawyer  
20 disciplinary enforcement. Thus under the model rules Respondent must tender his plea to  
21 disciplinary counsel for approval. Respondent conceded this reading of the rules for discipline  
22 by consent by his actions when on March 12, 2021, he presented Assistant Bar Counsel his  
23 proposed conditional plea and requested its approval by Bar Counsel.

24 The commentary to ABA Rule 21 further confirms that the conditional plea must be  
25 approved by disciplinary counsel. The commentary in paragraph one provides that:

If an *agreement* provides for reprimand, suspension or disbarment, or if any  
*agreement is reached* after formal charges have been filed, the *agreement* must  
be approved by a panel of the board. Members of the panel are disqualified from  
any future consideration of the matter in the event the stipulated discipline is for  
any reason not imposed. If the stipulated discipline provides for suspension or  
disbarment, it must also be approved by the court.

1 The commentary speaks in terms of an agreement. The language clearly shows that the  
2 plea must be tendered to disciplinary counsel and an agreement must be reached between  
3 disciplinary counsel and the respondent, then the agreement must be approved by the panel.  
4 As a result, Respondent's reliance upon Lundburgh's conclusions is misplaced. Therefore, the  
5 Chair should put no weight on Respondent's argument.

6 SCR 113(2) provides consistent, similar language. It states, "a continuance in a  
7 proceeding on the basis of a tendered plea shall be granted only with the concurrence of bar  
8 counsel." For example, SCR 105(2)(d) requires a hearing panel to hold an evidentiary hearing  
9 on the State Bar's allegations. A panel could not continue the evidentiary hearing and thereby  
10 abate the proceedings without bar counsel's concurrence. Respondent's proposal would clearly  
11 violate SCR 113(2). It would be impossible for the panel to consider Respondent's conditional  
12 guilty plea before hearing the evidence. Respondent denied the State Bar's allegations in his  
13 answer and now admits only limited, innocuous facts. *See* Resp.'s Ver. Ans. *and* Exhibit 1 at 2-  
14 4. If the Panel accepted Respondent's limited, innocuous facts as true without a hearing, it  
15 would violate a fundamental of due process. Due process is satisfied where interested parties  
16 are given an "opportunity to be heard at a meaningful time and in a meaningful manner." *J.D.*  
17 *Constr., Inc. v. IBEX Int'l Grp., Ltd. Liab. Co.*, 126 Nev. 366, 377, 240 P.3d 1033, 1041 (2010)  
18 (*Citing Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976)). Due process  
19 protects the State Bar and the public as it would the Respondent because "disciplinary  
20 proceedings are neither civil nor criminal in nature, but sui generis, designed to protect the  
21 citizenry..." *In Re Petition for a Writ of Prohibition*, 111 Nev. 70, 257, 893 P.2d 866, 983 (1995).  
22 Thus, it would be inappropriate for the Panel to deny the State Bar and the grievants a  
23 reasonable opportunity to present their case.

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1           Additionally, Respondent relies on an order issued by a sister disciplinary panel in the  
2 Adam S. Kutner case. See Exhibit 7 of Respondent Motion, p. 10:3-18 (citing to an order  
3 purportedly executed on June 23, 2017, redacted caption). Respondent's reliance on the Adam  
4 Kutner case is misplaced.

5           Kutner's case is distinguishable from the facts in this case. For example, Kutner offered  
6 a conditional guilty plea in exchange for a public reprimand—not a dismissal with a letter of  
7 caution. *Conditional Guilty Plea Adam S. Kutner, Esq.* OBC 15-0309, OBC15-0604, OBC15-  
8 1291, OBC 16-0041, and OBC16-0613, filed June 15, 2017 attached as **Exhibit B**. Kutner's  
9 misconduct was significantly less serious than the Respondent's alleged misconduct. Kutner  
10 violated RPC 1.2, 1.4, 1.7, 1.9, 1.18, 5.3, 5.5, 8.1 and 8.4 by directing nonlawyers to meet with  
11 clients during initial consultations and by failing to oversee his staff in personal injuries matters.  
12 *Id.* In contrast, the State Bar alleged that Respondent misappropriated client funds. See  
13 **Exhibit A**. Misappropriation is such a serious concern that the ABA Standards, which the  
14 Nevada Supreme Court follows, prohibits any sanction less than a suspension. See discussion  
15 on ABA Standard 2.5 in paragraph IX, *infra*.

16           Therefore, for the reasons above the Chair should give no weight to the order issued in  
17 the Kutner case. Kutner's discipline was not sanctioned or approved by the Nevada Supreme  
18 Court. It is not binding precedent.<sup>1</sup> NRAP 36(c)(2) (stating unpublished disposition does not  
19 establish mandatory precedent); See also *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d  
20 853, 855 (1992) (findings of a disciplinary panel, though persuasive, are not binding).

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24 <sup>1</sup> Motion, p. 10:3-18 (citing to an order purportedly executed on June 23, 2017, in an  
25 unidentified disciplinary case, which fails to include any file stamp by the State Bar).

1           **III. Pursuant to SCR 113, an attorney may only tender a conditional guilty**  
2 **plea to the charges(s) in a disciplinary complaint in exchange for a stated form of**  
3 **“discipline”.**

4           Supreme Court Rule 113 sets forth the requirements for discipline by consent.

5           SCR 113(1) reads in part that:

6           An attorney against whom a grievance or complaint has been made may tender a  
7 conditional guilty plea to the charge(s) in exchange for a stated form of discipline.  
8 The tendered plea shall be filed with bar counsel’s office and approved, modified  
9 or rejected by a hearing panel. The tendered plea is subject to final approval or  
10 rejection by the supreme court if the stated form of discipline includes disbarment  
11 or suspension.

12           SCR 113 only discusses three forms of discipline in the context of discipline by consent.  
13 Those include disbarment or suspension, as discussed in SCR 113(1) & (3), or public reprimand  
14 as discussed in SCR 113(4). SCR 113(4) provides that:

15           If the stated form of discipline includes neither a suspension nor disbarment, the  
16 matter shall not be submitted to the supreme court for approval. The state bar  
17 shall issue the public reprimand and publish the public reprimand in accordance  
18 with Rule 121.1.

19           Thus, the plain language of SCR 113(4) mandates that if the stated form of discipline  
20 tendered in connection with a conditional plea is neither a suspension nor disbarment that the  
21 State Bar *shall* issue a public reprimand. *See* SCR 113(4). As result, any discipline by consent  
22 must be for a stated form of discipline that is disbarment, suspension, or public reprimand. The  
23 plain language of SCR 113 does not provide that a letter of caution is a form of discipline for  
24 purposes of discipline by consent. Therefore, it is clear that discipline by consent only applies  
25 to three forms of discipline. As a result, in this case, Respondent’s proposed discipline by  
consent resulting in a letter of caution is not permitted.

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1 purposes of discipline by consent. *See* SCR 113 (not listing a letter of caution as a form of  
2 discipline applicable to discipline by consent).

3 **V. Misappropriation of client funds in violation of RPC 1.15**  
4 **(Safekeeping) warrants a sanction greater than dismissal and a caution.**

5 Respondent's request to tender a conditional guilty plea that merely results in a letter of  
6 caution being issued for serious violations alleging misappropriation of trust funds is  
7 inappropriate.

8 ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer  
9 knowingly converts client property and causes injury or potential injury to a client. Whether  
10 defined as "knowing" or "intentional" conduct, the focus of courts in applying this standard is  
11 on deliberate conduct. *See e.g. In re Discipline of Corey*, 274 P.3d 972 (Utah 2012) (lawyer's  
12 conversion of client's settlement funds for the operational needs of his law firm was "knowing  
13 and intentional;" "generally our rule is that 'intentional misappropriation of client funds will  
14 result in disbarment unless the lawyer can demonstrate truly compelling mitigating  
15 circumstances.'")

16 Courts will find that intent is established even when a lawyer says he or she was ignorant  
17 of the law, playing a practical joke, or making a truthful statement that nonetheless was  
18 misleading. *See Att'y Grievance Comm'n v. Nwadike*, 6 A.3d 287 (Md. 2010) (despite careless  
19 recordkeeping, lawyer's misuse of funds in attorney Trust Account for personal expenses,  
20 failure to deposit a refund check, and commingling of funds constituted intentional  
21 misappropriations); *N.C. State Bar v. Ford*, 94 DHC 4 (N.C. Disciplinary Hearing Comm'n Sept.  
22 16, 1994) (North Carolina Bar's Disciplinary Hearing Commission disbarred lawyer for gross  
23 negligence in handling and overseeing client's Trust Account, finding that lawyer's failure to  
24 oversee account and monitor secretary who issued checks on it by signing lawyer's name,

1 resulting in balance falling below amount owed to clients, constituted misappropriation of  
2 client).

3 A lawyer acts with knowledge when he has “the conscious awareness of the nature or  
4 attendant circumstances of the conduct but without the conscious objective or purpose to  
5 accomplish a particular result.” See *People v. Young*, 864 P. 2d 563 (Colo. 1993) (citing  
6 Standard 4.11, court held that knowing conversion of clients’ funds warranted disbarment even  
7 absent prior disciplinary history and despite cooperation and making restitution; “[w]hen a  
8 lawyer knowingly converts client funds, disbarment is ‘virtually automatic’, at least in the  
9 absence of significant factors in mitigation”) (citation omitted); *People v. Radosevich*, 783 P.2d  
10 841, 842 (Colo. 1989) (citing Standard 4.11, the court said, “[o]ur previous cases involving the  
11 conversion of client funds treat this type of misconduct very seriously because it destroys the  
12 trust essential to the attorney-client relationship, severely damages the public’s perception of  
13 attorneys, and erodes public confidence in our legal system”).

14 ABA Standard 4.12 states that suspension is generally appropriate when a lawyer knows  
15 or should know that he is dealing improperly with client property and causes injury or potential  
16 injury to a client. The most common cases under Standard 4.12 involve lawyers who commingle  
17 client funds with their own, or fail to remit client funds promptly. See e.g. *Office of Disciplinary*  
18 *Counsel v. Au*, 113 P.3d 203 (Haw. 2005) (citing 4.12, *inter alia*, the court imposed a five-year  
19 suspension for a lawyer whose misconduct included mishandling client funds and client Trust  
20 Account, holding that although misconduct did not appear to have caused actual harm to the  
21 lawyer’s clients, it did cause potentially serious injury to them and seriously harmed the  
22 integrity of the legal system.”) ABA Standard 4.12 specifies that knowledge is not required for  
23 suspension if it is proven that the lawyer should have known they were dealing improperly with  
24 client’s property and the client suffers injury or potential injury. Suspension is generally

1 appropriate when lawyers fail to oversee their employees' actions regarding client funds and the  
2 employee commingles or wrongfully uses these monies.

3 Under ABA Standard 4.12, lawyers who do not have knowledge that they are dealing  
4 improperly with clients' property may nonetheless face suspension if proven that they should  
5 have known they are doing so, and the client suffers injury or potential injury. This scenario  
6 frequently occurs, but is not limited to, when lawyers fail to oversee their employees' actions in  
7 regard to client funds and the employee commingles or wrongfully uses those monies. *See e.g.,*  
8 *In re Bailey*, 821 A.2d 851 (Del. 2003) (in imposing six-month suspension court agreed with  
9 finding that when lawyer instructed the bookkeeper to transfer funds from escrow account to  
10 operating account, he knew or should have known of firm's financial difficulties due to repeated  
11 overdrafts in operating account); *Fla. Bar v. Weiss*, 586 So. 2d 1051 (Fla. 1991) (six-month  
12 suspension because lawyer did not knowingly misappropriate, nor had any client suffered  
13 injury, but shortages in lawyer's Trust Account discovered during random audit were caused by  
14 improperly trained accountant and lack of adequate supervision by lawyer).

15 **A. General Obligations of RPC 1.15:**

16 RPC 1.15 imposes obligations of safekeeping, accounting, and delivery when a lawyer  
17 comes into possession of someone else's money or property. *See, e.g. Att'y Grievance Comm'n*  
18 *v. Sullivan*, 801 A.2d 1077 (Md. 2002) (misappropriating estate funds while acting as a personal  
19 representative for estate of deceased client). The RPC, by its express language prohibits  
20 commingling of the attorney's funds with client funds and requires prompt disbursement of  
21 client funds.

22 An unauthorized or improper use of money or property of another constitutes  
23 misappropriation. Thus an allocation of funds for a purpose for which the funds are not  
24

1 authorized, is a misappropriation, as is the taking of property of another person without a  
2 license to do so. *See* Bouvier Law Dictionary – Misappropriation (Misappropriate)

3 Use of client trust funds and commingling them with the personal funds of the attorney,  
4 even if replaced in the trust account and paid to the client, constitutes misappropriation of the  
5 trust funds. *See e.g. Copren v. State Bar*, 64 Nev. 364, 385, 183 P.2d 833, 843 (1947). Use of,  
6 and appropriation of client funds for personal purposes of the attorney until such time as the  
7 attorney sees fit to return the funds, if permitted, “would encourage and render easy of  
8 accomplishment of the misappropriation of trust funds and commingling them with the  
9 personal funds of the attorney.” *Id.*

#### 10 **B. Delegation of Obligations of RPC 1.15:**

11 Although a lawyer may delegate the work to another person, the lawyer remains  
12 ultimately responsible for compliance with recordkeeping requirements. *In re Bailey*, 821 A.2d  
13 851 (Del. 2003) (managing partner of firm suspended for failing to prevent firm bookkeeper’s  
14 improper withdrawal of client funds from trust); *In re Robinson*, 74 A.3d 688 (D.C. 2013)  
15 (lawyer should have carefully monitored subordinate tasked with Trust Account administration  
16 after first overdraft and should have removed subordinate after second overdraft); *In re*  
17 *Montpetit*, 528 N.W.2d 243 (Minn. 1995) (lawyer should have known secretary improperly  
18 maintained Trust Account books and records; lawyers charged with knowledge of requirements  
19 for handling client funds); *State ex rel. Okla. Bar Ass’n v. Mayes*, 977 P.2d 1073 (Okla. 1999)  
20 (lawyer’s lax supervision of nonlawyer office manager allowed commingling and conversion).

#### 21 **C. No Intent Element:**

22 No intent element is expressly included in RPC 1.15 and some authorities suggest that no  
23 intent need be proven to establish a violation. *See re Mayeaux*, 762 So. 2<sup>nd</sup> (La. 2000) (lawyer’s  
24 “mistake, good faith, or lack of conscious wrongdoing does not negate an infraction of the rule”);

1 *Att’y Grievance Comm’n v. Stolarz*, 842 A.2d 42 (Md. 2004) (“an unintentional violation...is  
2 still a violation of the attorney’s affirmative duties imposed by the rule”); *Restatement (Third)*  
3 *of the Law Governing Lawyers* Section 5 cmt. (d) (2000) (“Some few offenses, such as those  
4 requiring maintenance of office books and records...are absolute in form, thus warranting a  
5 finding of a violation...no matter what the lawyer’s state of mind.”).

6 **D. Lack of Harm Not a Defense:**

7 That a lawyer’s commingling, temporary use, or improper accounting of client funds  
8 causes no actual harm to a client is not a defense to a charge under RPC 1.15. *See In re*  
9 *Anonymous*, 698 N.E.2d 808 (Ind. 1998) (“that client funds were never...at risk” is irrelevant  
10 to charge of commingling under rule); *In re Cicardo*, 877 So. 2d 980 (La. 2004) (lawyer engaged  
11 in “rolling commingling and conversion” from client Trust Account, though no client was ever  
12 deprived of money); *Att’y Grievance Comm’n v. Whitehead*, 890 A.2d 751 (Md. 2006) (lawyer  
13 withdrew fees earned as conservator without court approval, though he promptly returned  
14 unapproved fees); *In re Trejo*, 185 P.3d 1160 (Wash. 2008) (discipline warranted even if  
15 commingling causes no actual harm because it causes potential harm of having client funds  
16 attached by lawyer’s creditors). As a result, any argument by Respondent that no clients were  
17 deprived of monies is wholly without merit.

18 **VI. Respondent’s conduct warrants significant discipline consistent with**  
19 **Nevada cases involving trust account violations.**

20 **A. *In Re: Mark Kemp*, 2013 Nev. Unpub. Lexis 978 (April 18, 2013)**

21 Kemp was holding funds for heirs of an estate and misappropriated the sum of \$47,478  
22 over a period of months in a series of more than two dozen smaller transactions. Kemp claimed  
23 he had simply taken out more money in fees than he realized due to improper accounting and  
24 personal issues going on in his life. The State Bar maintained that the number of transactions

1 over the period of time, along with his dwindling balance in his Trust Account, showed that he  
2 knew or should have known his behavior was harming his clients. The Panel recommended a  
3 six month and one-day suspension, which was increased by the Supreme Court to a two (2) year  
4 suspension based on the misappropriation, as well as Kemp's initial failure to cooperate with  
5 the State Bar.

6 **B. *In re: Discipline of John R. Clarkson*, 2013 Nev. Unpub. Lexis 280 (Feb.**  
7 **22, 2013)**

8 The Supreme Court upheld a Panel Recommendation for a two (2) year suspension for an  
9 attorney who had funds for two clients missing from his Trust Account. The attorney argued  
10 that the missing funds were due to accounting errors which resulted in the funds being used for  
11 his business expenses. He paid both clients back at the time of the hearing, for a total of  
12 \$34,802.97.

13 **C. *In re: Stanley Wade*, 2014 Nev. Unpub. Lexis 1049 (July 7, 2014)**

14 Attorney Stanley Wade received a one (1) year suspension for inadvertently neglecting to  
15 pay client funds owed on behalf of four clients, (\$8,366.75, \$13,458, \$3,300, and \$60). The  
16 attorney had closed his Trust Account and moved to Hawaii inadvertently taking the money  
17 when he went. He was ordered to make restitution prior to being eligible for reinstatement.

18 **D. *In re: Discipline of Anderson*, 2016 WL 315270 (Nev., Jan. 22, 2016)**

19 Attorney Alda Anderson was admitted to practice law in Nevada in 2004, and had no  
20 prior disciplinary record. The violations at issue involved Anderson's use of funds from her  
21 Trust Account to pay business expenses (she wrote a check from the Trust Account to pay her  
22 quarterly taxes in the amount of \$846.12), and her failure to supervise a non-lawyer employee  
23 hired to handle loan modifications. The employee was taking cash for payments of legal fees  
24 for loan modifications, which were paid at the beginning of the case in a lump sum per the fee

1 agreement. Anderson completed the work on those cases and earned the fees, and took the loss  
2 for the employee's theft, around \$35,000.

3 Anderson maintained that she suffered from a gambling addition, which the Panel  
4 determined explained the detour of judgment, and her failure to supervise her  
5 employee. Anderson also admitted she was to blame and took full responsibility for her actions,  
6 and received counseling for gambling issues. Finally, no funds being held for a client were ever  
7 at risk. The fees taken by the employee were flat fees for services actually performed by  
8 Anderson.

9 The Supreme Court imposed an 18-month stayed suspension with conditions including  
10 NLAP assessment, mentoring, and quarterly reports to the State Bar regarding her Trust  
11 Account including copies of Trust Account statements.

## 12 **VII. Aggravators**

13 The State Bar agrees with the items listed by Respondent in aggravation. Namely,  
14 Respondents prior disciplinary offense and his substantial experience in the law. In his personal  
15 declaration, Respondent claims that his prior public reprimand was not for trust account  
16 management. Mot. ex 2, p. 2:13-14, Declaration of James J. Jimmerson.

17 Respondent's prior public reprimand was for failing to safekeep client funds that were  
18 proceeds of a real estate transaction. *Public Reprimand of James J. Jimmerson*, Supreme Court  
19 Docket 22611, filed October 6, 1994 attached as **Exhibit C**. Respondent was reprimanded for  
20 violating SCR 165(2) – (safekeeping property). SCR 165 was codified as RPC 1.15 –(Safekeeping)  
21 on May 1, 2006. Therefore, Respondent's prior reprimand deals with failing to safekeep client  
22 funds in violation of the same rule of professional conduct charged in this case. As a result,  
23 respondent has a pattern of failing to protect client funds.

1 In mitigation, Respondent claims there was no selfish or dishonest motive. Mot. p. 7:4-  
2 6. Respondent's claim is belied by the objective facts. The evidence, in the form of bank records  
3 and summaries thereof will show that Respondent converted client trust funds to pay his payroll  
4 and pay his own taxes. As a result, Respondent had a selfish motive to use client trust funds for  
5 his own benefit or that of his law firm similar to the conduct in his prior public reprimand.  
6 Based upon these aggravators a significant suspension is required to protect the public.

7 **VIII. A significant suspension is required to protect the public concerning**  
8 **Respondent's trust account violations.**

9 ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer  
10 knowingly coverts client property and causes injury or potential injury to a client. In *In re*  
11 *Wilson*, 409 A.2d 1153 (N.J. 1979), the Court stated that misappropriation is one of the most  
12 egregious acts that can be committed by an attorney and that "[r]ecognition of the nature and  
13 gravity of the offense suggests only one result, disbarment." *Id.* at 1115. Other jurisdictions have  
14 treated misappropriation with significant suspension. See *In re Scheurich*, 871 So. 2d 1104,  
15 1106 (La. 2004) (suspending lawyer for three years for converting to own use more than  
16 \$14,000 in funds withheld to pay third-party medical providers for services rendered to clients;  
17 court stated that "[a]lthough respondent paid all outstanding amounts to the medical providers  
18 after institution of these proceedings, his clients were exposed to the danger of being required  
19 to pay the providers for the unsatisfied balances on their accounts").

20 In Nevada, where disbarment is permanent, the Nevada Supreme Court has utilized  
21 disbarment only in cases with multiple aggravation factors. See *In re: Discipline of Jeanne*  
22 *Winkler, Esq.* (Case No. 56194) and *In re: Discipline of Stanley A. Walton* (Case No. 64914).  
23 In other cases, the Nevada Supreme Court has imposed suspension for misappropriation. See  
24 *In re: Discipline of Gary L. Myers* (Case No. 67694) (Court imposed a four-year suspension for

misappropriation of \$108,536.12); also See *In re: Discipline of Mark A. Kemp, Esq.* (Case No. 59029) (Court imposed a two-year suspension for misappropriation of \$47,478.83, rejecting a panel recommendation of six months and one day suspension, acknowledging Kemp's lack of prior discipline but citing his lack of cooperation with the State Bar).

Respondent contends that conditions of self-reporting and quarterly reports of his trust account reconciliation is sufficient to protect the public. Mot. p. 17:12-23. Respondent fails to support his contention with any relevant authority.

Due to the seriousness of Respondent's conduct in this case, the misappropriation of client funds for his own selfish interest, a suspension which serves as a deterrent to Respondent and other attorneys and designed to change Respondent's behavior, protect the public and promote public confidence in the integrity of the profession is appropriate. See *In re Discipline of Reade*, 133 Nev. 711, 716 (November 16, 2017) (discussing how suspension is designed to protect the public); See also *In re Flanagan*, 2018 Nev. Unpub. LEXIS 196 (March 9, 2018) (imposing actual six months suspension and then three years of probation for misappropriate of client funds and stating that misappropriation of client property is serious violation).

**IX. Any sanction less than suspension is inappropriate for misappropriation of client funds.**

ABA Standard 2.5 addresses the types of discipline suitable for lesser misconduct, such as Reprimands. Rule 9(B) of the ABA Model Rules of Disciplinary Enforcement provides the following definition of a lesser misconduct:

Lesser misconduct is conduct that does not warrant a sanction restricting the respondent's license to practice law. Conduct **shall not** be considered lesser misconduct if any of the following considerations apply:

- (1) **The misconduct involves the misappropriation of funds;** (Emphasis Added).


1 Given the knowing misappropriation of trust funds so that Respondent could pay his  
2 payroll and his taxes together with depositing trust funds in his family trust account, there is no  
3 interpretation or analysis that could be performed by the Panel that could support a  
4 recommendation of anything less than suspension.

5 **X. Conclusion**

6 Respondent knowingly transferred client trust funds out of his trust account so that he  
7 could meet his law firm payroll and pay taxes. *See* Exhibit A. Respondent also took additional  
8 client trust funds out of his trust account before verifying there were funds in the trust to  
9 withdraw. Finally, Respondent knowingly transferred trust funds to his own personal family  
10 trust account. Pursuant to ABA Standard 4.11 and 4.12 Respondent's conduct warrants  
11 disbarment or a substantial suspension for his knowing conversion of client trust funds which  
12 could expose his clients to injury.

13 **DATED** this 7 day of April, 2021.

14 **STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

15  
16   
Daniel Young (702) 382-2200 2021 16:50 PDT  
Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENTS MOTION FOR APPROVAL OF CONDITIONAL GUILTY PLEA** was served via email to:

1. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)
2. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)
3. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

Dated this 7th day of April, 2021.

*Sonia Del Rio*  
\_\_\_\_\_  
Sonia Del Rio, an employee  
of the State Bar of Nevada

# EXHIBIT A

# EXHIBIT A

Case No: OBC20-0163



**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
 )  
 Complainant, )  
 vs. )  
 JAMES J. JIMMERSON, ESQ., )  
 Nevada Bar No. 0264, )  
 Respondent. )

**COMPLAINT**

TO: James J. Jimmerson, Esq.  
c/o Bailey Kennedy  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2), a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada ("State Bar"), 3100 W. Charleston Boulevard, Suite 100, Las Vegas, Nevada 89102, **within twenty (20) days of service of this Complaint**. Procedure regarding service is addressed in SCR 109.

**General Allegations**

1. Complainant, State Bar of Nevada, alleges that the Respondent, James J. Jimmerson, Esq. ("Respondent"), Nevada Bar No. 0264, is currently an active member of

1 the State Bar of Nevada and at all times pertinent to this complaint had his principal place  
2 of business for the practice of law located in Clark County, Nevada.

3 2. Respondent engaged in acts of professional misconduct warranting the  
4 imposition of professional discipline as set forth below.

5 3. On February 5, 2020, Nicole Cruz, who worked for Respondent sent a  
6 grievance to the State Bar (SBN) and alleged that Respondent made his office manager,  
7 Leah Ballard, transfer unearned funds out of his client trust account to make payroll.

8 4. Cruz claimed that Respondent told them to look the other way or they would  
9 be fired.

10 5. Cruz stated that she had no first-hand knowledge of Respondent giving  
11 these instructions, but she allegedly saw texts that he sent to Ballard.

12 6. In his response to SBN's letter of investigation, Respondent provided a  
13 current trust account reconciliation, that included his account ledgers and current  
14 account statement.

15 7. On February 6, 2020, SBN issued a subpoena to Nevada State Bank (NSB)  
16 requesting Respondents trust and business account records.

17 8. After receiving the records from NSB, SBN Investigator, Louise Watson  
18 reviewed Respondent's IOLTA trust, corporate and payroll accounts for any instances in  
19 which it appeared that he would not have had sufficient funds to make payroll but for a  
20 withdrawal from his IOLTA trust account.

21 9. Watson identified an instance in which payroll and related taxes disbursed  
22 from Respondent's payroll account between November 22 and November 27, 2019, would  
23 not have been possible without funds being withdrawn from IOLTA trust account, which  
24 was around the time referenced by Cruz.  
25

1           10.     Watson identified that on November 20, 2019 Respondent's payroll account  
2 closed with a balance of \$2,513.15.

3           11.     Similarly, on November 20, 2019 Respondent's corporate account closed  
4 with a balance of \$19,758.19.

5           12.     Subsequently, on November 21, 2019, Respondent or his agent made an  
6 unidentified transfer in the amount of \$45,000 from his IOLTA trust account to his  
7 corporate account.

8           13.     Respondent or his agent then transferred \$46,958.87 from his corporate  
9 account to his payroll account.

10          14.     After making the transfer to his payroll account, Respondent or his agent  
11 disbursed \$46,772.53 from his payroll account before another deposit was made.

12          15.     The subsequent disbursements from his payroll account were as follows:

13               a.    On November 22, 2019, Respondent or his agent made a direct debit  
14                    from his payroll account in the amount of \$30,025, and also issued  
15                    \$5,861.26 in payroll checks.

16               b.    On November 26, 2019, Respondent or his agent issued another check  
17                    in the amount of \$703.47 from his payroll account.

18               c.    On November 27, 2019, Respondent or his agent made a direct debit of  
19                    \$10,182.80 from his payroll account to the IRS.

20          16.     Additionally, on November 14, 2019, Respondent or his agent improperly  
21 transferred \$40,000 from his IOLTA trust account to his corporate account from funds  
22 that were not on deposit in his IOLTA account until after the transfer was made.

23        ///

24        ///

17. Then again on November 25, 2019, Respondent or his agent improperly transferred \$60,000 from his IOLTA trust account to his corporate account from funds that were not on deposit in his IOLTA account until after the transfer was made.

18. On December 19, 2019, Respondent or his agent transferred \$10,000 from his IOLTA trust account to his corporate account claiming that it was a transfer from Jay Nady's trust funds.

19. However, the January 25, 2020, invoice that Respondent provided in support of this transaction set forth in paragraph 18 above, showed that the work on Jay Nady's case was not performed until January 2020.

20. On December 20, 2019, Respondent or his agent transferred \$15,000 from his IOLTA trust account to a checking account belonging to the Jimmerson Family Trust.

21. On December 27, 2020, the \$15,000 was transferred back into the client trust account from Respondent's corporate account.

22. In response to the grievance, Respondent stated that Ballard worked for him for less than a month and managed to turn his books into a complete mess by the time she resigned on December 2, 2019.

23. Respondent also stated that Ballard was absent several days during her employment for health reasons and as a result he had to personally make some transfers from his trust account to his corporate account.

**COUNT I**

### RPC 1.15 - Safekeeping

24. RPC 1.15 states in relevant part:

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds

received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

25. Respondent improperly used his IOLTA trust account to pay his payroll obligations, as more fully set forth in paragraphs 10 through 15 herein.
26. Respondent withdrew funds from his IOLTA trust account without first verifying the balances of his clients' trust funds to see if there were funds available to be withdrawn, as more fully set forth in paragraphs 16 and 17 herein.
27. Respondent withdrew funds from his IOLTA account on the Jay Nady matter before he actually earned the earned the fees, as more fully set forth in paragraphs 18 and 19 herein.
28. Respondent improperly transferred \$15,000 from his client trust account to his personal Jimmerson Family Trust Account, as more fully set forth in paragraphs 20 and 21 herein.
29. Respondent knew or should have known his conduct was improper.
30. Respondent's conduct resulted in potential harm to his clients.
31. Respondent's conduct resulted in harm to the legal profession.
32. In light of the foregoing including, without limitation, paragraphs 1 through 23, Respondent has violated RPC 1.15 (Safekeeping).

**COUNT II**

**RPC 5.3 – Responsibilities Regarding Nonlawyer Assistants**

33. RPC 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

34. Respondent failed to take reasonable efforts to train his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that they had the necessary skill and knowledge to properly execute his trust account transactions.

35. Respondent failed to take reasonable efforts to supervise his nonlawyer assistants Leah Ballard and/or Nicole Cruz to ensure that their conduct was compatible with Respondent's professional obligations regarding his trust account transactions.

36. Respondent knew or should have known his conduct was improper.

37. Respondent's conduct resulted in potential harm to his clients.

38. Respondent's conduct resulted in harm to the legal profession.

39. In light of the foregoing including, without limitation, paragraphs 1 through 23, Respondent has violated RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants).

**WHEREFORE**, Complainant prays as follows:


40. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

41. That Respondent be assessed the actual and administrative costs of the disciplinary proceeding pursuant to SCR 120; and

42. That pursuant to SCR 102, such disciplinary action be taken by the Southern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

**DATED** this 7 day of October, 2020.

**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

  
Daniel T. Young (Clerk) (2020 08:51 PDT)

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Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

# EXHIBIT B

# EXHIBIT B



FILED

JUN 15 2017

STATE BAR OF NEVADA

BY: *[Signature]*  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,  
  
Complainant,  
  
vs.  
  
ADAM S. KUTNER, ESQ.,  
Nevada Bar No. 4310,  
  
Respondent.

**CONDITIONAL GUILTY PLEA  
IN EXCHANGE FOR A  
STATED FORM OF DISCIPLINE**

Pursuant to SCR 113(1) and DRP 23, Respondent Adam S. Kutner, Esq. ("Respondent" or "Mr. Kutner"), by and through his counsel, tenders to the Office of Bar Counsel ("Bar Counsel") for the State Bar of Nevada ("State Bar") the following Conditional Guilty Plea ("Plea") and agrees to the imposition of the following Stated Form of Discipline in the above-captioned matter. The Southern Nevada Disciplinary Board has jurisdiction over Mr. Kutner and the subject matter of this proceeding pursuant to SCR 99.

**I. CONDITIONAL GUILTY PLEA**

Through this Plea, Mr. Kutner agrees and admits as follows:

Mr. Kutner pleads guilty and admits that he violated the following Rules of Professional Conduct (RPC) as set forth in the Complaint filed August 1, 2016, and in accordance with the Admitted Facts set forth herein.

**RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer)**

- Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
- Grievance File No. OBC15-1291 / Yvonne Archie
- Grievance File No. OBC16-0041 / Margaret Butts

FILED

JUN 12 2015



STATE BAR OF NEVADA  
BY \_\_\_\_\_  
OFFICE OF BAR COUNSEL

RPC 1.4 (Communication)

- Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
- Grievance File No. OBC15-0604 / Shawna Freeman
- Grievance File No. OBC15-1291 / Yvonne Archie
- Grievance File No. OBC16-0041 / Margaret Butts

RPC 1.7 (Conflict of Interest: Current Clients)

- Grievance File No. OBC16-0613 / Gonzalo Duran

RPC 1.9 (Duties to Former Clients)

- Grievance File No. OBC16-0613 / Gonzalo Duran

RPC 1.18 (Duties to Prospective Clients)

- Grievance File No. OBC16-0613 / Gonzalo Duran

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants)

- Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
- Grievance File No. OBC15-0604 / Shawna Freeman
- Grievance File No. OBC15-1291 / Yvonne Archie
- Grievance File No. OBC16-0041 / Margaret Butts

RPC 5.5 (Unauthorized Practice of Law)

- Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
- Grievance File No. OBC15-0604 / Shawna Freeman
- Grievance File No. OBC15-1291 / Yvonne Archie
- Grievance File No. OBC16-0041 / Margaret Butts

RPC 8.1 (Bar Admission and Disciplinary Matters)

- Grievance File No. OBC15-1291 / Yvonne Archie

RPC 8.4 (Misconduct)

- Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
- Grievance File No. OBC15-0604 / Shawna Freeman
- Grievance File No. OBC15-1291 / Yvonne Archie
- Grievance File No. OBC16-0041 / Margaret Butts

**II. ADMITTED FACTS**

The facts as admitted by Mr. Kutner solely for purposes of this Plea are as follows:

1. Respondent is now and at all times pertinent herein [was] a licensed attorney in the State of Nevada, having had his principal place of business for the practice of law in Clark County, Nevada.

Count 1  
**OBC15-0309 / Floro Perez & Estela Serans**

2. Grievants Floro Perez ("Perez") and Estela Serans ("Serans") (together, "P&S") were involved in a motor vehicle accident on or about April 26, 2014.

3. On, about, or between April 26, 2014, and May 1, 2014, P&S contacted the Respondent's office for possible representation.

4. On or about May 1, 2014, P&S came to the Respondent's office and met with Hazel, the Respondent's employee.

5. Hazel is a nonlawyer.

6. At that time, each of P&S signed a Spanish-language retainer agreement in order to obtain legal services from the Respondent's firm.

7. Also at that time, each of P&S signed an English-language "Power of Attorney" for the Respondent's firm.

8. Each "Power of Attorney" form signed by P&S states in part:

That I ... do hereby appoint, make and constitute ADAM S. KUTNER AND ASSOCIATES, of the City of Las Vegas, County of Clark, State of Nevada, to be my true and lawful attorney-in-fact, for me and in my name and on my behalf to receive and receipt for any and all sums of money, to deposit in their trust account any and all monies received by them, and generally to act for me in all matters including signing settlement releases pertaining to my claim ...

9. No attorney was present in the room when P&S signed these documents, and no lawyer explained any of them.

10. Between May 1, 2014, and February 26, 2015, P&S made multiple requests to the Respondent's firm to speak to the Respondent, or any attorney at the firm, about their cases.

11. Between May 1, 2014, and February 26, 2015, neither the Respondent, nor any attorney at his firm, ever met with or spoke to P&S.

12. Instead, in that timeframe, many different nonlawyer employees of Respondent's firm always spoke to, or met with, P&S.

13. Also during that timeframe, P&S were not provided with a copy of their retainer agreements by the Respondent's office, despite multiple requests.

1           14.     On or about October 9, 2014, Serans was informed by Alicia, a nonlawyer employee  
2 at Respondent's firm, that nothing had happened on her case because there were missing medical  
3 bills.

4           15.     Serans emailed the missing medical bills to Alicia at [acortez@adamskutner.com](mailto:acortez@adamskutner.com) that  
5 day.

6           16.     Alicia confirmed receipt of the medical bills.

7           17.     On or about November 17, 2014, Serans contacted Renee, a nonlawyer employee at  
8 Respondent's firm, who advised Serans that there were missing medical bills.

9           18.     Even though she had previously sent them to Alicia, Serans resent the medical bill(s)  
10 to Renee at [afranco@adamskutner.com](mailto:afranco@adamskutner.com) that day.

11          19.     P&S were concerned that they could not get satisfactory answers as to how their cases  
12 were proceeding.

13          20.     On or about December 9, 2014, P&S went to the Respondent's office.

14          21.     P&S met with Gregorio, a nonlawyer employee of the Respondent, who informed  
15 them that they were called on December 5, 2014, and advised that a \$1,000 offer was made.

16          22.     P&S had not received this message or a telephone call.

17          23.     P&S were concerned about their cases and asked to meet with the Respondent.

18          24.     P&S were told that they could not and a message was left for Lilia, the Respondent's  
19 nonlawyer assistant, for her to return their call.

20          25.     On or about December 17, 2014, P&S called Respondent's office again.

21          26.     Lilia was not available and P&S spoke with Julia, a nonlawyer employee of the  
22 Respondent.

23          27.     Julia advised P&S that there was no resolution. Serans asked to speak with Lilia and  
24 was placed on hold.

25          28.     Another nonlawyer employee, Tracy, picked up the call and P&S asked to speak with  
26 the Respondent.

27          29.     Tracy said she would leave a message for Lilia. Tracy informed P&S that they would  
28 hear from their office before the end of 2014.

1 30. P&S called the Respondent's office from December 19, 2014, to January 14, 2015,  
2 requesting copies of their files.

3 31. P&S were denied an appointment with the Respondent every time they asked.

4 32. On or about December 20, 2014, a Release was signed by Irene Martinez (a  
5 nonlawyer employee of the Respondent) as P.O.A. for Serans for a \$7,500.00 settlement in the  
6 matter.

7 33. This settlement offer had not been discussed with, or approved for acceptance, by  
8 Serans.

9 34. On January 14, 2015, nonlawyer employee Tracy called P&S and relayed to them  
10 what was called an offer.

11 35. P&S did not want to accept the so-called offer.

12 36. Tracy told P&S that there were no alternatives and taking the case to court was not an  
13 option.

14 37. Serans felt pressured to accept the settlement.

15 38. On January 21, 2015, Serans was contacted to sign the release and to pick up a check  
16 for \$3,960.39. Her appointment was at 10:30 a.m.

17 39. Serans signed the Settlement Memorandum.

18 40. During the January 21 appointment, Serans asked for a copy of her file. She was told  
19 she would have to come back at 3:00 PM to pick up her file.

20 41. When Serans returned to the office that day, she was instructed to wait in the lobby.  
21 A nonlawyer employee, Magaly, gave her a copy of "everything she could."

22 42. When Serans reviewed the documents at home, there were missing pages, and pages  
23 were copied very large so the image was only a partial image.

24 43. On or about January 28, 2015, Serans sent a certified letter to the Respondent  
25 expressing P&S's concerns, including an inability to discuss their cases with him directly,  
26 unhappiness with how their cases were being handled, and \$600 case costs that was assessed on  
27 Serans.

28

1 44. On February 2, 2015, Serans was contacted by Respondent's nonlawyer assistant,  
2 Lilia, to make an appointment with the Respondent on February 11, 2015 at 2:00 PM.

3 45. At that February 11 appointment, P&S waited one hour and were seen by the  
4 nonlawyer assistant, Lilia, not the Respondent.

5 46. P&S told Lilia that they were uncomfortable with the results of Serans' case, and did  
6 not know what was happening with Perez's case.

7 47. At that time, Lilia told them that a portion of Perez's settlement for \$3,200 had  
8 arrived, and gave him a check for \$683.36.

9 48. Perez then signed the Settlement Memorandum, and a handwritten note was made  
10 that Perez received a refund check of \$600 for case costs.

11 49. Lilia advised Perez that the second portion of his settlement was sent from Arizona on  
12 February 10, 2015. Perez was to receive approximately \$2,495 from that settlement.

13 50. On February 26, 2015, P&S wrote a grievance to the State Bar after not being able to  
14 receive the final check in Perez's matter.

15 51. P&S were unable to get in touch with Lilia on her direct line, either.

16 52. In two letters, each dated March 7, 2016, P&S indicated to the State Bar that they had  
17 been in contact with the Respondent's office and would like to withdraw their complaints against the  
18 Respondent, because they "are both satisfied and feel like our complaint has been fully addressed."

19 53. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this  
20 Plea, *supra*.

21 **Count 2**  
22 **OBC15-0604 / Shawna Freeman**

23 54. On or about October 4, 2014, Grievant Shawna Freeman ("Freeman") was at The  
24 Joint at the Hard Rock Hotel and Casino.

25 55. Freeman was going to her seat in a suite and, as she was directed to her seat, she fell  
26 on the unlit stairs, bruising her ankle.

27 56. On or about October 20, 2014, Freeman retained the Respondent's office.  
28

1           57.     In the Respondent's initial forms for Freeman were a retainer agreement, a general  
2 authorization allowing the Respondent's office to sign release forms, and New Client Intake Form.

3           58.     No attorney was present in the room when Freeman filled out or signed any of these  
4 initial documents.

5           59.     No attorney explained any of these documents to Freeman.

6           60.     Between October 2014 and March 2015, Freeman went to the Respondent's office  
7 many times to drop off documents.

8           61.     Freeman never met with an attorney.

9           62.     On or about February 20, 2015, attorney Victor Cardoza reviewed Freeman's file and  
10 determined as follows: "[T]rip & fall case. No fractures. Client walking in dark. I would not take  
11 case. I would drop."

12           63.     A "Drop Letter Authorization" form was completed and signed by the Respondent  
13 and "LAR" on March 19, 2015.

14           64.     A note on the top stated that the letters were mailed out on April 9, 2015.

15           65.     The letters sent to Freeman stated that, after review of her case with litigation  
16 attorneys, they will not be able to pursue this matter on her behalf. They advised her that she had a  
17 two year statute of limitations and that they would not place a lien for attorney fees or costs on the  
18 file. The Respondent also enclosed a VIP card for unlimited free traffic representation and said they  
19 are very appreciative of referrals. If she were to refer someone, she is to write her information on  
20 the back of the card so they can personally contact her to thank her.

21           66.     Freeman later received a copy of her medical file from Red Rock Diagnostics, in  
22 relation to her injury.

23           67.     Attached in the file was a letter from the Respondent's office dated March 19, 2015,  
24 that stated his firm no longer represents Freeman "in regard to personal injuries sustained in an  
25 automobile collision."

26           68.     Freeman's case was a slip and fall, not a motor vehicle accident.

27           69.     The first time Freeman saw this letter was in her medical file; at that time, she had not  
28 received this letter from the Respondent's office.

1 70. Freeman had not otherwise been told that the Respondent had dropped her as a client,  
2 so she learned it from her medical file.

3 71. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this  
4 Plea, *supra*.

5 **Count 3**  
6 **OBC15-1291 / Yvonne Archie**

7 72. On or about April 29, 2014, Grievant Yvonne Archie ("Archie") retained the  
8 Respondent for an automobile accident that occurred on or about April 18, 2014.

9 73. At the time of her initial consultation, Archie met with Cinnamon O'Brien, a  
10 nonlawyer employee of the Respondent.

11 74. Also at that time, Archie signed a "Power of Attorney" for the Respondent's firm.

12 75. The "Power of Attorney" form signed by Archie states in part:

13 That I .. do hereby appoint, make and constitute ADAM S. KUTNER AND  
14 ASSOCIATES, of the City of Las Vegas, County of Clark, State of Nevada, to be my  
15 true and lawful attorney-in-fact, for me and in my name and on my behalf to receive  
16 and receipt for any and all sums of money, to deposit in their trust account any and all  
monies received by them, and generally to act for me in all matters including signing  
settlement releases pertaining to my claim ...

17 76. Archie did not meet with, or speak to, an attorney at the time of her initial  
18 consultation.

19 77. On December 1, 2014, a complaint was filed in District Court on Archie's behalf.

20 78. An Amended Complaint on Archie's behalf was filed on January 30, 2015.

21 79. On or about April 17, 2015, Medicare sent Archie a letter inquiring about Medicare  
22 reimbursement.

23 80. Archie was confused as to why she received this letter, since she had culinary  
24 insurance at the time of the accident, and did not enroll in Medicare until later.

25 81. Upon further inquiry, Archie learned that the Respondent's office attempted to submit  
26 her UMC hospital bill to Medicare.

27 82. Upon receiving this letter, Archie called the Respondent's office.

28 83. At that time, Archie was told for the first time that her case with Allstate had settled.

1 84. The settlement had not been discussed with, or approved for acceptance, by Archie.

2 85. Archie does not recall signing a release in relation to the settlement.

3 86. In fact, the release had been signed on February 19, 2015 by Irene Martinez, a  
4 nonlawyer employee of the Respondent's, "on behalf of Yvonne Archie per POA."

5 87. On or about April 23, 2015, Paula Ramirez (Disbursal Representative) emailed  
6 Archie to schedule a time to sign the disbursal sheet and pick up the settlement check for the Allstate  
7 matter. The email noted that a lawsuit was still pending against AAA Insurance Company.

8 88. The settlement memorandum for \$25,000.00 with Allstate was dated February 19,  
9 2015.

10 89. Upon reviewing the disbursal sheet, Archie believed that not all of her medical bills  
11 were submitted to her health insurance.

12 90. Archie attempted to reach the Respondent to find out what had happened.

13 91. Every time Archie called the Respondent's office, she spoke with a nonlawyer  
14 assistant who did not answer her questions.

15 92. In the course of her communications, Archie also found out that Paula (the disbursal  
16 representative) no longer worked at the Respondent's office.

17 93. At one point in time, the Respondent's office refused to talk to Archie or answer her  
18 calls at all.

19 94. Due to the lack of answers, Archie filed a grievance with the State Bar on October 8,  
20 2015.

21 95. On November 12, 2015, an "open file" letter was sent by the State Bar to the  
22 Respondent, requesting that he provide proof of settlement distribution, including copies of  
23 cancelled checks and bank statements.

24 96. On November 19, 2015, Archie sent another letter to the State Bar with a copy of a  
25 letter from a health-care provider related to her accident, requesting that payment of \$3,609.43 be  
26 made within ten days.

27 97. Archie was concerned as to why this medical bill was not paid.  
28

1           98.     On or about December 3, 2015, Archie sent a copy of a letter to the State Bar, the  
2 letter stating that she agrees to retract any and all complaints filed with the State Bar against the  
3 Respondent because all of her issues and concerns have been completely resolved to her full  
4 satisfaction.

5           99.     Included with this letter was a copy of a check and a copy of a settlement  
6 memorandum, both dated December 3, 2015.

7           100.    The check, number 14803, was made out to Yvonne Archie for \$12,032.00.

8           101.    This check was drawn from the general account of "Adam S. Kutner, P.C.," and the  
9 memo line states that it was for "client settlement."

10          102.    The settlement memorandum indicates that Archie was to receive \$12,000.32, as part  
11 of her \$25,000.00 settlement with Allstate Insurance Company.

12          103.    The settlement memorandum was signed by Archie, and indicated that she had  
13 received her check.

14          104.    At some point in November or December 2015, Archie received a phone call from the  
15 Respondent's office to schedule a meeting between her and the Respondent.

16          105.    Archie agreed to a meeting.

17          106.    On a day in December 2015, Archie went to the Respondent's office and met with a  
18 woman who identified herself as an attorney.

19          107.    At that time, Archie was given the business card for attorney Jennifer Foley.

20          108.    This woman said the Respondent asked her to make an offer to Archie, as to what  
21 would make Archie happy.

22          109.    Archie replied that she was not satisfied with the \$8,000.00 she would have received  
23 and wanted to go over her medical bills.

24          110.    Archie said \$11,000.00 was closer to what she should receive.

25          111.    The woman told Archie that the Respondent authorized a payment of \$12,000.00 if  
26 Archie would drop her complaint with the State Bar.

27          112.    Archie said she would sign the letter prepared by the Respondent's office.

28          113.    Archie was asked to return around 4 PM that day to pick up the check.

1 114. When Archie returned to the Respondent's office that day, she was handed a check  
2 for \$12,032.00 made payable to Yvonne Archie.

3 115. This was the same check that Archie sent a copy of to the State Bar in her December  
4 3, 2015 letter.

5 116. The settlement memorandum that Archie signed at her December meeting was  
6 different than the disbursal she had seen, and questioned, earlier in the year.

7 117. The new settlement memorandum, signed by Archie, reduced the Respondent's fees  
8 and costs.

9 118. On December 10, 2015, the State Bar received a letter from the Respondent stating  
10 that this incident was a miscommunication between his office and Archie, and all issues had been  
11 resolved.

12 119. The Respondent attached a copy of the same letter previously sent to the State Bar by  
13 Archie, stating that she agrees to retract any and all complaints filed with the State Bar because all of  
14 her issues and concerns have been completely resolved to her full satisfaction.

15 120. The Respondent failed to provide the State Bar with copies of cancelled checks as  
16 requested by the State Bar.

17 121. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this  
18 Plea, *supra*.

19 **Count 4**  
20 **OBC16-0041 / Margaret Butts**

21 122. On or about April 27, 2013, Grievant Margaret Butts ("Butts") was involved in a  
22 motor vehicle accident.

23 123. Butts retained the Respondent on or about April 29, 2013.

24 124. At the time of her initial consultation, Butts did not meet with an attorney, and  
25 nothing was explained to her by an attorney.

26 125. On June 4, 2013, a memo was prepared by Kyle (initials KRT) in the Respondent's  
27 office. Butts was requesting a loan of \$500.00 for the third time. The memo indicated that each  
28 time she had requested a loan she was told she needed more treatment. It was noted that she was

1 getting behind on her bills with all the treatment she was receiving. The notes indicated that an  
2 appointment could be set up with Lilia, a nonlawyer assistant of the Respondent.

3 126. On August 22, 2013, the Respondent filed a Complaint in *Butts v. Alemar, Geico, et*  
4 *al.*, Case No. A-13-687422-C, in the Eighth Judicial District Court.

5 127. On September 6, 2013, the Respondent's office sent a letter memorializing the  
6 acceptance of policy limits (\$25,000.00) from American Family Insurance.

7 128. This settlement had not been discussed with, or approved for acceptance by, Butts.

8 129. On September 12, 2013, Butts signed the settlement agreement for \$25,000.00 with  
9 American Family Insurance.

10 130. On September 19, 2013, Butts signed the Settlement Memorandum for the  
11 \$25,000.00 American Family Insurance settlement.

12 131. On or about September 20, 2013, a letter was sent to GEICO from the Respondent's  
13 office accepting \$21,000.00 as a settlement.

14 132. This settlement had not been discussed with, or approved for acceptance by, Butts.

15 133. On October 1, 2013, Butts signed the release for the GEICO settlement.

16 134. On or about October 7, 2013, Butts signed a Settlement Memorandum relating to the  
17 \$21,000.00 settlement with GEICO. This settlement memorandum is undated.

18 135. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this  
19 Plea, *supra*.

20 **Count 5**  
21 **OBC16-0613 / Gonzalo Duran**

22 136. On or about March 20, 2015, Grievant Gonzalo Duran ("Duran") was involved in a  
23 car accident.

24 137. On or about March 23, 2015, Duran went to the Respondent's office for a  
25 consultation, and signed initial paperwork.

26 138. Duran's case was in the investigation process by the Respondent's office for several  
27 months, to determine if there was insurance coverage for the accident.  
28

1 139. After meeting with Duran, the Respondent's firm was approached by Sara McGahey  
2 ("McGahey"), who was the passenger in the other vehicle.

3 140. As stated by Respondent's counsel in a June 24, 2016 letter to the State Bar, "Due to  
4 an error in checking for conflicts, it was not known that McGahey was the other party to Mr.  
5 Duran's accident."

6 141. McGahey engaged the Respondent's services, despite the conflict.

7 142. Four or five months after Duran retained the Respondent, the Respondent's law firm  
8 contacted Duran and stated they could no longer represent him because the other party did not have  
9 insurance and had expired plates.

10 143. The exact date of Duran's discharge is not known.

11 144. During the course of McGahey's representation, McGahey's file was transferred by  
12 the Respondent's office to Fassett & Cardoza to handle the actual litigation, as Respondent's firm  
13 sometimes does.

14 145. On February 3, 2016, Fassett & Cardoza filed a complaint against Duran on  
15 McGahey's behalf.

16 146. Duran was represented by attorney Rachel M. Lewis, who filed the Answer on his  
17 behalf on May 13, 2016.

18 147. Duran filed a grievance with the State Bar on April 16, 2016.

19 148. On May 25, 2016, the State Bar sent a letter of investigation to the Respondent.

20 149. On June 9, 2016, a motion to withdraw as counsel of record was filed in District  
21 Court, where Fassett & Cardoza and Mr. Kutner asked to withdraw from representing McGahey.

22 150. The motion was a typical motion that said that "an irreconcilable impasse" occurred  
23 with the client and they could no longer represent the client.

24 151. The Respondent failed to mention that the impasse was a conflict of representing two  
25 clients at the same time, instead making it appear as if his client was at fault.

26 152. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this  
27 Plea, *supra*.

28

### III. AGGRAVATION AND MITIGATION

In aggravation, Mr. Kutner has:

- Prior disciplinary offenses, SCR 102.5(1)(a);
- A pattern of misconduct, SCR 102.5(1)(c);
- Multiple offenses, SCR 102.5(1)(d);
- Vulnerability of victims, SCR 102.5(1)(h); and
- Substantial experience in the practice of law, SCR 102.5(1)(i).

In mitigation, Mr. Kutner has:

- Absence of a dishonest or selfish motive, SCR 102.5(2)(b);
- Timely good faith effort to make restitution or to rectify consequences of misconduct, SCR 102.5(2)(d);
- Cooperative attitude toward this proceeding, SCR 102.5(2)(e);
- Character or reputation, SCR 102.5(2)(g);
- Remorse, SCR 102.5(2)(m); and
- Remoteness of prior offenses, SCR 102.5(2)(n).

### IV. CONDITIONAL AGREEMENT BY RESPONDENT

Mr. Kutner agrees to the terms of this Plea on the express condition that the Formal Hearing Panel does not increase the level of discipline (e.g., Mr. Kutner is agreeable to the Formal Hearing Panel imposing additional conditions, if warranted, but not to the Formal Hearing Panel recommending a suspension of any type or duration instead of a public reprimand). If this Plea is accepted and the Formal Hearing Panel adopts the stated form of discipline, no review by the Nevada Supreme Court will be required because the stated form of discipline "includes neither a suspension nor disbarment." SCR 113(4).

If this Plea is rejected by the Formal Hearing Panel, it shall become null and void and inadmissible for any purpose, whether in this matter or in any other matter involving Mr. Kutner.

### V. STATED FORM OF DISCIPLINE

Pursuant to this Plea, Mr. Kutner agrees to the following imposition of discipline:

1. Public reprimand, with the following conditions, pursuant to SCR 102(6):

- a. Mr. Kutner shall modify his firm's form retainer agreement for all new clients to indicate as follows (such revised form to be reviewed and approved by Bar Counsel):
    - i. Mr. Kutner may not be the primary lawyer responsible for the matter.
- The firm will allocate and assign work among its lawyers and non-lawyer assistants in a manner which the firm believes to be most efficient for the client.

1                   ii.     A lawyer will be present to answer any question(s) that the client has  
2 about the retainer agreement and other intake documents. The client and the lawyer will each be  
3 required to affix his or her initials next to or directly below this provision of the retainer agreement  
4 in order to confirm that a lawyer met with the client and answered all of his or her questions.

5                   iii.    The client shall cooperate with the firm, be available to the firm for  
6 consultation on reasonable notice, and provide such decisions or direction as the firm may require  
7 for appropriate handling of the matter. This includes being available to sign any settlement or  
8 release agreement and other necessary paperwork related to the matter.

9                   b.     Mr. Kutner shall modify his firm's form power of attorney for all new clients  
10 to exclude any authority related to settlement of a matter (such revised form to be reviewed and  
11 approved by Bar Counsel).<sup>1</sup>

12                  c.     Mr. Kutner shall implement the following policy at his firm: If authority to  
13 settle a matter is orally obtained from a client, the firm shall prepare and send a confirming letter to  
14 the client within five (5) business days of receiving such oral authorization from the client.

15                  d.     For a period of twelve (12) calendar months following Bar Counsel's  
16 publication of a public reprimand in the state bar publication in accordance with SCR 121.1(6), Mr.  
17 Kutner's firm shall be reviewed on a quarterly basis – for a total of four (4) reviews – by a third  
18 party to be agreed upon by Mr. Kutner and the State Bar solely for purposes of confirming Mr.  
19 Kutner's compliance with these conditions. Each review shall be of fifty (50) random new client  
20 files and the results shall be reported in writing to Bar Counsel (with a copy sent to Mr. Kutner) in a  
21 form to be agreed upon by Mr. Kutner and the State Bar.

22                  2.     Mr. Kutner shall pay the costs of this proceeding, including Bar Counsel and staff  
23 salaries, within thirty (30) calendar days of receipt of a billing from the State Bar.

24                  3.     Mr. Kutner shall pay TEN THOUSAND AND 00/100 DOLLARS (\$10,000) to the  
25 Clients' Security Fund within thirty (30) calendar days of approval of this Plea by the Formal  
26 Hearing Panel.

27 \_\_\_\_\_  
28 <sup>1</sup> With regard to existing clients, Mr. Kutner's firm will not use powers of attorney to sign settlement or release agreements.

1 4. Mr. Kutner shall provide timely and complete responses to any request by Bar  
2 Counsel, pursuant to RPC 8.1, for any new grievance received and opened for investigation  
3 following approval of this Plea by the Formal Hearing Panel. If a screening panel determines that  
4 Mr. Kutner engaged in professional misconduct after the execution of this Plea, and violated any of  
5 the same RPC that he admitted to in this Plea, the screening panel shall vote the matter for a formal  
6 hearing. If a formal hearing panel then makes findings that Mr. Kutner engaged in professional  
7 misconduct and violated any of the same RPC that he admitted to in this Plea, the formal hearing  
8 panel shall recommend additional discipline, if any, as may be warranted under the circumstances.

9 **VI. APPROVAL BY RESPONDENT**

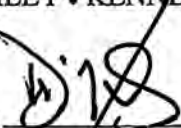
10 Having read the foregoing Plea and being satisfied with it, the Conditional Guilty Plea in  
11 Exchange for a Stated Form of Discipline set forth above is hereby approved by Mr. Kutner.

12 Mr. Kutner has had the opportunity to discuss this Plea with counsel of his own choosing and  
13 fully understands the conditions set forth herein. Mr. Kutner further understands that his failure to  
14 substantially adhere to any of the conditions of this Plea shall constitute grounds upon which the  
15 State Bar may commence disciplinary proceedings against him for such noncompliance.

16 DATED this 14 day of June, 2017.

DATED this 15<sup>th</sup> day of June, 2017.

17  
18  
19 By:   
20 ADAM S. KUTNER, ESQ.  
Respondent

BAILEY ♦ KENNEDY  
21  
22 By:   
DENNIS L. KENNEDY  
JOSHUA P. GILMORE

23 AND

HUTCHISON & STEFFEN, LLC  
MARK A. HUTCHISON

Attorneys for Respondent  
Adam S. Kutner, Esq.

**EXHIBIT C**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF  
JAMES J. JIMMERSON.

No. 22611

**FILED**

OCT 06 1994

BY *[Signature]*  
DEPUTY CLERK

ORDER OF PUBLIC REPRIMAND

Pursuant to our order directing issuance of a public reprimand in this matter, we authorize the publication, in accordance with SCR 121, of the following letter of public reprimand.

To: James J. Jimmerson, Attorney at Law:

You were retained by a client to represent her interests in post-divorce support and property distribution proceedings. One of the community assets was a five-acre parcel of land in Clark County. At the time you were retained, a foreclosure sale was pending on the property. Your client desired to save her interest in the land, but was financially unable to prevent foreclosure.

You advised your client that there was a possibility that either you or your firm could help her avoid foreclosure. Later, however, you informed your client that you would be unable to help her.


Thereafter, you contacted a friend of yours who is a real estate agent. You told your friend that your client's property would be available in a public foreclosure sale. You further suggested that he examine the property for the purpose of the two of you purchasing it. Your friend returned and told you that he would be interested in being involved in the purchase of the property if it could be bought for \$45,000 or less.

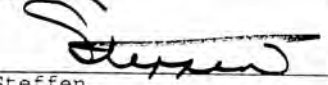
You then gave your friend a check for \$45,000 and he purchased the property for approximately \$32,000, the minimum bid. Your friend returned the excess money to you and purchased a 20% interest in the property from you. Two months later, your friend sold the property for \$84,950 and you realized a profit, after costs, of approximately \$35,000.

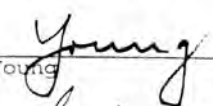
You did not disclose your actions to your client until approximately six months after the sale of the property. Further, you did not disclose your actions until your client's ex-husband expressed dissatisfaction about your actions. Thereafter, you requested your client to sign a disclosure letter consenting to your purchase of the property. Your letter, however, was misleading and did not clearly convey that your funds were used to purchase the property and that you invited your friend to participate in the purchase, not vice versa. Your client consulted independent counsel and a settlement was negotiated whereby you paid your client one-half of your profits from the purchase and sale.

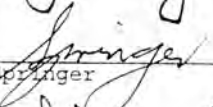
Your conduct is in violation of SCR 154(1) (communication), SCR 157(2) (conflict of interest; general rule), SCR 158(1) (conflict of interest; business transaction), SCR 158(2) (conflict of interest; use of information), SCR 158(10) (conflict of interest; acquiring interest in action), SCR 165(2) (safekeeping property); and SCR 203(4) (conduct prejudicial to the administration of justice), and warrants public discipline. Accordingly, you are publicly reprimanded.

It is so ORDERED.

  
Rose, C. J.

  
Steffen, J.

  
Young, J.

  
Springer, J.

  
Shearing, J.

cc: Dennis L. Kennedy, Chairman,  
Southern Nevada Disciplinary Board  
Leonard I. Gang, Bar Counsel  
Phillip W. Bartlett, Special Bar Counsel  
Rosalie Small, Executive Director  
Dickerson, Dickerson, Lieberman & Consul

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF  
JAMES J. JIMMERSON.

No. 22611

**FILED**

OCT 06 1994

JAMES J. JIMMERSON  
BY *[Signature]*  
DEPUTY CLERK

ORDER DIRECTING ISSUANCE OF PUBLIC REPRIMAND

On August 27, 1991, a hearing panel of the Southern Nevada Disciplinary Board issued a decision in the above-entitled matter accepting attorney James J. Jimmerson's conditional guilty plea to allegations of professional misconduct. See SCR 113(1). The conditional plea agreement provided that Jimmerson would receive a private reprimand, would perform 200 hours of community service, and would pay the disciplinary costs. Special bar counsel, who had been appointed pursuant to SCR 120(2), sought this court's review of the panel's decision.

On December 23, 1992, this court remanded this matter to the disciplinary board. This court stated in part: "If indeed evidence can be presented establishing that Jimmerson has committed all the acts of misconduct alleged by special bar counsel, then we would view such acts as a serious breach of the Nevada Rules of Professional Conduct warranting the imposition of public discipline."

On June 8, 1993, the Southern Nevada Disciplinary Board forwarded the findings and recommendations of the disciplinary panel to this court for final approval. The panel found that Jimmerson had, in essence, committed the acts of misconduct alleged by special bar counsel. The panel recommends that Jimmerson should: (1) receive an "anonymous public reprimand;" (2) pay the sum of \$17,500 into the client's security fund for the


State Bar of Nevada; (3) perform 100 hours of pro bono work for the Clark County Pro Bono Project or other similar public service organization; and (4) pay the disciplinary costs incurred in these proceedings. The panel further recommends that the "anonymous public reprimand" should disclose the following mitigating factors: (1) Jimmerson's eight years as a bar governor; (2) his three years on a disciplinary board; (3) his prior discipline-free record; and (4) his openness and candor with bar counsel in allowing complete access to his client's file. Jimmerson has notified this court that he accepts the panel's findings and recommendations.

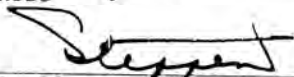
Although recommendations of a disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendations, and we must examine the record anew and exercise independent judgment. See *In re Kenick*, 100 Nev. 273, 680 P.2d 972 (1984). Having reviewed the record of the proceedings before the panel, we conclude that public discipline is warranted, and that an "anonymous public reprimand" is not public discipline in the sense this court intended in the prior order of December 23, 1992. Further, under the circumstances of this case, we do not agree that Jimmerson's service to the bar constitutes a mitigating factor sufficient to warrant the imposition of any form of discipline less severe than public discipline. Jimmerson is held to the same standards of professional responsibility as every other member of the State Bar of Nevada and his past service to the bar, if anything, indicates that he knew or should have known that the conduct revealed on this record was prohibited under this court's Rules of Professional Conduct.

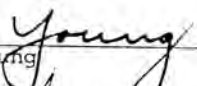
Accordingly, we reject the panel's recommendation for the issuance of an "anonymous public reprimand." Instead, we direct the issuance of a public reprimand. We approve the

remaining recommendations of the panel. Jimmerson shall pay the sum of \$17,500 into the client's security fund for the State Bar of Nevada, perform 100 hours of pro bono work for the Clark County Pro Bono Project or other similar public service organization, and pay the disciplinary costs incurred in these proceedings.

It is so ORDERED.

  
Rose, C. J.

  
Steffen, J.

  
Young, J.

  
Springer, J.

  
Shearing, J.

cc: Dennis L. Kennedy, Chairman,  
Southern Nevada Disciplinary Board  
Leonard I. Gang, Bar Counsel  
Phillip W. Bartlett, Special Bar Counsel  
Rosalie Small, Executive Director  
Dickerson, Dickerson, Lieberman & Consul

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James J. Jimmerson, Esq.



FILED

APR 09 2021

STATE BAR OF NEVADA  
BY: *B. Felix*  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S OPPOSITION TO  
STATE BAR OF NEVADA'S MOTION  
IN LIMINE TO EXCLUDE EXPERT  
TESTIMONY AND EXPERT REPORT**

**I. INTRODUCTION**

The State Bar is trying to dictate how Mr. Jimmerson defends himself in this matter. In particular, the State Bar seeks to prevent Mr. Jimmerson from calling his expert witness, Rob Bare, to testify regarding the applicable standard of care and whether Mr. Jimmerson met that standard in managing his non-lawyer employees. The State Bar's Motion finds no support in the law.

Preliminarily, the State Bar has objected to the admission of expert testimony in a prior disciplinary case—*without success*. Parts of this Motion appear to have been cut and pasted from the State Bar's previous, unsuccessful motion. Because this issue has been fully litigated in the past, the Chair should prevent the State Bar from seeking to relitigate the same issue in this case.

Mr. Bare's testimony is essential to providing Mr. Jimmerson with a full and complete defense to the State Bar's charges. It is ridiculous for the State Bar to argue that Mr. Bare—a long-standing and well-respected attorney in the State of Nevada who served for many years as Bar

1 Counsel before becoming a District Court Judge—lacks the background and qualifications to testify  
2 as an expert witness. It is equally ridiculous for the State Bar to question Mr. Bare’s ability to  
3 provide expert testimony regarding whether Mr. Jimmerson met the standard of care—such an  
4 opinion is within the realm of permissible expert testimony in Nevada and, in fact, is recommended  
5 by the Nevada Supreme Court to aid in determining whether a lawyer met the standard of care.

6 The State Bar’s other objections to Mr. Bare’s expert testimony fall flat. His opinions do not  
7 usurp the Panel’s role but rather, are relevant and will assist the Panel in determining whether Mr.  
8 Jimmerson violated the RPCs. Next, Mr. Bare is not opining as to witness credibility. Further,  
9 whether he properly considered all the relevant evidence may be addressed by the State Bar during  
10 his cross-examination. Finally, the State Bar’s refusal to retain a rebuttal expert witness is not a  
11 basis for claiming that Mr. Bare’s opinions are somehow more prejudicial than probative; the Panel  
12 is well-equipped and capable of determining the appropriate weight to afford Mr. Bare’s opinions.

13 For these reasons, as explained below, the Panel Chair should deny the State Bar’s Motion.<sup>1</sup>

14 **II. FACTS**

15 The State Bar has alleged that Mr. Jimmerson violated RPC 1.15 and 5.3 through a few  
16 minor accounting missteps sourced to the firm’s bookkeeper (Leah Ballard), who, when confronted  
17 with the errors, admitted—in writing—that she had fallen behind in her work and was not fit for the  
18 position. As part of his defense, Mr. Jimmerson retained Mr. Bare to render certain opinions  
19 regarding the State Bar’s allegations. Mr. Bare reviewed the case and opined as follows:

20 - Mr. Jimmerson had policies and procedures in place to ensure that nonlawyer  
21 employees acted in a manner compatible with Mr. Jimmerson’s professional obligations;

22 - Mr. Jimmerson appropriately ensured that Ms. Ballard was trained and qualified to  
23 work as the firm’s bookkeeper;

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26 <sup>1</sup> Unless otherwise ordered by the Panel Chair, Mr. Jimmerson does not necessarily disagree with excluding Mr.  
27 Bare’s written report from being admitted into evidence at the hearing so long as Mr. Bare is allowed to testify as  
28 discussed herein. As with any expert, Mr. Bare issued his report consistent with NRCP 16.1(a)(2)(B) and the Chair’s  
January 14, 2021 Scheduling Order.

1 - Mr. Jimmerson acted reasonably under the circumstances by immediately taking swift  
2 and decisive action once he discovered that Ms. Ballard, despite her training and qualifications, was  
3 not fulfilling her duties and responsibilities as the firm’s bookkeeper; and

4 - Mr. Jimmerson neither ordered Ms. Ballard to neglect her duties and responsibilities  
5 nor did he turn a blind eye toward her shortcomings.

6 (*See* Mot., Ex. A, ¶ 28 (summarizing his opinions); *see also id.*, ¶¶ 31-51 (explaining the bases for  
7 his opinions).)

8 Because these opinions gut the State Bar’s case against Mr. Jimmerson, the State Bar does  
9 not want the Panel to hear them. As a result, the State Bar has moved to exclude Mr. Bare from  
10 testifying at the hearing. The State Bar’s Motion is without merit and should be denied.

### 11 **III. ARGUMENT**

#### 12 **A. Mr. Jimmerson May Present Mr. Bare to Testify as an Expert at the Hearing.**

13 The State Bar argues that Mr. Bare may not testify at the hearing because he seeks to  
14 “impinge upon the disciplinary Panel’s exclusive role to determine if Respondent violated the Rules  
15 of Professional Conduct.” (Mot., 2:14-5:4; *see also id.*, 6:17-20 (arguing that Mr. Bare’s testimony  
16 “invades the exclusive province of the disciplinary panel”).) The argument should be rejected, either  
17 because the State Bar has unsuccessfully made the same argument in the past or because the plain  
18 language of the Nevada Supreme Court Rules and relevant case law make clear that an attorney may  
19 present an expert witness to testify in a disciplinary proceeding.

#### 20 **1. The State Bar Should Be Precluded from Arguing that Mr. Jimmerson** 21 **May Not Present an Expert Witness at the Hearing.**

22 The State Bar has unsuccessfully argued in the past that an attorney may not present expert  
23 testimony in a disciplinary case because doing so usurps the role of the Panel. The doctrine of issue  
24 preclusion prevents the State Bar from relitigating the same issue in this case.

25 As the Nevada Supreme Court has explained, issue preclusion prevents a party from  
26 relitigating an issue which has been decided in a prior case, such that the earlier determination is  
27 conclusive in any subsequent case involving the same party. *Executive Mgmt. v. Ticor Title Ins. Co.*,  
28 114 Nev. 823, 835, 963 P.2d 465, 473 (1998). The doctrine applies where (i) an issue decided in a

1 prior case is identical to an issue presented in the current case, (ii) the ruling from the prior case is on  
2 the merits and has become final, (iii) the party against whom the ruling is asserted was a party to the  
3 prior case, and (iv) the issue was “actually and necessarily litigated.” *Five Star Capital Corp. v.*  
4 *Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713-14 (2008).

5 Here, the elements of issue preclusion are easily met to preclude the State Bar from arguing  
6 that Mr. Jimmerson may not present Mr. Bare to testify as an expert witness at the hearing because it  
7 would usurp the Panel’s role in deciding the issues. First, in a prior disciplinary matter, the State Bar  
8 argued (as it does here) that an attorney could not present expert testimony because (i) the expert  
9 would invade the “exclusive province” of the Panel and (ii) the members of the Panel are capable of  
10 deciding whether an attorney violated the RPCs, without the need for expert testimony.<sup>2</sup> Second, the  
11 ruling from the prior matter—that the attorney was allowed to present expert testimony in support of  
12 his defense—is on the merits and has become final.<sup>3</sup> Third, the State Bar was involved in the prior  
13 case.<sup>4</sup> Finally, the issue of presenting expert testimony in a disciplinary case was actually and  
14 necessarily litigated, with the result being that expert testimony may be admitted in a disciplinary  
15 proceeding.<sup>5</sup>

16 For these reasons, the Chair should apply the doctrine of issue preclusion to prevent the State  
17 Bar from arguing that Mr. Jimmerson may not present an expert witness in support of his defense at  
18 the hearing.

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21 ///

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22  
23 <sup>2</sup> See generally State Bar of Nevada’s Motion in Limine to Exclude Witnesses, filed June 5, 2020, attached as  
24 **Exhibit 1**; State Bar of Nevada’s Reply in Support of its Motion in Limine to Exclude Witnesses, filed June 15, 2020,  
attached as **Exhibit 3**. For confidentiality purposes, personally-identifiable information has been redacted from these  
and the other referenced exhibits.

25 <sup>3</sup> See Order Granting, in Part, and Denying, in Part, State Bar of Nevada’s Motion in Limine to Exclude  
26 Witnesses, filed Aug. 7, 2020, attached as **Exhibit 4**; Findings of Fact, Conclusions of Law, and Order After Formal  
Hearing, filed Nov. 19, 2020, attached as **Exhibit 5**.

27 <sup>4</sup> See Exs. 1, 3.

28 <sup>5</sup> See Exs. 1, 3-4; Respondent’s Opposition to State Bar’s Motion in Limine to Exclude Witnesses, filed June 11,  
2020, attached as **Exhibit 2**.

2. **The Nevada Supreme Court Rules and Relevant Caselaw Permit Mr. Jimmerson to Present an Expert Witness in Support of His Defense.**

Assuming (*arguendo*) the doctrine of issue preclusion does not apply to the issue presented, the outcome is the same: Mr. Jimmerson may present an expert witness in support of his defense at the hearing.

The Nevada Supreme Court recognizes that due process is required in a disciplinary proceeding where an attorney has been accused of an ethical violation and threatened with discipline. *See generally State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988). To that end, notice of a disciplinary hearing issued by the State Bar “shall inform the attorney that he or she is entitled to be represented by counsel, to cross-examine witnesses, *and to present evidence*.” SCR 105(2)(d) (emphasis added). Notably, the rule does not preclude an attorney from presenting an expert witness; so long as the testimony would be admissible if presented in district court, it is admissible in a disciplinary proceeding. SCR 105(2)(f) (“The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel.”).

The Nevada Rules of Evidence define “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015. Further, “if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.” NRS 50.275.

Needless to say, Mr. Bare’s opinions are relevant for determining whether Mr. Jimmerson violated the RPCs. Indeed, the Nevada Supreme Court has held that expert testimony is required (with limited exception) when analyzing whether an attorney met the standard of care.<sup>6</sup> *Mainor v. Nault*, 120 Nev. 750, 767-69, 101 P.3d 308, 320-21 (2004). As shown further below, Mr. Bare is qualified to give an expert opinion as to whether Mr. Jimmerson met the standard of care.

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<sup>6</sup> This is also true in other jurisdictions. *See, e.g., Bellino v. McGrath N. Mullin & Kratz, PC LLO*, 738 N.W.2d 434, 448 (Neb. 2007) (“To determine how the attorney should have acted in a given case, the jury will often need expert testimony describing what law was applicable to the client’s situation.”).

1 *Contrary to the State Bar’s assertion, the Nevada Supreme Court has specifically held that*  
2 *expert testimony “should be admitted if it is helpful” in a disciplinary proceeding. See In re Assad,*  
3 *124 Nev. 391, 393, 185 P.3d 1044, 1045 (2008) (“[W]e note that the Commission has apparently*  
4 *misread our opinion in Matter of Mosley, concerning when judicial ethics expert testimony is*  
5 *appropriate, in that the Commission views Mosley as discouraging such testimony. Such was not*  
6 *our intent, since judicial ethics expert testimony can provide assistance to the Commission and*  
7 *should be admitted if it is helpful.”). This is true even if such testimony “concern[s] the ultimate*  
8 *issue to be decided,” i.e., whether the attorney violated the RPCs.<sup>7</sup> See id. at 402-03, 185 P.3d at*  
9 *1051 (emphasis added). Although the State Bar relied on In re Assad in its Motion, it conveniently*  
10 *failed to mention how the Nevada Supreme Court specifically encouraged the admission of helpful*  
11 *expert testimony in a disciplinary proceeding.<sup>8</sup>*

12 In this case, Mr. Bare will testify as an expert in the field of legal ethics and professional  
13 responsibility concerning the applicable standard of care and whether Mr. Jimmerson met that  
14 standard. Because such testimony would be helpful to the Panel, the Chair should deny the State  
15 Bar’s request to preclude Mr. Jimmerson from calling Mr. Bare as an expert in support of his  
16 defense at the hearing.

17 **B. Mr. Bare is Qualified to Testify at the Hearing, and His Opinions are Relevant,**  
18 **Within the Purview of Permissible Expert Testimony, Will Assist the Panel, Are**  
19 **Not More Prejudicial than Probative, and Permissibly Formulated Based on**  
20 **Matters Made Known to Him.**

21 The State Bar moves to exclude Mr. Bare from testifying at the hearing for three main  
22 reasons: (i) he lacks the background and qualifications to support his opinions; (ii) his testimony will  
23 not assist the Panel; and (iii) he did not consider certain facts, offers nothing more than “advocacy,”  
24 and the Panel will be unfairly swayed by his opinions. (See Mot., 5:5-8:7.) Each argument fails.

25 <sup>7</sup> This approach is in line with other jurisdictions that permit expert testimony in disciplinary proceedings. See,  
26 e.g., *In re Disciplinary Proceeding Against Rodriguez*, 306 P.3d 893, 900 (Wash. 2013) (“Hearing officers may accept or  
reject expert testimony.”); *In re Disciplinary Proceeding Against Botimer*, 214 P.3d 133, 140 (Wash. 2009) (finding that  
“[t]he hearing officer was entitled to credit the expert’s testimony”).

27 <sup>8</sup> Unlike in *In re Assad*, where it was determined that the expert’s testimony concerned the credibility of  
28 witnesses and factual issues irrelevant to the proceeding, see *id.*, 124 Nev. at 401, 185 P.3d at 1050, Mr. Bare is not  
opining as to the credibility of witnesses and he is addressing issues that are central to Mr. Jimmerson’s defense.

1                   **1. Mr. Bare is Qualified To Testify Concerning Legal Ethics and**  
2                   **Professional Responsibility.**

3                   Throwing caution to the wind, the State Bar argues that Mr. Bare (former Bar Counsel) is not  
4                   qualified to testify as an expert in this case, saying, “He provides no scientific, technical, or other  
5                   specialized knowledge.” (Mot., 5:20-6:16.) If Mr. Bare is not qualified to render expert opinions in  
6                   matters concerning legal ethics and professional responsibility, it is unknown who is.

7                   Mr. Bare summarized his background and qualifications in his expert report. (*See* Mot., Ex.  
8                   A, ¶ 2.) His training and experience are further described in his CV. (*See* Mot., Ex. A, at Ex. 1.) A  
9                   cursory review of his CV reveals the following: (i) he is admitted to practice law in Nevada (and  
10                  Pennsylvania); (ii) he served as a District Court Judge for approximately 10 years; (iii) he served in  
11                  the Office of Bar Counsel for approximately 17 years, including 15 years as Bar Counsel; (iv) he  
12                  served as a trial lawyer for the U.S. Army Judge Advocate General’s Corps for approximately 4  
13                  years; (v) he has authored numerous articles on legal ethics and professional responsibility; and (vi)  
14                  he has presented numerous times for continuing legal education courses in matters involving legal  
15                  ethics and professional responsibility. (*See id.*)

16                  Mr. Bare’s background and qualifications, which he relies upon in rendering his opinions in  
17                  this case (*see* Mot., Ex. A, ¶ 3), speak for themselves. The fact that the State Bar disagrees with his  
18                  opinions does not render him unqualified to give those opinions. He easily satisfies the requirements  
19                  for testifying as an expert witness in a disciplinary proceeding.<sup>9</sup> *See Brant v. State*, 130 Nev. 980,  
20                  984, 340 P.3d 576, 579 (2014) (describing the qualification requirement for expert testimony).

21                  For these reasons, the Panel Chair should find that Mr. Bare is qualified to render opinions in  
22                  this case on matters concerning legal ethics and professional responsibility.

23                   **2. Mr. Bare’s Testimony is Both Relevant and Useful.**

24                  The State Bar self-servingly argues that Mr. Bare’s testimony will not be useful to the Panel.  
25                  (Mot., 5:20-6:1.) The opposite is true.

26  
27  
28                  <sup>9</sup> Mr. Bare is not seeking to testify concerning matters outside the scope of his expertise. *See Brant*, 130 Nev. at  
                984, 340 P.3d at 579 (describing the limited scope requirement for expert testimony).

1 “The purpose of expert testimony ‘is to provide the trier of fact a resource for ascertaining  
2 *truth* in relevant areas outside the ken of ordinary laity.’” *McKeeman v. General Am. Life Ins. Co.*,  
3 111 Nev. 1042, 1051, 899 P.2d 1124, 1130 (1995) (emphasis added) (quoting *Townsend v. State*,  
4 103 Nev. 113, 117, 734 P.2d 705, 708 (1987)). Here, Mr. Bare’s testimony will greatly assist the  
5 Panel in assessing the propriety of Mr. Jimmerson’s actions; including: Mr. Jimmerson’s training  
6 and supervision of Ms. Ballard and steps that he took once he discovered that Ms. Ballard was not  
7 timely fulfilling her duties and responsibilities as the firm’s bookkeeper.<sup>10</sup> Mr. Bare’s opinion will  
8 further assist the Panel in conducting a thorough analysis of Mr. Jimmerson’s conduct in relation to  
9 RPC 5.3 and what is expected of managerial or supervisory lawyers acting under similar  
10 circumstances. *See, e.g., Sickler v. Kirby*, 805 N.W.2d 675, 693 (Neb. Ct. App. 2011) (“[T]he  
11 questions of what an attorney’s specific conduct should be in a particular case and whether an  
12 attorney’s conduct falls below that specific standard are questions of fact for the jury.”). As in any  
13 case, the Panel will determine the appropriate weight to afford his expert opinions. *See, e.g., Leavitt*  
14 *v. Siems*, 130 Nev. 503, 510, 330 P.3d 1, 6 (2014) (noting that it is for the fact-finder to “assess the  
15 weight to be assigned” to expert testimony).

16 ***As noted above, the Nevada Supreme Court has said that expert testimony is needed to***  
17 ***determine whether an attorney met the standard of care in a particular case. See Mainor***, 120  
18 Nev. at 767-69, 101 P.3d at 320-21. To that end, expert testimony from Mr. Bare will assist the  
19 Panel in assessing whether Mr. Jimmerson’s conduct met the standard of care. *See Brant*, 130 Nev.  
20 at 984, 340 P.3d at 579 (describing the assistance requirement for expert testimony).

21 As a fallback, the State Bar argues that “it is appropriate for this Panel to rely on its own  
22 expertise as representatives of the public and legal community to formulate the appropriate ethical  
23 standards for attorneys in Nevada.” (Mot., 5:1-3.) The argument is short-sighted. Only two  
24 members of the Panel are attorneys; the other member is a non-attorney. SCR 105(2)(a) (“A hearing  
25 panel as finally constituted shall include a non-lawyer.”). Absent negating the purpose of the lay  
26 member, the State Bar fails to explain how Mr. Bare’s opinion would not be useful to the lay

27  
28 <sup>10</sup> The State Bar faults Mr. Bare for accepting as true that Mr. Jimmerson maintained daily contact with Ms. Ballard. (Mot., 7:11-13.) Notably, the State Bar offers no evidence to the contrary with its Motion.

1 member who does not practice law and who is therefore unfamiliar with the applicable standard of  
2 care. *Cf. Goldman v. Bracewell & Patterson, L.L.P.*, No. 6:04-cv-725-Orl-28JGG, 2005 U.S. Dist.  
3 LEXIS 45620, \*8 (M.D. Fla. Sept. 13, 2005) (“Nordin is not a lawyer, and cannot opine on the  
4 standard of care for lawyers.”). Because the lay member will make her own assessment of the facts  
5 in lieu of deferring to those made by the other members of the Panel who also happen to be lawyers,  
6 Mr. Bare’s opinion will greatly assist her in deciding the issues.

7 Even then, the State Bar fails to explain why expert testimony from Mr. Bare will not be  
8 helpful to the members of the Panel who are attorneys. Although all lawyers are expected to know  
9 the RPCs, it is unrealistic to assume that all lawyers know and understand the various nuances of the  
10 RPCs. *In re Assad*, 124 Nev. at 403, 185 P.3d at 1051 (“*[A]n individual whose career is devoted to*  
11 *ethics issues will likely be more familiar with those materials than individuals who have varied*  
12 *full-time employment in addition to their Commission duties.*”) (emphasis added). Accepting the  
13 State Bar’s argument as true, expert testimony would be inadmissible in all legal malpractice cases  
14 that are tried to the court (rather than a jury) because the judge, as a lawyer, would already know the  
15 standard of care.

16 In the end, the State Bar seeks to preclude Mr. Bare from testifying at the hearing because the  
17 State Bar lacks competing expert testimony with which to challenge his opinions. In other words,  
18 the State Bar recognizes that it will be unable to meet its burden of proof if Mr. Bare’s testimony is  
19 considered by the Panel. The State Bar had every opportunity to retain a rebuttal expert witness to  
20 respond to Mr. Bare’s opinion. The State Bar declined the opportunity to do so. The State Bar’s  
21 decision to forego retaining an expert witness to support its theory of the case is not a basis to  
22 preclude Mr. Jimmerson from calling Mr. Bare to testify as an expert witness at the hearing.

23 For these reasons, the Chair should find that Mr. Bare’s opinion will be relevant and useful in  
24 deciding the issues.

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1                               **3. Any Concern with the Facts Relied Upon By Mr. Bare in Rendering His**  
2                               **Opinions May Be Addressed During His Cross-Examination.**

3               The State Bar argues that Mr. Bare’s testimony should be excluded because he “improperly  
4 bolsters Respondent’s testimony, ignores the State Bar’s evidence, and sums up the advocacy as an  
5 expert opinion.” (Mot., 7:8-10.) The argument confuses credibility with admissibility.

6               “As a general rule, the factual basis of an expert opinion goes to the credibility of the  
7 testimony, not the admissibility, and it is up to the opposing party to examine the factual basis for the  
8 opinion in cross-examination.” *Loudermill v. Dow Chem. Co.*, 863 F.2d 566, 570 (8th Cir.1988).  
9 Here, the State Bar will have an opportunity to cross-examine Mr. Bare at the hearing and ask him  
10 whether his opinions would change based on testimony that the State Bar believes it will elicit from  
11 witnesses in support of its case against Mr. Jimmerson. Indeed, Mr. Bare will listen to the testimony  
12 from each witness before he testifies. If the State Bar believes that certain testimony should impact  
13 or change Mr. Bare’s analysis, it will be able to question him in that regard.

14              The State Bar’s concern with the Panel being unable to fairly and objectively consider Mr.  
15 Bare’s testimony is insulting to the Panel. There is nothing to suggest that Mr. Bare wields undue  
16 influence or control over the Panel. If anything, as professionals who voluntarily serve on the  
17 Disciplinary Board and preside over disciplinary proceedings, they are better positioned to know  
18 how to credit Mr. Bare’s opinions when deciding the issues.

19              Finally, Mr. Bare is not intending to opine as to the credibility of witnesses. The State Bar  
20 will be able to object to any question posed to Mr. Bare at the hearing if it believes that the answer  
21 would cause Mr. Bare to assess a witness’s credibility; and, to move to strike if it believes that Mr.  
22 Bare assessed a witness’s credibility in answer to any question posed to him at the hearing.

23              For these reasons, the Chair should reject the State Bar’s attempt to preclude Mr. Bare from  
24 testifying at the hearing.

25              **IV. CONCLUSION**

26              The State Bar’s attempt to preclude Mr. Jimmerson from relying on an expert witness in  
27 support of his defense is a sign of desperation. The State Bar knows that it cannot prove, by clear  
28 and convincing evidence, that Mr. Jimmerson violated RPC 1.15 and 5.3. Thus, it seeks to bolster

1 its prosecution by hamstringing Mr. Jimmerson's defense. As a matter of due process, the State Bar  
2 cannot keep Mr. Jimmerson from putting on a full and complete defense, which necessarily entails  
3 presenting useful expert testimony showing why his conduct met the standard of care. If the State  
4 Bar is worried that Mr. Bare is not properly considering all the facts, it will have ample opportunity  
5 to draw his attention to those facts during cross-examination. In the end, the Panel will decide the  
6 appropriate weight to afford Mr. Bare's testimony.

7 For these reasons, the Chair should deny the State Bar's Motion.

8 DATED this 9<sup>th</sup> day of April, 2021.

9 BAILEY ♦ KENNEDY

10 By: /s/ Dennis L. Kennedy

11 DENNIS L. KENNEDY

12 JOSHUA P. GILMORE

13 *Attorneys for Respondent*

14 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 9<sup>th</sup> day of April, 2019, service of the foregoing **RESPONDENT'S OPPOSITION TO STATE BAR OF NEVADA'S MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY AND EXPERT REPORT** was made by email to the following at their last known address:

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BAR COUNSEL

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STATE BAR OF NEVADA

THOMAS EDWARDS, ESQ.  
Panel Chair

Email: tedwards@nevadafirm.com

---

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

# EXHIBIT 1

# EXHIBIT 1

1 Case Number: [REDACTED]  
2 [REDACTED]



FILED

JUN 05 2020

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

7 **STATE BAR OF NEVADA**

8 **SOUTHERN NEVADA DISCIPLINARY BOARD**

9 STATE BAR OF NEVADA,

10 Complainant,

**STATE BAR OF NEVADA'S MOTION**  
**IN LIMINE TO EXCLUDE**  
**WITNESSES**

11 vs.

12 [REDACTED]  
13 Bar No. [REDACTED]  
Respondent.

14  
15 The State Bar of Nevada, through Assistant Bar Counsel R. Kait Flocchini, Esq.,  
16 hereby moves to exclude expert witness Jeffrey W. Stempel, lay witness C.J. Maupin (ret.),  
17 and lay witness Alan Freer, Esq. from testifying in this disciplinary Formal Hearing.

18 This Motion is based on the following Memorandum of Points and Authorities, the  
19 pleadings for the underlying matters, and any oral argument requested.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 Respondent has identified four witnesses to testify at the disciplinary Formal  
22 Hearing: Respondent, C.J. Maupin (ret.), Alan Free, Esq., and Jeffrey Stempel.

23 The State Bar agrees that Respondent has percipient knowledge that the triers of  
24 fact (the Panel) should hear as they decide whether Respondent has violated RPC 1.8(e)

1 (Conflict of Interest: Current Clients: Specific Rules) and RPC 1.15 (Safekeeping of  
2 Property).

3 C.J. Maupin (ret.) and Alan Freer, Esq. are identified as lay witnesses presumably  
4 because of their experience with the issuing of Formal Opinions by the Standing Committee  
5 on Ethics and Professional Responsibility ("Standing Committee"). These witnesses'  
6 proposed testimony and Alan Freer's testimony should be excluded because no Formal  
7 Opinion advises on the narrow issues to be decided by the Panel. That means that these  
8 witnesses' testimony would not affect the existence of any fact of consequence to the  
9 determine of the action, and thus, is irrelevant.

10 Mr. Stempel is identified as an expert witness and has issued an opinion on whether  
11 Respondent's conduct violated the respective Rules of Professional Conduct. This  
12 proposed expert testimony should be excluded because he does not opine on any issue that  
13 is outside the ken of the ordinary laity, who is the trier of fact in this matter. Further, any  
14 probative value in Mr. Stempel's expert opinions is outweighed by the unduly prejudicial  
15 assumptions of fact and expression of personal agenda contained in his opinions.

16 A. Experience with the Issuance of Formal Opinions by the Standing Committee  
17 on Ethics and Professional Responsibility is Irrelevant.

18 NRS 48.015 states that "relevant evidence" is "evidence having any tendency to  
19 make the existence of any fact that is of consequence to the determination of the action  
20 more or less probable than it would be without the evidence."

21 As set forth in the State Bar's Motion for Summary Judgment, the three cited  
22 opinions do not offer any guidance to attorneys regarding paying for a client's rental car  
23 during the pendency of representation or whether attorney's fees can be withdrawn before  
24 a client has had the opportunity to review the proposed disbursement of all received  
25 settlement funds. This means that the Formal Opinions are irrelevant. Therefore, the

1 Standing Committee's process when issuing a Formal Opinion is not relevant to whether  
2 ████████ has violated RPC 1.8(e) and RPC 1.15. Whether the Nevada Supreme Court  
3 engages in a review process prior to the Standing Committee's issuance of a Formal  
4 Opinion is irrelevant too.

5 Even if the Formal Opinions are relevant to this disciplinary proceeding, a witness's  
6 interpretation that a Formal Opinion offers a binding defense to an allegation of a violation  
7 of the Rules of Professional Conduct would still not be relevant. This is because the Nevada  
8 Supreme Court has held that "[i]n interpreting a statute, this court looks to the plain  
9 language of the statute and, if that language is clear, this court does not go beyond it."  
10 *Branch Banking v. Windhaven & Tollway, LLC*, 347 P.3d 1038, 1040, 131 Nev. Adv. Op.  
11 20 (Nev. 2015) (citation omitted).

12 Rule 225(5) of the Nevada Supreme Court Rules ("SCR") states that all Formal  
13 Opinions are "advisory only," "express only the judgment of the Committee," and are "not  
14 binding upon the courts, the State Bar of Nevada, its Board of Governors, any personal or  
15 tribunals charged with regulatory responsibilities, or any member of the State Bar." There  
16 is nothing ambiguous in SCR 225(5), and therefore, nothing that the two lay witnesses  
17 could interpret about the rule and its application to a Standing Committee's issued formal  
18 opinion.

19 For these reasons, the proffered testimony from C. J. Maupin (ret.) and Mr. Freer  
20 should be excluded.<sup>1</sup>

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25 <sup>1</sup> If either witness is allowed to testify, then such testimony should be limited to his  
personal knowledge and avoid unnecessarily cumulative evidence. See NRS 48.035(2).

1           B.     Mr. Stempel's Proffered Testimony is Not Needed in this Disciplinary Formal  
2                 Hearing.

3           "The admission of expert testimony lies within the sound discretion of the trial  
4 court." *McKeeman v. General American Life Ins. Co.* 111 Nev. 1042, 1051, 899 P.2d 1124,  
5 1130 (Nev. 1995). NRS 50.275 provides

6                 If scientific, technical or other specialized knowledge will assist the trier of fact to  
7 understand the evidence or to determine a fact in issue, a witness qualified as an  
8 expert by special knowledge, skill, experience, training or education may testify to  
9 matters within the scope of such knowledge.

10           "The purpose of expert testimony 'is to provide the trier of fact a resource for  
11 ascertaining truth in relevant areas outside the ken of ordinary laity.'" *McKeeman*, 111 Nev.  
12 at 1051 (*citing Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (Nev. 1987)).

13           In *Townsend v. State*, the Court held that it was appropriate for an expert to offer  
14 testimony on whether a child had been sexually assaulted or abused because "post-  
15 traumatic stress disorder patterns in sexually abused children" was "a critical and relevant  
16 subject of an esoteric nature" about which a lay juror would not ordinarily have knowledge.  
17 See *Townsend*, 103 Nev. at 118. However, the Court held that it was inappropriate for the  
18 expert to identify the person who assaulted the victim because "it transcended the test of  
19 jury enlightenment and entered the realm of fact-finding that was well within the capacity  
20 of a lay jury." *Id.*

21           In a disciplinary Formal Hearing, the trier of fact is the Panel. Therefore,  
22 appropriate expert testimony would offer knowledge that is outside the capacity of a  
23 panelmember.

24           In *in the matter of Mosley* the Nevada Supreme Court deferred to the Judicial  
25 Commission's discretion in excluding proposed expert testimony in a judicial disciplinary  
hearing to decide whether a judge's conduct violated the canons. See *in the matter of*

1 *Mosley*, 120 Nev. 908, 102 P.3d 555, 564 (Nev. 2004). Mr. Stempel was the proffered  
2 expert witness in that disciplinary hearing. Mr. Stempel had observed the Judicial  
3 Commission hearing and was to be offered to (i) summarize the evidence and (ii) provide  
4 his opinion on whether Judge Mosley had violated the judicial canons. In support of the  
5 Commission's decision to exclude Mr. Stempel's proffered testimony, the Court cited a  
6 *Judicial Court Reporter* article which stated:

7       Judicial conduct organizations often have the difficult job of determining ethical  
8       issues of first impression in their states, or perhaps, nationally. That important job  
9       should not be delegated to an expert witness in a proceeding. No legal scholar or  
10       judge familiar with the customs of a judicial community possesses unique  
11       knowledge of ethical standards that is more reliable than the independent decision-  
12       making of the members of the judicial conduct organization. By relying on their own  
13       expertise as representatives of the public and legal community, rather than the  
14       opinions of experts, a judicial conduct commission fulfills its official public  
15       responsibility to formulate the appropriate ethical standards for their states.

16 *Id.* at 564-565.

17       Similarly, the Court upheld the exclusion of a proposed expert affidavit because the  
18 Judicial Commission did not find the affidavit necessary for it to determine a fact at issue  
19 in *in re Assad*, 185 P.3d 1044 (Nev. 2008). In that matter, Judge Assad appealed the  
20 exclusion of the affidavit, which was offered by Mr. Stempel, in his judicial disciplinary  
21 matter. The Court found that, in the affidavit at issue, Mr. Stempel engaged in "tasks  
22 reserved to the Commission," particularly credibility determinations and weighing the  
23 evidence. *Id.* at 1050. The Court found the Commission did not abuse its discretion when  
24 it excluded the affidavit because it determined "that Professor Stempel's testimony would  
25 not be helpful." *Id.*

26       In this matter, Mr. Stempel offers a summary of facts, some of which are not yet in  
27 evidence, and offers his opinion on whether those facts show Respondent has violated the  
28 Rules of Professional Conduct. Yet, there is nothing nuanced or specialized about the facts,  
29 RPC 1.8(e), or RPC 1.15, which requires specialized knowledge, skill, experience, training,

1 or education to apply these rules to the facts. Mr. Stempel's proposed testimony does  
2 nothing to enlighten the Panel regarding a fact or issue that it could not simply directly  
3 understand.

4 It is undisputed that Respondent paid for his clients' rental cars during the pendency  
5 of their matters and reimbursed himself from the proceeds of their respective settlements.  
6 It is undisputed that RPC 1.8(e) states "[a] lawyer shall not provide financial assistance to  
7 a client in connection with pending or contemplated litigation, except that: (1) a lawyer  
8 may advance court costs and expenses of litigation." Mr. Stempel has offered the  
9 interpretation that renting a car is an "expense of litigation." However, he offers no specific  
10 knowledge, skill, experience, training or education that supports his conclusion except (i)  
11 that he, and two friends/colleagues, voted for an unsuccessful attempt to amend the ALI  
12 *Restatement of the Law Governing Lawyers* to support providing 'subsistence' type aide  
13 to certain clients and (ii) the generalized statement that "many if not most lawyers" support  
14 paying clients' living expenses as an 'expense of litigation.' See Stempel Expert Report at  
15 ¶71, a true and correct copy of which is attached hereto as **Exhibit A**. Mr. Stempel's  
16 proposed testimony is not of an esoteric nature that is beyond the knowledge of the  
17 panelmembers appointed to hear this disciplinary matter.

18 Similarly, it is undisputed that Respondent withdrew an amount for attorney's fees  
19 from his clients' respective settlements before he reviewed the distribution of those funds  
20 with his clients. It is undisputed that, in all the matters at issue, Respondent ultimately  
21 received less in attorney's fees than he originally took, and he returned funds to his client  
22 trust account to reconcile the lesser amount. RPC 1.15(e) provides that a lawyer must hold  
23 funds in the client trust account until any dispute regarding the funds is resolved, including  
24 if the dispute is with the lawyer. Mr. Stempel offers nothing but his personal experience  
25 with the MPRE in 1981, general examples of attorney distributions, and his personal

1 teachings as support for his opinion that Respondent's conduct did not violate RPC 1.15(e).  
2 See Expert Report at ¶ 56.<sup>2</sup> This personal experience does not go beyond Respondent's  
3 own personal experience or the panelmembers' personal experience taking the MPRE  
4 and/or witnessing, or participating in, the distribution of settlement funds. Mr. Stempel  
5 fails to explain a relevant fact using information otherwise unavailable to the panel. Mr.  
6 Stempel also offers no specialized knowledge, skill, experience, training or education to  
7 support his assertion that "refund[ing] a portion of [Respondent's] fee to each of his clients  
8 is immaterial" to whether Respondent prematurely withdrew money from the client trust  
9 account. See Expert Report at ¶ 60.

10 The facts and issues in this case are not complicated and they do not require  
11 specialized knowledge, skill, experience, training, or education to understand them. As  
12 with the Judicial Commission, it is appropriate for this Panel to rely on its own expertise  
13 as representatives of the public and legal community to formulate the appropriate ethical  
14 standards for attorneys in Nevada and, thus, exclude, the proposed expert testimony of Mr.  
15 Stempel.

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24 <sup>2</sup> Mr. Stempel also interprets Formal Opinion 31 to support his opinion of Respondent's  
25 conduct. As set forth above, and in the State Bar's Motion for Summary Judgment, Formal  
Opinion 31 does not address whether an attorney can withdraw a contingency fee from  
settlement funds before telling the client of the final disbursement amounts. Thus, such  
proposed testimony is irrelevant.

1 C. Any Probative Value in Mr. Stempel's Proposed Testimony is Outweighed by  
2 Undue Prejudice.

3 NRS 48.035 provides, in pertinent part:

4 1. Although relevant, evidence is not admissible if its probative value is  
5 substantially outweighed by the danger of unfair prejudice, of confusion of the issues  
6 or of misleading the jury.

6 Mr. Stempel's Expert Report characterizes information not in evidence to support  
7 his predetermined agenda regarding providing financial assistance to clients. For example,  
8 the report states that [REDACTED] had "limited financial means" and the  
9 cars that each client rented were "modest." See Expert Report at ¶¶ 9 and 29. The Report  
10 also states that Respondent's clients would have prematurely settled their claims without  
11 the financial assistance. See *id.* Yet, one client returned the rental cars months before  
12 Respondent made a settlement demand on her behalf and the other client returned the  
13 rental car months before accepting a settlement, plus the other insurance carrier offered to  
14 assist with renting a car. See Respondent's Exhibits Q [REDACTED], LL [REDACTED], WW [REDACTED]  
15 and [REDACTED]000423 (Letter to insurance carrier, dated April 1, 2019), all of which are  
16 attached hereto as **Exhibit B.**

17 Mr. Stempel's Report states that [REDACTED] did not dispute Respondent's right to a  
18 contingency fee of 40%. Yet, [REDACTED] did seek a distribution of which would give  
19 Respondent only 1/3 of the settlement funds. See Respondent's Exhibit X, a true and  
20 correct copy of which is attached hereto as **Exhibit C.**

21 These subjective characterizations create unfair prejudice that outweighs any  
22 probative value that Mr. Stempel's report might have. This unfair prejudice warrants  
23 exclusion of Mr. Stempel's testimony (and report) from evidence in this disciplinary  
24 hearing.

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D. Conclusion.

Based on the foregoing, the State Bar respectfully requests that Jeffrey Stempel, C.J. Maupin (ret.), and Alan Freer, Esq. be excluded from testifying in the Formal Hearing in this disciplinary matter.

Dated this 5<sup>th</sup> day of June, 2020.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, BAR COUNSEL

By:   
\_\_\_\_\_  
R. Kait Flocchini, Assistant Bar Counsel  
3100 W. Charleston Blvd., Suite 100  
Las Vegas, Nevada 89102  
702-382-2200

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **Motion in**  
3 **Limine** was served via email to:

- 4  
5 1. Nell Christensen, Esq. (Panel Chair): [Nell.christensen@clarkcountyda.com](mailto:Nell.christensen@clarkcountyda.com)  
6 2. Joshua Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)  
7 3. Dennis Kennedy, Esq. (Counsel for Respondent): [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)  
8 4. R. Kait Flocchini (Assistant Bar Counsel): [kaitf@nvbar.org](mailto:kaitf@nvbar.org)

9  
10 DATED this 5<sup>th</sup> day of June, 2020.

11 By: K. Faust  
12 Kristi Faust, an employee of  
13 the State Bar of Nevada.  
14  
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# EXHIBIT 2

# EXHIBIT 2

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*Attorneys for Respondent*



FILED

JUN 11 2020

STATE BAR OF NEVADA  
BY: *B. Felix*  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

Bar No. [REDACTED],

Respondent.

Case Nos. [REDACTED]

**RESPONDENT'S OPPOSITION TO  
STATE BAR'S MOTION *IN LIMINE* TO  
EXCLUDE WITNESSES**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The State Bar wants to dictate how [REDACTED] gets to defend himself in this matter, including saying who he may – and may not – call as witnesses. The State Bar lacks such authority.

[REDACTED] intends to present the testimony of three witnesses at the hearing in this matter, each of whom provides a unique and relevant perspective on [REDACTED] actions, including the advisory opinions on which he relied. First, [REDACTED] intends to call Professor Jeffrey W. Stempel, one of Nevada's foremost legal ethics experts, who is expected to testify as to the applicable standard of care and whether [REDACTED] met the standard of care in representing his clients. Professor Stempel is further expected to testify that [REDACTED] reliance on advisory opinions published by the State Bar of Nevada Standing Committee on Ethics & Professional

1 Responsibility (the “Committee”) was reasonable under the circumstances. Such testimony will  
2 assist the panel in addressing the propriety of [REDACTED]’s actions.

3 Second, [REDACTED] intends to call Retired Nevada Supreme Court Chief Justice A. William  
4 Maupin, who is expected to testify regarding the interplay between the Nevada Supreme Court and  
5 the Committee. C.J. Maupin has experience reviewing advisory opinions before they are published.  
6 His testimony will assist the panel in determining whether [REDACTED] made appropriate ethical  
7 decisions in the absence of clear guidance from the Nevada Supreme Court on the issues presented.

8 Finally, [REDACTED] intends to call Alan Freer, Esq., who is expected to testify regarding his  
9 experience serving on the Committee, including publishing advisory opinions, and what the  
10 Committee intends for Nevada lawyers to do with its advisory opinions. Mr. Freer’s testimony will  
11 assist the panel in assessing [REDACTED] reliance on Formal Opinions 31, 36, and 44.

12 This testimony of these witnesses is essential to providing [REDACTED] with a full and fair  
13 defense to the State Bar’s charges. It is ridiculous for the State Bar to argue that Professor  
14 Stempel—a long-standing and well-respected law professor in the State of Nevada who has testified  
15 numerous times in prior cases—lacks the background and qualifications to testify as an expert  
16 witness. It is equally ridiculous for the State Bar to question Professor Stempel’s ability to provide  
17 expert testimony regarding whether [REDACTED] met the standard of care—such an opinion is within  
18 the realm of permissible expert testimony in Nevada. Finally, it is obvious why Professor Stempel’s  
19 report assumes certain facts not yet in evidence – the hearing has not yet occurred and [REDACTED]  
20 was not deposed prior to the hearing.

21 Turning to the testimony from C.J. Maupin and Mr. Freer, the State Bar’s basis for excluding  
22 them rests on the argument that [REDACTED] should be precluded from presenting evidence on Formal  
23 Opinions 31, 36, and 44. That argument fails as detailed in [REDACTED] Opposition to the State  
24 Bar’s Motion for Summary Judgment Regarding Applicability of Formal Opinions. Because the  
25 opinions are relevant, so, too, is the testimony from C.J. Maupin and Mr. Freer.

26 For these reasons, as explained more fully below, the Panel Chair should deny the State Bar’s  
27 Motion *in Limine* to Exclude Witnesses.  
28

## II. ARGUMENT

### A. The Nevada Supreme Court Rules Permit [REDACTED] to Present Witnesses in Support of His Defense.

The Nevada Supreme Court recognizes that due process is required in a disciplinary proceeding where an attorney has been accused of an ethical violation and threatened with discipline. *See generally State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988). To that end, SCR 105 provides that notice of a disciplinary hearing “shall inform the attorney that he or she is entitled to be represented by counsel, to cross-examine witnesses, *and to present evidence.*” SCR 105(2)(d) (emphasis added). Notably, this rule does not preclude attorneys from presenting either lay or expert witnesses—so long as the testimony would be admissible in district court, it is admissible in a disciplinary proceeding. SCR 105(2)(f) (“The rules applicable to the admission of evidence in the district courts of Nevada govern admission of evidence before a hearing panel.”).

The Nevada Rules of Evidence define “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” NRS 48.015. With regard to witnesses, the Nevada Rules of Evidence provide that a witness may testify as to matters of which the witness “has personal knowledge.” NRS 50.025. Further, “if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.” NRS 50.275.

Contrary to the assumption underlying the State Bar’s Motion, expert testimony is permissible in a disciplinary proceeding. *See In re Assad*, 124 Nev. 391, 393, 185 P.3d 1044, 1045 (2008) (“[W]e note that the Commission has apparently misread our opinion in *Matter of Mosley*, concerning when judicial ethics expert testimony is appropriate, in that the Commission views Mosley as discouraging such testimony. Such was not our intent, since judicial ethics expert testimony can provide assistance to the Commission *and should be admitted if it is helpful.*”) (emphasis added). This is true even if such testimony “concern[s] the ultimate issue to be decided.” *Id.* at 402-03, 185 P.3d at 1051. ***While the State Bar relied on In re Assad, it conveniently failed to***

1 *mention in its Motion how the Nevada Supreme Court encourages the admission of helpful expert*  
2 *testimony in disciplinary proceedings.*<sup>1</sup>

3 This approach is in line with other jurisdictions that permit expert testimony in disciplinary  
4 proceedings. *See, e.g., In re Disciplinary Proceeding Against Rodriguez*, 306 P.3d 893, 900 (Wash.  
5 2013) (“Hearing officers may accept or reject expert testimony.”); *see also In re Disciplinary*  
6 *Proceeding Against Botimer*, 214 P.3d 133, 140 (Wash. 2009) (finding that “[t]he hearing officer  
7 was entitled to credit the expert’s testimony”).

8 In support of his defense, [REDACTED] will present three witnesses to testify at the hearing.  
9 Professor Stempel will testify as a recognized expert in the field of legal ethics concerning the  
10 applicable standard of care and whether [REDACTED] met the standard of care. Professor Stempel will  
11 further testify regarding whether [REDACTED] reasonably relied on Opinions 31, 36, and 44. C.J.  
12 Maupin and Mr. Freer will then testify as to their personal knowledge of the Committee’s  
13 promulgation of advisory opinions, the Nevada Supreme Court’s involvement in that process, and  
14 how the opinions are intended to guide Nevada lawyers in the ethical practice of law.

15 As explained below, the testimony from these witnesses is relevant and admissible.  
16 Accordingly, the Panel Chair should deny the State Bar’s attempt to preclude [REDACTED] from  
17 calling these witnesses at the hearing.

18 **B. Professor Stempel is Qualified to Testify at the Hearing, and His Opinions are**  
19 **Relevant, Within the Purview of Expert Testimony, Will Assist the Triers of**  
20 **Fact, and Permissibly Formulated Based on Matters Made Known to Him.**

21 The State Bar moves to exclude Professor Stempel from testifying at the hearing for three  
22 main reasons: (i) he lacks the background and qualifications to support his opinions, and he seeks to  
23 offer opinions purportedly outside the purview of acceptable expert testimony; (ii) his testimony will  
24 not assist the panel; and (iii) he relies on facts not yet admitted into evidence. (*See Mot. in Lim.*,  
25 2:10-15, 5:22 – 7:15, 8:6-24.) Each argument fails.

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27 <sup>1</sup> Unlike in *In re Assad*, where it was determined that the expert’s testimony concerned the credibility of  
28 witnesses and factual issues irrelevant to the proceeding, *see id.*, 124 Nev. at 401, 185 P.3d at 1050, the expert testimony  
here involves relevant matters squarely within the purview of expert testimony as discussed further below.

1                   **1. Professor Stempel is Qualified To Testify Concerning Legal Ethics and**  
2                   **Professional Responsibility, and Expert Testimony is Appropriate**  
3                   **Concerning Whether a Lawyer Met the Standard of Care in the Course**  
4                   **of Representing a Client.**

5                   Throwing caution to the wind, the State Bar asserts that Professor Stempel “offers no  
6                   specialized knowledge, skill, experience, training or education” to support his opinions. (Mot. in  
7                   Lim., 6:9-10, 7:5-9.) If Professor Stempel is not qualified to render expert opinions in matters  
8                   concerning legal ethics and professional responsibility, it is unknown who is.

9                   Professor Stempel summarized his background and qualifications in his expert report. (*See*  
10                  Mot. in Lim., Ex. A, ¶¶ 2-6.) His training and experience are further described in his CV, which was  
11                  attached to his report though conveniently omitted by the State Bar from its Motion. (*See* App. of  
12                  Exs. in Support of Respondent’s Mots. For Summ. J., Ex. 5 – Report of Jeffrey W. Stempel, at  
13                  Exhibit A.) A cursory review of his CV reflects the following: (i) he is admitted to practice law in  
14                  Nevada (and Minnesota); (ii) he has taught various law courses as a professor since 1986; (iii) he  
15                  practiced law for several years after receiving his J.D. at Yale Law School; (iv) he has authored, or  
16                  co-authored, numerous legal publications and legal treatises; (v) he has written myriad law review  
17                  articles, comments, book reviews, Bar publications, and features; (vi) he has presented numerous  
18                  times for continuing legal education courses; and (vii) he is a member of several academies and  
19                  institutes. (*See id.*) Also attached to his report (though likewise omitted from this Motion) is a list  
20                  of prior cases in which Professor Stempel testified as an expert. (*See id.* at Exhibit B.)

21                  Professor Stempel’s background and qualifications, which he relies upon in rendering his  
22                  opinions (*see* Mot. in Lim., Ex. A, ¶ 6), speak for themselves. The fact that the State Bar disagrees  
23                  with his opinions does not render him unqualified to give those opinions. He easily satisfies the  
24                  requirements for testifying in matters concerning legal ethics and professional responsibility.<sup>2</sup> *See*  
25                  *Brant v. State*, 130 Nev. 980, 984, 340 P.3d 576, 579 (2014) (describing the qualification  
26                  requirement for expert testimony).

27 \_\_\_\_\_  
28 <sup>2</sup> Professor Stempel is not seeking to testify concerning matters outside the scope of his expertise. *See Brant*, 130  
Nev. at 984, 340 P.3d at 579 (describing the limited scope requirement for expert testimony).

Further, the Nevada Supreme Court has previously recognized that expert testimony is proper when analyzing whether an attorney met the standard of care in the course of representing a client.<sup>3</sup> *Mainor v. Nault*, 120 Nev. 750, 767-69, 101 P.3d 308, 320-21 (2004). Professor Stempel’s opinion thus fits squarely within the realm of allowable expert testimony in Nevada.

For these reasons, the Panel Chair should find that Professor Stempel is qualified to render an opinion on matters concerning legal ethics and professional responsibility, and that his testimony is allowable in this matter.

## **2. Professor Stempel’s Testimony is Both Relevant and Useful.**

The State Bar self-servingly argues that Professor Stempel’s testimony will not be useful at the hearing. (Mot. in Lim., 5:22 – 7:10.) The opposite is true.

“The purpose of expert testimony ‘is to provide the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinary laity.’” *McKeeman v. General Am. Life Ins. Co.*, 111 Nev. 1042, 1051, 899 P.2d 1124, 1130 (1995) (emphasis added) (quoting *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987)). Here, Professor Stempel’s testimony will assist the panel in assessing the propriety of [REDACTED] actions; specifically: his handling of settlement funds for his clients; and his advancement of rental car expenses for needy clients. Professor Stempel’s opinion will further assist the panel in conducting a thorough analysis of [REDACTED] conduct in relation to Nevada RPC 1.15 and 1.8(e) and what is expected of lawyers acting under similar circumstances. The panel will determine the appropriate weight to afford his testimony.

The State Bar would have the Panel Chair find that the issues presented are “not complicated,” thus negating the need for expert testimony. (See Mot. in Lim., 7:10-11.) If only; yet, through various contortions, the State Bar has manufactured a theory of wrongdoing purportedly committed by [REDACTED]—a theory that is not supported by the plain language of Nevada RPC 1.15 and 1.8(e)(1). By necessity, expert testimony is needed to explain why [REDACTED] actions met the

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<sup>3</sup> This is true in other jurisdictions. See, e.g., *Bellino v. McGrath N. Mullin & Kratz, PC LLO*, 738 N.W.2d 434, 448 (Neb. 2007) (“To determine how the attorney should have acted in a given case, the jury will often need expert testimony describing what law was applicable to the client’s situation.”).

1 standard of care. *See Brant*, 130 Nev. at 984, 340 P.3d at 579 (describing the assistance requirement  
2 for expert testimony).

3 As a fallback, the State Bar proclaims that “it is appropriate for this Panel to rely on its own  
4 expertise as representatives of the public and legal community to formulate the appropriate ethical  
5 standards for attorneys in Nevada and, thus, exclude, the proposed expert testimony of Professor  
6 Stempel.” (Mot. in Lim., 7:12–14.) The argument is short-sighted. Only two members of the panel  
7 are attorneys; the other panel member is a non-attorney. SCR 105(2)(a) (“A hearing panel as finally  
8 constituted shall include a non-lawyer.”). Short of negating the purpose of the lay member, the State  
9 Bar fails to explain how Professor Stempel’s opinion would not be useful to the lay member who  
10 does not practice law and who is therefore unfamiliar with the applicable standard of care. *Cf.*  
11 *Goldman v. Bracewell & Patterson, L.L.P.*, No. 6:04CV725-ORL28JGG, 2005 WL 5740234 at \*3  
12 (M.D. Fla. Sept. 13, 2005) (“Nordin is not a lawyer, and cannot opine on the standard of care for  
13 lawyers.”). Because the lay member will make her own assessment of the facts in lieu of deferring  
14 to those made by the other panel members who also happen to be attorneys, Professor Stempel’s  
15 opinion will assist her in deciding the issues.

16 Even then, the State Bar fails to explain why expert testimony from Professor Stempel will  
17 not be useful to the panel members who are attorneys. While all lawyers are expected to know and  
18 adhere to the Nevada RPCs, it is unrealistic to assume that all lawyers know and understand the  
19 various nuances of those rules. *See In re Assad*, 124 Nev. at 403, 185 P.3d at 1051 (acknowledging  
20 that “an individual whose career is devoted to ethics issues will likely be more familiar with those  
21 materials than individuals who have varied full-time employment in addition to their Commission  
22 duties”). Accepting the State Bar’s argument as true, expert testimony would be inadmissible in all  
23 legal malpractice cases that are tried to the court (rather than a jury) because the judge, as a lawyer,  
24 would already know the standard of care.

25 In the end, the State Bar seeks to preclude Professor Stempel from testifying at the hearing  
26 because the State Bar lacks competing expert testimony with which to challenge his opinions. In  
27 other words, the State Bar recognizes that it will be unable to meet its burden of proof if Professor  
28 Stempel’s testimony is considered by the panel. The State Bar had every opportunity to retain a

1 rebuttal expert to respond to Professor Stempel’s opinion. The State declined the opportunity to do  
2 so. The State Bar’s decision to forego retaining an expert to support its theory of the case is not a  
3 basis to keep [REDACTED] from calling Professor Stempel to testify at the hearing.

4 For these reasons, the Panel Chair should find that Professor Stempel’s opinion will be  
5 relevant and useful in deciding the issues.

6 **3. Professor Stempel’s Reliance on Facts Not Yet in Evidence Does Not**  
7 **Alter the Admissibility of His Opinion.**

8 The State Bar argues that Professor Stempel’s testimony is unfairly prejudicial due to his  
9 reliance on facts not yet in evidence. (Mot. in Lim., 5:22–23.) The argument reflects a basic  
10 misunderstanding of the Nevada Rules of Evidence.

11 NRS 50.285 states that “[t]he facts or data in the particular case upon which an expert bases  
12 an opinion or inference may be those perceived by or made known to the expert *at or before the*  
13 *hearing*... If of a type reasonably relied upon by experts in forming opinions or inferences upon the  
14 subject, the facts or data need not be admissible in evidence.” NRS 50.285(1)–(2) (emphasis added);  
15 accord FED. R. EVID. 703 (“An expert may base an opinion on facts or data in the case that the  
16 expert has been made aware of or personally observed. If experts in the particular field would  
17 reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be  
18 admissible for the opinion to be admitted.”). Because depositions were not taken in this matter, it  
19 was appropriate for Professor Stempel to prepare his opinion based, in part, on anticipated testimony  
20 from [REDACTED] at the hearing.

21 “An expert is of course permitted to testify to an opinion formed on the basis of information  
22 that is handed to rather than developed by him—information of which he lacks first-hand knowledge  
23 and which might not be admissible in evidence no matter by whom presented.” *In re James Wilson*  
24 *Assocs.*, 965 F.2d 160, 172–73 (7th Cir. 1992) (citations omitted). Further, “in explaining his  
25 opinion an expert witness normally is allowed to explain the facts underlying it, even if they would  
26 not be independently admissible.” *Id.* “[T]he basis for a witness’s opinion generally does not affect  
27 his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency.”  
28 *Griffin v. Prairie Dog Ltd. P’ship*, 133 N.E.3d 15, 31 (Ill. App. 2019). “The weight to be assigned to

an expert opinion is for the [fact-finder] to determine in light of the expert’s credentials and the factual basis of his opinion. The burden is placed upon the adverse party during cross-examination to elicit the facts underlying the expert opinion.” *Id.* (citations omitted).

Even if the facts on which Professor Stempel relies are inadmissible, this does not affect whether to admit his testimony at the hearing. *Hose v. Chi. Nw. Transp. Co.*, 70 F.3d 968, 974 (8th Cir. 1996) (“[T]he factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and it is up to the opposing party to examine the factual basis for the opinion in cross-examination.”) (quotation marks and citation omitted). But that is ultimately irrelevant since the facts on which he relied in formulating his opinions will be admitted into evidence at the hearing. If the State Bar believes that Professor Stempel is not considering all relevant facts in rendering his opinions, or is misconstruing the import of the facts, it will have the opportunity to cross-examine him about those facts.

For these reasons, the Panel Chair should reject the State Bar’s attempt to preclude Professor Stempel from testifying at the hearing based on his preparation of an expert report based, in part, on information to be admitted into evidence at the hearing.<sup>4</sup>

**C. The Testimony of [REDACTED] Lay Witnesses is Relevant to These Proceedings**

The State Bar seeks to preclude C.J. Maupin and Mr. Freer from testifying at the hearing based on the erroneous assertion that Opinions 31, 36, and 44 are irrelevant. (Mot. in Lim., 2:18 – 3:4.) The State Bar further argues that even if those opinions are relevant, neither of these witnesses will offer anything of value in relation to them. (*Id.* at 3:5-18.) Both arguments miss the mark.

C.J. Maupin and Mr. Freer will testify at the hearing regarding the process in promulgating advisory opinions. Although the opinions are advisory in nature, they are carefully drafted so as to

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<sup>4</sup> *As an aside, it is clear that Professor Stempel knows the facts better than the State Bar.* For example, the State Bar questions why one of the grievants returned her rental car “months before Respondent made a settlement demand on her behalf” and another grievant “returned [her] rental car months before accepting a settlement.” (Mot. in Lim., 8:11-14.) The answers are obvious: [REDACTED] returned her rental car once her vehicle was repaired, and [REDACTED] returned her rental car once she received payment in resolution of her property damage claim and was able to afford purchasing a new car. (See App. of Exs. in Support of Respondent’s Mots. For Summ. J., Ex. 4 – Decl. of [REDACTED] ¶¶ 3, 18.) Once each of those events occurred, a rental car was no longer necessary.

Similarly, the State Bar argues that one of the grievants disputed [REDACTED] contingency fee. (Mot. in Lim., 8:17-19.) The State Bar offers no supporting affidavit from the grievant because the facts are otherwise. (See App. of Exs. in Support of Respondent’s Mots. For Summ. J., Ex. 4 – Decl. of [REDACTED], ¶ 16.)

1 provide attorneys with the tools needed to make an informed decision when faced with an ethical  
2 choice that lacks a black-and-white answer. *See, e.g., Telecomms. Law Prof'ls PLLC v. T-Mobile*  
3 *US, Inc.*, No. 13-1178 (GK), 2015 U.S. Dist. LEXIS 190792, at \*12 n.3 (D.D.C. Jan. 12, 2015)  
4 (“Although not binding, Opinions of the D.C. Bar Legal Ethics Committee provide valuable  
5 guidance and have been cited favorably by our Court of Appeals and the District of Columbia Court  
6 of Appeals.”). The State Bar’s insistence that the advisory opinions are irrelevant demeans the  
7 careful process of drafting, approving, and publishing such opinions.

8 Both of [REDACTED] witnesses offer different, yet valuable perspectives on this process.  
9 C.J. Maupin was a Justice of the Nevada Supreme Court from 1997 to 2009. He will provide insight  
10 as to the involvement of the Nevada Supreme Court in review of the advisory opinions before they  
11 are published. He will further testify regarding how the Nevada Supreme Court generally views  
12 those opinions in relation to proper lawyer conduct.

13 Mr. Freer is a practicing attorney and an active member of the Committee. He will testify  
14 about the Committee’s research and drafting of advisory opinions. He will further testify regarding  
15 the intent of the Committee for those opinions to have on Nevada lawyers.

16 Such testimony from C.J. Maupin and Mr. Freer is relevant and useful. Armed with their  
17 testimony, together with Professor Stempel’s, the panel will be able to fully and fairly evaluate [REDACTED]  
18 [REDACTED] actions.

19 Moreover, the testimony from C.J. Maupin and Mr. Freer will not be cumulative of other  
20 testimony. To the contrary, each offers unique testimony not available from any other witness.  
21 Even if their testimony was cumulative, its probative value substantially outweighs any concern with  
22 the “needless presentation of cumulative evidence.” NRS 48.035(2).

23 For these reasons, the Panel Chair should find that [REDACTED] may call C.J. Maupin and Mr.  
24 Freer to testify at the hearing in support of his defenses.

### 25 III. CONCLUSION

26 The State Bar’s attempt to preclude [REDACTED] from relying on witnesses at the hearing is a  
27 sign of desperation. The State Bar knows that it cannot meet its burden of proof in proving that [REDACTED]  
28 [REDACTED] violated Nevada RPC 1.15 and/or 1.8(e)(1). Thus, it wants to win by hamstringing [REDACTED]

1 [REDACTED] defenses. The State Bar cannot keep [REDACTED] from putting on a full and complete  
2 defense, which necessarily entails expert testimony explaining why his conduct met the standard of  
3 care and lay witness testimony regarding the Committee's process of publishing advisory opinions  
4 and the anticipated reliance on those opinions by Nevada lawyers.

5 For these reasons, the Disciplinary Chair should deny the State Bar's Motion *in Limine* to  
6 Exclude Witnesses.

7 DATED this 11<sup>th</sup> day of June, 2020.

8 BAILEY ♦ KENNEDY

9  
10 By: /s/ Joshua P. Gilmore  
11 DENNIS L. KENNEDY  
JOSHUA P. GILMORE

12 *Attorneys for Respondent*  
13 [REDACTED]  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 11<sup>th</sup> day of June, 2020, service of the foregoing **RESPONDENT'S OPPOSITION TO STATE BAR'S MOTION IN LIMINE TO EXCLUDE WITNESSES** was made by hand delivery/ email and/or by depositing a true and correct copy in the U.S. Mail, certified mail, return receipt requested, postage prepaid, and addressed to the following at their last known address:

DANIEL M. HOOGE, BAR COUNSEL	Email: kaitf@nvbar.org
R. KAIT FLOCCHINI, ASSISTANT BAR COUNSEL	kristif@nvbar.org
<b>STATE BAR OF NEVADA</b>	<i>Attorneys for Complainant</i>
3100 W. Charleston Blvd., Ste. 100	STATE BAR OF NEVADA
Las Vegas, NV 89102	

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/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

# EXHIBIT 3

# EXHIBIT 3

Case Number: [REDACTED]



**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

**STATE BAR OF NEVADA'S REPLY**  
**IN SUPPORT OF ITS**  
**MOTION IN LIMINE**  
**TO EXCLUDE WITNESSES**

[REDACTED]  
Bar No. [REDACTED]  
Respondent.

The State Bar of Nevada, through Assistant Bar Counsel R. Kait Flocchini, Esq., hereby replies in support of its motion to exclude Professor Jeffrey W. Stempel, retired Nevada Supreme Court Chief Justice William Maupin, and attorney Alan Freer from testifying as witnesses in this disciplinary Formal Hearing.

This Reply is based on the following Memorandum of Points and Authorities, the pleadings for the underlying matters, and any oral argument requested.

**MEMORANDUM OF POINTS AND AUTHORITIES**

There is no dispute that expert testimony could be admitted in a disciplinary proceeding *if it is helpful*. The State Bar submits that Mr. Stempel's proposed expert testimony is not helpful because it is not rooted in scientific, technical, or specialized knowledge that is beyond the 'ken' of the Disciplinary Panel.

1 Similarly, the State Bar submits that Justice Maupin's and Mr. Freer's testimony is  
2 unnecessary to analyze the elements of a disciplinary matter: (i) whether Respondent  
3 violated the Rules of Professional Conduct; (ii) *Respondent's* mental state (not the Court  
4 or Standing Committee's mental state) when he engaged in the particular conduct; (iii) any  
5 injury or potential injury to client, the judiciary, or the integrity of the profession; and (iv)  
6 any aggravating or mitigating factors that warrant a deviation in the appropriate sanction.  
7 Any unpublished analysis of a Standing Committee's Formal Opinion from the Court does  
8 not prove any of these elements. Any unwritten intentions of a Standing Committee  
9 member also does not prove any of these elements. Therefore, the proffered testimony  
10 from Justice Maupin and Mr. Freer are irrelevant to the issues the Disciplinary Panel must  
11 decide.

12 **Only Respondent's Mental State is Relevant to this Disciplinary Matter.**

13 Respondent argues that the testimony of Justice Maupin and Mr. Freer regarding  
14 how they intended advisory Standing Committee Formal Opinions to be used is relevant to  
15 Respondent's disciplinary proceeding.

16 Even accepting the proffered testimony, it does not change that the three cited  
17 Formal Opinions fail to set forth the actual opinions upon which Respondent purports to  
18 rely. Further, the only "insight" or "intent" relevant to this matter is what Respondent was  
19 thinking when he engaged in particular conduct. The other witnesses cannot testify  
20 regarding Respondent's mental state. Finally, Justice Maupin's insight and Mr. Freer's  
21 intentions do not change the letter of the law that such opinions are not binding, and thus,  
22 not a complete defense to misconduct.

23 By offering Justice Maupin and Mr. Freer to testify in this matter, Respondent asks  
24 this Panel to engage in an interpretation of SCR 225. This analysis is beyond the purview  
25

1 of the Disciplinary Panel. That renders the proffered testimony irrelevant to the  
2 disciplinary proceeding.

3 **Mr. Stempel's Proposed Expert Testimony Should be Excluded.**

4 The State Bar does not argue whether Mr. Stempel *could* be useful, as an expert, to  
5 some Disciplinary Panel. However, Mr. Stempel cites no scientific, technical, or specialized  
6 knowledge to support his opinions; an evaluation of Mr. Stempel's qualifications is  
7 unnecessary in this matter.

8 Respondent argues that Mr. Stempel's testimony offers the Panel scientific,  
9 technical, or specialized knowledge necessary to understand RPC 1.8(e) and RPC 1.15 and  
10 apply them to Respondent's conduct. Yet, Respondent's argument does not provide a  
11 causal connection between Mr. Stempel's qualifications and his proposed expert opinions.  
12 Instead, Respondent attempts to bootstrap Mr. Stempel's personal interpretations of (i)  
13 "expenses of litigation" and (ii) when Respondent earned his fee into an authoritative  
14 opinion into expert opinions using Mr. Stempel's Yale School of Law graduation, years of  
15 professorship, and general publication/testimony, which appears to be largely in the area  
16 of insurance law and general civil procedure.

17 Mr. Stempel offers none of his scholarly writing or lecturing as a basis for his  
18 interpretation of "expenses of litigation." *See* Stempel Expert Report at ¶¶ 62-76. Mr.  
19 Stempel does not even offer case law, persuasive or otherwise, to support his interpretation  
20 of "expenses of litigation." *See id.*

21 Similarly, Mr. Stempel offers no scholarly writing, lecture, or case law to support his  
22 interpretation of when Respondent 'earned his fee' and the fees became 'undisputed,' and  
23 thus, capable of distribution. *See id.* at ¶50 and ¶56. Mr. Stempel simply offers his personal  
24 interpretation of Formal Opinion 31 and Formal Opinion 44 to support his opinion that  
25 Respondent's distribution was acceptable. Mr. Stempel's statements are no more based in

1 scientific, technical, or specialized knowledge than Respondent's same argument. *See id.*  
2 at ¶50 and ¶59. Mr. Stempel's opinions are not based on any of his specific, technical, or  
3 specialized knowledge.

4 Mr. Stempel's opinions are also based on hearsay from Respondent regarding [REDACTED]  
5 [REDACTED] and [REDACTED] financial situations and intentions for settling their respective  
6 claims. *See* Expert Report at ¶9 and ¶29. As set forth in the State Bar's oppositions to  
7 Respondent's motions for summary judgment, Respondent should be precluded from  
8 offering the hearsay. Such otherwise inadmissible evidence should not be admitted  
9 through a purported loophole in expert testimony.

10 Mr. Stempel's opinions are not a 'resource for ascertaining truth in relevant areas  
11 outside the ken of ordinary laity.' For this reason, Mr. Stempel, and his expert report,  
12 should be excluded from the hearing in this disciplinary matter.

13 A. Conclusion.

14 The State Bar reiterates its request that Mr. Stempel, Justice Maupin, and Mr. Freer  
15 be excluded from testifying in the Formal Hearing in this disciplinary matter.

16 Dated this 15th day of June, 2020.

17 STATE BAR OF NEVADA  
18 DANIEL M. HOOGE, BAR COUNSEL


19 By:   
20 R. Kait Flocchini, Assistant Bar Counsel  
21 3100 W. Charleston Blvd, Suite 100  
22 Las Vegas, Nevada 89102  
23 702-382-2200  
24  
25

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR**  
3 **OF NEVADA'S REPLY IN SUPPORT OF ITS MOTION IN LIMINE TO**  
4 **EXCLUDE WITNESSES** was served via email to:

- 5  
6 1. Nell Christensen, Esq. (Panel Chair): [Nell.Christensen@clarkcountyda.com](mailto:Nell.Christensen@clarkcountyda.com)  
7 2. Joshua Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)  
8 3. Dennis Kennedy, Esq. (Counsel for Respondent): [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)  
9 4. R. Kait Flocchini (Assistant Bar Counsel): [kaitf@nvbar.org](mailto:kaitf@nvbar.org)

10 DATED this 15 day of June, 2020.

11 By:   
12 Sonia Del Rio, an employee of  
13 the State Bar of Nevada.  
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# EXHIBIT 4

# EXHIBIT 4

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*Attorneys for Respondent*  
[REDACTED]



**FILED**

AUG 07 2020

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

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

Bar No. [REDACTED]

Respondent.

Case Nos. [REDACTED]

**ORDER GRANTING, IN PART, AND  
DENYING, IN PART, STATE BAR OF  
NEVADA'S MOTION *IN LIMINE* TO  
EXCLUDE WITNESSES**

This matter came before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Disciplinary Board"), with Panel Chair Nell Christensen, Esq. presiding, on the 19<sup>th</sup> day of June, 2020, at 10:00 A.M., for a hearing on State Bar of Nevada's Motion *in Limine* to Exclude Witnesses (the "Witnesses Motion"). Kait Flocchini, Esq., Assistant Bar Counsel, appeared on behalf of the State Bar of Nevada ("State Bar"). Dennis L. Kennedy, Esq. and Joshua P. Gilmore, Esq. of Bailey ♦ Kennedy appeared on behalf of Respondent [REDACTED].

The Panel Chair, having reviewed the papers and pleadings on file, including the Witnesses Motion, Opposition, and Reply, heard arguments of counsel, and being fully advised of the premises, and good cause appearing,

1       **HEREBY ORDERS** that the Witnesses Motion shall be, and hereby is, GRANTED, in  
2 part, and DENIED, in part. The Panel Chair finds that the proposed expert testimony from Jeffrey  
3 W. Stempel is relevant to this proceeding and may be helpful to the Hearing Panel. *See In re*  
4 *Assad*, 124 Nev. 391, 393, 185 P.3d 1044, 1045 (2008). The Panel Chair further finds that  
5 Professor Stempel's proposed expert testimony is admissible under NRS 50.275 because (i) he is  
6 qualified to opine on matters concerning legal ethics and professional responsibility, (ii) his  
7 specialized knowledge may assist the Hearing Panel in understanding the evidence and deciding  
8 the issues, and (iii) his testimony is within the scope of his expertise. *See Brant v. State*, 130 Nev.  
9 980, 984, 340 P.3d 576, 579 (2014) (describing the admissibility requirements for expert  
10 testimony). Professor Stempel cannot, however, testify regarding the credibility of any witnesses  
11 or the weight of other evidence presented. The Hearing Panel will determine what weight to give  
12 Professor Stempel's opinions.

13       **IT IS FURTHER ORDERED** that A. William Maupin and Alan Freer are excluded from  
14 testifying at the hearing. The Panel Chair finds that Mr. Maupin's proffered testimony regarding  
15 the decision in *In re Discipline of Schaefer*, 117 Nev. 496, 25 P.3d 191 (2001), the intent  
16 underlying Rule 222, *et seq.* of the Nevada Supreme Court Rules ("SCR"), the purpose of the State  
17 Bar of Nevada's Standing Committee on Ethics and Professional Responsibility, and the process  
18 by which the Nevada Supreme Court reviewed any opinions issued by the Standing Committee in  
19 advance of their publication is irrelevant to this disciplinary proceeding because SCR 225(5) states  
20 that the Standing Committee's opinions are "advisory only," "express only the judgment of the  
21 [Standing C]ommittee," and are "not binding upon the courts, the State Bar of Nevada, or any  
22 member of the State Bar." For the same reasons, the Panel Chair finds that Mr. Freer's proffered  
23 testimony regarding the purpose of the Standing Committee and the process by which the Nevada  
24 Supreme Court reviewed any opinions issued by the Standing Committee in advance of their  
25 publication is irrelevant to this disciplinary proceeding. The plain language of SCR 225(5) is clear  
26 and there is no basis for going beyond it. *See Branch Banking v. Windhaven & Tollway, LLC*, 131

1 Nev., Adv. Op. 20, 347 P.3d 1040 (2015). Accordingly, the Panel Chair finds that the proposed  
2 testimony from Messrs. Maupin and Freer will not be helpful to the Hearing Panel.

3 **IT IS SO ORDERED.**

4 Dated this 7<sup>th</sup> of August, 2020.

Nell Christensen

Nell Christensen (Aug 7, 2020 07:54 PDT)

Nell Christensen, Esq.  
Panel Chair  
Southern Nevada Disciplinary Board

8 Submitted by:

9 BAILEY ♦ KENNEDY

Approved as to form and content by:

THE STATE BAR OF NEVADA

10  
11 By: Joshua P. Gilmore  
Joshua P. Gilmore (Aug 7, 2020 09:29 PDT)

DENNIS L. KENNEDY  
JOSHUA P. GILMORE  
*Attorneys for Respondent*  
[REDACTED]

By: Kait Flocchini

KAIT FLOCCHINI  
Assistant Bar Counsel  
3100 W. Charleston Blvd., Ste. 100  
Las Vegas, NV 89102

*Attorneys for Complainant*  
STATE BAR OF NEVADA

1 **CERTIFICATE OF SERVICE**

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

- 4
1. Nell Christensen, Esq. (Panel Chair): [Nell.christensen@clarkcountyda.com](mailto:Nell.christensen@clarkcountyda.com)
  - 5 2. Joshua Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)
  3. Dennis Kennedy, Esq. (Counsel for Respondent): [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)
  - 6 4. R. Kait Flocchini (Assistant Bar Counsel): [kaitf@nvbar.org](mailto:kaitf@nvbar.org)

7 DATED this 14 day of August, 2020.

8

9 By: 

10 Kristi Faust, an employee of  
11 the State Bar of Nevada.

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# EXHIBIT 5

# EXHIBIT 5

Case No. [REDACTED]



FILED

NOV 19 2020

STATE BAR OF NEVADA  
BY: *B. Felix*  
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA**  
**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
[REDACTED] )  
BAR NO. [REDACTED] )  
 )  
Respondent. )

**FINDINGS OF FACT, CONCLUSIONS**  
**OF LAW, AND ORDER AFTER**  
**FORMAL HEARING**

This matter involving attorney [REDACTED] ("Respondent"), Bar No. [REDACTED] came before a designated Formal Hearing Panel of the Southern Nevada Disciplinary Board ("Panel") at 10:00 a.m. on October 2, 2020, via remote audio/visual appearance using Zoom hosted from Las Vegas, Nevada, for hearing on Respondent's Conditional Guilty Plea in Exchange for a Stated Form of Discipline ("Plea"), which had been tendered by Respondent, pursuant to SCR 113(1) and DRP 23, to the Office of Bar Counsel on October 2, 2020. The Panel consisted of Chair Nell Christensen, Esq.; Vincent Romeo, Esq.; and Afeni Banks, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the

1 State Bar of Nevada ("State Bar"). Respondent was present and represented by Dennis L.  
2 Kennedy, Esq. and Joshua P. Gilmore, Esq. of Bailey Kennedy.

3 The Panel received in evidence previously admitted State Bar Exhibits 1-23 and  
4 Respondent Exhibits C, E, F, G, M, Q, V, Y, Z, AA, CC, GG, II, LL, OO, PP, QQ, RR, WW,  
5 XX, and BBB-KKK. Respondent's Plea was admitted into evidence as Exhibit 24 and  
6 provided to the Panel. The Panel also received Trial Briefs submitted on September 25,  
7 2020, by the State Bar and Respondent, and the Offer of Proof submitted by Respondent  
8 on October 1, 2020.

9 The Panel heard statements from both parties and testimony from Respondent.

10 Based upon the evidence presented, testimony received, and arguments made, the  
11 Panel unanimously issues the following Findings of Fact, Conclusions of Law, and Order:

12 **FINDINGS OF FACT**

13 1. Respondent was admitted to the State Bar of Nevada on September 29, 2000  
14 and is actively licensed to practice of law in the State of Nevada.

15 2. During the period in question, Respondent maintained a law practice in Clark  
16 County, Nevada.

17 3. The Stipulation of Facts, as set forth in paragraphs 1 through 14 of the Plea,  
18 accurately reflects this Panel's findings regarding the facts and circumstances pertinent to  
19 these proceedings.

20 4. On December 23, 2019, the Office of Bar Counsel filed a disciplinary  
21 Complaint against Respondent (Case Nos. [REDACTED]), which charged  
22 him with violations of Rule of Professional Conduct ("RPC") 1.8(e) (Conflict of Interest:  
23 Current Clients: Specific Rules) and RPC 1.15 (Safekeeping Property).

24 5. On March 16, 2020, the Office of Bar Counsel filed a disciplinary Complaint  
25 against Respondent (Case No. [REDACTED]), which charged him with separate violations

1 of Rule of Professional Conduct (“RPC”) 1.8(e) (Conflict of Interest: Current Clients:  
2 Specific Rules) and RPC 1.15 (Safekeeping Property).

3 6. On May 11, 2020, an Order consolidating the two Complaints to be heard in  
4 one Formal Hearing was filed.

5 7. On Respondent’s motion, the Formal Hearing in this matter was continued  
6 from June 30, 2020 to October 2, 2020.

7 8. On October 2, 2020, Respondent submitted his Plea, through which he  
8 admitted to violating RPC 1.8(e) under Sections III and VIII thereof. As part of the Plea,  
9 under Section VII, the State Bar agreed to dismiss all charges in these proceedings  
10 regarding violations of RPC 1.15 and to forego bringing or asserting similar violations of  
11 RPC 1.8(e) and/or RPC 1.15 against Respondent in any pending matter as well as in any  
12 future matter that may be brought to the State Bar’s attention if the underlying acts  
13 occurred prior to approval of the Plea by the Panel.

14 9. At the Formal Hearing, Respondent confirmed that he voluntarily agreed (i)  
15 that for purposes of the Plea, he knowingly<sup>1</sup> violated RPC 1.8(e) in two of the underlying  
16 representations and (ii) to revise his, and his law firm’s, procedures regarding the  
17 distribution of attorney’s fees in particular matters, as fully described below and in Section  
18 VIII of the Plea.

19 10. The Panel finds, and incorporates herein by reference, the Aggravating and  
20 Mitigating Factors set forth in Article V of the Plea.

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25 <sup>1</sup> A “knowing” mental state, as applied to a violation of the Rules of Professional Conduct, is defined in  
Standard 3.0 of the ABA Standards for Imposing Lawyer Sanctions.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Panel hereby issues the following Conclusions of Law:

1. The Southern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

2. Venue is proper in Clark County, Nevada.

3. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*, 108 Nev. 629, 633-634, 837 P.2d 853, 856 (1992); *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d 386, 387 (1990).

4. The Panel unanimously finds that the foregoing Findings of Fact prove by clear and convincing evidence that:

a. Respondent knowingly violated RPC 1.8(e) (Conflict of Interest: Current Clients: Specific Rules) by advancing the cost of renting cars for two of his clients; and

b. The integrity of the profession was injured by Respondent's misconduct and Respondent's clients could have been injured by his violation of RPC 1.8(e).

5. The appropriate level of discipline must be determined considering "all relevant factors and mitigating circumstances on a case-by-case basis." *State Bar of Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). The purpose of attorney discipline is to protect the public, the courts, and the legal profession—not to punish the attorney. *Id.* at 213, 756 P.2d at 527-28. The American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards") identify the following four factors to be considered in determining the appropriate disciplinary sanction: "the duty violated, the

1 lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and  
2 the existence of aggravating or mitigating factors." *See In re Discipline of Lerner*, 124 Nev.  
3 1232, 1246, 197 P.3d 1067, 1078 (2008).

4 6. Pursuant to Standard 4.32 of the ABA Standards, the appropriate baseline  
5 sanction for Respondent's violation of RPC 1.8(e) is suspension.

6 7. Pursuant to SCR 102.5, the Panel unanimously finds that Respondent's  
7 substantial experience in the practice of law (SCR 102.5(1)(i)) and a pattern of misconduct  
8 (SCR 102.5(1)(c)) are aggravating factors.

9 8. Pursuant to SCR 102.5, the Panel unanimously finds the following mitigating  
10 factors exist:

11 a. no recent prior discipline and an absence of discipline for a similar  
12 offense (SCR 102.5(2)(a)),

13 b. absence of dishonest or selfish motive (SCR 102.5(2)(b)),

14 c. cooperative attitude towards the disciplinary proceeding and full  
15 and free disclosure to the State Bar (SCR 102.5(2)(e)), and

16 d. Respondent's good reputation (SCR 102.5(2)(g)).

17 9. The Panel unanimously finds that the mitigating factors, particularly  
18 Respondent's cooperative attitude and good reputation, warrant a downward deviation  
19 from suspension, as contemplated by ABA Standard 4.32, to issuance of a Letter of  
20 Reprimand.

21 10. The allegations of violations of RPC 1.15 (Safekeeping Property) are  
22 dismissed with prejudice.

23 11. The Panel unanimously finds important to the acceptance of the Plea, which  
24 includes a dismissal of the allegations of violations of RPC 1.15 (Safekeeping Property), that  
25 Respondent agreed, in Section VIII of the Plea, that on a going forward basis, so long as he

1 advertises and/or agrees to not take more in attorney's fees than his client's net recovery  
2 in a case that is resolved without the filing of a lawsuit or demand for arbitration, he and  
3 his law firm will not distribute attorney's fees from the client's settlement in such a case  
4 absent an equal amount of undisputed funds being distributed to the client unless  
5 Respondent and the client agree otherwise after the settlement of the client's case. Also  
6 important to the acceptance of the Plea is Respondent's affirmation that for one year  
7 hereafter, he and his law firm's bookkeeper will certify to the State Bar on a quarterly basis  
8 that he and his law firm have complied with this Order.

9 **ORDER**

10 Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel  
11 **HEREBY ORDERS** that:

12 1. Respondent shall be issued a Letter of Reprimand for violation of RPC 1.8(e)  
13 that is substantially the same as Exhibit A submitted with the Plea.

14 2. For any settlement of a client's case occurring after entry of this Order, so  
15 long as Respondent advertises and/or agrees to not take more in attorney's fees than his  
16 client's net recovery in a case that is resolved without the filing of a lawsuit or demand for  
17 arbitration, he and his law firm shall not distribute attorney's fees from the client's  
18 settlement in such a case absent an equal amount of undisputed funds being distributed to  
19 the client unless Respondent and the client agree otherwise after the settlement of the  
20 client's case. Respondent and his law firm's bookkeeper shall certify to the State Bar, on a  
21 quarterly basis for one year following entry of this Order, that Respondent and his law firm  
22 have complied with this Order.

23 ///

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3. Respondent shall pay costs, provided for in SCR 120, in the amount of \$1,500 plus the hard costs of these proceedings. Such payment shall be made no later than the 30th day after the filing of this Order or the filing of a Memorandum of Costs, whichever is later.

**IT IS SO ORDERED.**

DATED this 19<sup>th</sup> day of November, 2020.

Nell Christensen

Nell Christensen (Nov 19, 2020 09:26 PST)

NELL CHRISTENSEN, ESQ., Chair  
Southern Nevada Disciplinary Panel

**Submitted By:**  
STATE BAR OF NEVADA  
Daniel M. Hooge, Bar Counsel

**Approved as to Form and  
Content:**

By: Kait Flocchini

Kait Flocchini, Assistant Bar Counsel  
3100 W. Charleston Blvd., Suite 100  
Las Vegas, Nevada 89102  
(702) 382-2200  
Attorney for State Bar of Nevada

Joshua P. Gilmore

Joshua P. Gilmore (Nov 12, 2020 16:34 PST)

Dennis L. Kennedy, Esq. (NV Bar No. 1462)  
Joshua P. Gilmore, Esq. (NV Bar No. 11576)  
Bailey Kennedy  
8984 Spanish Ridge Ave.  
Las Vegas, Nevada 89148-1302  
(702) 562-8820  
Attorneys for Respondent [REDACTED]









# proposed FF CL Order (SBN v. [REDACTED])

Final Audit Report

2020-11-19

Created:	2020-11-13
By:	Kait Flocchini (Kaitf@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAnRU2F50Gb1h3vw52dNQIFH_TzMcEIM

## "proposed FF CL Order (SBN v. [REDACTED])" History

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-  Document emailed to Joshua P. Gilmore (jgilmore@baileykennedy.com) for signature  
2020-11-13 - 0:12:35 AM GMT
-  Email viewed by Joshua P. Gilmore (jgilmore@baileykennedy.com)  
2020-11-13 - 0:32:01 AM GMT- IP address: 24.120.203.34
-  Document e-signed by Joshua P. Gilmore (jgilmore@baileykennedy.com)  
Signature Date: 2020-11-13 - 0:34:50 AM GMT - Time Source: server- IP address: 24.120.203.34
-  Document emailed to Nell Christensen (nell.christensen@clarkcountyda.com) for signature  
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2020-11-13 - 0:35:30 AM GMT- IP address: 198.200.132.41
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-  Agreement completed.  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing Findings of Fact,  
Conclusions of Law and Order After Formal Hearing was served via email to:

1. Nell Christensen, Esq. (Panel Chair): [Nell.christensen@clarkcountyda.com](mailto:Nell.christensen@clarkcountyda.com)
2. Joshua Gilmore, Esq. (Counsel for Respondent): [JGilmore@BaileyKennedy.com](mailto:JGilmore@BaileyKennedy.com)
3. Dennis Kennedy, Esq. (Counsel for Respondent): [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)
4. R. Kait Flocchini (Assistant Bar Counsel): [kaitf@nvbar.org](mailto:kaitf@nvbar.org)

DATED this 19th day of November, 2020.

By: Kristi A. Faust  
Kristi Faust, an employee of  
the State Bar of Nevada.

DENNIS L. KENNEDY  
Nevada Bar No. 1462  
JOSHUA P. GILMORE  
Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
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JGilmore@BaileyKennedy.com

*Attorneys for Respondent*  
James J. Jimmerson, Esq.



FILED

APR 13 2021

STATE BAR OF NEVADA  
BY: *B. Felix*  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**RESPONDENT'S OBJECTIONS TO  
THE STATE BAR'S SUMMARY OF  
EVIDENCE AND DISCLOSURE OF  
WITNESSES FOR FORMAL HEARING**

Pursuant to DRP 22, Respondent James J. Jimmerson, Esq., by and through his counsel, objects to the State Bar of Nevada's Summary of Evidence and Disclosure of Witnesses for Formal Hearing, served March 11, 2021 (the "Final Disclosures"), for the following reasons.

As a general matter, although the State Bar's Final Disclosures identify each exhibit sought to be introduced at the hearing, the State Bar generically refers to "[a]ny and all documentation contained in the State Bar of Nevada's files ... regarding grievance file number OBC20-0163." (Final Disclosures at 1:16-19.) The State Bar cannot simply designate every document in its file as a potential exhibit for use at the hearing. *See* Fed. R. Civ. P. 26 Committee Note, 146 F.R.D. 401, 636 (explaining that the federal rule concerning pretrial disclosures generally requires a "separate listing of each [] exhibit" that a party intends to use at trial); *accord Johnson v. UPS*, 236 F.R.D. 376, 378 (E.D. Tenn. 2006) (finding that a defendant "is not required to sift through every document in its possession that might possibly be relevant to Plaintiffs' claims and assume they all will be presented

1 at trial”).<sup>1</sup> A party abuses the pre-hearing disclosure process by listing “so many witnesses or  
2 exhibits as to exceed any possibility of use at trial and swamp the opposing party with a meaningless  
3 avalanche of information.” 8A Charles A. Wright, et al., FED. PRAC. & PROC. CIV. § 2054 (3d ed.  
4 2011). Accordingly, Mr. Jimmerson objects to the State Bar’s use of any document at the hearing  
5 not specifically identified in its Final Disclosures.

6 Turning to the documents specifically identified in the State Bar’s Final Disclosures, Mr.  
7 Jimmerson asserts the following objections:

8 - **Exhibit 2:** Mr. Jimmerson objects to his prior discipline being offered into evidence  
9 for purposes of trying to establish that he violated the RPCs. *See* ABA Standards for Imposing  
10 Lawyer Sanctions § 3.0 (“In imposing a sanction after a finding of lawyer misconduct ...”), *id.* § 9.1  
11 (stating that aggravating and mitigating factors are considered “[a]fter misconduct has been  
12 established”).<sup>2</sup> In determining whether Mr. Jimmerson violated the RPCs, his prior discipline is  
13 irrelevant, NRS 48.025(2); unfairly prejudicial, NRS 48.035(1); and constitutes inadmissible  
14 character evidence, NRS 48.045(2).<sup>3</sup>

15 - **Exhibits 3-5, 22-23:** Mr. Jimmerson objects to the introduction of these documents  
16 due to: Authenticity, NRS 52.015(1); Lack of Foundation, NRS 52.025; Hearsay, NRS 51.065(1);  
17 Probative Value Substantially Outweighed by Danger of Unfair Prejudice, of Confusion of the  
18 Issues, or of Misleading the Panel, NRS 48.035(1); and Probative Value Substantially Outweighed  
19 by Considerations of Undue Delay, Waste of Time, and Needless Presentation of Cumulative  
20 Evidence, NRS 48.035(2).

21 - **Exhibits 6-9, 14-16, 19:** Mr. Jimmerson objects to the introduction of these  
22 documents due to: Lack of Foundation, NRS 52.025; Relevance, NRS 48.025(2); Hearsay, NRS  
23 51.065(1); Probative Value Substantially Outweighed by Danger of Unfair Prejudice, of Confusion  
24 of the Issues, or of Misleading the Panel, NRS 48.035(1); and Probative Value Substantially  
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26  
27 <sup>1</sup> The Nevada Rules of Civil Procedure apply in disciplinary proceedings. SCR 119(3).

28 <sup>2</sup> The ABA Standards for Imposing Lawyer Sanctions apply in disciplinary proceedings. DRP 34(b).

<sup>3</sup> The Nevada Rules of Evidence apply in disciplinary proceedings. SCR 105(2)(f).

1 Outweighed by Considerations of Undue Delay, Waste of Time, and Needless Presentation of  
2 Cumulative Evidence, NRS 48.035(2).

3 - **Exhibits 20-21:** This matter arises from a timely objection made by Mr. Jimmerson to  
4 a proposed letter of reprimand issued by a screening panel. In determining whether Mr. Jimmerson  
5 violated the RPCs, the screening panel's findings are irrelevant, NRS 48.025(2); constitute hearsay,  
6 NRS 51.065(1); and are unfairly prejudicial, NRS 48.035(1).

7 - **Exhibits 24-25, 39-41:** Nevada State Bank, in response to a subpoena issued by the  
8 State Bar (without prior notice to Mr. Jimmerson), produced records for myriad bank accounts not  
9 involving The Jimmerson Law Firm, P.C. (*See* State Bar Exs. 42-46.) These records contain  
10 private, sensitive information concerning Mr. Jimmerson and/or confidential information concerning  
11 other businesses. The documents are irrelevant, NRS 48.025(2); will cause confusion if introduced,  
12 NRS 48.035(1); and will waste time if addressed by the parties, NRS 48.035(2).

13 - **Exhibits 47-48:** Mr. Jimmerson objects to the introduction of these documents due  
14 to: Relevance, NRS 48.025(2); Hearsay, NRS 51.065(1); Probative Value Substantially Outweighed  
15 by Danger of Unfair Prejudice, of Confusion of the Issues, or of Misleading the Panel, NRS  
16 48.035(1); and Probative Value Substantially Outweighed by Considerations of Undue Delay, Waste  
17 of Time, and Needless Presentation of Cumulative Evidence, NRS 48.035(2).

18 As to the witnesses identified by the State Bar in its Final Disclosures, Mr. Jimmerson  
19 objects to testimony from Louise Watson because she (i) lacks personal knowledge of Mr.  
20 Jimmerson's handling of his client trust account and hiring, management, and oversight of his non-  
21 lawyer employees, NRS 50.025; and (ii) her testimony would be needlessly cumulative of testimony  
22 received from Mr. Jimmerson, NRS 48.035(2).

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1 Mr. Jimmerson reserves the right to amend these objections and to object to any additional,  
2 amended and/or supplemental pre-hearing disclosures served by the State Bar.

3 DATED this 13<sup>th</sup> day of April, 2021.

4 BAILEY ♦ KENNEDY

5 By: /s/ Dennis L. Kennedy

6 DENNIS L. KENNEDY

7 JOSHUA P. GILMORE

8 *Attorneys for Respondent*

9 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 13<sup>th</sup> day of April, 2021, service of the foregoing **RESPONDENT'S OBJECTIONS TO THE STATE BAR'S SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING** was made by emailing a true and correct copy to the following at their last known address:

DANIEL M. HOOGE  
BAR COUNSEL  
DANIEL T. YOUNG,  
ASSISTANT BAR COUNSEL  
**STATE BAR OF NEVADA**  
3100 West Charleston Boulevard  
Las Vegas, NV 89102

Email: daniel@nvbar.org  
kristif@nvbar.org  
sbnnotices@nvbar.org  
*Attorneys for Complainant*  
**STATE BAR OF NEVADA**

---

/s/ Susan Russo  
Employee of BAILEY ♦ KENNEDY

Case No: OBC20-0163



**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,  
  
Complainant,  
  
vs.  
  
JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,  
  
Respondent.


**STATE BAR OF NEVADA'S  
OBJECTION TO RESPONDENT'S  
EXHIBITS**

Pursuant to Rule 22 of the Disciplinary Rules of Procedure the State Bar of Nevada, through Assistant Bar Counsel Daniel T. Young, Esq., hereby submits its written objections to Respondents final list of exhibits to be argued at the prehearing conference.

Exhibit No.	Bates No.	Document Title	Objection
N	JJJ00030- JJJ00034	Leah Ballard Text Messages	Hearsay

**DATED** this 13 day of April, 2021.

**STATE BAR OF NEVADA**  
Daniel M. Hooge, Bar Counsel

  
Daniel Young (f6) 2021 15:28 PDT  
Daniel T. Young, Assistant Bar Counsel  
Nevada Bar No. 11747  
3100 W. Charleston Blvd, Suite 100  
Las Vegas, Nevada 89102  
(702)-382-2200  
Attorney for State Bar of Nevada

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR**  
3 **OF NEVADA'S OBJECTION TO RESPONDENT'S EXHIBITS** was served via email  
to:

- 4 1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
5 2. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)  
6 3. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)  
7 4. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniel@nvbar.org](mailto:daniel@nvbar.org)

8 Dated this 13th day of April, 2021.

9 *Kristi A. Faust*

10 Kristi Faust, an employee  
11 of the State Bar of Nevada  
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# 2021.04.13- SBN Objection to Exhibits - Jimmerson OBC20-0163

Final Audit Report

2021-04-13

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By:	Kristi Faust (kristif@nvbar.org)
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## "2021.04.13- SBN Objection to Exhibits - Jimmerson OBC20-0163" History



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Agreement completed.

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Case No: OBC20-0163



**STATE BAR OF NEVADA**  
**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
 )  
Complainant, )  
vs. )  
 )  
JAMES J. JIMMERSON, ESQ. )  
Nevada Bar No. 0264 )  
 )  
Respondent. )

**STATE BAR OF NEVADA'S**  
**REPLY TO RESPONDENT'S**  
**OPPOSITION TO STATE BAR**  
**OF NEVADA'S MOTION IN LIMINE**  
**TO EXCLUDE EXPERT TESTIMONY**  
**AND EXPERT REPORT**

COMES NOW the State Bar of Nevada, through Assistant Bar Counsel, Daniel T. Young, and submits it Reply to Respondent's Opposition to State Bar of Nevada's Motion in Limine to Exclude Expert Testimony and Expert Report. This reply is based on the pleadings and papers filed herein, the Points and Authorities which follow, the attached Exhibits, and upon such further evidence and argument of counsel as the Chair may require or allow.

**POINTS AND AUTHORITIES**

**I. Issue Preclusion does not Apply in this Case**

The general rule of issue preclusion is that if an issue of fact or law was actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action **between the parties** . . . . For purposes of issue preclusion, a final judgment includes any prior adjudication of an issue in another action that is 'determined to be sufficiently firm to be accorded conclusive effect.'

1 *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994) (citing Charles A.  
2 Wright, *Law of Federal Courts* § 100A, at 682 (4th ed. 1983); *see* Restatement (Second) of  
3 Judgments § 13 (1982)). (Emphasis added)

4 Collateral estoppel is generally invoked when separate causes of action are presented in  
5 the first and second suits. "The doctrine provides that any issue that was *actually and*  
6 *necessarily litigated* in [case I] will be estopped from being relitigated in [case II]." *Exec. Mgmt.*  
7 *v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d 465, 473 (1998) (citing *Univ. of Nev. v.*  
8 *Tarkanian*, at 599, 879 P.2d at 1191). "The doctrine is intended to prevent multiple litigation  
9 causing vexation and expense to the parties and wasted judicial resources by precluding  
10 **parties from relitigating issues they could have raised in a prior action concerning**  
11 **the same controversy.**" *Kuptz-Blinkinsop v. Blinkinsop*, 466 P.3d 1271, 1275 (Nev. 2020)  
12 (Emphasis Added)

13 In this case, Respondent asserts that the State Bar is precluded from seeking the  
14 exclusion of his expert. Opposition, p. 3:20. Respondent claims that the issue of seeking to  
15 exclude an expert from testifying in a disciplinary matter was litigated in a separate case and  
16 therefore, the State Bar is now precluded from seeking to exclude Respondent's expert in the  
17 instate case. *Id.*

18 Respondent attaches to his Opposition several briefs and an order purportedly to support  
19 his assertion of claim preclusion. However, the documents relied upon by Respondent are not  
20 from a prior action concerning the same or even similar controversy regarding Respondent and  
21 the State Bar.<sup>1</sup> The briefs attached are from a separate, wholly unrelated case to the instant  
22 matter. Respondent was neither a party nor had any relationship that resulted in privity to the  
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25 <sup>1</sup> Respondent has redacted the captions on the briefs and order he relies upon. In so doing,  
Respondent appears to give the Chair the impression that those pleadings are connected to the  
instant matter.

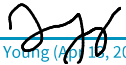
1 other case upon which he now relies.<sup>2</sup> *In re MGM Mirage Derivative Litig.*, No. 2:09-cv-01815-  
2 KJD-RJJ, 2014 U.S. Dist. LEXIS 88967, at 11 (D. Nev. June 30, 2014) (stating requirement of  
3 same party or having privity to establish issue preclusion). As a result, Respondent's argument  
4 is fatally flawed because issue preclusion is only implicated when the parties to an earlier suit  
5 are involved in a subsequent litigation on a different claim. *Kuptz-Blinkinsop v. Blinkinsop*, 466  
6 P.3d 1271, 1275 (Nev. 2020).

## 7 **II. Conclusion**

8 Based upon the above, Respondent's assertion that the State Bar is precluded from  
9 seeking exclusion of his expert is fatally flawed and it should be denied by the Chair. As such,  
10 the Chair should grant the State Bar's motion to exclude the proposed testimony Rob Bare  
11 because it impermissibly invades the exclusive role of the disciplinary panel.

12 **DATED** this 13 day of April 2021.

13 **STATE BAR OF NEVADA**  
14 Daniel M. Hooge, Bar Counsel

15   
16 Daniel T. Young (Apr 16, 2021 15:19 PDT)  
17 Daniel T. Young, Assistant Bar Counsel  
18 Nevada Bar No. 11747  
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(702)-382-2200  
Attorney for State Bar of Nevada


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24 <sup>2</sup> Upon information and belief, the attached briefs and order are from State Bar of Nevada v.  
25 Paul D. Powell, OBC19-0078, OBC19-0404, and OBC19-1183. The conclusion of the Powell  
matters was not approved by the Supreme Court. A hearing panel's findings are non-binding.  
SCR 105(3)(b).

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR**  
3 **OF NEVADA'S REPLY TO RESPONDENT'S OPPOSITION TO STATE BAR OF**  
4 **NEVADA'S MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY AND**  
5 **EXPERT REPORT** was served via email to:

- 6 1. Thomas Edwards, Esq. (Panel Chair): [tedwards@nevadafirm.com](mailto:tedwards@nevadafirm.com)  
7 2. Dennis Kennedy, Esq. (Counsel for Respondent): [dkennedy@BaileyKennedy.com](mailto:dkennedy@BaileyKennedy.com)  
8 3. Joshua Gilmore, Esq. (Counsel for Respondent): [jgilmore@BaileyKennedy.com](mailto:jgilmore@BaileyKennedy.com)  
9 4. Daniel T. Young, Esq. (Assistant Bar Counsel): [daniely@nvbar.org](mailto:daniely@nvbar.org)

10 Dated this 13th day of April, 2021.

11   
12 Kristi Faust, an employee  
13 of the State Bar of Nevada  
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FILED

APR 14 2021

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

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 0264,

Respondent.

Case No. OBC20-0163

**REPLY IN SUPPORT OF  
RESPONDENT'S MOTION FOR  
APPROVAL OF CONDITIONAL  
GUILTY PLEA**

**I. Introduction**

The State Bar wants the Chair to rewrite SCR 113 to unfairly deprive Mr. Jimmerson of his right to have the Panel consider his Plea. As written, the rule does not require Bar Counsel to approve a tendered plea before it may be considered by a hearing panel. Further, the rule is not limited to cases where the attorney offers to accept a public reprimand, suspension or disbarment.

Contrary to the State Bar's assertion, Mr. Jimmerson has not conditionally admitted "only limited, innocuous facts" (*see* Opp. at 4:12-13)—he has conditionally admitted all the allegations in the State Bar's Complaint. Further, he has conditionally pled guilty to all the RPC violations in the State Bar's Complaint. Based on the Plea, it is unknown what the State Bar still seeks to prove at the hearing—hence why the *Annotated Standards* expressly recognize that "discipline by consent" involves bypassing the guilt phase of a hearing.

1 The State Bar cites no authority indicating that a letter of caution is not a form of attorney  
2 discipline in Nevada. Even the Board of Governors has said that a letter of caution constitutes a  
3 form of attorney discipline. Further, the State Bar finds no reprieve in the rules governing judicial  
4 discipline; if anything, the differences in treatment of a letter of caution between NCJD Rule 12(1)  
5 and SCR 102 proves that they serve different purposes in each setting.

6 The State Bar is out for blood by arguing that the Panel should suspend Mr. Jimmerson.  
7 Such discipline would be grossly disproportionate to the facts in this case. Indeed, the State Bar  
8 completely ignores what occurred with Mr. Jimmerson's bookkeeper in order to reach the conclusion  
9 that Mr. Jimmerson acted with a selfish motive. If that was true, the events giving rise to this matter  
10 would not be isolated occurrences. Upon considering all the facts, it is clear that a letter of caution  
11 with conditions is fair and reasonable, aligns with attorney discipline entered in similar cases,  
12 follows the recommendations of the *ABA Standards*, and protects the public.

13 Because the State Bar is unable to preclude Mr. Jimmerson from presenting his Plea to the  
14 Panel, and because no basis exists (in law or in fact) to suspend Mr. Jimmerson, the Motion should  
15 be granted in its entirety.

16 **II. Argument**

17 **A. The Panel May Consider the Plea Even Though Bar Counsel Objects to the**  
18 **Proposed Form of Discipline.**

19 The State Bar asks the Chair to rewrite SCR 113 in order to deprive Mr. Jimmerson of his  
20 right to present the Plea to the Panel. (Opp. at 2:18-5:20.) Preliminarily, the Chair should decline to  
21 permit the State Bar to argue that SCR 113 mandates that Bar Counsel must approve a tendered plea  
22 before it may be considered by a hearing panel because that argument has been made—and  
23 rejected—in a prior disciplinary matter.

24 As the Nevada Supreme Court has explained, issue preclusion prevents a party from  
25 relitigating an issue which has been decided in a prior case, such that the earlier determination is  
26 conclusive in any subsequent case involving the same party. *Executive Mgmt. v. Ticor Title Ins. Co.*,  
27 114 Nev. 823, 835, 963 P.2d 465, 473 (1998). The doctrine applies where (i) an issue decided in a  
28 prior case is identical to an issue presented in the current case, (ii) the ruling from the prior case is on