

1 the merits and has become final, (iii) the party against whom the ruling is asserted was a party to the
2 prior case, and (iv) the issue was “actually and necessarily litigated.” *Five Star Capital Corp. v.*
3 *Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713-14 (2008). Importantly, the issue was actually litigated
4 by a party who was not involved in the prior matter. *See, e.g., Scott v. Snelling & Snelling, Inc.*, 732
5 F. Supp. 1034, 1038 (N.D. Cal. 1990) (indicating that “non-mutual defense estoppel” applies to a party
6 applies “wherein a litigant not a party to a prior case seeks to preclude relitigation of an issue by its
7 current opponent who was a party to the prior case and lost on the very issue which the opponent
8 seeks to relitigate in the current action”).

9 Here, the elements of issue preclusion are easily met to preclude the State Bar from arguing
10 that Mr. Jimmerson may not present his Plea to the Panel.¹ First, in a prior disciplinary matter, the
11 State Bar argued (as it does here) that an attorney must reach an agreement with Bar Counsel with
12 regard to a conditional guilty plea before presenting it to a hearing panel.² Second, the ruling from
13 the prior matter—that the attorney was allowed to present his plea to the hearing panel even though
14 Bar Counsel did not approve it—is on the merits and has become final.³ Third, the State Bar was
15 involved in the prior matter.⁴ Finally, the issue of presenting a tendered plea to a panel was actually
16 and necessarily litigated, with the result being that an attorney has the right to do so under SCR 113.⁵

17 Assuming (*arguendo*) the Chair does not apply the doctrine of issue preclusion to prevent the
18 State Bar from relitigating the meaning of SCR 113, the Chair should find that the rule does not
19 require Bar Counsel to approve the Plea before it may be considered by the Panel.
20

21
22 ¹ It is irrelevant that the prior matter is factually distinguishable from the present matter—the issue presented was
the same: Whether an attorney may present a tendered plea to a hearing panel even if Bar Counsel does not approve it.

23 ² (*See Mot., Ex. 7.*) The State Bar does not deny briefing the same issue in a prior matter. (*Opp.* at 5:5-15.) As a
result, the briefs from the prior matter have been omitted, but will be made available to the Chair upon request.

24 ³ *See Findings of Fact, Conclusions of Law, & Order Approving Respondent’s Conditional Guilty Plea (As*
25 *Modified)*, filed Nov. 16, 2017, attached as **Exhibit 8**.

26 ⁴ (*See Mot., Ex. 7.*) Although the State Bar argues that the prior decision “was not sanctioned or approved by the
Nevada Supreme Court” (*Opp.* at 5:17-18), the State Bar fails to mention that it could have, but did not, seek review of
the decision by writ petition after the final order was entered in the matter.

27 ⁵ Without saying so directly, the State Bar implies that the June 23, 2017 Order was not filed or entered in the
28 prior matter. (*Opp.* at 5 n.1.) Attached to this Reply as **Exhibit 9** is the cover email from the Chair in the prior matter
disseminating his decision to the parties.

1. *The Chair Must Interpret and Apply SCR 113 as Written.*

Words used in a rule must be afforded their plain and ordinary meanings. *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 460, 282 P.3d 751, 756 (2012).

In common parlance, the word “tender,” when used as a verb, means “to offer something, usually in writing, or to make an offer in writing to do something.” CAMBRIDGE DICTIONARY, <http://dictionary.cambridge.org/us/dictionary/english/tender> (last visited Apr. 13, 2021). Mr. Jimmerson did just that—he made a written offer to the Panel to conditionally admit all the allegations in, and to conditionally plead guilty to all the RPC violations in, the State Bar’s Complaint in exchange for a stated form of discipline. SCR 113 allows him to do so.

Nothing in SCR 113(1) requires that “an agreement must be reached between disciplinary counsel and the respondent” before a tendered plea may be presented to a hearing panel. (Opp. at 4:1-5.) For example, the first sentence of the rule is *not* written as follows:⁶

- “Subject to bar counsel’s approval, an attorney against whom a grievance or complaint has been made may tender a conditional guilty plea to the charge(s) in exchange for a stated form of discipline”;
- “An attorney against whom a grievance or complaint has been made who has negotiated an agreement with bar counsel may tender a conditional guilty plea to the charge(s) in exchange for a stated form of discipline;” or
- “An attorney against whom a grievance or complaint has been made may enter into a written agreement with bar counsel to conditionally plead guilty to the charge(s) in exchange for a stated form of discipline.”

Similarly, the second sentence of the rule is *not* written as follows:⁷

- The tendered plea shall be filed with bar counsel’s office and, if approved as to form and content by bar counsel, submitted to a hearing panel to be approved, modified or rejected”;

⁶ Underlined passages depict changes to the first sentence of SCR 113(1) required to support the State Bar’s interpretation of it.

⁷ Underlined passages depict changes to the second sentence of SCR 113(1) required to support the State Bar’s interpretation of it.

- The tendered plea shall be jointly filed with bar counsel's office by the attorney and bar counsel and approved, modified or rejected by a hearing panel"; or
- The agreement between the attorney and bar counsel shall be filed with bar counsel's office and approved, modified or rejected by a hearing panel."

Like SCR 113(1), SCR 113(2) does not say anything about Bar Counsel having to approve a tendered plea. SCR 113(2) merely indicates that the "concurrence" of Bar Counsel is required in order to continue a hearing as a result of a tendered plea. The Nevada Supreme Court would have used similar language under SCR 113(1) to indicate that Bar Counsel must concur in the filing of a tendered plea if the attorney needed Bar Counsel's approval of the plea in order to present it to a hearing panel. For that matter, the Nevada Supreme Court would have changed the remaining language in SCR 113(2) to read as follows: "Approval of a tendered plea by Bar Counsel and a panel and, if required, by the court shall abate the proceedings"

The Chair must interpret SCR 113 as a whole and in accordance with its plain and ordinary meaning. *Cromer v. Wilson*, 126 Nev. 106, 110, 225 P.3d 788, 790 (2010) (noting that statutes must be construed "as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized."). The rule says that an attorney may tender a plea for review by a hearing panel, which, if approved, shall abate the proceedings (if the stated form of discipline includes neither a suspension nor disbarment). The rule does not say that a plea must be agreed to by Bar Counsel.

2. *Mr. Jimmerson's Interpretation of SCR 113(1) is Consistent with the ABA's Interpretation of the Model Rule Governing Discipline by Consent.*

The State Bar criticizes Mr. Jimmerson's reference to a 2009 article written by Donald R. Lundburgh interpreting the comparable rule for discipline by consent found in the ABA Model Rules for Lawyer Disciplinary Enforcement (the "ABA Disciplinary Rules"). (Opp. at 2:23-4:5.) The State Bar glosses over the fact that Mr. Lundburgh's article appeared in *The Journal of the Professional Lawyer*, a peer-reviewed annual journal of the ABA Standing Committee on Professionalism and the Center for Professional Responsibility. It requires a leap of faith to conclude that the ABA inadvertently released an article for widespread dissemination to its

1 members that incorrectly interprets the ABA Disciplinary Rule governing discipline by consent. To
2 the contrary, the ABA endorses the process being undertaken by Mr. Jimmerson in this matter as
3 seen from Mr. Lundburgh's article. So, too, should the Chair.

4 3. *Other High Courts Allow Attorneys to Tender a Conditional Admission of*
5 *Guilt Directly to a Hearing Panel.*

6 Even though there is "great diversity in how [lawyer disciplinary] systems differ," including
7 with regard to the "availability of consent discipline,"⁸ the instant process is not unique to Nevada.⁹
8 At least two other states allow attorneys to bypass bar counsel for purposes of discipline by consent:
9 Connecticut and Utah. Each rule is quoted below.

10 a. The Connecticut Superior Court Rules.

11 Section 2-82(c) of the Connecticut Superior Court Rules provides:

12 *If disciplinary counsel and the respondent are unable to agree to a proposed disposition of*
13 *the matter, the respondent may nonetheless tender an admission of misconduct*, which shall
14 be in accordance with subsection (a) of this section. If such an admission of misconduct
15 without proposed disposition is tendered, disciplinary counsel shall cause it to be forwarded,
16 together with the complaint and the record in the matter, for consideration, possible
17 acceptance and disposition as follows: (i) by the court, in all matters involving possible
18 suspension or disbarment, or possible imposition of a period of probation or other sanctions
beyond the authority of the Statewide Grievance Committee, as set forth in Section 2-37; or
(ii) by a reviewing committee of the Statewide Grievance Committee, in all other matters. If,
after a hearing, the admission of misconduct is accepted by the court or the reviewing
committee, the matter shall be disposed of and any resulting imposition of discipline shall be
made public in the manner prescribed by these rules. If the admission of misconduct is rejected
by the court or the reviewing committee, it shall be withdrawn, shall not be made public, and

19 ⁸ Mot., Ex. 6, at 107.

20 ⁹ Like Nevada, the rule in Tennessee does not require bar counsel's approval of a conditional guilty plea. *See*
21 Tennessee Supreme Court Rule 9: Disciplinary Enforcement, Section 24.1 ("An attorney against whom formal charges
22 have been served may at any stage of the proceedings before the Board, hearing panel or trial court, thereafter tender a
23 conditional guilty plea to the petition or to a particular count thereof in exchange for a stated form of punishment. Such a
24 tendered plea shall be submitted to Disciplinary Counsel and approved or rejected by the Board upon recommendation of
the hearing panel if the matter has been assigned for hearing, or shall be approved or rejected by the trial court if an appeal
has been filed pursuant to Section 33; subject, however, in either event, to final approval or rejection by the Court if the
stated form of punishment includes disbarment, suspension or public censure.").

25 Moreover, in Oregon, an attorney only needs bar counsel to approve a no contest plea as to form—a member of
26 the State Professional Responsibility Board ("SPRB") approves the no contest plea as to content. *See* Rule 3.6(d) of the
27 Oregon State Bar Rules of Procedure ("Pleas of no contest and stipulations shall be approved as to form by Disciplinary
28 Counsel and approved in substance by the chairperson of the SPRB or a member of the SPRB designated by the
chairperson. If the plea or stipulation is acceptable to the respondent and the SPRB chairperson or designated member,
and if the full term of the discipline agreed upon does not exceed a 6-month suspension, Disciplinary Counsel shall submit
it to the Disciplinary Board Clerk for review by the Adjudicator, acting on behalf of the Disciplinary Board. Otherwise,
Disciplinary Counsel shall file the stipulation with the State Court Administrator for review by the Supreme Court.").

1 shall not be used against the respondent in any subsequent proceedings. In that event, the
2 matter shall be referred for further proceedings to a different judicial authority or reviewing
committee, as appropriate.

3 This rule (like Nevada's) contemplates an attorney having a committee review a proposed
4 disposition of a disciplinary matter without disciplinary counsel's approval of it.

5 b. The Utah Supreme Court Rules of Professional Practice.

6 Rule 15-520(b) of the Utah Supreme Court Rules of Professional Practice provides:

7 A respondent against whom a formal complaint has been filed may tender a conditional
8 admission to the formal complaint or to a particular count thereof in exchange for a stated
9 form of discipline and final disposition of the formal complaint. ***The proposal shall be
submitted to OPC counsel, who shall then forward the proposal to the district court with a
recommendation favoring or opposing the proposal and a statement of the basis for such
recommendation.*** The district court shall either approve or reject the proposal. If the district
10 court approves the proposal and the stated form of discipline includes public discipline, it
11 shall enter the appropriate disciplinary order as provided in paragraph (d). If the district court
rejects the proposal, the proposal and conditional admission shall be withdrawn and cannot
12 be used against the respondent in subsequent proceedings.

13 This rule contemplates allowing disciplinary counsel to recommend that a tendered
14 conditional admission of guilt be accepted or rejected by a district court. It does not condition
15 review of a tendered admission on disciplinary counsel's approval of it.

16 4. *Unlike Some High Courts, the Nevada Supreme Court Did Not Adopt a Rule
17 Requiring that Bar Counsel Approve a Tendered Plea.*

18 As mentioned in the Motion, several high courts have adopted a rule governing discipline by
19 consent that expressly requires bar counsel to approve a tendered plea or conditional admission of
20 wrongdoing. (Mot. at 9 n.3.) The Nevada Supreme Court did not do so.

21 On July 10, 1978, the State Bar filed a Petition for Approval of Proposed Disciplinary Rules
22 with the Nevada Supreme Court, together with Comments. The Comments indicated that the
23 proposed rules were analyzed at length by members of the Bar. Although no comment was drafted
24 with regard to the rule governing discipline by consent, the Comments make clear that the drafters
25 considered the law in other states when preparing the rules. The Nevada Supreme Court did not
26 change SCR 113 before adopting it in 1979 (*see* ADKT No. 1); nor did the Court modify the
27 provisions of SCR 113 at issue in this Motion when amending it in 2015 (*see* ADKT No. 0506).
28

1 *The rule governing discipline by consent in Nevada does not require Bar Counsel to*
2 *approve a plea before it can be considered by a hearing panel.* The Chair should decline the State
3 Bar's invitation to interpret the rule to say otherwise.

4 5. *Mr. Jimmerson is Not Attempting to Usurp Bar Counsel's Role in this*
5 *Process.*

6 The State Bar argues that Mr. Jimmerson's interpretation of SCR 113 denies the State Bar
7 the opportunity to present its case to the Panel. (Opp'n at 4:14-23.) The argument is a red herring.

8 Through his Plea, Mr. Jimmerson has offered to conditionally admit all the allegations in,
9 and to conditionally plead guilty to all the RPC violations in, the State Bar's Complaint. As a
10 result, the State Bar does not need to prove its case at the hearing—all that remains is determining
11 whether the proposed form of discipline set forth in the Plea (a letter of caution with conditions) is
12 appropriate.

13 6. *SCR 113 is Not Limited to Public Reprimands, Suspensions, and*
14 *Disbarments.*

15 Grasping for straws, the State Bar argues that SCR 113 is limited to "three forms of
16 discipline ... disbarment, suspension, or public reprimand." (Opp. at 6:4-23.) Not true. As seen in
17 the Bar Counsel Report of each monthly edition of the *Nevada Lawyer*, conditional guilty pleas
18 may involve lesser forms of discipline, such as letters of reprimand (which are separate and distinct
19 from public reprimands under SCR 102). *See, e.g., 29 NEVADA LAWYER 36, Letter of Reprimand,*
20 *Case No. OBC19-0438; 23 NEVADA LAWYER 41, Letter of Reprimand, File No. SG13-0275.*

21 SCR 113(4) does not compel a different result. That portion of the rule simply confirms that
22 if the stated form of discipline in a tendered plea involves a public reprimand, no review from the
23 Nevada Supreme Court is needed.

24 In sum, SCR 113(1) applies to all forms of discipline, including letters of caution.

25 * * * *

26 Mr. Jimmerson's interpretation of SCR 113 is both reasonable and derived from the rule's
27 plain language; the State Bar's interpretation of SCR 113 is strained and contrary to established rules
28 of statutory interpretation. For these reasons, the Chair should allow the Panel to consider the Plea.

B. A Letter of Caution is A Form of Attorney Discipline in Nevada.

The State Bar argues that a letter of caution is not a form of discipline, and therefore, the Panel may not consider the Plea because Mr. Jimmerson has not offered to accept a form of discipline recognized in Nevada. (Opp. at 7:2-17.) Notably, the State Bar makes no effort to explain why a letter of caution appears under the rule outlining the different forms of attorney discipline available in Nevada, SCR 102. Instead, the State Bar cites a petition filed by the Board of Governors in 2015 when seeking to amend certain Nevada Supreme Court Rules. Because SCR 102 is clear and unambiguous, there is no need to reference its history. *Coleman v. State*, 134 Nev. 218, 219, 416 P.3d 238, 240 (2018). Even then, *the State Bar's reference to the 2015 petition is curious since the Board of Governors specifically said in a supplemental brief filed with the Nevada Supreme Court that "letters of caution are defined as a type of discipline."*¹⁰

The State Bar further cites the procedural rules for judicial discipline as a basis for arguing that a letter of caution is not a form of attorney discipline. (Opp. at 7:18-8:2.) The fact that NCJD Rule 12(1) says that a letter of caution "is not to be considered an event of [judicial] discipline" buttresses the conclusion that a letter of caution *is* considered an event of attorney discipline; otherwise, SCR 102(8) would have similar language to NCJD 12(1). *See, e.g., Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (indicating that it is presumed that drafters act "intentionally and purposely" when including specific language in one statute and excluding the same language in another statute). Further, a letter of caution is treated differently for purposes of judicial discipline than attorney discipline. *Compare* NCJD Rule 12(1) ("The Commission may take into consideration a dismissal with a letter of caution in subsequent complaints against a Respondent when considering the appropriate discipline to be imposed.") *with* SCR 102(8) ("A letter of caution may not be used as an aggravating factor in any subsequent disciplinary proceeding.").

For these reasons, the Chair should find that Mr. Jimmerson has offered to accept a form of attorney discipline recognized in Nevada.

¹⁰ Supplemental Brief by the Board of Governors, State of Nevada, *In the Matter of Amendments to Court Rules regarding attorney discipline, specifically, SCR 102, 103, 104, 105, 105.5, 110, 111, 113, 116, and 117*, ADKT No. 0506, filed Aug. 10, 2015, at 4:6, attached as **Exhibit 10**.

1 **C. The Facts and Circumstances Do Not Justify a Suspension.**

2 The balance of the State Bar’s Opposition involves arguing in favor of a suspension. (Opp.
3 at 8:5-17:12.) Such arguments, although they fall flat, are better suited to be made when the Plea is
4 considered by the Panel; they do not justify denying Mr. Jimmerson the opportunity to ask the Panel
5 to consider his Plea in the first instance.

6 Nevertheless, the State Bar’s arguments are completely disconnected from the facts
7 underlying this matter. Indeed, the State Bar ignores the impetus of the RPC 1.15 and 5.3 violations
8 to which Mr. Jimmerson has conditionally agreed to plead guilty: A bookkeeper who, despite her
9 background, training and qualifications, fell behind in her work and was not keeping up with her
10 duties and responsibilities, including maintaining the firm’s books and records—an issue that was
11 immediately corrected once discovered by Mr. Jimmerson.¹¹ (Mot. at 3:3-4:20.) Those facts are
12 critical and easily distinguish this case from those cited by the State Bar in its Opposition.

13 By ignoring the facts, the State Bar paints Mr. Jimmerson as having acted to advance his own
14 interests to the detriment of his clients. (Opp. at 15:1-6, 17:1-4.) If that were true, there would be a
15 pattern of trust account irregularities at issue in this matter. Preceding the filing of its Complaint, the
16 State Bar subpoenaed Mr. Jimmerson’s bank records, looking to uncover other accounting errors
17 beyond those that occurred during the time in which Ms. Ballard was working as the firm’s
18 bookkeeper. *None was found*. The reason is obvious: The RPC violations at issue in this matter are
19 once-in-a-career aberrations sourced to an errant bookkeeper.¹² Nothing more; nothing less.

20 The State Bar has no response to the myriad mitigating factors identified by Mr. Jimmerson
21 in his Motion. (*See id.* at 7:3-8:11.) Nor does the State Bar have an answer for the authorities cited
22 in the Motion confirming that a letter of caution is befitting of these circumstances. (*Id.* at 16:20-
23 17:5.) The State Bar questions the self-reporting conditions set forth in the Plea, overlooking that
24
25

26 ¹¹ Rob Bare has opined that Mr. Jimmerson “acted reasonably” and “demonstrated extreme and commendable
27 professionalism in swiftly and immediately employing remedial measures to remedy the errors” caused by his firm’s
28 former bookkeeper. (Mot., Ex. 4, at ¶ 51.)

¹² Mr. Jimmerson’s prior discipline from 1994 did not involve prematurely disbursing money from trust or
commingling personal funds with client funds. (*See generally* Opp., Ex. C.)

1 such conditions are frequently imposed in cases involving RPC 1.15 violations.¹³ Further, the State
2 Bar disregards how the self-reporting conditions prove that Mr. Jimmerson means what he says.

3 The State Bar cites Rule 9(B) of the ABA Disciplinary Rules for the proposition that an RPC
4 1.15 violation precludes imposition of any form of discipline less than a suspension. (Opp. at 16:18-
5 17:4; *see also id.* at 5:13-15.) Setting aside that the Nevada Supreme Court has not adopted the
6 ABA Disciplinary Rules and *notwithstanding the fact that other Nevada attorneys have received*
7 *private discipline, including a letter of caution, for RPC 1.15 violations, see, e.g.,* 16 NEVADA
8 LAWYER 47, *Letter of Caution*, File No. 07-148-0349 (May 2008) (issuing a letter of caution for a
9 lawyer’s violation of RPC 1.15); 10 NEVADA LAWYER 18, *Private Reprimands*, File Nos. 02-017-
10 1195; 02-031-1195; 02-032-1195 (issuing a private reprimand for a lawyer’s violation of SCR 165);
11 9 NEVADA LAWYER 28, *Private Reprimands*, File Nos. 99-113-0044, 00-193-0143 (issuing private
12 reprimands to two different attorneys for violations of SCR 165), Rule 9(B) applies only “[i]n
13 determining whether misconduct should be treated as ‘lesser’ for purposes of Rule 18(H) (Hearings
14 on Lesser Misconduct).” *See* ABA DISCIPLINARY RULES, R. 9(B) *Commentary*. Rule 18(H) of the
15 ABA Disciplinary Rules prescribes an expedited process for handling certain types of disciplinary
16 offenses. When read together with Rule 18(H), it is obvious that Rule 9(B) does not establish a
17 baseline sanction for certain types of RPC violations—it merely guides whether certain disciplinary
18 cases may be handled in an expedited fashion.

19 Each disciplinary case must be decided on its own. Ample authority exists (as cited in the
20 Motion) for admonishing Mr. Jimmerson for violating RPC 1.15 and 5.3. The *ABA Standards*
21 recognize imposition of an admonishment (i.e., a letter of caution) for “sloppy bookkeeping” that
22 does not result in client harm. ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, ANNOTATED
23 STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 161 (2d. ed. 2019). An admonishment serves the
24 purposes of attorney discipline while avoiding damage to Mr. Jimmerson’s reputation given that
25 future violations are unlikely. *Id.* at 86. There is no evidence to show that Mr. Jimmerson knew that
26

27 ¹³ In fact, in *In re Discipline of Anderson* (a case cited by the State Bar in its Opposition), the Nevada Supreme
28 Court approved a conditional guilty plea that included “quarterly reports to the State Bar regarding [respondent’s] trust
account.” *See id.*, No. 69076, 2016 Nev. Unpub. LEXIS 65, *2-3 (Nev. Jan. 22, 2016).

1 he was dealing improperly with client money; or that he caused injury or potential injury to his
2 clients—necessary predicates for the Panel to even consider a suspension.¹⁴

3 For these reasons, as will be shown more fully at the hearing, the Panel should admonish, not
4 suspend, Mr. Jimmerson.

5 **III. Conclusion**

6 The State Bar may argue at the hearing that the Panel should reject the Plea and may present
7 whatever admissible evidence it believes will assist the Panel in deciding whether to accept the Plea.
8 The fact that the State Bar believes that a greater form of discipline is warranted for the RPC
9 violations to which Mr. Jimmerson has conditionally agreed to plead guilty is not grounds for
10 precluding the Panel from considering the Plea. When all the facts are taken into account and the
11 Panel considers the four factors for assessing attorney discipline, if any, to impose in a particular
12 case, including mitigating factors, it is clear that a letter of caution with conditions is the right result.

13 For these reasons, this Motion should be granted in its entirety.

14 DATED this 14th day of April, 2021.

15 BAILEY❖KENNEDY

16 By: /s/ Dennis L. Kennedy

17 DENNIS L. KENNEDY

18 JOSHUA P. GILMORE

19 *Attorneys for Respondent*

20 James J. Jimmerson, Esq.

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27
28 ¹⁴ It is unknown why the State Bar argues that lack of client injury is irrelevant given the reference to client injury under the *ABA Standards*. (Compare Opp. at 12:7-17, with *ABA Standards* §§ 4.12, 4.14, 7.2, 7.4.)

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 14th day of April, 2021, service of the foregoing **REPLY IN SUPPORT OF RESPONDENT'S MOTION FOR APPROVAL OF CONDITIONAL GUILTY PLEA** was made by emailing a true and correct copy to the following at their last known address:

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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 8

EXHIBIT 8



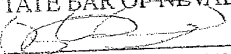
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NOV 16 2017

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

BY: 
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

Complainant,

vs.

ADAM S. KUTNER, ESQ.,
Nevada Bar No. 4310,

Respondent.

Case Nos. OBC15-0309, OBC15-0604,
OBC15-1291, OBC16-0041, OBC16-0613**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER APPROVING
RESPONDENT'S CONDITIONAL
GUILTY PLEA (AS MODIFIED)**

This consolidated matter involving Adam S. Kutner, Esq. ("Mr. Kutner") came before a Formal Hearing Panel of the Southern Nevada Disciplinary Board on June 27, 2017, at 9:00 AM, at the offices of the State Bar of Nevada in Las Vegas, Nevada, for hearing on the Conditional Guilty Plea in Exchange for a Stated Form of Discipline ("CGP") tendered by Mr. Kutner, pursuant to SCR 113(1) and DRP 23, to the Office of Bar Counsel on June 15, 2017. The Panel consisted of Chair Dan R. Waite, Esq., Jason R. Maier, Esq., and Randall Scott, lay member. Assistant Bar Counsel Jason R. Dworin, Esq., and Assistant Bar Counsel Bri Corrigan, Esq., represented the State Bar of Nevada ("State Bar"), and were assisted by Hearing Paralegal Tiffany Bradley. Mr. Kutner was present and represented by Dennis L. Kennedy, Esq. and Joshua P. Gilmore, Esq. of Bailey♦Kennedy and Mark A. Hutchison, Esq. of Hutchison & Steffen, LLC.

Based on the evidence presented, testimony received and arguments of counsel, the Panel (unanimously) issues the following Findings of Fact and Conclusions of Law, and (by a vote of 2-1) issues the following Order approving the CGP (as modified):

FINDINGS OF FACT

1. Mr. Kutner is an attorney licensed to practice law in the State of Nevada and was admitted to the State Bar on or about September 30, 1991. He has at all pertinent times maintained his principal place of business for the practice of law in Clark County, Nevada.

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2. On August 1, 2016, the State Bar filed its Complaint against Mr. Kutner, charging him with violating the following Rules of Professional Conduct (RPC) while representing the following clients:

- a. Floro Perez & Estela Serans: RPC 1.2, 1.4, 5.3, 5.5, and 8.4;
- b. Shawna Freeman: RPC 1.4, 5.3, 5.5, and 8.4;
- c. Yvonne Archie: RPC 1.2, 1.4, 5.3, 5.5, 8.1, and 8.4;
- d. Margaret Butts: RPC 1.2, 1.4, 5.3, 5.5, and 8.4; and
- e. Gonzalo Duran: RPC 1.7, 1.9, and 1.18.

3. On September 13, 2016, Mr. Kutner filed his Verified Response to the Complaint.

4. On June 15, 2017, Mr. Kutner filed his CGP with the State Bar, a copy of which is attached to this Order as Exhibit A. Through the CGP, Mr. Kutner conditionally pled guilty to all the facts alleged in the Complaint and all the RPC violations charged in the Complaint in exchange for a public reprimand with conditions. The State Bar did not approve of the CGP, arguing that a one year stayed suspension, followed by a two-year probationary period, was warranted under the facts and circumstances presented.

5. On June 27, 2017, the Panel considered whether to approve, modify or reject the CGP. The Hearing Packet, comprising all filings in this matter, including all briefing on the CGP, was admitted into evidence as State Bar Exhibit 1; and the Affidavit of Tiffany Bradley, Custodian of Records, identifying Mr. Kutner's prior disciplinary history was admitted into evidence as State Bar Exhibit 2. (The exhibits identified as subparts 4 and 5 to Ms. Bradley's Affidavit were not and could not be considered as aggravating circumstances by the Panel under SCR 102.5(1)).

6. During the hearing, the Panel heard an opening statement from Mr. Kutner's counsel, live testimony from Mr. Kutner, including cross-examination, and closing arguments from Mr. Kutner's counsel and the State Bar.

7. Following deliberations, by a vote of 2-1, the Panel accepted the CGP in all respects subject to the following modifications to the Stated Form of Discipline set forth in Part V of the CPG, which were presented to and approved by Mr. Kutner:

///

1 a. Section 1)(a)(ii) is revised as follows:

2 A lawyer will be present for the initial consultation with the client and
3 will explain the terms and conditions of the retainer agreement and
4 other intake documents to the client along with answering all of the
5 client's questions. The client will represent and warrant that he or she
6 met with a lawyer during the initial consultation and that the lawyer
7 explained the terms and conditions of the retainer agreement and other
8 intake documents to the client as well as answered all of the client's
9 questions. The client and the lawyer will each be required to affix his
10 or her initials next to or directly below this provision of the retainer
11 agreement (the "Confirmation") in order to confirm that the lawyer (i)
12 met with the client, (ii) explained the terms and conditions of the
13 retainer agreement and other intake documents to the client, and (iii)
14 answered all of the client's questions. The language of the
15 Confirmation must be submitted to Bar Counsel for review and
16 approval.

17 b. Section 1(c) is revised as follows:

18 Mr. Kutner shall implement the following policy at his firm: If
19 authority to settle a matter is orally obtained from a client, the firm
20 shall prepare and send a confirming letter to the client within one (1)
21 business day of receiving such oral authorization from the client.

22 c. Section 1(d) is revised as follows:

23 For a period of twenty-four (24) calendar months following Bar
24 Counsel's publication of a public reprimand in the state bar publication
25 in accordance with SCR 121.1(6), Mr. Kutner's firm shall be reviewed
26 on a quarterly basis – for a total of eight (8) reviews – by a third party
27 to be agreed upon by Mr. Kutner and the State Bar solely for purposes
28 of confirming Mr. Kutner's compliance with these conditions. Each
review shall be of fifty (50) random new client files and the results
shall be reported in writing to Bar Counsel (with a copy sent to Mr.
Kutner) in a form to be agreed upon by Mr. Kutner and the State Bar

8. Having accepted the CGP (as modified), the Panel finds, and incorporates herein by
this reference, the Admitted Facts set forth in Part II of the CGP and the aggravating and mitigating
factors set forth in Part III of the CGP.

CONCLUSIONS OF LAW

1. The Southern Nevada Disciplinary Board has jurisdiction over Mr. Kutner and the
subject matter of this proceeding pursuant to SCR 99.

2. Having accepted the CGP (as modified), the Panel finds that Mr. Kutner violated the
RPC as admitted in Part I of the CGP, and incorporated herein by this reference.

4. The purpose of attorney discipline is to protect the public, the courts, and the legal profession—not to punish the lawyer. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 464, 527-28 (1988); *see also* ABA CENTER FOR PROFESSIONAL RESPONSIBILITY, ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 11-13 (2015) (“It is a well-established principle that the punishment of lawyers is not the purpose of lawyer disciplinary sanctions.”). There must also be consistency in the imposition of lawyer sanctions. *In re Discipline of Drakulich*, 111 Nev. 1556, 1571, 908 P.2d 709, 718 (1995).

13 5. Having considered the four factors for imposing lawyer sanctions and applied them to
14 the facts and circumstances presented in this proceeding, the Panel finds that a public reprimand with
15 conditions as outlined in Part V of the CGP (as modified) is warranted in accordance with SCR
16 102(6).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and for good cause appearing, by a vote of 2-1,

20 **THE PANEL HEREBY ORDERS** that the CGP (as modified) shall be, and hereby is,
21 **APPROVED.**

IT IS HEREBY FURTHER ORDERED that a Public Reprimand shall be issued, a copy of which is attached to this Order as Exhibit B.

24 **IT IS HEREBY FURTHER ORDERED** that Mr. Kutner shall pay the costs of this
25 proceeding, including Bar Counsel and staff salaries, within thirty (30) calendar days of receipt of a
26 billing from the State Bar.

IT IS HEREBY FURTHER ORDERED that Mr. Kutner shall pay the sum of Ten
Thousand and 00/100 Dollars (\$10,000.00) to the Clients' Security Fund within thirty (30) calendar

1 days of approval of the CGP (as modified) by the Panel. In compliance with this Order, the Chair
2 notes that on July 25, 2017, Mr. Kutner delivered to the State Bar a \$10,000.00 check (No. 15425)
3 made payable to the State Bar of Nevada Clients' Security Fund.

4 **IT IS HEREBY FURTHER ORDERED** that Mr. Kutner shall comply with the following
5 conditions:

6 - Mr. Kutner shall modify his firm's form retainer agreement for all new clients (i.e.,
7 clients retained following entry of this Order) to indicate as follows (such revised form to be
8 reviewed and approved by Bar Counsel):

9 - Mr. Kutner may or may not be the primary lawyer responsible for the matter.
10 The firm will allocate and assign work among its lawyers and non-lawyer assistants in a
11 manner which the firm believes to be most efficient for the client;

12 - A lawyer will be present for the initial consultation with the client and will
13 explain the terms and conditions of the retainer agreement and other intake documents to the
14 client along with answering all of the client's questions.

15 - The client will represent and warrant that he or she met with a lawyer during
16 the initial consultation and that the lawyer explained the terms and conditions of the retainer
17 agreement and other intake documents to the client as well as answered all of the client's
18 questions. The client and the lawyer will each be required to affix his or her initials next to
19 or directly below this provision of the retainer agreement in order to confirm that the lawyer
20 (i) met with the client, (ii) discussed the terms and conditions of the retainer agreement and
21 other intake documents with the client, and (iii) answered all of the client's questions.

22 - The client shall cooperate with the firm, be available to the firm for
23 consultation on reasonable notice, and provide such decisions or direction as the firm may
24 require for appropriate handling of the matter. This includes being available to sign any
25 settlement or release agreement and other necessary paperwork related to the matter.

26 - Mr. Kutner shall modify his firm's form power of attorney for all new clients to
27 exclude any authority related to settlement of a matter (such revised form to be reviewed and
28

1 approved by Bar Counsel). With regard to existing clients, neither Mr. Kutner nor any other
2 member of his firm shall use powers of attorney to sign settlement or release agreements for clients.

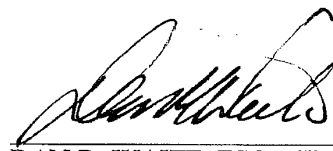
3 - Mr. Kutner shall implement and ensure compliance with the following policy at his
4 firm: If authority to settle a matter is orally obtained from a client, the firm shall prepare and send a
5 confirming letter to the client within one (1) business day of receiving such oral authorization from
6 the client.

7 - For a period of twenty-four (24) calendar months following Bar Counsel's
8 publication of the Public Reprimand in the state bar publication in accordance with SCR 121.1(6),
9 Mr. Kutner's firm shall be reviewed on a quarterly basis – for a total of eight (8) reviews – by a third
10 party to be agreed upon by Mr. Kutner and the State Bar solely for purposes of confirming Mr.
11 Kutner's compliance with this Order. Each review shall be of fifty (50) random new client files and
12 the results shall be reported in writing to Bar Counsel (with a copy sent to Mr. Kutner) in a form to
13 be agreed upon by Mr. Kutner and the State Bar.

14 - Mr. Kutner shall provide timely and complete responses to any request by Bar
15 Counsel, pursuant to RPC 8.1, for any new grievance received and opened for investigation
16 following entry of this Order. If a screening panel determines that Mr. Kutner engaged in
17 professional misconduct after the execution of the CGP, and violated any of the same RPCs that he
18 admitted to in the CGP, the screening panel shall vote the matter for a formal hearing. If a formal
19 hearing panel then makes findings that Mr. Kutner engaged in professional misconduct and violated
20 any of the same RPCs that he admitted to in the CGP, the formal hearing panel shall recommend
21 additional discipline, if any, as may be warranted under the circumstances.

22 **IT IS SO ORDERED.**

23 DATED this 15th day of November, 2017.

24
25 
26 DAN R. WAITE, ESQ., CHAIR

27 ///

28 ///

1 Submitted by:

2 BAILEY ♦ KENNEDY

3

4

5 By: 

DENNIS L. KENNEDY, ESQ.
JOSHUA P. GILMORE, ESQ.

6

AND

7

MARK A. HUTCHISON, ESQ.
HUTCHISON & STEFFEN, LLC

8

Attorneys for Respondent

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Adam S. Kutner, Esq.

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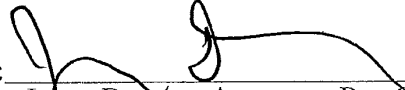
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Approved as to form and content by:

STATE BAR OF NEVADA

C. STANLEY HUNTERTON, BAR COUNSEL

By: 

JASON DWORIN, ASSISTANT BAR COUNSEL
BRI CORRIGAN, ASSISTANT BAR COUNSEL

Attorneys for Complainant
State Bar of Nevada

EXHIBIT “A”



FILED

JUN 15 2017

Case Nos.: OBC15-0309, OBC15-0604,
OBC15-1291, OBC16-0041, and
OBC16-0613 (5 Counts)

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

1 RPC 1.4 (Communication)

- 2 • Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
3 • Grievance File No. OBC15-0604 / Shawna Freeman
4 • Grievance File No. OBC15-1291 / Yvonne Archie
5 • Grievance File No. OBC16-0041 / Margaret Butts

6 RPC 1.7 (Conflict of Interest: Current Clients)

- 7 • Grievance File No. OBC16-0613 / Gonzalo Duran

8 RPC 1.9 (Duties to Former Clients)

- 9 • Grievance File No. OBC16-0613 / Gonzalo Duran

10 RPC 1.18 (Duties to Prospective Clients)

- 11 • Grievance File No. OBC16-0613 / Gonzalo Duran

12 RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants)

- 13 • Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
14 • Grievance File No. OBC15-0604 / Shawna Freeman
15 • Grievance File No. OBC15-1291 / Yvonne Archie
16 • Grievance File No. OBC16-0041 / Margaret Butts

17 RPC 5.5 (Unauthorized Practice of Law)

- 18 • Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
19 • Grievance File No. OBC15-0604 / Shawna Freeman
20 • Grievance File No. OBC15-1291 / Yvonne Archie
21 • Grievance File No. OBC16-0041 / Margaret Butts

22 RPC 8.1 (Bar Admission and Disciplinary Matters)

- 23 • Grievance File No. OBC15-1291 / Yvonne Archie

24 RPC 8.4 (Misconduct)

- 25 • Grievance File No. OBC15-0309 / Floro Perez & Estela Serans
26 • Grievance File No. OBC15-0604 / Shawna Freeman
27 • Grievance File No. OBC15-1291 / Yvonne Archie
28 • 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 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 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.

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.

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.

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.

52. In two letters, each dated March 7, 2016, P&S indicated to the State Bar that they had been in contact with the Respondent's office and would like to withdraw their complaints against the Respondent, because they "are both satisfied and feel like our complaint has been fully addressed."

Count 2
OBC15-0604 / Shawna Freeman

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.

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SBN Exhibit 1 - Page 007

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.

71. In light of the foregoing, Respondent violated the RPC as outlined in Section I of this Plea, *supra*.

Count 3
OBC15-1291 / Yvonne Archie

72. On or about April 29, 2014, Grievant Yvonne Archie ("Archie") retained the Respondent for an automobile accident that occurred on or about April 18, 2014.

73. At the time of her initial consultation, Archie met with Cinnamon O'Brien, a nonlawyer employee of the Respondent.

74. Also at that time, Archie signed a "Power of Attorney" for the Respondent's firm.

75. The "Power of Attorney" form signed by Archie 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 ...

76. Archie did not meet with, or speak to, an attorney at the time of her initial consultation.

77. On December 1, 2014, a complaint was filed in District Court on Archie's behalf.

78. An Amended Complaint on Archie's behalf was filed on January 30, 2015.

79. On or about April 17, 2015, Medicare sent Archie a letter inquiring about Medicare reimbursement.

80. Archie was confused as to why she received this letter, since she had culinary insurance at the time of the accident, and did not enroll in Medicare until later.

81. Upon further inquiry, Archie learned that the Respondent's office attempted to submit her UMC hospital bill to Medicare.

82. Upon receiving this letter, Archie called the Respondent's office.

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).¹

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 ¹ 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.

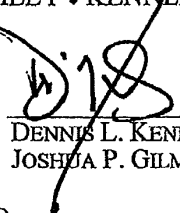
12 Mr. Kutner has had the opportunity to discuss this Plea with counsel of his own choosing and
13 fully understands the conditions set forth herein. Mr. Kutner further understands that his failure to
14 substantially adhere to any of the conditions of this Plea shall constitute grounds upon which the
15 State Bar may commence disciplinary proceedings against him for such noncompliance.

16 DATED this 14 day of June, 2017.

DATED this 15th day of June, 2017.

BAILEY ♦ KENNEDY

17
18
19 By: 
20 ADAM S. KUTNER, ESQ.
Respondent

By: 
DENNIS L. KENNEDY
JOSHUA P. GILMORE

AND

HUTCHISON & STEFFEN, LLC
MARK A. HUTCHISON

Attorneys for Respondent
Adam S. Kutner, Esq.

EXHIBIT “B”



FILED

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

NOV 16 2017

STATE BAR OF NEVADA,)
Complainant,)
vs.)
ADAM S. KUTNER, ESQ.,)
Nevada Bar No. 4310,)
Respondent)

STATE BAR OF NEVADA
BY: 
OFFICE OF BAR COUNSEL

PUBLIC REPRIMAND

TO: Adam S. Kutner, Esq
c/o Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302

On Wednesday June 27, 2017, a Formal Hearing Panel of the Southern Nevada Disciplinary Board convened to determine whether certain actions by you violated the Rules of Professional Conduct ("RPC").

COUNT 1 / OBC15-0309

In the first matter, you represented your clients in a personal injury matter after they were injured in a motor vehicle accident. When your clients came to your office they met with non-lawyer employees and signed retainer agreements without speaking to a lawyer regarding their claims.

Additionally, the retainer agreement contained the following provision:

"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..."

This provision purportedly allowed your office to sign settlement agreements for your clients without having consulted with them.

1 After signing the retainer agreements your clients made multiple attempts to contact you at
2 your office without success. Instead of speaking with an attorney, they continued to speak only
3 with non-lawyer employees.

4 Ultimately, one of your non-lawyer employees signed a settlement agreement using the
5 power of attorney. This agreement had not been discussed with your client. Thereafter, another
6 non-lawyer employee contacted your client to inform her that her case had settled.

7 When the client refused to accept the settlement, she was told, again by non-lawyer
8 employees, that there were no alternatives to accepting the agreement. When the client
9 complained to office staff she was once again allowed to speak only with non-lawyer employees.

10 As such, you violated RPC 1.2 (Scope of Representation and Allocation of Authority
11 Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding
12 Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct), and
13 you are hereby **REPRIMANDED**.

14 **COUNT 2 / OBC15-0604**

15 In this matter you agreed to represent your client after she slipped and fell while at a local
16 casino. As with the previous matter, this client did not meet with an attorney during the initial
17 consultation.

18 Ultimately, there was decision to withdraw from the matter. This decision was not
19 effectively communicated to your client and the client learned of the decision only when she was
20 reviewing her medical records.

21 As such, you violated RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding
22 Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4 (Misconduct), and
23 you are hereby **REPRIMANDED**.

COUNT 3 / OBC15-1291

In this matter you agreed to represent your client subsequent to a motor vehicle accident. As with the other matters, the client did not meet with an attorney during the initial consultation. At the time of retention, the client signed a power of attorney that purportedly allowed your office to sign a settlement agreement without having consulted with the client.

In this matter your client discovered that your office had settled her case when she received a letter indicating that your office submitted the hospital bill to Medicare for payment. Specifically, when the client called your office it was only then that she was told that your firm had negotiated her case. As with the other case, the release had been signed by one of your non-lawyer employees and had not been discussed with the client.

After reading the settlement sheet, your client had concerns that not all of her medical bills had been paid from the proceeds of the settlement and contacted your office. When she attempted to speak with a lawyer from your office she was assisted only by non-lawyer employees.

To your credit, you later worked diligently with the client to resolve the situation. She subsequently sent the State Bar a letter indicating that she wished to withdraw the grievance that she filed against you. However, your actions in this matter constitute violations of RPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), RPC 8.1 (Bar Admission and Disciplinary Matters) and RPC 8.4 (Misconduct), and you are hereby **REPRIMANDED**.

COUNT 4 / OBC16-0041

In this matter your office again agreed to represent the client without having her meet with an attorney, and used the power of attorney signed by the client to settle the matter without having consulted with the client.

1 Based upon this conduct, you violated RPC 1.2 (Scope of Representation and Allocation of
2 Authority Between Client and Lawyer), RPC 1.4 (Communication), RPC 5.3 (Responsibilities
3 Regarding Nonlawyer Assistants), RPC 5.5 (Unauthorized Practice of Law), and RPC 8.4
4 (Misconduct), and you are hereby **REPRIMANDED**.

5 **COUNT 5 / OBC16-0613**

6 In this matter your client sought representation subsequent to a motor vehicle accident.
7 Your client signed the initial retention paperwork, and thereafter your office held the file for
8 several months while conducting an initial investigation and determining whether there was
9 insurance coverage.

10 Thereafter your office was contacted by the passenger of the other vehicle who was
11 involved in the accident and who subsequently retained your office. As such your office was then
12 representing both sides involved in the accident.

13 Several months later your office contacted your initial client and informed him that you
14 could not proceed with the representation due to a lack of insurance coverage. Thereafter, your
15 office transferred the matter for the other client to the law firm of Fassett & Cardozo, and a
16 complaint was filed in District Court against your original client.

17 On May 25, 2016, the State Bar sent your office a letter of investigation regarding this
18 matter. On June 9, 2016, Fassett & Cardozo moved to withdraw from the matter involving the
19 other client. This motion never mentioned the conflict of interest in the case, instead maintaining
20 that "an irreconcilable impasse" had occurred with the client, which necessitated the withdrawal.

21 ...

22 ...

23 ...

24 ...

25

1 Based upon this conduct, you violated RPC 1.7 (Conflict of Interest: Current Clients),
2 RPC 1.9 (Duties to Former Clients), and RPC 1.18 (Duties to Perspective Clients), and you are
3 hereby **REPRIMANDED**.

4 DATED this 15th day of November, 2017.

5 

6 Dan R. Waite Esq.,
7 Formal Hearing Panel Chair
8 Southern Nevada Disciplinary Board
9
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EXHIBIT 9

EXHIBIT 9

Joshua Gilmore

From: Waite, Dan R. <DWaite@lrrc.com>
Sent: Friday, June 23, 2017 3:19 PM
To: Susan Russo; 'stanh@nvbar.org'; 'jasond@nvbar.org'; Waite, Dan R.; Horvath, Luz; 'tiffanyb@nvbar.org'
Cc: Joshua Gilmore; Dennis Kennedy; 'randallscott29@gmail.com' (randallscott29@gmail.com); Jason Maier (jrm@mgalaw.com)
Subject: State Bar v. Kutner: Decision re. Renewed Mtn for Approval of CGP
Attachments: 2017.06.23 Order Re Renewed Mot for Approval of CGP.pdf

Thank you everyone for the briefing. Attached is my order. See you all on Tuesday.

Dan

Dan R. Waite
Las Vegas Office Managing Partner
702.474.2638 office
702.216.6177 fax
dwaite@lrrc.com

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

From: Susan Russo [<mailto:SRusso@baileykennedy.com>]
Sent: Friday, June 23, 2017 12:38 PM
To: stanh@nvbar.org; jasond@nvbar.org; Waite, Dan R.; Horvath, Luz; tiffanyb@nvbar.org
Cc: Joshua Gilmore; Dennis Kennedy
Subject: State Bar v. Kutner

Attached is a copy of Respondent's Reply in Support of his Renewed Motion for Approval of Conditional Guilty Plea. The original is being delivered to the State Bar for filing this afternoon.

Thank you,
Susan

Susan Russo
Litigation Assistant to
Dennis L. Kennedy and Joshua P. Gilmore
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
Phone (DD): 702-851-0053
Fax: 702-562-8821
Main Phone: 702-562-8820

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EXHIBIT 10

EXHIBIT 10

● ORIGINAL ●

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of Amendments to Court
Rules regarding attorney discipline,
specifically, SCR 102, 103, 104, 105,
105.5, 110, 111, 113, 116, and 117.

ADKT NO.: 0506

FILED

AUG 10 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

**SUPPLEMENTAL BRIEF BY THE BOARD OF GOVERNORS,
STATE BAR OF NEVADA.**

On March 16, 2015, the State Bar Board of Governors ("Board") filed a
petition to amend Nevada's Supreme Court Rules regarding attorney discipline.

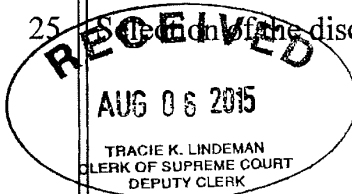
On July 1, 2015, at the public hearing, the Supreme Court directed the Board to
supplement its Petition with a survey of the demographic make-up of the
members of the Northern and Southern Nevada Disciplinary Boards, along with
any other information the Board felt pertinent for the Court's consideration.

**I. NORTHERN AND SOUTHERN NEVADA DISCIPLINARY
BOARDS.**

Attached as Exhibit A is a list of the current members of the Northern and
Southern Nevada Disciplinary Boards. This includes an additional 19 members
added to the Southern Board at the Board of Governor's Annual Meeting. Also
included is a breakdown of the demographics of the membership of the
disciplinary boards based on a survey of the membership recently conducted by
the State Bar, attached as Exhibit B.

The significance of any demographic imbalances should be analyzed
within the context of the voluntary nature of membership on a disciplinary board.

Submission of the disciplinary board members begins only upon the submission of



1 a statement of interest by a member of the Nevada Bar for consideration
2 following a solicitation for applications sent to the Bar as a whole. The State
3 Bar does not ask for or consider any of the demographic factors used in the recent
4 survey. The only inquiry made is a review of the disciplinary history of each of
5 the interested members. The recommendations are then submitted to the Board
6 of Governors for their approval.

7 The survey results suggests a demographic breakdown that is consistent
8 with the demographics of the overall Bar. 70% of the State Bar is male with an
9 average age of 45.9 and 13.4 years of experience. 76% of the State Bar describes
10 their practice setting as "private practice." The disciplinary boards, by
11 comparison, are 74% male with a median age of approximately 45 years and 19
12 years of experience. 74% of the disciplinary board members describe their
13 practice settings "private practice." A comparison by ethnicity was not made
14 as such data for the overall Bar is not available.

15 **II. ADDITIONAL ISSUES FOR THE COURT'S CONSIDERATION.**

16 **A. Incorporating the ABA Standards into Discipline Record.**

17 Some of the significant proposed changes involve reducing the size of
18 hearings panel from five to three members as well as reducing the number of
19 members that must concur, from 4-1 to 3-2 (or 2-1 if the size of the panel is
20 reduced). In addition, ADKT 0505 proposes that the Supreme Court give greater
21 deference to factual findings while maintaining de novo review of legal
22 conclusions and recommended sanctions.

23 The Court has expressed concern with the adequacy of the findings it must
24 review to ensure imposing appropriate and consistent discipline. Specifically,
25 the Court has directed that the Panels better delineate in the Findings and

1 Recommendations the analysis employed under the ABA Standards for
2 Imposing Lawyer Sanction, which the Court utilized in *In the Matter of*
3 *Discipline of Glen Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008).¹

4 **1. Disciplinary board training in ABA Standards.**

5 The State Bar has scheduled training programs in August 2015 for all
6 Disciplinary Board members specifically directed at applying the methodology
7 and criteria in the ABA Standards to discipline cases. A point of emphasis will
8 be the discussion of evidence of the offending attorney's state of mind in
9 committing the misconduct and how aggravating and mitigating factors were
10 weighed by the panel. In addition, the Office of Bar Counsel (OBC) has
11 instructed all bar counsel to make specific recommendations for an appropriate
12 sanction and to implement arguments and presentations that directly address
13 how the ABA Standards should be used as guidance in the deliberations of the
14 panel.

15 **2. Rule change regarding content of panel findings.**

16 At Annual Meeting, the Board reviewed a proposed change to Rule 39 of
17 the Disciplinary Rules of Procedure that would set forth the application of the
18 ABA Standards and define what should be required in Hearing Panel findings.
19 A copy of this proposed rule change is attached as Exhibit C.

20 Additionally, OBC has developed a template that contains an outline of
21 the type of information needed in the findings. This would be used by a panel
22 chair to fashion a more appropriate findings or guide the drafting of the findings
23 by one of the parties, if so directed by the Chair. During the training sessions,
24

25 ¹In 2007, the Supreme Court previously adopted verbatim Standards 9.1
– 9.4 (Aggravating and Mitigating factors, codified as SCR 102.5.)

1 OBC will elicit feedback from the Disciplinary Board members and present the
2 final rule and template to the Board for approval in September.

3 **B. Letters of Caution.**

4 Issues were raised during public comment concerning the frequency of
5 the imposition of letters of caution on younger attorneys and with the long-term
6 effect of these letters. While letters of caution are defined as a type of discipline,
7 *see* SCR 102(8), significant differences exist with respect to the treatment of a
8 letter of caution as compared to other forms of discipline. For example, SCR
9 102(8) provides "[a] letter of caution may not be used as an aggravating factor
10 in any subsequent disciplinary proceeding."

11 Letters of caution primarily are imposed by a screening panel following
12 investigation by bar counsel. *See* SCR 105(1)(a). Because no formal complaint
13 is filed on a case that has been dismissed with the issuance of a letter of caution,
14 the disciplinary record becomes public upon the conclusion of the screening
15 panel proceedings. *See* SCR 121(2).

16 Letters of caution issued by a screening panel are expunged after three
17 years pursuant to SCR 121(14). After a file has been expunged, the State Bar is
18 obligated to respond to any inquiry about that letter of caution by stating "there
19 is no record of such matter." *Id.* The potential effect of a letter of caution is
20 therefore limited to the three period following issuance of such letter.

21 A review of screening panel proceedings over the past eighteen months
22 indicate 4 attorneys in practice less than five years were issued a letter of caution
23 out of a total of 106 reported cases. All of the cases involving younger attorneys
24 included multiple grievances and other factors that contributed to the imposition
25 of discipline. The average years of practice for attorneys receiving a letter of

1 caution as a sole form of discipline from a screening panel during the period of
2 this survey is 15.5 years.

3 Respectfully submitted this 3rd day of August 2015.

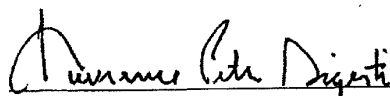
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STATE BAR OF NEVADA
BOARD OF GOVERNORS

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LAURENCE PETER DIGESTI, President

9

Nevada Bar No. 88

10

State Bar of Nevada

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3100 W. Charleston Blvd., Suite 100

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Las Vegas, NV 89102

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(702) 382-2200

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EXHIBIT A

SOUTHERN NEVADA
DISCIPLINARY BOARD

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George P. Kelesis, Esq.-Vice Chair
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F. Thomas Edwards, Esq.
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Jack Fleeman Esq.
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Robert Giunta, Esq.
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Kevin Hejmanowski, Esq.
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Oliver Pancheri, Esq.
Brian Pezzillo, Esq.
Gary Pulliam, Esq.
Paul "Luke" Puschnig, Esq.
Zachary E. Redman, Esq.
Miriam Rodriguez, Esq.
Daniel Royal, DO, HMD, JD
Thomas G. Ryan, Esq.
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Jen J. Sarafina, Esq.
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Villani, Jacob, Esq.
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Reed J. Werner, Esq.
Shann D. Winesett, Esq.
Donna M. Wittig, Esq.

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Nick Miller
Ronald Moonin, CPA
Christine Needham
Peter Ossowski
Richard E. Porter, Professor Emeritus
Kellie C. Rubin
Barbara J. Schell
Randall Scott, CPA
Carrie C. Taylor
Robert Valdez
Richard Vaughan
Irene Vogel
Harvey Weatherford

NORTHERN NEVADA
DISCIPLINARY BOARD

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Sara Almo, Esq.
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David Stanton, Esq.
Eric Stovall, Esq.

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Clark V. Vellis, Esq.
Richard Williamson, Esq.

LAYMEMBERS

Robert Bayer, Ph.D.
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Thomas Kelly
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Timothy Meade
Karen Pearl
Jodi Travis
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Carolyn Vaught
John White

EXHIBIT B

SURVEY RESULTS

Responses Received:

Total Members:

Northern Board	37	55
Southern Board	57	99
Attorney Members	68	120
Lay Members	26	34
Total:	94	154

1. GENDER

	Responses	
Male	69	74%
Female	24	26%
Total	93	100%

2. AGE

	Responses	
Under 35 years of age	4	4%
35-44 years of age	22	23%
45-54 years of age	20	21%
55-64 years of age	28	30%
65 years of age or older	20	21%
Total	94	

3. RACE/ETHNICITY

	Responses	
Caucasian	81	87%
Hispanic	4	4%
Asian/Pacific Islander	4	4%
African American	1	1%
Native American	1	1%
Other	4	4%
Total	93	

4. LENGTH OF TIME LICENSED TO PRACTICE LAW

	Responses	
Under 4 years	1	1%
4-9 years	14	21%
10-19 years	18	26%
20-29 years	20	29%
30 years or longer	15	22%
Total	67	

5. SIZE OF FIRM/ORGANIZATION

	Responses	
Solo	18	27%
2-4 attorneys	15	23%
5-14 attorneys	19	29%
15 attorneys or more	14	21%
Total	66	

6. PRACTICE SETTING

	Responses	
Private Practice	50	74%
Government	8	12%
Corporate/In House	6	9%
Retired	2	3%
Judiciary	1	1%
Private Trials/Arbitration/Mediation	1	1%
Total	68	

7. FIELD OF PRACTICE

	Responses	
General Civil (defense)	21	31%
General Civil (plaintiff)	16	24%
General Practice	14	21%
Personal Injury	13	19%
Construction Litigation	8	12%
Criminal (defense)	8	12%
Family Law	7	10%
Insurance Defense	7	10%
Transactional	6	9%
Bankruptcy	5	7%
Criminal (prosecution)	4	6%
Estate Planning/Probate/Wills & Trusts	3	4%
Labor & Employment Law	3	4%
Other	14	21%

8. LOCATION OF PRACTICE

	Responses	
Clark County	41	60%
Washoe County	23	34%
Rural Counties	4	6%
Carson City	0	0%
Total	68	

EXHIBIT C

PROPOSED CHANGE TO
DISCIPLINARY RULES OF PROCEDURE

Delete Rule 39 and substitute as follows:

Rule 39. Panel Decision.

(a) **Rendering of decision.** The hearing panel shall render a written decision within thirty (30) days of the conclusion of the hearing, unless post-hearing briefs are allowed by the panel or ordered by the chair pursuant to a request from either party, in which event the decision shall be rendered within sixty (60) days of the conclusion of the hearing. A decision to impose or recommend discipline as defined in SCR 102 by a five-member panel requires the concurrence of four (4) members of the panel. A decision to impose discipline by consent pursuant to SCR 113 by a three-member panel as set forth in DRP 5 requires the concurrence of two (2) members of the panel.

(b) **Contents of decision.** The decision shall be signed by the panel chair and include findings of fact; conclusions of law; statement of rule violations for each count; findings of aggravating and mitigating factors as set forth in SCR 102.5; and recommended discipline including terms of probation or conditions, if applicable. The written decision is to include such analysis as is necessary to support the recommended discipline based upon the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the applicable aggravating or mitigating factors as provided in the American Bar Association Standards for Imposing Lawyer Sanctions.

(c) **Preparation of decision.** The panel chair may request proposed findings be prepared by one of the parties at the discretion of the panel chair. In the event proposed findings are to be prepared by one of the parties, a post-hearing conference shall be held, in person or by telephone, between the chair and the parties to discuss any matters reasonably necessary to assist in the preparation of the written decision in conformance with the standards set forth in this rule.

(d) **Filing and service.** The decision shall be filed with bar counsel's office and served pursuant to SCR 109(1).

Case No: OBC20-0163



FILED

APR 16 2021

STATE BAR OF NEVADA
BY: *[Signature]*
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'S RESPONSE TO
RESPONDENT'S OBJECTIONS TO
THE STATE BAR'S PROPOSED
WITNESSES AND EXHIBITS**

PLEASE TAKE NOTICE that the State Bar hereby submits its timely Response to Respondent's Objections to the State Bar's Proposed Witnesses and Exhibits. This response is based on all papers and pleadings herein, the attached Points and Authorities and any arguments adduced by counsel, and any oral argument requested by the Chair.

POINTS AND AUTHORITIES

A. Objection to State Bar Investigator Louise Watson.

Respondent seeks to exclude the testimony State Bar Investigator Louise Watson. Respondent claims that Watson lacks personal knowledge of Respondent's trust account and that her testimony would be needlessly cumulative. See Objection, p. 3:18-22. There is also no dispute that Watson's testimony would be relevant to this proceeding.

In addition to providing testimony about her investigation, Ms. Watson is offered by the State Bar as a summary witness. A non-expert summary witness may testify if the evidence is sufficiently complex and voluminous that a summary witness would assist the trier of fact.

1 *Murray v. Just In Case Bus. Lighthouse, LLC*, 374 P.3d 443 (Colo. 2016). A summary witness
2 satisfies the personal knowledge requirement by personally examining the voluminous records.
3 *Id.* Similarly, federal courts also generally allow non-expert summary witnesses. *Id.* (citing
4 *United States v. Lemire*, 720 F.2d 1327, 1347 (D.C. Cir. 1983).

5 In holding that a summary witness' testimony is admissible, the *Murray* Court reasoned
6 that federal courts have held that summary witness's examination of the underlying documents
7 is enough to satisfy the personal knowledge requirement. *Murray v. Just In Case Bus.*
8 *Lighthouse, Ltd. Liab. Co.*, 2016 CO 47, ¶ 38, 374 P.3d 443, 454-55 (citing *In re Furr's*
9 *Supermarkets, Inc.*, 373 B.R. 691, 703 (B.A.P. 10th Cir. 2007); *Bryant v. Farmers Ins.*
10 *Exchange*, 432 F.3d 1114, 1123 (10th Cir. 2005); *Lemire*, 720 F.2d at 1347, compare with NRS
11 50.025). The *Murray* Court adopted the Tenth Circuit's two factor analysis to inform the court
12 whether the evidence should be admitted: (1) the testimony's or chart's potential to 'aid the jury
13 in ascertaining the truth,' and (2) 'the possible prejudice that may result to the [opposing party]
14 in allowing such evidence.'" *Id.* (citing *United States v. Brooks*, 736 F.3d 921, 931 (10th Cir.
15 2013) (quoting *United States v. Ray*, 370 F.3d 1039, 1046, 1047 (10th Cir. 2004), vacated on
16 other grounds, 543 U.S. 1109, 125 S. Ct. 995, 160 L. Ed. 2d 1035 (2005) (alterations and internal
17 citations omitted))). Lastly, in finding that both prongs were met the *Murray* Court reasoned
18 that because 1) the summary evidence dealt with a complicated series of business transactions
19 and relied upon evidence in admitted exhibits, which was otherwise voluminous, and 2) even
20 if the summary evidence presented the risk of bias, the court did not abuse its discretion
21 because it allowed wide latitude during cross examination on the evidence. *Id.* 374 P.3d at 456.

22
23 Nevada seems to be in line with the rationale of Colorado and the federal courts
24 regarding summary evidence. For example, NRS 52.275 provides that summary evidence is
25 admissible in Nevada. Additionally, the Nevada Supreme Court has found that a lower court

1 properly admitted witness testimony regarding contents of summary evidence and determined
2 that the appellant suffered no prejudice in admitting such testimony and evidence. *Pandelis*
3 *Constr. Co. v. Jones-Viking Ass'n*, 103 Nev. 129, 131, 734 P.2d 1236, 1237 (1987).

4 In this case, Ms. Watson personally reviewed detailed transactions in Respondent's bank
5 records and then created a summary chart based upon those records. See Affidavit of Louise
6 Watson, dated April 16, 2021 attached as **Exhibit A**. Respondent's bank records consist of over
7 approximately 2000 pages of records and thousands of individual banking transactions. Ms.
8 Watson's testimony is expected to help the disciplinary panel to organize and evaluate the
9 voluminous and complex evidence. *Murray v. Just In Case Bus. Lighthouse, LLC*, 374 P.3rd
10 443 (citing *Lemire*, 720 F.2d at 1346, 1348 (citing *Scales*, 594 F.2d at 563).

11 Finally, Ms. Watson's testimony would not be cumulative as she would be testifying to
12 her summaries, the statements and admissions made to her during her investigation by
13 Respondent.

14 **B. Objection to Exhibits.**

15 1. SBN Exhibit 2: Affidavit of Prior Discipline

16 Pursuant to SCR 102.5 aggravating circumstances may be admitted into evidence at a
17 disciplinary hearing. SCR 102.5(1)(a) specifically authorizes the admission of evidence relating
18 to Respondent's prior discipline. As a result, State Bar Exhibit 2, which sets forth Respondent's
19 prior discipline is properly admitted during the disciplinary hearing.

20 2. SBN Exhibits 3-5, 22: Documents relating to Nicole Cruz

21 The State Bar will withdraw Exhibits 3-5, and 22.

22 3. SBN Exhibit 23: SBN Investigator Watson's summary of Respondent Trust 23 Account.

24 NRS 52.275(1) provides "[t]he contents of voluminous writings, recordings or
25 photographs which cannot conveniently be examined in court may be presented in the form of

1 a chart, summary or calculation.” The summary provided in Exhibit 23 was prepared by State
2 Bar Investigator Louise Watson using the subpoenaed bank records. *See Exhibit A.* The bank
3 records are voluminous. Examining those records in court would not be convenient or an
4 efficient way to present evidence in this disciplinary matter. *Murray v. Just In Case Bus.*
5 *Lighthouse, LLC*, 374 P.3rd 443 (citing *Lemire*, 720 F.2d at 1346, 1348 (citing *Scales*, 594 F.2d
6 at 563). Further, Respondent has not alleged that Exhibit 23 is an inaccurate summary of the
7 respective records. Therefore, it is appropriate to deny Respondent’s objection to Exhibit 23’s
8 admission based on a lack of foundation or authenticity, prejudice, and that it is cumulative
9 evidence. *See Pandelis Constr. Co. v. Jones-Viking Ass’n*, 103 Nev. 129, 131, 734 P.2d 1236,
10 1237 (1987) (court properly admitted witness testimony regarding contents of summary
11 evidence and determined that the appellant suffered no prejudice in admitting such testimony
12 and evidence).

13 4. SBN Exhibits 6-9, 14-16, 19: SBN Records of communication with Respondent

14 The State Bar will withdraw Exhibits 6-9, 14-16 and 19.

15 5. Exhibits 20-21: Letter of Reprimand and Objection

16 The State Bar will withdraw Exhibits 20-21.

17 6. SBN Exhibits 24-25, 39-41: Certain Nevada State Bank Records.

18 The State Bar will withdraw Exhibits 24-25, and 39-41.

19 7. SBN Exhibits 47-48: Booth Medical Lien Checks

20 The State Bar will withdraw Exhibits 47-48.

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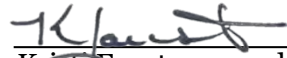
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CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S RESPONSE TO RESPONDENT'S OBJECTIONS TO THE STATE BAR'S PROPOSED WITNESSES AND EXHIBITS** was served via email to:

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

Dated this 16th day of April, 2021.



Kristi Faust, an employee
of the State Bar of Nevada

Exhibit A

1 **DECLARATION OF LOUISE WATSON**

2 Louise Watson, under penalty of perjury, being first and duly sworn,
3 deposes and states as follows:

4 1. I am employed as a Senior Investigator for the Office of Bar Counsel
5 of the State Bar of Nevada (“State Bar”). My job duties are performed under the
6 direct supervision of Bar Counsel.

7 2. I am the investigator assigned to investigate Grievance File No.
8 OBC20-0163 involving attorney James J. Jimmerson (“Jimmerson”). In that
9 capacity I have personal knowledge of the facts and circumstances set forth
10 herein and also serve as the custodian of records for the Office of Bar Counsel.

11 3. As part of the investigation, the State Bar subpoenaed and received
12 Jimmerson’s client trust account and business account records from Nevada State
13 Bank for the period of January 1, 2019, through January 31, 2020. True and
14 correct copies of these records are marked as State Bar Exhibits 24 through 45,
15 in this matter.

16 4. With respect to each account received, I examined every bank
17 statement, check, deposit, and withdrawal to examine if Jimmerson was properly
18 handling client funds in accordance with Rule of Professional Conduct 1.15.

19 5. With respect to Jimmerson’s trust account, I entered the information
20 from every bank statement, check, deposit, and withdrawal into an Excel

1 spreadsheet to create a summary journal for this account, and reconciled the
2 running daily totals with the bank statements to ensure accuracy. The summary
3 spreadsheet is marked as State Bar Exhibit 23, in this matter.

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

5
6 DATED this 16 day of April, 2021.

Louise Watson

Louise Watson
Senior Investigator

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

APR 22 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 TO DISMISS
WITH PREJUDICE AND/OR FOR
OTHER RELIEF**

Respondent, James J. Jimmerson, by and through his counsel, moves to dismiss the Complaint in this matter, with prejudice, and/or for other relief. The basis for this Motion is that it reasonably appears that the State Bar has had improper *ex parte* communications with two of the three Panel members (Anne Hanson and Ira David, Esq.) assigned to the formal hearing (scheduled for April 30, 2021). Such conduct requires that this matter be dismissed, with prejudice, and/or that other relief be granted. Because of the time restraints, this Motion is concise and will be fully argued on the conference call at 2:00 p.m. today (April 22, 2021) with the Panel Chair.

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1 This Motion is made and based on the papers and pleadings on file, the following
2 Memorandum of Points and Authorities and exhibits attached thereto, and any argument heard by
3 the Panel Chair.

4 DATED this 22nd day of April, 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 **A. The Pending Matter.**

12 There is a matter pending before the Panel Chair upon which further discussion is to be had
13 today (April 22, 2021): (i) whether to hear this matter on April 30, 2021 – now scheduled – or to
14 continue it; and (ii) whether the hearing will be conducted remotely or in-person. When the matter
15 was previously discussed on April 21, 2021, Assistant Bar Counsel (Daniel Young, Esq.) agreed to
16 investigate the State Bar’s ability to hold in-person hearings at the State Bar offices. The Panel
17 Chair’s decision was deferred to April 22, 2021, pending the Bar’s inquiry. No direction was given
18 by the Panel Chair for the Bar to unilaterally contact the other two Panel members; nor was it
19 disclosed to Mr. Jimmerson’s counsel that the Bar intended to reach out to and discuss this matter, *ex*
20 *parte*, with the other two Panel members.

21 **B. What the Bar Did.**

22 The results of the Bar’s inquiry regarding the availability to hold in-person hearings at the
23 State Bar offices are contained in an e-mail from Mr. Young sent to undersigned counsel at 4:46
24 p.m. on April 21, 2021 (attached as Exhibit 1 hereto). That is not the subject of this Motion. It is,
25 instead, the penultimate paragraph of Mr. Young’s e-mail, where he writes:

26 Additionally, with regard to the other panel members, one panel member
27 has informed the State Bar of her inability to participate in an in-person
28 hearing, and the last panel member has expressed a desire to keep the
hearing in its current electronic format.

1 Upon demand by undersigned counsel, Mr. Young produced an e-mail chain that he
2 represented to comprise the communications between the Bar and the other two Panel members on
3 the subject pending before the Panel Chair (attached as Exhibit 2 hereto). Exhibit 2 shows that the
4 representation contained in Exhibit 1 was false. The communications (in Exhibit 2) between the Bar
5 and the other two Panel members were concealed from undersigned counsel, were produced only
6 when demanded, and reveal the falsity of what Mr. Young said in his e-mail (Exhibit 1).

7 **C. The Bar’s Misconduct.**

8 The Bar admits that it has had improper *ex parte* communications with two Panel members
9 on substantive issues in this matter. These communications constitute professional misconduct by
10 Assistant Bar Counsel, improper behavior by the two Panel members who are supposed to serve as
11 impartial and objective fact-finders in this proceeding, and require that this matter be dismissed with
12 prejudice (or other relief be granted). Specifically:

13 1. Nevada RPC 3.4.

14 RPC 3.4(a) prohibits a lawyer from “conceal[ing] a document or other material having
15 potential evidentiary value.” The communications from Panel members Hanson and David
16 constitute such “material.” Both communications contain disqualifying admissions (i.e., that neither
17 of these two Panel members is prepared to serve in the hearing in this matter), which were concealed
18 from Mr. Jimmerson’s counsel (and likely the Panel Chair) until their disclosure was demanded.
19 The Bar’s conduct violated RPC 3.4.

20 2. Nevada RPC 3.5.

21 RPC 3.5(b) prohibits *ex parte* communications between counsel and “a judge, juror,
22 prospective juror or other official” “Other officials” include administrative law judges,
23 members of administrative panels, commissioners and other similar officials.” AMERICAN BAR
24 ASS’N, *Annotated Model Rules of Prof’l Conduct* 387-88 (8th ed. 2015) [hereinafter, “*Annotated*
25 *Model Rules*”]. The Bar’s conduct violated RPC 3.5(b).

26 ///

27 ///

28 ///

3 Nevada RPC 8.4(a).

RPC 8.4(a) provides that it is professional misconduct for a lawyer to violate the rules of professional conduct directly or through the acts of another. Assistant Bar Counsel violated RPC 3.5(b) through the acts of his assistant, Belinda Felix, by contacting the two Panel members *ex parte* to discuss a pending matter.

4. Nevada RPC 8.4(d).

RPC 8.4(d) provides that it is professional misconduct for a lawyer to commit an act that is prejudicial to the administration of justice. *Ex parte* contacts are prejudicial to the administration of justice, *per se*. See *Annotated Model Rules* at 695-96. The Bar's conduct violated RPC 8.4(d).

D. The Penalty.

The penalty for the prosecutorial misconduct that occurred in this matter is dismissal of the Complaint with prejudice. *Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 477 (2008). The Bar had no right to communicate, *ex parte*, with the fact-finders related to this matter, and by doing so, substantially prejudiced Mr. Jimmerson's right to a fair hearing. See, e.g., *Pekar v. United States*, 315 F.2d 319, 322 (5th Cir. 1963) (finding inexcusable *ex parte* communications between a prosecutor and a juror).

At the very least, the misconduct requires the disqualification of Bar Counsel and the dismissal of the two Panel members.

1. Disqualification of Bar Counsel.

Assistant Bar Counsel violated the Rules of Professional Conduct as shown above. Disqualification is mandated in order to ensure that Mr. Jimmerson receives a fair hearing. *State v. Eighth Jud. Dist. Ct.*, 130 Nev. 158, 164-65, 321 P.3d 882, 887-88 (2014) (recognizing that disqualification of the prosecutor may be ordered); see also *Switch Commc'ns Grp. v. Ballard*, No. 2:11-cv-285-KJD-GWF, 2011 WL 3859725, *3 (D. Nev. Aug. 31, 2011) (stating that disqualification is appropriate if it will "preserve the integrity of [the Court's] judgment and maintain the public confidence in the integrity of the bar").

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2. The Two Contaminated Panel Members Must Be Dismissed.

a. Per Se Disqualification

The two Panel members contacted *ex parte* must be dismissed per se. They have been subjected to unethical influence and cannot be expected to put it aside, just like a juror in a similar situation. *Sicor, Inc. v. Hutchison*, 127 Nev. 904, 916, 266 P.3d 608, 617 (2011).

b. Disqualification for Cause.

The *ex parte* communications between the Panel members and the Bar are grounds for their disqualification for cause. SCR 105(2); *see also* NRS 175.036.

i. Anne Hanson

In response to the *ex parte* contact made by Ms. Felix, Panel member Hanson stated that “she would not be attending an in-person hearing due to her work. She owns her own business and did not make accommodations to leave her office.” (*See* Ex. 2.) Mr. Jimmerson’s objection is precisely this: Remote proceedings do not maintain the attention of the fact-finders. Ms. Hanson admits that she will be running her business during the hearing. She is hereby challenged for cause.

ii. Ira David, Esq.

In response to the *ex parte* contact made by Ms. Felix, Panel member David prefers an electronic hearing; he sees no “upside to an in-person session and [sees] a lot of downside, not all related to COVID.” (*See* Ex. 2.) COVID-19 is the *only* reason for a remote session. Panel member David does not elaborate on his perceived “downsides,” but their existence notwithstanding, Panel member David’s admitted prejudice though not having heard one piece of testimony nor seen one bit of evidence is disconcerting, to say the least. He is hereby challenged for cause.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 22nd day of April, 2021, service of the foregoing **RESPONDENT'S MOTION TO DISMISS WITH PREJUDICE AND/OR FOR OTHER RELIEF** 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

THOMAS EDWARDS, ESQ.
Panel Chair

Email: tedwards@nevadafirm.com

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT 1

EXHIBIT 1

Dennis Kennedy

From: Daniel Young <daniely@nvbar.org>
Sent: Wednesday, April 21, 2021 4:46 PM
To: Joshua Gilmore; Dennis Kennedy
Cc: Kristi Faust; Belinda Felix
Subject: State Bar of Nevada v. James J. Jimmerson

Mr. Gilmore,

Please allow this email to follow up on the Chair's request for the State Bar to determine the feasibility of converting the formal hearing currently scheduled to be conducted electronically on April 30, 2021 to be held in-person on the same date.

The State Bar has the ability to implement policies and procedures to comply with social distancing during an in-person hearing. However, due to the short notice, the State Bar has been unable to confirm that all its witnesses would be available to testify in an in-person capacity if the current electronic hearing was to be converted to an in-person hearing.

Additionally, with regard to the other panel members, one panel member has informed the State Bar of her inability to participate in an in-person hearing, and the last panel member has expressed a desire to keep the hearing in its current electronic format.

Please let me know if you have any questions. Thank you.

Daniel T. Young
Assistant Bar Counsel
STATE BAR OF NEVADA
3100 W. Charleston, Suite 100
Las Vegas, NV 89102
Telephone: 702.382.2200
www.nvbar.org



EXHIBIT 2

EXHIBIT 2

Dennis Kennedy

From: Daniel Young <daniely@nvbar.org>
Sent: Thursday, April 22, 2021 9:30 AM
To: Dennis Kennedy; Joshua Gilmore
Cc: Dan Hooge
Subject: FW: Formal Hearing scheduled for April 30, 2021

Mr. Kennedy,

I am forwarding you the information that you requested. The email chain explains how the other panel members were contacted by Belinda Felix, the State Bar's board liaison, to inquire as to their availability to convert from electronic to in-person hearing.

Please let me know if you have any questions. Thank you.

Daniel T. Young
Assistant Bar Counsel
STATE BAR OF NEVADA
3100 W. Charleston, Suite 100
Las Vegas, NV 89102
Telephone: 702.382.2200
www.nvbar.org



From: Belinda Felix <belindaf@nvbar.org>
Sent: Thursday, April 22, 2021 8:44 AM
To: Dan Hooge <danh@nvbar.org>
Cc: Daniel Young <daniely@nvbar.org>
Subject: FW: Formal Hearing scheduled for April 30, 2021

I called two panel members, Ira David no answer and below is the email I sent and his response. I called Anne Hanson, she answered. It was a quick call less than a minute. She stated she would not be attending an in-person hearing due to her work. She owns her own business and did not make accommodations to leave her office.

Thank you and Please let me know if you have any questions or concerns.

Belinda Felix
Legal Administrator, Office of Bar Counsel
3100 W. Charleston, Suite 100
Las Vegas, NV 89102
Telephone: 702.382.2200
www.nvbar.org



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From: Belinda Felix
Sent: Wednesday, April 21, 2021 3:17 PM

To: Ira David <lawofficesofiradavid@gmail.com>
Subject: RE: Formal Hearing scheduled for April 30, 2021

Thank you.

Thank you and Please let me know if you have any questions or concerns.

Belinda Felix
Legal Administrator, Office of Bar Counsel
3100 W. Charleston, Suite 100
Las Vegas, NV 89102
Telephone: 702.382.2200
www.nvbar.org



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From: Ira David <lawofficesofiradavid@gmail.com>
Sent: Wednesday, April 21, 2021 3:14 PM
To: Belinda Felix <belindaf@nvbar.org>
Subject: Re: Formal Hearing scheduled for April 30, 2021

I just sent the panel chair an email request that I would prefer that we leave this hearing electronic. I don't see an upside to an in-person session and I see a lot of downside, not all related to COVID.

Ira David
Law Offices of Ira David
lawofficesofiradavid@gmail.com
702-990-0646

On Wed, Apr 21, 2021 at 3:09 PM Belinda Felix <belindaf@nvbar.org> wrote:

A redacted signature block, likely containing the name and contact information of Belinda Felix.

Ira David, Esq.,

I am following up on a voicemail I just left you. We have a formal hearing scheduled for Friday April 30, 2021. It looks like we may need to hold this hearing in person at the State Bar office. Would you be ok with and able to accommodate this change?

Thank you and Please let me know if you have any questions or concerns.

Belinda Felix

Northern and Southern Nevada Disciplinary Board Liaison

Legal Administrator, Office of Bar Counsel

3100 W. Charleston, Suite 100

Las Vegas, NV 89102

Telephone: 702.382.2200

www.nvbar.org



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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.



FILED

APR 23 2021

STATE BAR OF NEVADA
BY: B. Kelly
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

NOTICE OF FILING EMAILS

Attached hereto for the record as Exhibit 1 is an email from Panel Chair Tom Edwards attaching his two email strings with Panel members Hanson and David and State Bar employees. Those email strings are attached to the Panel Chair's email as Attachments 1 and 2.

DATED this 23rd day of April, 2021.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

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 23rd day of April, 2021, service of the foregoing **NOTICE OF FILING EMAILS** 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: daniely@nvbar.org
kristif@nvbar.org
sbnnotices@nvbar.org

Attorneys for Complainant
STATE BAR OF NEVADA

/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

EXHIBIT 1

EXHIBIT 1

Susan Russo

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Thursday, April 22, 2021 1:29 PM
To: Susan Russo; Daniel Young; Kristi Faust; sbnnotices@nvbar.org
Cc: Dennis Kennedy; Joshua Gilmore; Ashley Lacroix
Subject: RE: State Bar of Nevada v. James J. Jimmerson, Case No. OBC20-0163
Attachments: RE: FW: State Bar of Nevada vs. Jimmerson; Re: FW: State Bar of Nevada vs. Jimmerson

All,

Just so the record is complete, attached are my emails with the panel on the topic.

Thanks,
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

HOLLEY DRIGGS

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

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

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From: Susan Russo <SRusso@baileykennedy.com>
Sent: Thursday, April 22, 2021 1:01 PM
To: Daniel Young <daniely@nvbar.org>; Kristi Faust <KristiF@nvbar.org>; sbnnotices@nvbar.org; Tom Edwards <tedwards@nevadafirm.com>
Cc: Dennis Kennedy <DKennedy@baileykennedy.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Ashley Lacroix <ALacroix@baileykennedy.com>
Subject: State Bar of Nevada v. James J. Jimmerson, Case No. OBC20-0163

Attached for filing is Respondent's Motion to Dismiss with Prejudice and/or For Other Relief.

Thank you,
Susan

Susan Russo
Litigation Assistant to
Dennis L. Kennedy and Joshua P. Gilmore
Bailey Kennedy
8984 Spanish Ridge Avenue

Las Vegas, NV 89148-1302
Phone (DD): 702-851-0053
Fax: 702-562-8821
Main Phone: 702-562-8820

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ATTACHMENT 1

ATTACHMENT 1

Susan Russo

From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Wednesday, April 21, 2021 5:41 PM
To: Ira David; 2555aspen@gmail.com
Subject: RE: FW: State Bar of Nevada vs. Jimmerson

Ira and Anne,

Thank you for your feedback. I appreciate it. It certainly changes my perspective.

Thanks,
Tom

F. Thomas Edwards
Shareholder
Las Vegas Office

HOLLEY DRIGGS

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

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From: Ira David <lawofficesofiradavid@gmail.com>
Sent: Wednesday, April 21, 2021 3:12 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Cc: 2555aspen@gmail.com
Subject: Re: FW: State Bar of Nevada vs. Jimmerson

Actually, it is my preference that we leave this electronic. I am a big fan of electronic meetings and have held them for years. In the present world I feel even stronger about them and really prefer holding this session on Zoom. In addition, I set my schedule presuming that I did not have to drive to the State Bar. I have another (Zoom) hearing at 8:30. That will be very short, but if I then have to travel to the State Bar I am not sure if I can make it by 9:00. Also, as the ethics hearing is supposed to conclude by noon, so I scheduled another hearing at 2pm. If push comes to shove I can make it work, but I don't see any upside to doing so.

Ira David

Ira David
Law Offices of Ira David

On Wed, Apr 21, 2021 at 2:53 PM Tom Edwards <tedwards@nevadafirm.com> wrote:

Anne and Ira,

I understand you are on the panel with me for the Jimmerson matter set to be heard Friday of next week. Although the hearing was originally noticed as a Zoom hearing, Mr. Jimmerson has requested that we do the hearing live. My personal preference is to do the hearing live as well. We are having a call tomorrow afternoon with the parties to discuss it further.

Can you let me know your thoughts/preferences on whether we hold a live or Zoom hearing? The State Bar has a large enough room that we can be appropriately distanced. However, if you have reservations about a live hearing, I want to accommodate you. Also, I'm happy to get on a call to discuss if you'd prefer.

Thanks,
Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:30 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Ira David lawofficesofiradavid@gmail.com

Anne Hanson 2555aspen@gmail.com

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

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From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Wednesday, April 21, 2021 2:28 PM
To: Kristi Faust <KristiF@nvbar.org>
Subject: RE: State Bar of Nevada vs. Jimmerson

Could you please send me their emails? Thanks

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

Tel: 775.851.8700 | Fax: 775.851.7681

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:28 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Ira David and Anne Hanson (Laymember)

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

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From: Tom Edwards <tedwards@nevadafirm.com>
Sent: Wednesday, April 21, 2021 2:26 PM
To: Kristi Faust <KristiF@nvbar.org>
Subject: RE: State Bar of Nevada vs. Jimmerson

Kristi,

Who is on this panel with me?

Thanks,

Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

Tel: 775.851.8700 | Fax: 775.851.7681

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:22 PM
To: Susan Russo <SRusso@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Received. Thank you!

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

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adversely affect your matter with the OBC. We ask that you communicate through email to kristif@nvbar.org. Thank you for your patience and cooperation during this difficult time.

From: Susan Russo <SRusso@baileykennedy.com>

Sent: Wednesday, April 21, 2021 2:15 PM

To: Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

Dial-in information for tomorrow's (4/22/21) 2:00 pm call:

Toll free number: (855) 212-0212

Meeting ID: 136-561-912

Thank you,

Susan

Susan Russo

Litigation Assistant to

Dennis L. Kennedy and Joshua P. Gilmore

Bailey Kennedy

8984 Spanish Ridge Avenue

Las Vegas, NV 89148-1302

Phone (DD): 702-851-0053

Fax: 702-562-8821

Main Phone: 702-562-8820

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From: Susan Russo

Sent: Wednesday, April 21, 2021 11:13 AM

To: Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

1:30 pm today works.

Dial-in information is:

Toll free number: (855) 212-0212

Meeting ID: 136-561-912

Thank you,

Susan

Susan Russo

Litigation Assistant to

Dennis L. Kennedy and Joshua P. Gilmore

Bailey Kennedy

8984 Spanish Ridge Avenue

Las Vegas, NV 89148-1302

Phone (DD): 702-851-0053

Fax: 702-562-8821

Main Phone: 702-562-8820

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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Wednesday, April 21, 2021 11:07 AM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Cc: Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

I can make today at 1pm or 1:30pm work. I am not available tomorrow between 9am and 11am.

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

Tel: 775.851.8700 | Fax: 775.851.7681

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From: Joshua Gilmore <JGilmore@baileykennedy.com>

Sent: Wednesday, April 21, 2021 10:51 AM

To: Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Cc: Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

Mr. Young – with those time frames in mind, tomorrow works, between 9:00 AM and 11:00 AM.

Mr. Edwards – please let us know if that day and time frame works for you.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP

8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302

(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

www.BaileyKennedy.com

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From: Daniel Young <daniely@nvbar.org>

Sent: Wednesday, April 21, 2021 9:42 AM

To: Dennis Kennedy <DKennedy@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Belinda Felix <belindaf@nvbar.org>; Ashley

Lacroix <ALacroix@baileykennedy.com>
Cc: Susan Russo <SRusso@baileykennedy.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Mr. Kennedy,

The State Bar is available to discuss today at 1 or 1:30 pm, or tomorrow morning between 9am and noon.

Thank you.

Daniel T. Young

Assistant Bar Counsel

STATE BAR OF NEVADA

3100 W. Charleston, Suite 100

Las Vegas, NV 89102

Telephone: 702.382.2200

www.nvbar.org



From: Dennis Kennedy <DKennedy@baileykennedy.com>
Sent: Wednesday, April 21, 2021 8:55 AM
To: Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>
Cc: Susan Russo <SRusso@baileykennedy.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Everyone: Following up on yesterday's hearing – Mr. Jimmerson and I are very concerned about doing the hearing remotely, especially since regular activities will resume June 1st or shortly thereafter. How is everyone's availability for a call to discuss this today [Wednesday], tomorrow or Friday? Let me know and we will set it up. Thanx. Dennis Kennedy

From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Monday, April 19, 2021 1:29 PM

To: Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Dennis Kennedy <DKennedy@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

All,

Before our Pre-Hearing Conference tomorrow, I wanted to let you know my preliminary thoughts about the pending motions and objections.

For Respondent's Motion for Approval of Conditional Guilty Plea, it appears that Respondent's interpretation of SCR 113 would permit a respondent to submit an endless number of conditional guilty pleas, each time forcing the hearing panel to consider the conditional guilty plea and, if not successful, would start the process over again before a new panel. That does not appear to be a reasonable interpretation. If Respondent wants to stipulate (not conditionally) to the facts alleged in the Complaint or stipulate (not conditionally) to another set of facts agreed upon by the parties, then we could "bypass the trial phase of the a formal hearing" and "proceed with the sentencing phase." See Motion, 9:12-13. If the parties cannot agree upon the facts, the State Bar is entitled to present its case. Also, nothing prevents Respondent from proposing a stated form of discipline during any sentencing phase.

For the State Bar's Motion in Limine, it appears that there is no dispute the Mr. Bare's expert report is inadmissible and that Mr. Bare cannot provide an opinion as to witness credibility. However, it appears that he can testify to the standard of care.

Also, if the parties want me to resolve any of their objections to the exhibits at the Pre-Hearing Conference, I believe I would need to have a copy of the documents raised in the objections. However, I don't believe I have a copy of the documents. While I would certainly prefer that the parties attempt to reach an agreement on the exhibits, If you want me to rule on any objections to the exhibits at the Pre-Hearing Conference, please forward the subject documents to me (although I can't promise that I will have time to review before the Pre-Hearing Conference depending on the volume). Otherwise, I would expect to handle the objections at the hearing.

Of course, you are all welcome to talk me out of any of these positions at the Pre-Hearing Conference tomorrow.

Thanks,
Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

Tel: 775.851.8700 | Fax: 775.851.7681

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From: Kristi Faust <KristiF@nvbar.org>

Sent: Wednesday, April 14, 2021 4:29 PM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Dennis Kennedy <DKennedy@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: State Bar of Nevada vs. Jimmerson

Mr. Edwards,

Please find attached the Respondent's Motion for Approval of Conditional Guilty Plea, the State Bar of Nevada's Opposition to Respondent's Motion, and the Respondent's Reply in Support of the Motion for Approval of Conditional Guilty Plea. This motion is now fully briefed and ready for your review/ruling.

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

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ATTACHMENT 2

ATTACHMENT 2

Susan Russo

From: Anne Hanson <2555aspen@gmail.com>
Sent: Wednesday, April 21, 2021 4:25 PM
To: Tom Edwards
Subject: Re: FW: State Bar of Nevada vs. Jimmerson

Follow Up Flag: Follow up
Flag Status: Flagged

I am unable to attend in person...I would have to plan more in advance to do so.

Thank you.

Anne Hanson

On Wed, 21 Apr 2021 at 14:53, Tom Edwards <tedwards@nevadafirm.com> wrote:

Anne and Ira,

I understand you are on the panel with me for the Jimmerson matter set to be heard Friday of next week. Although the hearing was originally noticed as a Zoom hearing, Mr. Jimmerson has requested that we do the hearing live. My personal preference is to do the hearing live as well. We are having a call tomorrow afternoon with the parties to discuss it further.

Can you let me know your thoughts/preferences on whether we hold a live or Zoom hearing? The State Bar has a large enough room that we can be appropriately distanced. However, if you have reservations about a live hearing, I want to accommodate you. Also, I'm happy to get on a call to discuss if you'd prefer.

Thanks,
Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912

Tel: 775.851.8700 | Fax: 775.851.7681

400 S. 4th Street, Suite 300, Las Vegas NV 89101

800 S. Meadows Parkway, Suite 800, Reno NV 89521

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:30 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Ira David lawofficesofiradavid@gmail.com

Anne Hanson 2555aspen@gmail.com

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

www.nvbar.org

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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Wednesday, April 21, 2021 2:28 PM

To: Kristi Faust <KristiF@nvbar.org>

Subject: RE: State Bar of Nevada vs. Jimmerson

Could you please send me their emails? Thanks

F. Thomas Edwards

Shareholder

Las Vegas Office

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:28 PM
To: Tom Edwards <tedwards@nevadafirm.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Ira David and Anne Hanson (Laymember)

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

www.nvbar.org

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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Wednesday, April 21, 2021 2:26 PM

To: Kristi Faust <KristiF@nvbar.org>

Subject: RE: State Bar of Nevada vs. Jimmerson

Kristi,

Who is on this panel with me?

Thanks,

Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

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From: Kristi Faust <KristiF@nvbar.org>
Sent: Wednesday, April 21, 2021 2:22 PM
To: Susan Russo <SRusso@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Received. Thank you!

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

www.nvbar.org

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From: Susan Russo <SRusso@baileykennedy.com>

Sent: Wednesday, April 21, 2021 2:15 PM

To: Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

Dial-in information for tomorrow's (4/22/21) 2:00 pm call:

Toll free number: (855) 212-0212

Meeting ID: 136-561-912

Thank you,

Susan

Susan Russo

Litigation Assistant to

Dennis L. Kennedy and Joshua P. Gilmore

Bailey Kennedy

8984 Spanish Ridge Avenue

Las Vegas, NV 89148-1302

Phone (DD): 702-851-0053

Fax: 702-562-8821

Main Phone: 702-562-8820

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From: Susan Russo

Sent: Wednesday, April 21, 2021 11:13 AM

To: Tom Edwards <tedwards@nevadafirm.com>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

1:30 pm today works.

Dial-in information is:

Toll free number: (855) 212-0212

Meeting ID: 136-561-912

Thank you,

Susan

Susan Russo

Litigation Assistant to

Dennis L. Kennedy and Joshua P. Gilmore

Bailey Kennedy

8984 Spanish Ridge Avenue

Las Vegas, NV 89148-1302

Phone (DD): 702-851-0053

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From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Wednesday, April 21, 2021 11:07 AM

To: Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Cc: Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

I can make today at 1pm or 1:30pm work. I am not available tomorrow between 9am and 11am.

F. Thomas Edwards

Shareholder

Las Vegas Office

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From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Wednesday, April 21, 2021 10:51 AM
To: Daniel Young <daniely@nvbar.org>; Dennis Kennedy <DKennedy@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>
Cc: Susan Russo <SRusso@baileykennedy.com>
Subject: RE: State Bar of Nevada vs. Jimmerson

Mr. Young – with those time frames in mind, tomorrow works, between 9:00 AM and 11:00 AM.

Mr. Edwards – please let us know if that day and time frame works for you.

Thanks everyone. Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP

8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302

(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

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From: Daniel Young <daniely@nvbar.org>

Sent: Wednesday, April 21, 2021 9:42 AM

To: Dennis Kennedy <DKennedy@baileykennedy.com>; Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Belinda Felix <belindaf@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>

Cc: Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

Mr. Kennedy,

The State Bar is available to discuss today at 1 or 1:30 pm, or tomorrow morning between 9am and noon.

Thank you.

Daniel T. Young

Assistant Bar Counsel

STATE BAR OF NEVADA

3100 W. Charleston, Suite 100

Las Vegas, NV 89102

Telephone: 702.382.2200

www.nvbar.org



From: Dennis Kennedy <DKennedy@baileykennedy.com>

Sent: Wednesday, April 21, 2021 8:55 AM

To: Tom Edwards <tedwards@nevadafirm.com>; Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Cc: Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

Everyone: Following up on yesterday's hearing – Mr. Jimmerson and I are very concerned about doing the hearing remotely, especially since regular activities will resume June 1st or shortly thereafter. How is everyone's availability for a call to discuss this today [Wednesday], tomorrow or Friday? Let me know and we will set it up. Thanx. Dennis Kennedy

From: Tom Edwards <tedwards@nevadafirm.com>

Sent: Monday, April 19, 2021 1:29 PM

To: Kristi Faust <KristiF@nvbar.org>; Joshua Gilmore <JGilmore@baileykennedy.com>; Dennis Kennedy <DKennedy@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix <ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: RE: State Bar of Nevada vs. Jimmerson

All,

Before our Pre-Hearing Conference tomorrow, I wanted to let you know my preliminary thoughts about the pending motions and objections.

For Respondent's Motion for Approval of Conditional Guilty Plea, it appears that Respondent's interpretation of SCR 113 would permit a respondent to submit an endless number of conditional guilty pleas, each time forcing the hearing panel to consider the conditional guilty plea and, if not successful, would start the process over again before a new panel. That does not appear to be a reasonable interpretation. If Respondent wants to stipulate (not conditionally) to the facts alleged in the Complaint or stipulate (not conditionally) to another set of facts agreed upon by the parties, then we could "bypass the trial phase of the a formal hearing" and "proceed with the sentencing phase." See Motion, 9:12-13. If the parties cannot agree upon the facts, the State Bar is entitled to present its case. Also, nothing prevents Respondent from proposing a stated form of discipline during any sentencing phase.

For the State Bar's Motion in Limine, it appears that there is no dispute the Mr. Bare's expert report is inadmissible and that Mr. Bare cannot provide an opinion as to witness credibility. However, it appears that he can testify to the standard of care.

Also, if the parties want me to resolve any of their objections to the exhibits at the Pre-Hearing Conference, I believe I would need to have a copy of the documents raised in the objections. However, I don't believe I have a copy of the documents. While I would certainly prefer that the parties attempt to reach an agreement on the exhibits, If you want me to rule on any objections to the exhibits at the Pre-Hearing Conference, please forward the subject documents to

me (although I can't promise that I will have time to review before the Pre-Hearing Conference depending on the volume). Otherwise, I would expect to handle the objections at the hearing.

Of course, you are all welcome to talk me out of any of these positions at the Pre-Hearing Conference tomorrow.

Thanks,
Tom

F. Thomas Edwards

Shareholder

Las Vegas Office

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From: Kristi Faust <KristiF@nvbar.org>

Sent: Wednesday, April 14, 2021 4:29 PM

To: Tom Edwards <tedwards@nevadafirm.com>

Cc: Joshua Gilmore <JGilmore@baileykennedy.com>; Dennis Kennedy <DKennedy@baileykennedy.com>; Daniel Young <daniely@nvbar.org>; Belinda Felix <belindaf@nvbar.org>; Sonia Del Rio <soniad@nvbar.org>; Ashley Lacroix

<ALacroix@baileykennedy.com>; Susan Russo <SRusso@baileykennedy.com>

Subject: State Bar of Nevada vs. Jimmerson

Mr. Edwards,

Please find attached the Respondent's Motion for Approval of Conditional Guilty Plea, the State Bar of Nevada's Opposition to Respondent's Motion, and the Respondent's Reply in Support of the Motion for Approval of Conditional Guilty Plea. This motion is now fully briefed and ready for your review/ruling.

Sincerely,

Kristi A. Faust

Hearing Paralegal

Office of Bar Counsel



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Las Vegas, NV 89102

Phone: (702) 317-1461

Fax: (702) 385-8747

www.nvbar.org

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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.



FILED

APR 23 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 TRIAL BRIEF

Pursuant to DRP 24, James J. Jimmerson, by and through his counsel, hereby submits his Trial Brief in advance of the April 30, 2021 hearing.

I. OVERVIEW

This matter arises from a grievance filed by a disgruntled former employee of Mr. Jimmerson's law firm. The State Bar alleges that Mr. Jimmerson knowingly directed his firm's former bookkeeper (Leah Ballard) to make certain improper withdrawals from his client trust account. Mr. Jimmerson denies these allegations. At the hearing, Mr. Jimmerson will prove, in part through expert testimony, that once he discovered that his firm's bookkeeper was not completing her duties and responsibilities in a timely manner, he took swift remedial measures to address the issues.

Assuming (*arguendo*) the Panel finds that the State Bar meets its burden of proof (clear and convincing evidence) in establishing violations of the RPCs, the discipline to be imposed, if any, should be private—not public. Mr. Jimmerson was not then, and is not now, a threat to the public;

1 he is not, as the State Bar will suggest, stealing money from his clients. When considering all
2 relevant mitigating factors and extenuating circumstances, the *ABA Standards for Imposing Lawyer*
3 *Sanctions*, and prior disciplinary decisions in Nevada and other jurisdictions involving comparable
4 fact patterns, it is clear that a letter of caution (with conditions) would serve the purposes of attorney
5 discipline while avoiding reputational harm to Mr. Jimmerson at this stage in his legal career.

6 Mr. Jimmerson thanks the Panel members for their time and attention to this matter.

7 **II. THE RPC VIOLATIONS**

8 The State Bar alleges that Mr. Jimmerson violated RPC 1.15 and 5.3. A finding that an
9 attorney violated one or more of the RPCs “must be supported by clear and convincing evidence.”
10 SCR 105(2)(f). The State Bar has the burden of proving – by clear and convincing evidence – that
11 Mr. Jimmerson violated these RPCs. *See, e.g., In re Discipline of Reade*, 133 Nev. 711, 713, 405
12 P.3d 105, 106 (2017).

13 The Nevada Supreme Court defines clear and convincing evidence as proof that is:

14 [S]o strong and cogent as to satisfy the mind and conscience of a common man,
15 and so to convince him that he would venture to act upon that conviction in matters of
16 the highest concern and importance to his own interest. It need not possess such a
degree of force as to be irresistible, but there must be evidence of tangible facts from
which a legitimate inference ... may be drawn.

17 *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (citations omitted). In
18 other words, the evidence has to be so clear as to leave no substantial doubt in the minds of the Panel
19 members of Mr. Jimmerson’s culpability. *See id.*

20 With regard to RPC 1.15, the State Bar must prove that Mr. Jimmerson mishandled his client
21 trust account. With regard to RPC 5.3, the State Bar must prove that Mr. Jimmerson:

22 - Did not make reasonable efforts to ensure that his firm had in effect measures to give
23 reasonable assurance to Mr. Jimmerson that his non-lawyer employees would act in a manner
24 compatible with his professional obligations;

25 - Did not make reasonable efforts to ensure that persons over whom he had direct
26 supervisory authority would act in a manner compatible with his professional obligations; or

27 - Ordered misconduct to be committed by Ms. Ballard or ratified it upon discovery, or
28 failed to take reasonable remedial action upon discovering misconduct by Ms. Ballard.

1 Importantly, “[t]he mere fact that an employee acted improperly does not necessarily result in
2 lawyer discipline; [a] lawyer is not per se vicariously responsible for an employee’s misconduct.”
3 *See In re Discipline of Lerner*, 124 Nev. 1232, 1243, 197 P.3d 1067, 1075 (2008). Nor may the
4 State Bar use the benefit of hindsight to prove that Mr. Jimmerson violated the RPCs. *See Mainor v.*
5 *Nault*, 120 Nev. 750, 775, 101 P.3d 308, 325 (2004).

6 **III. PRESENTATION BY MR. JIMMERSON**

7 Mr. Jimmerson intends to present testimony from several witnesses at the hearing;
8 specifically, he will testify, as will his firm’s current bookkeeper, Amanda Kahn; his son, James M.
9 Jimmerson, Esq.; his expert witness, Rob Bare, Esq. (former District Court Judge and former Bar
10 Counsel); and his client, Jay Nady. Through such testimony, Mr. Jimmerson will present evidence
11 in support of his defenses and as to mitigating factors under SCR 102.5 and extenuating
12 circumstances under RPC 1.0A(c) (in the event that the Panel finds that he violated the RPCs).

13 **IV. DISCIPLINARY CONSIDERATIONS**

14 If the Panel finds that Mr. Jimmerson violated RPC 1.15 and/or 5.3, the Panel should (i)
15 decline to impose any discipline as allowable by RPC 1.0A(c) or (ii) issue a letter of caution in
16 accordance with SCR 102(8), together with conditions; the Panel should not suspend Mr. Jimmerson
17 as will likely advocated by the State Bar.¹

18 **A. The Panel Has the Discretion to Decline to Discipline Mr. Jimmerson Even if the**
19 **Panel Finds that He Violated the RPCs.**

20 *“Not every violation of the Rules of Professional Conduct warrants the imposition of*
21 *formal discipline.” In re Dalton*, 18 So. 3d 743, 747 (La. 2009) (emphasis added). When adopting
22 the RPCs, the Nevada Supreme Court expressly contemplated that discipline may be inappropriate in
23 certain cases notwithstanding the existence of RPC violations. *See* RPC 1.0A(c) (“[T]he Rules
24 presuppose that *whether or not discipline should be imposed for a violation*, and the severity of a
25 sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation,
26 extenuating factors and whether there have been previous violations.”) (emphasis added).

27 _____
28 ¹ Mr. Jimmerson does not concede that he violated the RPCs by discussing disciplinary considerations. These
considerations are solely intended to aid the Panel members if—but only if—they find one or more RPC violations.

1 Assuming (*arguendo*) the Panel finds that the State Bar demonstrates, by clear and
2 convincing evidence, that Mr. Jimmerson violated RPC 1.15 and/or 5.3, upon considering the
3 evidence and testimony presented, the Panel will be well within its discretion to decline to impose
4 any form of discipline. *See, e.g., In re: Grievance Proceeding*, 171 F. Supp. 2d 81, 85 (D. Conn.
5 2001) (refusing to discipline a lawyer for technically violating the RPCs, saying that it was “an
6 unrepeatable and relatively minor violation of the Rules that did not actually harm the public,” and
7 therefore, imposing discipline “would not serve a legitimate purpose”).

8 **B. A Letter of Caution Befits the Circumstances.**

9 If the Panel finds that some form of discipline is needed, it should impose a letter of caution,
10 with conditions.

11 SCR 102 sets forth the types of discipline that may be imposed for professional misconduct.
12 According to the rule, the lowest form of discipline is a letter of caution. SCR 102(8). The Nevada
13 Supreme Court has recognized that a letter of caution is a form of attorney discipline. *See, e.g., In re*
14 *Discipline of Haley*, 2016 Nev. Unpub. LEXIS 259, *1 n.1 (Nev. Apr. 22, 2016) (noting that a
15 hearing panel had ordered the State Bar to issue a letter of caution to the respondent related to his
16 RPC 1.5(c) violation) (citing SCR 102(8)). So, too, have the Disciplinary Boards for the State Bar
17 of Nevada. *See, e.g.,* 16 NEVADA LAWYER 47, *Letter of Caution*, File No. 07-148-0349 (May 2008)
18 (issuing a letter of caution for a lawyer’s violation of RPC 1.15); 9 NEVADA LAWYER 18, *Letter of*
19 *Caution*, File No. N00-35-856 (Nov. 2001) (issuing a letter of caution for actions resulting in the
20 dismissal of a client’s lawsuit without prejudice); 8 NEVADA LAWYER 30, *Private Reprimand*, File
21 No. 99-145-0092 (May 2000) (indicating that the lawyer had previously received a letter of caution
22 involving similar facts); *see also* 13 NEVADA LAWYER 37, *Private Reprimand*, File No. 04-073-0520
23 (Mar. 2005) (indicating that the attorney “was given the option of receiving a Private Reprimand or
24 [] a lesser discipline of a Letter of Caution” for violating former SCR 153, 154, and 200).

25 In reference to the ABA Standards for Imposing Lawyer Sanctions (the “*ABA Standards*”),
26 which guide the Panel’s determination of appropriate discipline, *see* DRP 34(b), a letter of caution is
27
28

1 akin to an admonishment.² *See id.* § 2.6 (describing an admonishment as a “private reprimand” and
2 a form of “non-public discipline”). According to the *ABA Standards*, an admonishment is
3 appropriate “in cases of minor misconduct, *when there is little or no injury to a client*, the public,
4 the legal system, or the profession, *and where there is little or no likelihood of repetition.*” *See*
5 AMERICAN BAR ASS’N, *Annotated Standards for Imposing Lawyer Sanctions* [hereinafter,
6 “ANNOTATED STANDARDS”], at 84-85 (2d ed. 2019) (emphasis added). *Relying on these three*
7 *criteria helps “protect the public while, at the same time, avoiding damage to a lawyer’s*
8 *reputation when future ethical violations are unlikely.” Id.* at 86 (emphasis added).

9 The Nevada Supreme Court has similarly held that non-public discipline (i.e., a letter of
10 caution) is warranted where a lawyer “engages in an isolated instance of nonwillful misconduct that
11 causes little or no actual or potential injury.” *In re Discipline of Lerner*, 124 Nev. at 1246, 197 P.3d
12 at 1077 (citing *ABA Standard* § 7.4, which states that an admonishment is appropriate where a lawyer
13 “engages in an isolated instance of negligence” that causes “little or no actual or potential injury to a
14 client, the public, or the legal system”). *For the Panel’s purposes, because a letter of reprimand is*
15 *“public” in Nevada, the appropriate form of discipline to impose for isolated instances of non-*
16 *willful misconduct that are unlikely to reoccur and that cause little or no injury to a client is a*
17 *letter of caution.*³

18 As the evidence will show, this is the textbook case for issuing a letter of caution (again
19 assuming, for purposes of this discussion, that the Panel finds that Mr. Jimmerson violated the
20 RPCs). Further, a letter of caution would be entirely consistent with discipline imposed in prior
21 cases in Nevada involving similar facts. *See, e.g.*, 16 NEVADA LAWYER 47, *Letter of Caution*, File
22 No. 07-148-0349 (May 2008) (issuing a letter of caution for a lawyer’s violation of RPC 1.15); 10
23 NEVADA LAWYER 18, *Private Reprimands*, File Nos. 02-017-1195; 02-031-1195; 02-032-1195
24 (issuing a private reprimand for a lawyer’s violation of SCR 165); 9 NEVADA LAWYER 28, *Private*
25 *Reprimands*, File Nos. 99-113-0044, 00-193-0143 (issuing private reprimands to two different

26 ² The Nevada Supreme Court consults the *ABA Standards* in disciplinary proceedings. *See, e.g., In re Discipline*
27 *of Reade*, 133 Nev. at 716, 405 P.3d at 109.

28 ³ As stated by the Nevada Supreme Court in *In re Lerner*, speculation or conjecture regarding potential harm to a
client is not entitled to any weight. *See id.*, 124 Nev. at 1246, 197 P.3d at 1078.

1 attorneys for violations of SCR 165). That is hardly surprising since the *ABA Standards* expressly
2 permit the imposition of an admonishment (i.e., a letter of caution) for “sloppy bookkeeping” that
3 does not result in client harm. ANNOTATED STANDARDS at 161.

4 Additionally, a letter of caution would be in accord with comparable discipline imposed
5 upon attorneys in other states involving similar facts. *See, e.g., Matter of Anonymous Member of*
6 *South Carolina Bar*, 844 S.E.2d 374, 377-78 (S.C. 2020); *In re PRB No. 2013-145*, 165 A.3d 130,
7 140-42 (Vt. 2017); *In re Anonymous*, 876 N.E.2d 333, 334-35 (Ind. 2007); *Lawyer Disciplinary Bd.*
8 *v. Beveridge*, 459 S.E.2d 542, 550 (W. Va. 1995); *see also Matter of Respondent F*, No. 87-O-
9 15284, 1992 WL 20333, *13-14 (Cal. State Bar Ct. Feb. 4, 1992) (unpublished disp.).

10 Consistency in attorney discipline is essential “within and among jurisdictions.”
11 ANNOTATED STANDARDS at 38-39. The Nevada Supreme Court has echoed the need for maintaining
12 consistency in the imposition of attorney discipline. *See In re Discipline of Drakulich*, 111 Nev.
13 1556, 1571, 908 P.2d 709, 718 (1995).

14 Upon considering the facts and circumstances presented, including mitigating factors and
15 extenuating circumstances; the purposes of attorney discipline; the *ABA Standards*; and caselaw
16 from Nevada and other jurisdictions involving attorney misconduct, the Panel will find that a letter
17 of caution is befitting of the circumstances. *In re Discipline of Reade*, 133 Nev. at 716, 405 P.3d at
18 109 (assessing whether recommended discipline is “consistent with the purpose of attorney
19 discipline and is supported by the ABA and other jurisdictions”).

20 3. Mr. Jimmerson Will Submit to Reporting Conditions.

21 The *ABA Standards* indicate that a hearing panel should be flexible and creative in
22 determining the appropriate form of attorney discipline in a particular case. *Id.* § 1.3 (“The
23 Standards constitute a model, setting forth a comprehensive system for determining sanctions,
24 permitting flexibility and creativity in assigning sanctions in particular cases of lawyer
25 misconduct.”). Here, a letter of caution with conditions would achieve that purpose.

26 Specifically, the Panel may consider ordering Mr. Jimmerson to self-report to the State Bar
27 on a quarterly basis for a period of time (such as 12 or 24 months) all activity involving his client
28 trust account dating back to January 1, 2020; to provide bank statements with each quarterly report;

1 and to include a verification from a certified public accountant as to the accuracy and completeness
2 of the information contained in each report. If need be, the Panel may also choose to order Mr.
3 Jimmerson to attend additional hours of continuing legal education.

4 These types of conditions are routinely included in disciplinary decisions and help achieve
5 the purposes of attorney discipline—protecting the public, not punishing the lawyer. *State Bar of*
6 *Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). The Panel may consider
7 adopting these conditions if it imposes a letter of caution.

8 4. Suspending Mr. Jimmerson Would Be Contrary to Law, Unfair, and Punitive.

9 The State Bar will likely argue that if it proves violations of the RPCs, a suspension is
10 appropriate because Mr. Jimmerson allegedly *misappropriated* money belonging to his clients.
11 Setting aside the misleading nature of that allegation when used in the disciplinary context given that
12 it suggests that Mr. Jimmerson *stole* money from his clients (which is patently false), no basis exists
13 under the *ABA Standards* to suspend Mr. Jimmerson.

14 A suspension is “the removal of a lawyer from the practice of law for a specified minimum
15 period of time.” *ABA Standard* § 2.3. Relevant to the RPCs at issue in this matter, a suspension as
16 the baseline sanction—before considering aggravating and mitigating factors and extenuating
17 circumstances—would require proof (*i.e.*, clear and convincing evidence) that Mr. Jimmerson knew
18 or should have known that he was “dealing improperly with client property and cause[d] injury or
19 potential injury to a client,” *ABA Standard* § 4.12; or that he knowingly failed to supervise his
20 nonlawyer employees and caused injury or potential injury to a client, the public, or the legal
21 profession, *id.* § 7.2; ANNOTATED STANDARDS at 383.

22 Nothing before the Panel will even remotely suggest that Mr. Jimmerson needs to be, or
23 should be, suspended. The Panel will find that he did not seek to take advantage of any client, nor
24 did he steal from his clients. As he will explain, Mr. Jimmerson managed his client trust account in
25 a manner that he believed was reasonable, notwithstanding Ms. Ballard’s shortcomings. Further, he
26 did what he understood was expected under the RPCs once he discovered that Ms. Ballard was not
27 performing her duties and responsibilities in a timely manner as the firm’s bookkeeper. Mr. Bare
28 will testify that Mr. Jimmerson did exactly what would be expected and required of him in this case.

1 It would not achieve the purposes of attorney discipline to suspend Mr. Jimmerson for acts
2 that did not result in client injury. To the contrary, suspending him would be “excessive and
3 unnecessary.” *In re Discipline of Bumgarner*, No. 70426, 2016 Nev. Unpub. LEXIS 900, *3 (Nev.
4 Oct. 21, 2016). Stated another way, a suspension would merely be punitive, which is contrary to the
5 purposes of attorney discipline. *State Bar of Nev.*, 104 Nev. at 213, 756 P.2d at 527-28.

6 For these reasons, the Panel should reject any argument for a suspension that may be
7 presented by the State Bar at the hearing.⁴

8 **IV. CONCLUSION**

9 Mr. Jimmerson is a well-respected attorney who for the last 45 years has strived to practice
10 law at the highest level. He has had a long, positive history with the State Bar. He previously
11 served on the Board of Governors for eight (8) years, as a member of the Disciplinary Board for
12 many years, as a member of the ABA Board of Governors, and as a lawyer representative for the
13 Ninth Circuit Judicial Conference. He regularly speaks at family law conferences and has, for a
14 large number of years, served as a mediator for the Nevada Supreme Court Settlement Program.

15 Mr. Jimmerson maintains that he acted in good faith and in a manner that he believed was
16 reasonable. If the Panel disagrees, the Panel should decline to publicly discipline him and only
17 impose a letter of caution (with conditions). There will be ample evidence in the record supporting
18 such a result.

19 DATED this 23rd day of April, 2021.

20 BAILEY ♦ KENNEDY

21 By: /s/ Dennis L. Kennedy

22 DENNIS L. KENNEDY

23 JOSHUA P. GILMORE

24 *Attorneys for Respondent*

James J. Jimmerson, Esq.

25 ⁴ At best, the State Bar may seek a letter of reprimand. *ABA Standards* § 4.13 (indicating that reprimand is
26 generally appropriate where a lawyer “is negligent in dealing with client property and causes injury or potential injury to
27 a client”); *id.* § 7.13 (indicating that a reprimand is generally appropriate where “a lawyer negligently engages in conduct
28 that is a violation of a duty owed as a professional,” such as failing to properly supervise non-lawyer employees, “and
causes injury or potential injury to a client, the public, or the legal system”). *The State Bar has no doubt chosen to seek
a higher form of discipline in hopes that the Panel will choose a form of discipline greater than that proposed by Mr.
Jimmerson and lesser than that proposed by the State Bar.*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 23rd day of April, 2021, service of the foregoing **RESPONDENT'S TRIAL BRIEF** 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 <i>Attorneys for Complainant</i> STATE BAR OF NEVADA
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THOMAS EDWARDS, Esq. Panel Chair	Email: tedwards@nevadafirm.com
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IRA DAVID Panel Member	Email: lawofficesofiradavid@gmail.com
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ANNE HANSON Panel Member	Email: 2555aspen@gmail.com
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/s/ Susan Russo
Employee of BAILEY ♦ KENNEDY

Case No: OBC20-0163



FILED

APR 23 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.

**STATE BAR OF NEVADA'S
TRIAL BRIEF**

Complainant, State Bar of Nevada ("State Bar") hereby submits a trial brief in support of a finding of ethical misconduct and proposed sanctions. This brief is based upon the following Memorandum of Points and Authorities and upon such evidence and argument as the Chair may request or entertain at Formal Hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

A. The Grievance

On February 5, 2020, Nicole Cruz a former employee of Respondent submitted a grievance against him. Cruz reported that Respondent instructed another employee, Leah Ballard, to take funds from the client trust account to cover payroll. Cruz stated that she saw the text message from Respondent to Ballard with the instructions. Cruz claimed that both

1 she and Ballard knew that it was theft. Cruz told the State Bar that Respondent told her and
2 Ballard to look the other way or they would be fired. Cruz claims that she and Ballard
3 resigned.

4 State Bar investigator Louise Watson obtained Respondent's bank account records
5 from Nevada State Bank by subpoena. Watson reverse engineered an account journal from
6 the bank records from January 2019 to January 2020. This means that she attempted to
7 identify the date, source, and purpose of each deposit as well as the date, payee, and purpose
8 of each withdrawal.

9 Watson discovered numerous withdrawals for which she could not relate to a specific
10 client, payee, or purpose. Most often these unidentified withdrawals were withdrawals into
11 Respondent's operating account. Three unidentified withdrawals occurred around the time
12 that Cruz and Ballard worked for Respondent. They were \$40,000 on November 14, 2019;
13 \$45,000 on November 21, 2019; and \$60,000 on November 25, 2019. *See* SBN Exhibit 26 at
14 195; Exhibit 27 at 1466.

15 Watson also reviewed Respondent's operating and payroll accounts for instances in
16 which it appeared that he would not have had sufficient funds to make payroll but for a
17 withdrawal from his trust account. Watson discovered that Respondent's payroll and
18 operating accounts closed with balances of \$2,513.15 and \$19,758.19, respectively, on
19 November 20, 2019. *See* SBN Exhibit 28 at 189; SBN Exhibit 27 at 1468. Respondent would
20 not have been able to make payroll even if he emptied his operating account.

21 Just as Cruz alleged, Watson found what appeared to be theft from the client trust
22 account to cover payroll. Just after the \$45,000 unidentified transfer from his client trust
23 account to his operating account on November 21, Respondent moved \$46,958.87 from his
24 operating account to cover his payroll account. *See* SBN Exhibit 27 at 1468; SBN Exhibit 28
25

1 at 187. He transferred the money on November 21—the day after the unidentified transfer
2 from his clients’ trust account. This enabled him to disburse \$46,772.53 from his payroll
3 account over the next few days. For example, on November 22, Respondent made direct
4 deposit payroll payments of \$30,025 and \$5,861.26 in payroll checks. A few day later he
5 issued a \$703.47 payroll check and sent \$10,182.80 to the IRS.

6 **i. The Cover-Up**

7 Watson asked Respondent to provide accounting records for November 2019 through
8 the present day. She also asked him for his account journal entries and client ledger entries,
9 copies of invoice for any alleged fees withdrawn, and any other document supporting the
10 purpose for the withdraws.

11 Respondent immediately contacted Watson and asked for more time. However, in a
12 good faith effort to show that his account was sound, he provided a current trust account
13 reconciliation that included client ledgers and a current bank statement.

14 Forty-two days after receiving Watson’s request, Respondent provided a written
15 explanation and accounting documentation. In summary, Respondent blamed Cruz and
16 Ballard for making a “mess” of his bookkeeping in November 2019. He denied telling them to
17 take from the client trust account. He claimed that it took him until the end of December to
18 reconcile the accounts fully. He claimed that the \$45,000 and other unidentified transfers
19 were for earned fees from a combination of 13 different clients. A lump sum withdrawal for
20 fees from 13 different cases without annotation was unusual.

21 Watson attempted to verify Respondent’s claim of earned fees. She immediately noted
22 that two named clients had insufficient deposits. A partial fee payment of \$4,365.89 for the
23 Denise Cashman matter and a fee payment of \$14,855.90 for the James Vance matter we not
24 in the clients trust account on November 21. They were not deposited until the next day,
25

1 November 22, and would have taken additional days to clear. SBN Exhibit 13 at 135-137, 146-
2 147; Exhibit 26 at 195, 109-110 (payment for James Vance in amount of \$14,855.90 not
3 deposited until November 22, 2019); SBN Exhibit 13 at 105; Exhibit 26 at 195, 111-113
4 (payment for Denise Cashman in amount of \$4,365.89 not deposited until November 22,
5 2019).

6 **ii. Other Transactions**

7 Watson found other evidence of misappropriation. She discovered that Respondent's
8 accounting for both the \$40,000 withdrawal on November 14 and the \$60,000 withdrawal
9 on November 25 were unsupported.

10 Respondent attributed the \$40,000 withdraw to earned fees in four matters. SBN Ex
11 13 at 13, 74. Respondent also provided the cleared transfer check. *Id.* However, the
12 \$32,499.02 of the client's funds that were transferred were not on deposit until after
13 Respondent made the transfer. Respondent did not receive a deposit for the fees attributed
14 to Denise Cashman until November 22, 2019, a full eight days after Respondent made the
15 transfer SBN Exhibit 13 at 74, 83; Exhibit 26 at 111-113, 195. Additionally, fees attributed to
16 Jennifer Kraft (\$250) were not deposited until November 16, 2019. SBN Exhibit 26 at 195.
17 Fees for Lorena Baker (\$300) were not deposited until November 19, 2019. SBN Exhibit 26
18 at 195. As a result, Respondent misappropriated \$32,499.02 of funds from other clients to
19 make the \$40,000 transfer on November 14, 2019.

20 Respondent attributed the \$60,000 withdrawal on November 25, 2019 to earned fees
21 in 10 different matters. SBN Exhibit 13 at 21, 145; Exhibit 27 at 1466. Watson again
22 discovered that almost half of the alleged fee withdrawals were not yet on deposit and
23 therefore impossible. SBN Exhibit 26 at 201. As a result, the records establish a clear pattern
24
25

1 that Respondent misappropriated other client trust funds to complete the transfer on
2 November 25, 2019.

3 On December 19, 2019, Respondent transferred \$10,000 from his client trust account
4 to his corporate account and claimed that it was for earned fees on the Jay Nady matter. SBN
5 Ex 13 at 28. However, the January 25, 2020, invoice that Respondent provided in support of
6 this transaction will show that Respondent did not perform the work until January of 2020.
7 See SBN Ex 13 p. 227-228. As a result, Respondent misappropriated client funds when he
8 transferred the \$10,000 to his corporate account on December 19, 2019 before he performed
9 the work.

10 On December 20, 2019, Respondent transferred \$15,000 from his client trust account
11 to a checking account belonging to the Jimmerson Family Trust without providing any client-
12 linked purpose. SBN Exhibit 26 at 201; Exhibit 33 at 34. As a result, respondent improperly
13 commingled trust funds with personal funds. Subsequently, on December 27, 2020,
14 Respondent asserting that he had made an error transferred the \$15,000 back into the trust
15 account from the Jimmerson Family Trust Account. SBN Exhibit 26 at 201; Exhibit 27 at
16 1480.

17 **II. VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT**

18 **A. VIOLATION OF RPC 1.15 (SAFEKEEPING PROPERTY).**

19 **1. SCR 78**

20 SCR 78 requires that active members of the State Bar deposit all client funds, held in
21 trust for a client, into a fiduciary Trust Account to be held for the client's benefit in
22 accordance with RPC 1.15. "Funds held in trust include funds held in any fiduciary capacity
23 in connection with a representation . . ."

1 SCR 78(1)(b) unambiguously mandates that all Nevada lawyers *shall* (i) maintain
2 records of the accounts, including check books, cancelled checks, check stubs, vouchers,
3 ledgers, journals, closing statements, accounting or other statements of disbursements with
4 regard to the trust funds which, “clearly and expressly reflecting the date, amount, source,
5 and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or
6 other property of a client,” (ii) preserve such records for a period of at least five years after
7 final disposition of the underlying matter, and (ii) make such clear records available to the
8 State Bar for inspection upon request.

9 **2. General Obligations of RPC 1.15:**

10 Record-keeping requirements in SCR 78.5 and RPC 1.15 ensure that lawyers keep
11 accurate information for their clients and others, including third parties and the State Bar.

12 At a general level, record keeping for a client trust account should track all deposits
13 and disbursements through the account. This is an account journal. It should associate each
14 transaction with a client.

15 The lawyer should also keep a written ledger detailing every transaction by client. This
16 is a client ledger. The lawyer should reconcile the total from all client ledgers with the
17 account journal and finally with bank statements.

18 Lawyers must keep copies of all deposit slips, bank statements, checkbook stubs,
19 cancelled checks, and client checks to create an audit trail relating to all transactions.
20 Lawyers should never draw checks on the account that are payable to “cash.” Checks drawn
21 on a client trust account should name a client or their creditor. Lawyers must keep these
22 records for 5 years according to SCR 78.5 and RPC 1.15.

23 Any unauthorized or improper use of another’s money or property constitutes
24 misappropriation. Using client funds for an unauthorized purpose is a misappropriation.

1 Withdrawing client funds for firm or personal use is misappropriation. *See*
2 *Misappropriation*, Black's Law Dictionary 11th Ed. 2019.

3 Use of client trust funds and commingling them with the personal funds of the
4 attorney, even if replaced and eventually paid to the client, constitutes misappropriation of
5 the trust funds. *See, e.g., Copren v. State Bar*, 64 Nev. 364, 385, 183 P.2d 833, 843 (1947).
6 Use of, and appropriation of, client funds for personal purposes of the attorney until such
7 time as the attorney sees fit to return the funds, if permitted, "would encourage and render
8 easy of accomplishment of the misappropriation of trust funds and commingling them with
9 the personal funds of the attorney." *Id.*

10 **3. 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
13 A.2d 851 (Del. 2003) (managing partner of firm suspended for failing to prevent firm
14 bookkeeper's improper withdrawal of client funds from trust); *In re Robinson*, 74 A.3d 688
15 (D.C. 2013) (lawyer should have carefully monitored subordinate tasked with Trust Account
16 administration after first overdraft and should have removed subordinate after second
17 overdraft); *In re Montpetit*, 528 N.W.2d 243 (Minn. 1995) (lawyer should have known
18 secretary improperly maintained Trust Account books and records; lawyers charged with
19 knowledge of requirements for handling client funds); *State ex rel. Okla. Bar Ass'n v. Mayes*,
20 977 P.2d 1073 (Okla. 1999) (lawyer's lax supervision of nonlawyer office manager allowed
21 commingling and conversion).

22 **4. No Intent Required:**

23 No intent element is expressly included in RPC 1.15 and some authorities suggest that
24 no intent need be proven to establish a violation. *See re Mayeaux*, 762 So. 2nd (La. 2000)

1 (lawyer's "mistake, good faith, or lack of conscious wrongdoing does not negate an infraction
2 of the rule"); *Att'y Grievance Comm'n v. Stolarz*, 842 A.2d 42 (Md. 2004) ("an unintentional
3 violation...is still a violation of the attorney's affirmative duties imposed by the rule");
4 *Restatement (Third) of the Law Governing Lawyers* Section 5 cmt. (d) (2000) ("Some few
5 offenses, such as those requiring maintenance of office books and records...are absolute in
6 form, thus warranting a finding of a violation...no matter what the lawyer's state of mind.").

7 The State Bar anticipates that Respondent will contend that he had no intent to
8 misappropriate client monies and the transfers were justified as earned fees or were simple
9 mistakes. However, Respondent's belief that he was entitled to transfer the monies despite
10 the monies not having been deposited or that he made a mistake in completing the transfers
11 does not negate his violations of RPC 1.15. Respondent knew or should have known of the
12 misconduct at the time it occurred and personally benefitted from the misappropriation.

13 **5. Lack of Harm is Not a Defense:**

14 Lawyers caught "kiting" or taking from clients with the intent to return the money
15 often claim that no harm occurred to their clients. Clients are generally unaware of the theft.

16 It is not a defense to a charge under RPC 1.15 (Safekeeping Property) that a lawyer's
17 commingling, temporary use, or improper accounting of client funds causes no actual harm
18 to a client. *See In re Anonymous*, 698 N.E.2d 808 (Ind. 1998) ("that client funds were
19 never...at risk" is irrelevant to charge of commingling under rule); *In re Cicardo*, 877 So. 2d
20 980 (La. 2004) (lawyer engaged in "rolling commingling and conversion" from client Trust
21 Account, though no client was ever deprived of money); *Att'y Grievance Comm'n v.*
22 *Whitehead*, 890 A.2d 751 (Md. 2006) (lawyer withdrew fees earned as conservator without
23 court approval, though he promptly returned unapproved fees); *In re Trejo*, 185 P.3d 1160
24 (Wash. 2008) (discipline warranted even if commingling causes no actual harm because it

causes potential harm of having client funds attached by lawyer's creditors). As a result, any argument by Respondent that no clients were deprived of monies is wholly without relevance.

6. Application of RPC 1.15 (Safekeeping Property) to Respondent's Conduct.

Here, Respondent withdrew \$45,000 from money he was safekeeping for clients to pay his payroll. His conduct is misappropriation. *See, e.g., Copren v. State Bar*, 64 Nev. 364, 385, 183 P.2d 833, 843 (use of client funds for personal purposes is misappropriation). Similar transfers evidence a pattern of misappropriation.

Respondent used his client's money as a personal loan to float his business activities. Respondent's use of his trust account in this fashion is misappropriation. *See, e.g., Copren v. State Bar*, 64 Nev. 364, 385, 183 P.2d 833, 843 (1947) (temporary use of client funds is misappropriation).

B. VIOLATIONS OF RPC 5.3.

RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants 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

1 (2) The lawyer is a partner or has comparable managerial
2 authority in the law firm in which the person is employed, or has direct
3 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.

4 Rule 5.3 requires a lawyer or firm to (a) have sufficient policies and procedures in
5 place, and (b) sufficient supervision to ensure that staff is following those policies and
6 procedures.

7 Respondent shifts all blame to Cruz and Ballard for the misappropriation and lack of
8 trust accounting. Respondent will claim that Ballard misstated her skill set when she was
9 hired and, as a result, that she made a complete mess of his books during her short tenure
10 with his office. But Respondent had insufficient policies and procedures and failed to
11 supervise his staff sufficiently. Ultimately, the responsibility is his alone.

12 **III. SANCTION CONSIDERATIONS**

13 The purpose of attorney discipline is to protect the public, the courts, and the legal
14 profession, not to punish the attorney. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756
15 P.2d 464, 527-28 (1988). The appropriate level of discipline must be determined by
16 considering “all relevant factors and mitigating circumstances on a case-by-case basis.” *State*
17 *Bar of Nevada v. Claiborne*, 104 Nev. 115, 219, 756 P.2d 464, 531 (1988).

18 The ABA Standards are designed to promote consistency in the imposition of sanctions
19 by identifying relevant factors that courts should consider and then applying those factors to
20 situations where lawyers have engaged in various types of misconduct. ABA Standards 1.3,
21 Commentary. More specifically, the Standards require analysis of the “duty violated, the
22 lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and
23 the existence of aggravating or mitigating factors.” *In the matter of Discipline of Glen Lerner*,
24 1124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).

1 **A. Misappropriation of client funds in violation of RPC 1.15**
2 **(Safekeeping) warrants disbarment or suspension.**

3 ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer
4 knowingly converts client property and causes injury or potential injury to a client. Whether
5 defined as “knowing” or “intentional” conduct, the focus of courts in applying this standard is
6 on deliberate conduct. *See, e.g., In re Discipline of Corey*, 274 P.3d 972 (Utah 2012)
7 (lawyer’s conversion of client’s settlement funds for the operational needs of his law firm was
8 “knowing and intentional;” “generally our rule is that ‘intentional misappropriation of client
9 funds will result in disbarment unless the lawyer can demonstrate truly compelling
10 mitigating circumstances.’”)

11 Courts will find that intent is established even when a lawyer says he or she was
12 ignorant of the law, playing a practical joke, or making a truthful statement that nonetheless
13 was misleading. *See Att’y Grievance Comm’n v. Nwadike*, 6 A.3d 287 (Md. 2010) (despite
14 careless recordkeeping, lawyer’s misuse of funds in attorney Trust Account for personal
15 expenses, failure to deposit a refund check, and commingling of funds constituted intentional
16 misappropriations); *N.C. State Bar v. Ford*, 94 DHC 4 (N.C. Disciplinary Hearing Comm’n
17 Sept. 16, 1994) (North Carolina Bar’s Disciplinary Hearing Commission disbarred lawyer for
18 gross negligence in handling and overseeing client’s Trust Account, finding that lawyer’s
19 failure to oversee account and monitor secretary who issued checks on it by signing lawyer’s
20 name, resulting in balance falling below amount owed to clients, constituted
21 misappropriation of client).

22 A lawyer acts with knowledge when he has “the conscious awareness of the nature or
23 attendant circumstances of the conduct but without the conscious objective or purpose to
24 accomplish a particular result.” *See People v. Young*, 864 P. 2d 563 (Colo. 1993) (citing
25

1 Standard 4.11, court held that knowing conversion of clients' funds warranted disbarment
2 even absent prior disciplinary history and despite cooperation and making restitution;
3 "[w]hen a lawyer knowingly converts client funds, disbarment is 'virtually automatic', at least
4 in the absence of significant factors in mitigation") (citation omitted); *People v. Radosevich*,
5 783 P.2d 841, 842 (Colo. 1989) (citing Standard 4.11, the court said, "[o]ur previous cases
6 involving the conversion of client funds treat this type of misconduct very seriously because it
7 destroys the trust essential to the attorney-client relationship, severely damages the public's
8 perception of attorneys, and erodes public confidence in our legal system").

9 ABA Standard 4.12 states that suspension is generally appropriate when a lawyer
10 knows or should know that he is dealing improperly with client property and causes injury or
11 potential injury to a client. The most common cases under Standard 4.12 involve lawyers
12 who commingle client funds with their own, or fail to remit client funds promptly. *See, e.g.,*
13 *Office of Disciplinary Counsel v. Au*, 113 P.3d 203 (Haw. 2005) (citing 4.12, *inter alia*, the
14 court imposed a five-year suspension for a lawyer whose misconduct included mishandling
15 client funds and client Trust Account, holding that although misconduct did not appear to
16 have caused actual harm to the lawyer's clients, it did cause potentially serious injury to them
17 and seriously harmed the integrity of the legal system.") ABA Standard 4.12 specifies that
18 knowledge is not required for suspension if it is proven that the lawyer should have known
19 they were dealing improperly with client's property and the client suffers injury or potential
20 injury. Suspension is generally appropriate when lawyers fail to oversee their employees'
21 actions regarding client funds and the employee commingles or wrongfully uses these
22 monies.

23 Under ABA Standard 4.12, lawyers who do not have knowledge that they are dealing
24 improperly with clients' property may nonetheless face suspension if proven that they should
25

1 have known they are doing so, and the client suffers injury or potential injury. This scenario
2 frequently occurs, but is not limited to, when lawyers fail to oversee their employees' actions
3 in regard to client funds and the employee commingles or wrongfully uses those monies. *See,*
4 *e.g., In re Bailey*, 821 A.2d 851 (Del. 2003) (in imposing six-month suspension court agreed
5 with finding that when lawyer instructed the bookkeeper to transfer funds from escrow
6 account to operating account, he knew or should have known of firm's financial difficulties
7 due to repeated overdrafts in operating account); *Fla. Bar v. Weiss*, 586 So. 2d 1051 (Fla.
8 1991) (six-month suspension because lawyer did not knowingly misappropriate, nor had any
9 client suffered injury, but shortages in lawyer's Trust Account discovered during random
10 audit were caused by improperly trained accountant and lack of adequate supervision by
11 lawyer).

12 **B. A significant suspension is required to protect the public concerning**
13 **Respondent's trust account violations.**

14 ABA Standard 4.11 states that disbarment is generally appropriate when a lawyer
15 knowingly coverts client property and causes injury or potential injury to a client. In *In re*
16 *Wilson*, 409 A.2d 1153 (N.J. 1979), the Court stated that misappropriation is one of the most
17 egregious acts that can be committed by an attorney and that "[r]ecognition of the nature and
18 gravity of the offense suggests only one result, disbarment." *Id.* at 1115. Other jurisdictions
19 have treated misappropriation with significant suspension. *See In re Scheurich*, 871 So. 2d
20 1104, 1106 (La. 2004) (suspending lawyer for three years for converting to own use more
21 than \$14,000 in funds withheld to pay third-party medical providers for services rendered to
22 clients; court stated that "[a]lthough respondent paid all outstanding amounts to the medical
23 providers after institution of these proceedings, his clients were exposed to the danger of
24 being required to pay the providers for the unsatisfied balances on their accounts").

1 In Nevada, where disbarment is permanent, the Nevada Supreme Court has utilized
2 disbarment only in cases with multiple aggravation factors. *See In re: Discipline of Jeanne*
3 *Winkler, Esq.* (Case No. 56194) and *In re: Discipline of Stanley A. Walton* (Case No. 64914).
4 In other cases, the Nevada Supreme Court has imposed suspension for misappropriation.
5 *See In re: Discipline of Gary L. Myers* (Case No. 67694) (Court imposed a four-year
6 suspension for misappropriation of \$108,536.12); *also See In re: Discipline of Mark A.*
7 *Kemp, Esq.* (Case No. 59029) (Court imposed a two-year suspension for misappropriation of
8 \$47,478.83, rejecting a panel recommendation of six months and one day suspension,
9 acknowledging Kemp's lack of prior discipline but citing his lack of cooperation with the State
10 Bar).

11 In is anticipated that Respondent will assert that conditions of self-reporting and
12 quarterly reports of his trust account reconciliation to the State Bar are sufficient to protect
13 the public. However, due to the seriousness of Respondent's conduct in this case, the
14 misappropriation of client funds for his own selfish interest, a suspension which serves as a
15 deterrent to Respondent and other attorneys and designed to change Respondent's behavior,
16 protect the public, and promote public confidence in the integrity of the profession is
17 appropriate. *See In re Discipline of Reade*, 133 Nev. 711, 716 (November 16, 2017) (discussing
18 how suspension is designed to protect the public); *See also In re Flanagan*, 2018 Nev.
19 Unpub. LEXIS 196 (March 9, 2018) (imposing actual six months suspension and then three
20 years of probation for misappropriate of client funds and stating that misappropriate of client
21 property is serious violation).

1 **C. Any sanction less than suspension is inappropriate for**
2 **misappropriation of client funds.**

3 ABA Standard 2.5 addresses the types of discipline suitable for lesser misconduct,
4 such as Reprimands. Rule 9(B) of the ABA Model Rules of Disciplinary Enforcement
5 provides the following definition of a lesser misconduct:

6 Lesser misconduct is conduct that does not warrant a sanction
7 restricting the respondent's license to practice law. Conduct **shall**
8 **not** be considered lesser misconduct if any of the following
9 considerations apply:

10 (1) **The misconduct involves the misappropriation of**
11 **funds;** (Emphasis Added).

12 Given the knowing misappropriation of trust funds so that Respondent could pay his
13 payroll and his taxes together with depositing trust funds in his family trust account, there is
14 no interpretation or analysis that could be performed by the Panel that could support a
15 recommendation of anything less than suspension.

16 /////


17 /////

1 **VII. Conclusion**

2 Respondent knowingly transferred client trust funds out of his trust account so that he
3 could meet his law firm payroll and pay taxes. Respondent also took additional client trust
4 funds out of his trust account before verifying there were funds in the trust to withdraw.
5 Finally, Respondent commingled trust funds with his own personal family trust account.
6 Pursuant to ABA Standard 4.11 and 4.12 Respondent's conduct warrants disbarment or a
7 substantial suspension for his knowing conversion of client trust funds which could expose
8 his clients to injury.


9 **DATED** this 23 day of April 2021.

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

12 
13 Daniel T. Young, Assistant Bar Counsel
14 Nevada Bar No. 11747
15 3100 W. Charleston Blvd, Suite 100
16 Las Vegas, Nevada 89102
17 (702)-382-2200
18 Attorney for State Bar of Nevada
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2. Ira David, Esq. (Panel Member): lawofficesofiradavid@gmail.com
3. Anne Hanson (Lay Member): 2555aspen@gmail.com
4. Dennis Kennedy, Esq. (Counsel for Respondent): dkennedy@BaileyKennedy.com
5. Joshua Gilmore, Esq. (Counsel for Respondent): jgilmore@BaileyKennedy.com
6. Daniel T. Young, Esq. (Assistant Bar Counsel): daniely@nvbar.org


Kristi Faust, an employee
of the State Bar of Nevada

Case No: OBC20-0163



FILED

APR 28 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.)

**ORDER AFTER PRE-HEARING
CONFERENCE**

On April 20, 2021, the Hearing Panel Chair Tom Edwards, Esq., met telephonically with Daniel Young, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Dennis L. Kennedy, Esq., on behalf of the Respondent. The State Bar of Nevada's Motion in Limine to Exclude Expert Testimony and Expert Report, the Respondent's Motion for Approval of Conditional Guilty Plea, the State Bar of Nevada's Objection to Respondent's Exhibits, and the Respondent's Objections to the State Bar's Summary of Evidence and Disclosure of Witnesses for Formal Hearing were addressed. Additionally, the parties met telephonically on April 21, 2021, and April 22, 2021 to address the Respondent's request to hold the hearing in-person at the State Bar office instead of virtually via zoom and the Respondent's Motion to Dismiss with Prejudice and/or for Other Relief.

1 1. The State Bar of Nevada's Motion in Limine to Exclude Expert Testimony and
2 Expert Report was heard, argued, and is hereby **GRANTED** in part and **DENIED** in part.
3 The motion is granted to exclude Mr. Bare's expert report. The motion is denied to exclude
4 Mr. Bare from testifying at the hearing. Mr. Bare may testify concerning the standard of care
5 and whether the Respondent met that standard. Mr. Bare cannot, however, testify regarding
6 the credibility of any witness.

7 2. Respondent's Motion for Approval of Conditional Guilty Plea was heard, argued,
8 and is hereby **DENIED**. The Respondent's interpretation of SCR 113 is unreasonable because
9 it would permit a respondent to submit an endless number of conditional guilty pleas, each
10 time forcing the hearing panel to consider the conditional guilty plea and, if not successful,
11 would start the process over again before a new hearing panel. This interpretation would lead
12 to an absurd result. If the State Bar and the Respondent are unable to agree upon a conditional
13 guilty plea and a Respondent wishes to bypass the trial phase of the formal hearing in order
14 to proceed to the sentencing phase, the Respondent is required to unconditionally stipulate
15 to the facts alleged in the Complaint or unconditionally stipulate to another set of facts agreed
16 upon by the parties. Absent an agreement between the State Bar and the Respondent to a
17 conditional guilty plea or an unconditional stipulation of facts, the State Bar is entitled to
18 present its case at the formal hearing.

19 3. The State Bar of Nevada's Objection to Respondent's Exhibit N was heard,
20 argued, and is decided as follows:

21 Respondent's proposed Exhibit N is admissible pursuant to the state of mind exception
22 to the hearsay rule. NRS 51.105(1). Therefore, the State Bar's objection is **OVERULED**.

23 4. Respondent's Objections to the State Bar's Summary of Evidence and Disclosure
24 of Witnesses for Formal Hearing was heard, argued, and is decided as follows:

- 1 a. Regarding the State Bar's proposed Exhibit 23, the objection is
2 **OVERRULED** without prejudice.
- 3 b. Regarding the State Bar's proposed Exhibit 2, the objection is **SUSTAINED**
4 in part and **OVERRULED** in part. The hearing will be bifurcated, such that
5 the State Bar's proposed Exhibit 2 will not be offered or admitted into
6 evidence until the sentencing portion of the Formal Hearing, after the
7 Hearing Panel has decided whether the Respondent violated one or more of
8 the RPCs.
- 9 c. Regarding the State Bar's proposed Witness, Louise Watson, the Panel Chair
10 reserves his ruling for the hearing.

11 5. Respondent's request for in-person hearing was heard, argued, and is decided
12 as follows:

13 After initially hearing arguments, the Panel Chair requested that Assistant Bar Counsel,
14 Daniel T. Young, determine the feasibility of converting the currently scheduled electronic
15 formal hearing into an in-person hearing to accommodate the Respondent's request for an in-
16 person hearing and to notify Respondent and the Panel Chair of the decision the following
17 day. After, it was discovered that the other two panel members could not be available for an
18 in-person hearing for reasons other than COVID-19. As a result, the Respondent's request for
19 an in-person hearing is **DENIED**.

20 6. Respondent's Motion to Dismiss with Prejudice and/or for Other Relief was
21 heard, argued, and is decided as follows:

22 The Respondent's motion asserts that Assistant Bar Counsel, Daniel T. Young, through
23 his assistant, violated ethical rules by having improper *ex parte* communications with two
24 panel members after Mr. Young was tasked by the Panel Chair to determine the feasibility of
25

1 converting the formal hearing from its current electronic format to an in-person hearing. The
2 Panel Chair specifically tasked Mr. Young and the State Bar with determining the feasibility
3 of converting the current electronically scheduled hearing to an in-person format. Mr. Young
4 interpreted this directive to allow contact with the other panel members in an administrative
5 or scheduling capacity to determine their availability to attend an in-person hearing. The
6 Panel Chair finds that there was no evidence that either Mr. Young or any member of the State
7 Bar engaged in discussions with the two panel members regarding the substantive facts of the
8 case. Instead, it appears that the brief communications were limited to determining the panel
9 members' availability to attend the hearing in person. Furthermore, the Panel Chair finds the
10 State Bar's actions were reasonable and did not amount to misconduct. Accordingly, the
11 Respondent's Motion is **DENIED**.

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

13 **DATED** this 27th day of April, 2021.

14 **SOUTHERN NEVADA DISCIPLINARY BOARD**

15 *Tom Edwards*

16 Tom Edwards (Apr 27, 2021 17:04 PDT)

17 Thomas Edwards, Esq.
Hearing Panel Chair

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


Kristi Faust, an employee
of the State Bar of Nevada

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Attorneys for Respondent
James J. Jimmerson, Esq.



FILED

APR 29 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

STIPULATION AND ORDER

(i) ADMITTING EXHIBITS 1, 10-13, 17-18, 26-28, 33, 42-46, Y, Z, AA, BB, AND CC; AND (ii) SEALING EXHIBITS 10-13, 18, 26-28, 33, 44, AND 46

Complainant, State Bar of Nevada, and Respondent, James J. Jimmerson, by and through their respective counsel, stipulate and agree as follows:

1. The following exhibits identified by the State Bar in its Final Summary of Evidence and Disclosure of Witnesses for Formal Hearing, served March 11, 2021, are deemed admitted for purposes of the April 30, 2021 hearing:

- a. Exhibit 1 - State Bar Hearing Packet;
- b. Exhibit 10 - March 12, 2020 Email from Amanda Fisher with attachments;
- c. Exhibit 11 - March 23, 2020 Email exchange between Louise Watson and Ms. Fisher;
- d. Exhibit 12 - April 10, 2020 Email exchange between Ms. Watson and Ms. Fisher;

- 1 e. Exhibit 13 - April 21, 2020 Letter from Mr. Jimmerson with attachments;
- 2 f. Exhibit 17 - May 8, 2020 Email from Ms. Fisher;
- 3 g. Exhibit 18 - May 22, 2020 Letter from Mr. Jimmerson with attachments;
- 4 h. Exhibit 26 - Nevada State Bank ("NSB") Records for account ending #7126;
- 5 i. Exhibit 27 - NSB Records for account ending #7217;
- 6 j. Exhibit 28 - NSB Records for account ending #7225;
- 7 k. Exhibit 33 - NSB Records for account ending #1525;
- 8 l. Exhibit 42 - February 6, 2020 Subpoena Duces Tecum ("SDT") to NSB;
- 9 m. Exhibit 43 - February 6, 2020 certified mail card regarding SDT to NSB;
- 10 n. Exhibit 44 - February 18, 2020 Response by NSB to SDT;
- 11 o. Exhibit 45 - February 19, 2020 NSB Custodian of Records Affidavit; and
- 12 p. Exhibit 46 - NSB Account Summary for Respondent;

13 2. The following exhibits identified by Mr. Jimmerson in his Final Disclosures, served
14 March 12, 2021, are deemed admitted for purposes of the April 30, 2021 hearing:

- 15 a. Exhibit Y - Leah Ballard's Employment Application for The Jimmerson Law
16 Firm, P.C. ("Jimmerson Law");
- 17 b. Exhibit Z - Ms. Ballard's Resume;
- 18 c. Exhibit AA - Nicole Cruz's Employment Application for Jimmerson Law;
- 19 d. Exhibit BB - Ms. Cruz's Resume; and
- 20 e. Exhibit CC - Text Messages between Ms. Fisher and Ms. Ballard;

21 3. Exhibits 10, 13, and 18 contain confidential information concerning clients of Mr.
22 Jimmerson and his law firm that is protected from public disclosure pursuant to Nevada RPC 1.6(a);

23 4. Exhibits 10-13, 18, 26-28, 33, 44, and 46 contain private banking information
24 concerning Mr. Jimmerson and/or his law firm;

25 5. Rule 3(4)(h) of the Nevada Supreme Court Rules for Sealing and Redacting Court
26 Records (SRCR) authorize sealing Exhibits 10-13, 18, 26-28, 33, 44, and 46;

27 ///

28 ///

FINDINGS

Based on the foregoing Stipulation of the parties, and good cause appearing,

THE PANEL CHAIR FINDS that pursuant to SRCR 3(4), Exhibits 10, 13, and 18 contain confidential information concerning clients of Respondent and his law firm, and Respondent's interest in maintaining the confidential nature of such information outweighs the public interest in access to the court record.

THE PANEL CHAIR FURTHER FINDS that pursuant to SRCR 3(4), Exhibits 10-13, 18, 26-28, 33, 44, and 46 contain private banking information concerning Respondent and/or his law firm, and Respondent's interest in maintaining the confidential nature of such information outweighs the public interest in access to the court record.

ORDER

Based on the foregoing Findings, and good cause appearing,

IT IS HEREBY ORDERED that Exhibits 1, 10-13, 17-18, 26-28, 33, 42-46, Y, Z, AA, BB, and CC are deemed ADMITTED for purposes of the April 30, 2021 hearing.

IT IS HEREBY FURTHER ORDERED that Exhibits 10-13, 18, 26-28, 33, 44, and 46 shall be SEALED.

IT IS SO ORDERED.

DATED this 29 day of April, 2021.

Tom Edwards
Tom Edwards (Apr 29, 2021 16:41 PDT)

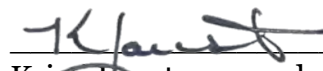
TOM EDWARDS, ESQ., PANEL CHAIR
SOUTHERN NEVADA DISCIPLINARY BOARD

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing Stipulation and Order Admitting Exhibits was served via email to:

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

Dated this 29th day of April, 2021.



Kristi Faust, an employee
of the State Bar of Nevada

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Attorneys for Respondent
James J. Jimmerson, Esq.



FILED

MAY 18 2021

STATE BAR OF NEVADA
BY: *B. Kelly*
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

**SUPPLEMENT TO RESPONDENT'S
TRIAL BRIEF**

James J. Jimmerson, by and through his counsel, submits this Supplement to his Trial Brief for purposes of responding to the unexpected submission by the State Bar of an inapplicable disciplinary decision – *In re Discipline of Harold Gewerter* (Nev. Apr. 23, 2021) – which was a new legal citation raised during closing remarks that had not been submitted with or referenced in the State Bar's Trial Brief.

As shown below, the *Gewerter* decision, a copy of which is attached for the Panel's convenience as Exhibit A, has no relevance to the instant matter—Mr. Gewerter's conduct bears no resemblance to Mr. Jimmerson's and, as a result, the discipline imposed by the Nevada Supreme Court on Mr. Gewerter should not in any way guide what the Panel decides in this case.

On April 23, 2021, the Nevada Supreme Court entered an Order of Suspension for Mr. Gewerter. Mr. Gewerter had been disciplined on multiple prior occasions *and was already suspended at the time of entry of the Nevada Supreme Court's Order*. According to his profile on

1 the State Bar’s website, Mr. Gewerter has been the subject of at least three prior disciplinary
2 proceedings. In this latest round of discipline, Mr. Gewerter was facing two separate adverse
3 findings by sister Disciplinary Panels. In the first case (No. 81540), Mr. Gewerter had “accepted
4 \$750,000 from his client to be held in trust, continued to bill the client separately from the \$750,000
5 but also withdrew the \$750,000 as attorney fees without any accounting of how the funds were
6 distributed, and failed to provide the State Bar with records it requested.” The Nevada Supreme
7 Court found that Mr. Gewerter violated duties owed to his client and the profession, acted
8 knowingly, and that his client and the profession “suffered at least potential injury.” Next, the
9 Nevada Supreme Court found that the record supported the aggravating factors of “prior discipline;
10 *submission of false evidence, false statements, or other deceptive practices during the disciplinary*
11 *hearing; refusal to acknowledge the wrongful nature of his conduct*; and substantial experience in
12 the practice of law.” (Emphasis added.) Finally, the Nevada Supreme Court found that there were
13 *no mitigating factors*. In light of these damning facts and circumstances, the Nevada Supreme
14 Court affirmed the panel’s recommended discipline of a one (1) year suspension.

15 In the second case (No. 81817), Mr. Gewerter had converted a client’s advance payment of
16 \$10,000 in fees and never paid any of the money back despite claiming that he would do so.
17 Initially, Mr. Gewerter convinced the client to pay him the \$10,000 despite knowing that a Court
18 Order was required to approve the payment. Once Mr. Gewerter was fired by the client, he “released
19 confidential communications he had with the client” and “commingled and/or misappropriated the
20 \$10,000 and failed to refund his unearned fees.” The Nevada Supreme Court found that Mr.
21 Gewerter violated several duties owed to his client. Further, Mr. Gewerter’s client was obviously
22 and directly harmed by his actions. Next, the Nevada Supreme Court found *four aggravating*
23 *factors*—“substantial experience in the practice of law, prior discipline, multiple offenses, and
24 refusal to acknowledge the wrongful nature of his conduct”—and *no mitigating factors*. In light of
25 these damning facts and circumstances, the Nevada Supreme Court ordered a four (4) year
26 suspension, to run concurrent with the suspension arising from the other case.

27 ///

28 ///

1 In sum, the *Gewerter* decision involves facts and circumstances that are undeniably different
2 from those presented in this case. Mr. Jimmerson welcomes the opportunity to further argue the
3 inapplicability of the *Gewerter* decision if so requested or directed by the Panel.

4 DATED this 17th day of May, 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 17th day of May, 2021, service of the foregoing **SUPPLEMENT TO RESPONDENT'S TRIAL BRIEF** 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: danh@nvbar.org daniely@nvbar.org kristif@nvbar.org sbnnotices@nvbar.org <i>Attorneys for Complainant</i> STATE BAR OF NEVADA
--	--

THOMAS EDWARDS, ESQ. Panel Chair	Email: tedwards@nevadafirm.com
-------------------------------------	--------------------------------

IRA DAVID Panel Member	Email: lawofficesofiradavid@gmail.com
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ANNE HANSON Panel Member	Email: 2555aspen@gmail.com
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/s/ Stephanie M. Kishi
Employee of BAILEY ♦ KENNEDY

IN THE SUPREME COURT OF THE STATE OF NEVADA

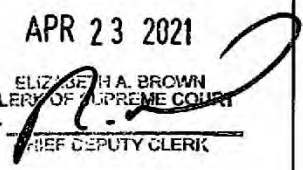
IN THE MATTER OF DISCIPLINE OF
HAROLD GEWERTER, BAR NO. 449.
IN THE MATTER OF DISCIPLINE OF
HAROLD P. GEWERTER, BAR NO. 499.

No. 81540 ✓

No. 81817

FILED

APR 23 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF SUSPENSION

These are automatic reviews of Southern Nevada Disciplinary Board hearing panels' recommendations that attorney Harold P. Gewerter be suspended in Docket No. 81540 for one year based on violations of RPC 1.15 (safekeeping property), RPC 8.1 (disciplinary matters), and SCR 78(1)(b) (maintenance of trust funds) and disbarred in Docket No. 81817 based on violations of RPC 1.2 (scope of representation), RPC 1.5 (fees), RPC 1.9 (duties to former clients), RPC 1.15 (safekeeping property), and RPC 1.16(d) (declining or terminating representation: refunding unearned fees).¹ In Docket No. 81817, Gewerter's counsel withdrew before briefing and advised the court that Gewerter intends to resign from the State Bar rather than litigate the matter given the adverse medical diagnoses he recently received. Thus, that matter stands submitted for decision based on the

¹Gewerter is currently suspended. *In re Discipline of Gewerter*, Docket No. 80198 (Order of Suspension, Oct. 26, 2020).

record. SCR 105(3)(b). In Docket No. 81540, Gewerter's amended opening brief and notice of appearance of new counsel are overdue.² Thus, we submit that matter for decision based on the record as well. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Gewerter committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). This court determines the appropriate discipline de novo. SCR 105(3)(b). In doing so, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Docket No. 81540

We defer to the panel's findings that Gewerter violated the above listed rules in Docket No. 81540 as those findings are supported by substantial evidence and are not clearly erroneous. See SCR 105(3)(b); *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). The record demonstrates that Gewerter accepted \$750,000 from his client to be held in trust, continued to bill the client separately from the \$750,000 but also withdrew the \$750,000 as attorney fees without any accounting of how the funds were distributed, and failed to provide the State Bar with records it requested.

²Gewerter's original opening brief was struck. *In re Discipline of Gewerter*, Docket No. 81540 (Order, Nov. 12, 2020).

Gewerter violated duties owed to his client (safekeeping property) and the profession (disciplinary matters). The record supports the panel's finding that Gewerter acted knowingly and that his client and the profession suffered at least potential injury.³ The baseline sanction for Gewerter's conduct, before consideration of aggravating and mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."). The record supports the four aggravating circumstances found by the panel (prior discipline; submission of false evidence, false statements, or other deceptive practices during the disciplinary hearing; refusal to acknowledge the wrongful nature of his conduct; and substantial experience in the practice of law). The record, however, does not support the two mitigating circumstances found by the panel, as no evidence was admitted as to Gewerter's character and reputation and at least one of Gewerter's prior offenses is not remote. Considering all of the factors, we conclude that the recommended discipline of a one-year suspension is appropriate.

³The panel concluded that Gewerter's misconduct resulted in little or no injury, likely because in a separate civil action brought by the client, the district court found that despite the absence of an agreement providing that the \$750,000 was for attorney fees, Gewerter performed legal work for the client for which he was not paid and the client owed Gewerter at least \$750,000 for that work.

Docket No. 81817

We defer to the panel's findings that Gewerter violated the above listed rules in Docket No. 81817 as those findings are supported by substantial evidence and are not clearly erroneous. *See* SCR 105(3)(b); *Sowers*, 129 Nev. at 105, 294 P.3d at 432. When a client met with Gewerter to discuss an estate, he did not adequately define his scope of representation for the client. He charged the client a flat fee of \$10,000 and encouraged the client to pay the fee by charging the \$10,000 to the decedent's credit card, despite knowing any payment from the estate would have to be first approved by the court. Once the client terminated Gewerter's representation, he released confidential communications he had with the client. Lastly, he commingled and/or misappropriated the \$10,000 and failed to refund his unearned fees.

Gewerter violated duties owed to his client (scope of representation, fees, preserving client confidences, safekeeping property, and refunding unearned fees). The record supports the panel's findings that Gewerter acted negligently in violating RPC 1.2 and RPC 1.16 and knowingly in violating RPC 1.5, RPC 1.9, and RPC 1.15. Gewerter's client and the decedent's estate were injured or exposed to potential injury. Gewerter released the client's confidential communications, which could adversely affect her in the probate matter. Further, the decedent's estate has been deprived of the \$10,000. The baseline sanction for Gewerter's conduct, before consideration of aggravating and mitigating circumstances, is disbarment. *See Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass'n 2017) ("Disbarment is generally appropriate when a

lawyer knowingly converts client property and causes injury or potential injury to a client.”); *id.* at Standard 8.1(b) (providing that disbarment is appropriate when a lawyer “has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client”). The record supports the four aggravating circumstances found by the panel (substantial experience in the practice of law, prior discipline, multiple offenses, and refusal to acknowledge the wrongful nature of his conduct).

Considering all four factors and this court’s previously imposed discipline for similar misconduct, we conclude a downward deviation from the recommended discipline of disbarment is warranted. While Gewerter has yet to return the \$10,000, he has indicated a willingness to do so. Further, nothing in the record indicates the estate has suffered actual injury by the delay in the \$10,000 refund. Thus, we conclude that a four-year suspension will serve the purpose of attorney discipline. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline).

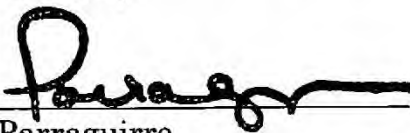
Accordingly, commencing from the date of this order, we hereby impose a one-year suspension on attorney Harold P. Gewerter’s practice of law in Nevada based on the misconduct in Docket No. 81540, and a four-year concurrent suspension on his practice of law based on the misconduct in Docket No. 81817.⁴ Additionally, Gewerter shall pay the costs of both


⁴The panel recommended that the suspension in Docket No. 81540 “run concurrent to any other suspension previously imposed” without specifying whether the commencement date should be retroactive to the date of suspension in Docket No. 80198. We conclude that it should not,

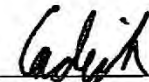
disciplinary proceedings, including \$2,500 for each as mandated by SCR 120(3), within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.

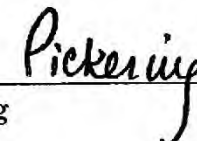
It is so ORDERED.

, C.J.
Hardesty

 J.
Parraguirre

 J.
Stiglich

 J.
Cadish

 J.
Pickering

SILVER, J., with whom HERNDON, J., agrees, dissenting:


I respectfully dissent. Based on the violations, disbarment is the appropriate discipline for Gewerter's misconduct. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility*

_____ and thus the concurrent suspensions imposed in the two dockets addressed in this order shall commence from the date of this order.

Rules and Standards, Standard 4.11 (Am. Bar Ass'n 2017) ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.").


_____, J.
Silver

I concur:


_____, J.
Herndon

cc: Chair, Southern Nevada Disciplinary Board
Harold P. Gewerter
Manuele Law LLC
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court

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
MEMORANDUM OF COSTS**

Description	Amount
Court Reporter Fee & Transcript Fee Hearing Held on May 13, 2021	\$1,120.50
Certified Mailing (\$6.86 x 3)	\$20.58
SCR 120(5) Administrative Cost	\$1,500.00
TOTAL AMOUNT DUE	\$2,641.08


1. I am Assistant Bar Counsel with the State Bar of Nevada. On information and belief of the above-referenced costs and disbursements expended.

2. The costs set forth above are true and correct to the best of my knowledge and belief and were necessary and reasonably incurred and paid in connection with this matter. True and correct copies of invoices supporting these costs are attached to this Memorandum of Costs.

1 3. Pursuant to Supreme Court Rule 120(5), Respondent shall be ordered to pay the
2 fees and costs of these proceedings within thirty (30) days of receipt of the State Bar of Nevada's
3 Memorandum of Costs in this matter.

4 Dated this 1 day of June 2021.

5 **STATE BAR OF NEVADA**
6 Daniel M. Hooe, Bar Counsel

7 
8 Daniel T. Young (June 1, 2021 13:06 PDT)
9 Daniel T. Young, Assistant Bar Counsel
10 Nevada Bar No. 11747
11 3100 W. Charleston Blvd, Suite 100
12 Las Vegas, Nevada 89102
13 (702)-382-2200
14 Attorney for State Bar of Nevada
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1. Dennis Kennedy, Esq. (Counsel for Respondent): dkennedy@BaileyKennedy.com
2. Joshua Gilmore, Esq. (Counsel for Respondent): jgilmore@BaileyKennedy.com
3. Daniel T. Young, Esq. (Assistant Bar Counsel): daniely@nvbar.org


Kristi Faust, an employee of the
State Bar of Nevada



Integrity Court Reporting
7835 S. Rainbow Boulevard
Suite 4-25
Las Vegas, NV 89139
(702)509-3121

Invoice

Number: 1779

Date: 6/1/2021

Bill To:

Belinda Felix
State Bar of Nevada
3100 W. Charleston Boulevard
Suite 100
Las Vegas, NV, 89102

PAYMENT DUE UPON RECEIPT

Job Date	Witness Name	Case Name	Case No.
5-13-21	James Jimmerson	State Bar v Jimmerson	OBC20-0163

Description	Amount
Half Day Appearance Fee	\$100.00
Transcript - 157 Pages @ 6.50	\$1,020.50

Tax I.D. No. 01-0974768

Total

\$1,120.50

Received On: _____

6/1/2021

Received By: _____

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Attn: Subpoena Research
Nevada State Bank
1875 Redwood Rd.
Mailstop UTSC 0929
Salt Lake City, UT 84111

2. Article Number (Transfer from service label)

7018 3090 0000 3915 2260

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2/10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No**RECEIVED BY****FEB 12 2020****STATE BAR OF NEVADA**

3. Service Type

- | | |
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| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
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| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

08C20-0163 2-6-20 597

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USPS TRACKING#



First-Class Mail
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USPS
Permit No. G-10

9590 9402 5495 9249 9035 64

United States
Postal Service

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FEB 13 2020

OFFICE OF BAR COUNSEL

• Sender: Please print your name, address, and ZIP+4® in this box•

State Bar of Nevada
Attn: OBC/LW
3100 W. Charleston Blvd., #100
Las Vegas, NV 89102



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USPS TRACKING#



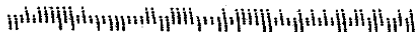
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 5495 9249 9023 70

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3100 W. Charleston Blvd., #100
Las Vegas, NV 89102



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<p>1. Article Addressed to:</p> <p>James J. Jimmerson, Esq. 415 S. Sixth St., Suite 100 Las Vegas, NV 89101</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>RECEIVED BY MAR 12 2020 STATE BAR OF NEVADA</p>																
<p>2. Article Number (Transfer from service label)</p> <p>7017 2400 0000 3192 7764</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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9590 9402 5871 0038 4392 02

United States
Postal Service

State Bar of Nevada

Attn: Breanna M.

3100 W. Charleston Blvd., Ste. 100

Las Vegas, NV 89102

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AUG 26 2020

OFFICE OF BAR COUNSEL

DB(20-0163) LOR / JM / 08.12.20



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<p>1</p> <p>James Jimmerson, Esq. The Jimmerson Law Firm, PC 415 S. Sixth St. Suite 100 Las Vegas, NV 89101</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>RECEIVED BY AUG 20 2020 STATE BAR OF NEVADA</p>																
<p></p> <p>9590 9402 5871 0038 4392 02</p> <p>2. Article Number (Transfer from service label) 7019 2970 0001 1910 4645</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input checked="" type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input checked="" type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input checked="" type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input checked="" type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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Case No(s): OBC20-0163



FILED

JUN 21 2021

STATE BAR OF NEVADA

BY: 
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.)
)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION
AFTER FORMAL HEARING**

This matter came before a designated Formal Hearing Panel of the Southern Nevada Disciplinary Board (Panel) for hearing that lasted two days. The hearing, which proceeded via simultaneous audio/video transmission using Zoom, hosted from Las Vegas, Nevada, commenced on Friday, April 30, 2021, at 9:00 a.m. and concluded on Thursday, May 13, 2021, at 5:00 p.m. The Panel consisted of Chair Thomas Edwards, Esq., Ira David, Esq., and Anne Hanson, Laymember.

Bar Counsel Daniel M. Hooge, Esq., and Assistant Bar Counsel Daniel T. Young, Esq. represented the State Bar of Nevada ("State Bar"). Respondent was present and represented by Dennis L. Kennedy, Esq. and Joshua P. Gilmore, Esq.

1 During the first phase of the hearing, the Panel received into evidence State Bar's
2 Exhibits 1, 10, 11, 12, 13, 17, 18, 26, 27, 28, 33, 42, 43, 44, 45, and 46 and Respondent's
3 Exhibits Y, Z, AA, BB, and CC and heard testimony from State Bar Investigator Louise
4 Watson, Respondent, and Craig Jay Nady. During the second phase of the hearing, the
5 Panel received into evidence State Bar's Exhibits 2, 49, 50, and 51 and Respondent's Exhibit
6 DD and heard testimony from Amanda Kahn, James M. Jimmerson, Esq., Respondent,
7 and Rob Bare, Esq.

8 Based upon the pleadings on file, including the Trial Brief filed by the State Bar, the
9 Trial Brief filed by the Respondent, and the Supplement to Respondent's Trial Brief, the
10 evidence presented, testimony received, and arguments of counsel, the Panel unanimously
11 issues the following Findings of Fact, Conclusions of Law, and Recommendation After
12 Formal Hearing:

13 FINDINGS OF FACT

- 14 1. Respondent, James J. Jimmerson, Bar No. 0264, is an attorney licensed to
15 practice law in the State of Nevada. For the time at issue in these proceedings,
16 Respondent's principal office for the practice of law was located in Clark
17 County, Nevada.
- 18 2. Respondent engaged in acts of professional misconduct which warrant the
19 imposition of professional discipline as set forth below.
- 20 3. The first phase of the disciplinary proceeding focused on whether there was
21 a violation of the ethical rules. The second phase of the disciplinary
22 proceeding focused on whether and, if so, to what extent Respondent should
23 be disciplined.

24 ///

25 ///

- 1 4. Count I of the Complaint, alleges a violation of RPC 1.15 – Safekeeping,
2 involving five (5) separate transfers from Respondent’s trust account,
3 specifically,
4 a. a November 14, 2019, transfer of \$40,000 to Respondent’s corporate
5 account (the “11/14/19 Transfer”);
6 b. a November 21, 2019, transfer of \$45,000 to Respondent’s corporate
7 account to cover payroll (the “11/21/19 Transfer”);
8 c. a November 25, 2019, transfer of \$60,000 to Respondent’s corporate
9 account (the “11/25/19 Transfer”);
10 d. a December 19, 2019, transfer of \$10,000 to Respondent’s corporate
11 account (the “Nady Transfer”); and
12 e. a December 20, 2019, transfer of \$15,000 to Respondent’s family trust
13 account (the “Family Trust Transfer”).
14 5. Count II of the Complaint, alleges a violation of RPC 5.3 – Responsibilities
15 Regarding Nonlawyer Assistants, involving alleged failures by Respondent to
16 train and supervise his nonlawyer employees. The State Bar voluntarily
17 abandoned Count II during the first phase of the disciplinary proceeding,
18 based upon the testimony by Respondent that he initiated the transfers from
19 the trust account at issue (as opposed to a nonlawyer assistant).
20 6. After the first phase of the disciplinary proceeding, the Panel unanimously
21 concluded each of the Respondent’s transfers from the trust account
22 constituted a violation of RPC 1.15 – Safekeeping.
23 7. The evidence supporting this conclusion included:
24 a. The bank records that confirm that the transfers were made;
25 b. Respondent’s testimony that he made the transfers;

- 1 c. As to the 11/14/19 Transfer, the 11/21/19 Transfer, and the 11/25/19
2 Transfer (collectively, the “November Transfers”), Respondent’s
3 testimony that he did not confirm that the fees were in fact paid by the
4 clients before he made the withdrawals from the trust account;
- 5 d. As to November Transfers, Respondent’s reconciliation confirming that
6 he withdrew funds from the trust account when those funds had not yet
7 been paid into the trust account by the clients, effectively borrowing other
8 client funds in making the withdrawals;
- 9 e. As to the Nady Transfer, Respondent’s testimony that he had not yet
10 earned the fees at the time he made the withdrawal; and
- 11 f. As to the Family Trust Transfer, Respondent’s testimony that the
12 withdrawal was not justified.

13 CONCLUSIONS OF LAW

14 Based upon the foregoing Findings of Fact, the Panel hereby issues the following
15 Conclusions of Law:

- 16 1. The appropriate level of discipline must be determined considering “all
17 relevant factors and mitigating circumstances on a case-by-case basis.” State
18 Bar of Nevada v. Claiborne, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). The
19 purpose of attorney discipline is to protect the public, the courts, and the legal
20 profession—not to punish the attorney. *Id.* at 213, 756 P.2d at 527-28. The
21 Panel evaluates The American Bar Association Standards for Imposing
22 Lawyer Sanctions’ four factors in determining the appropriate disciplinary
23 sanction: “the duty violated, the lawyer’s mental state, the potential or actual
24 injury caused by the lawyer’s misconduct, and the existence of aggravating or
25

mitigating factors.” In re Discipline of Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).

2. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. 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).

3. The Southern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

4. Venue is proper in Clark County.

5. The Panel unanimously finds that the Findings of Fact set forth *supra* were proven by the State Bar by clear and convincing evidence.

6. **The Violations**

a. **Count I - RPC 1.15 (Safekeeping)** After the initial phase of the disciplinary proceeding, the Panel unanimously concluded each of Respondent’s transfers from the trust account constituted a violation of RPC 1.15 – Safekeeping.

b. **Count II – RPC 5.3 (Responsibility Regarding nonlawyer Assistants)** During the initial phase of the disciplinary proceeding, following voluntary abandonment by the State Bar of Count II of the Complaint alleging a violation of RPC 5.3 – Responsibility Regarding Nonlawyer Assistants, Count II of the Complaint was dismissed by the Panel with prejudice.

7. **Respondent’s Mental State**

a. The Panel unanimously concludes:

1. For the November Transfers, Respondent should have known that he was dealing improperly with client property when he made the withdrawals from the trust account. Respondent testified that he did not have his customary daily cash reports upon which he would otherwise rely to determine if the clients had paid into the trust account. Without this information, Respondent was required to investigate and specifically determine whether the clients had paid into the trust account. He testified that he failed to conduct this investigation before making the withdrawals and instead made estimates of the fees Respondent believed were earned and paid. The round number withdrawals (\$45,000, \$40,000 and \$60,000) also confirm that these withdrawals were merely estimates. Respondent also testified that he used the 11/21/19 Transfer to cover payroll.
2. For the Nady Transfer, Respondent should have known that he was dealing improperly with client property when he made the withdrawal from the trust account. Despite the fact that Mr. Nady testified he authorized Respondent to withdraw the funds from the trust account, Respondent testified that the funds had not yet been earned.
3. For the Family Trust Transfer, Respondent was negligent in dealing with client property. Respondent's testimony showed that this transfer was a clerical error by Respondent that was corrected immediately when the error was discovered.

1 **8. Injury to Client(s)**

2 a. The Panel unanimously concludes:

- 3 1. For the November Transfers, there was potential injury to the
4 clients whose money Respondent borrowed to make the
5 withdrawals. The rules for handling trust account funds are
6 designed to prevent this precise conduct by Respondent based upon
7 the potential injury to the clients. However, given the timing of the
8 subsequent client payments, in many cases just days after the
9 improper withdrawals, the potential injury to the clients was
10 remote.
11 2. As to the Nady Transfer, there was little or no injury because the
12 client consented to the transfer and the fees were earned shortly
13 after the withdrawal was made.
14 3. As to the Family Trust Transfer, there was little or no injury because
15 the Respondent corrected the issue immediately when the error was
16 discovered.

17 **9. ABA Standards**

- 18 a. Based upon the RPC 1.15 violations, Respondent's mental state, and the
19 extent of the injury, the Panel unanimously concludes the baseline
20 sanction is a suspension pursuant to ABA Standard 4.12.

21 **10. Aggravators**

- 22 a. Pursuant to SCR 102.5, the Panel unanimously finds that the following
23 aggravating factors exist:
24 1. Prior Disciplinary offenses as confirmed in the State Bar's Exhibit
25 2; and

1 2. Substantial experience in the practice of law given Respondent's
2 licensure since 1976.

3 b. The Panel considered whether there was a pattern of misconduct or
4 multiple offenses, but concluded that given the brief period of time over
5 which the improper transfers were made, applying these aggravating
6 circumstances would not be appropriate.

7 11. **Mitigators**

8 a. Pursuant to SCR 102.5, the Panel unanimously finds the following
9 mitigating factors exist:

- 10 1. Absence of a dishonest or selfish motive. Respondent's motive was
11 to avoid the work necessary to determine whether the funds could
12 be withdrawn;
- 13 2. Personal or emotional problems based upon the passing of
14 Respondent's son;
- 15 3. Timely good faith effort to make restitution or to rectify the
16 consequences of misconduct based upon Respondent's efforts to
17 quickly audit and balance the trust account;
- 18 4. Full and free disclosure to the disciplinary authority or cooperative
19 attitude toward the proceeding as Respondent was frank about the
20 transfers;
- 21 5. Remorse as Respondent conveyed that he is very sorry, and the
22 Panel believes Respondent is taking this seriously such that the
23 risk of future violations of RPC 1.15 seem remote; and
- 24 6. Remoteness of prior offenses in 1994.

1 **RECOMMENDATION**

2 Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause
3 appearing, the Panel hereby recommends as follows:

4 1. Based upon the aggravating and mitigating circumstances, the Panel
5 unanimously finds that a downward adjustment in the baseline sanction is appropriate;

6 2. The Panel unanimously recommends a PUBLIC REPRIMAND, which shall
7 be prepared by the State Bar consistent with this Order;

8 3. Given that the Panel's conclusion that the risk of Respondent engaging in
9 future violations of RPC 1.15 seems remote, additional forms of sanction (e.g., periodic
10 audits, CLE etc.) do not seem to be necessary;

11 4. Respondent shall pay SCR 120 fees in the amount of \$1,500.00; and

12 5. Respondent shall pay the costs of this proceeding, excluding Bar Counsel and
13 staff salaries, no later than the 30th day after the Supreme Court's Order in this matter or
14 service of a Memorandum of Costs, whichever is later.

15 DATED this 21st day of June 2021.

16 

17 _____
18 **HEARING CHAIR,**
19 **THOMAS EDWARDS, ESQ., Chair**
20 Southern Nevada Disciplinary Panel
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **FIDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION AFTER FORMAL HEARING** was sent via email to:

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

Dated this 22nd day of June 2021.

Sonia Del Rio
Sonia Del Rio, an employee of the
State Bar of Nevada

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **RECORD ON APPEAL** was placed in a sealed envelope and sent by certified mail in Las Vegas, Nevada, postage fully prepaid thereon for certified mail addressed to:

James J. Jimmerson, Esq.
c/o Dennis Kennedy, Esq. &
Joshua Gilmore, Esq.
8984 Spanish Ridge Ave.
Las Vegas, NV 89148
CERTIFIED MAIL RECEIPT NO. 7021 0350 0001 7810 3545

DATED this 20th day of July 2021.

Sonia Del Rio

Sonia Del Rio, an Employee
of the State Bar of Nevada

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF
JAMES J. JIMMERSON, ESQ.
NEVADA BAR NO. 0264

Case No. _____

VOLUME II

RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS AND TRANSCRIPT OF HEARING

Daniel T. Young, Esq.
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State Bar of Nevada
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STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA)	
)	Case No.
Complainant,)	OBC20-0163
)	
vs.)	
)	
JAMES J. JIMMERSON, ESQ.,)	
)	
Respondent.)	
_____)	



FORMAL HEARING OF JAMES J. JIMMERSON, ESQ.

Taken at the State Bar of Nevada Via Zoom Videoconference
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada

On Friday, April 30, 2021

At 9:07 a.m.

Reported by: Deborah Ann Hines, CCR #473, RPR

Appearances (via Zoom videoconference):

Commission Panel:

THOMAS EDWARDS, ESQ.
Panel Chairman

IRA DAVID, ESQ.
Panel Member

ANNE HANSON
Laymember

For the Complainant:

DANIEL YOUNG, ESQ.
- and -
DANIEL HOOGE, ESQ.
Bar Counsel
State Bar of Nevada
3100 W. Charleston Boulevard
Suite 100
Las Vegas, NV 89102
(702)382-2200

For the Respondent:

DENNIS KENNEDY, ESQ.
- and -
JOSHUA P. GILMORE, ESQ.
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
(702)562-8820
dkennedy@baileykennedy.com
jgilmore@baileykennedy.com

Also Present:

ROB BARE

KRISTI FAUST
Hearing Paralegal

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1 CHAIRMAN EDWARDS: We are now on the record
2 in Case Number OBC20-0163, State Bar of Nevada versus
3 James J. Jimmerson, esquire. My name is Tom Edwards.
4 I'm the panel Chair. Would the rest of the panel
5 members please introduce themselves, starting with
6 the laymember.

7 COMMISSIONER HANSON: My name is Anne
8 Hanson. I'm a laymember.

9 CHAIRMAN EDWARDS: Mr. David, seems like
10 you're on mute.

11 COMMISSIONER DAVID: Okay. I just didn't
12 hit it hard enough. This is Ira David.

13 CHAIRMAN EDWARDS: Okay. And here for the
14 State Bar?

15 MR. YOUNG: This is Daniel Young with -- on
16 behalf of the State Bar.

17 MR. HOOGE: And this is Dan Hooge for the
18 State Bar.

19 CHAIRMAN EDWARDS: And for the respondent?

20 MR. KENNEDY: For the respondent, Dennis
21 Kennedy and Josh Gilmore for Mr. Jimmerson.

22 CHAIRMAN EDWARDS: Okay. Are the parties
23 ready to proceed with opening statements?

24 MR. KENNEDY: Mr. Chairman, this is Dennis
25 Kennedy. I had indicated in one of our prehearing

1 conferences that I would like to ask a couple of
2 questions of the other two panel members on voir dire
3 before we started, and you said that would be okay.

4 CHAIRMAN EDWARDS: Okay.

5 MR. KENNEDY: And for Mr. David, he knows
6 about this. This is like voir diring a couple jurors
7 that you've met for the first time and just ask a
8 couple of questions. And, Miss Hanson, I know you're
9 not a lawyer, but I just have a couple of questions
10 for both you and Mr. David, just as if you were going
11 to be jurors in a case. And you understand there's
12 nothing personal about this at all, I just have a
13 couple of questions.

14 Is that okay with both of you?

15 COMMISSIONER HANSON: That's fine with me.
16 Thanks.

17 MR. KENNEDY: Okay. I'll start with
18 Mr. David. Mr. David, the reason I ask these
19 questions is when we were trying to schedule this
20 hearing, the Bar gave us a copy of an email that you
21 had sent regarding scheduling. And you said in that
22 email, and I'm quoting it, "I just sent the panel
23 Chair an email requesting that I would prefer that we
24 leave this hearing electronic. I don't see an upside
25 to an in-person session and I see a lot of downside

1 not related to COVID." Do you remember sending that
2 email?

3 COMMISSIONER DAVID: I remember sending the
4 email, I don't remember the "not related to COVID"
5 comment. Oh, I do remember what I was speaking
6 about, and it was simply a matter of travel planning.

7 MR. KENNEDY: Of travel plans?

8 COMMISSIONER DAVID: Of travel time.

9 MR. KENNEDY: Travel time, okay. You see
10 why I ask that question?

11 COMMISSIONER DAVID: Absolutely.

12 MR. KENNEDY: You said there was some
13 downtime.

14 COMMISSIONER DAVID: If I may, I had on my
15 calendar an 8:30 mediation this morning, and I
16 scheduled that expecting both hearings to be done
17 electronically, which meant I did not have to commute
18 from one to the other. As it turns out, that hearing
19 was canceled, it was a matter that was set in
20 advance, so that would have been a nonissue as things
21 evolved. But that was the only reason I added that
22 comment.

23 MR. KENNEDY: Okay. Thanks. I appreciate
24 that.

25 COMMISSIONER DAVID: No problem.

1 MR. KENNEDY: Miss Hanson, same kind of a
2 question. And, by the way, I'm not losing my voice,
3 I'm just suffering from my yearly allergy bout in
4 April.

5 And my question for you is, you spoke to a
6 scheduler on a scheduling call with a member of the
7 State Bar. Do you remember that?

8 COMMISSIONER HANSON: No.

9 MR. KENNEDY: Okay. So you have no
10 recollection of a phone call?

11 COMMISSIONER HANSON: No.

12 MR. KENNEDY: Okay. The message that we got
13 from the State Bar was that holding the hearing in
14 person would be a problem because you needed to be at
15 your business and wanted to do it electronically.

16 COMMISSIONER HANSON: Well, I am at my
17 office, and I have a schedule, which is why I asked
18 for the 1:00 o'clock break time. So I had to be here
19 for something at 1:00 o'clock. And I don't remember
20 if it was a phone call or an email. It was
21 communication, but I didn't -- I was thinking it was
22 an email communication.

23 MR. KENNEDY: Okay. Maybe -- I may be
24 wrong. I may -- recollection --

25 COMMISSIONER HANSON: I don't frankly

1 remember.

2 MR. KENNEDY: Okay. Other than the 1:00
3 o'clock phone call that you would be taking, and we
4 get it, we understand all that, are you able to
5 devote your full time and attention today?

6 COMMISSIONER HANSON: Yeah, absolutely.

7 MR. KENNEDY: Okay. That's good. Those are
8 the only questions I needed to have answered.

9 CHAIRMAN EDWARDS: All right. So opening
10 statements for the State Bar?

11 MR. YOUNG: Before we proceed to opening
12 statements, the State Bar has a couple of
13 housekeeping matters that we'd like to address.

14 CHAIRMAN EDWARDS: Okay.

15 MR. YOUNG: The first being we would invoke
16 the exclusionary rule, so any witnesses that are not
17 testifying today, we'd ask that they be excluded from
18 the presence of the audio/video. I know that
19 Mr. Kennedy has a number of people in that room. It
20 would be only appropriate for the witness testifying
21 to be in the room, and of course the attorneys and
22 Mr. Jimmerson.

23 MR. KENNEDY: Yeah, my response to that is
24 to go to NRS 50.155. And that rule is universally
25 interpreted to allow an expert witness to attend the

1 proceeding because that expert witness' testimony is
2 going to be based on the testimony given in the
3 proceeding. So Judge Bare has the right to be here
4 and listen to the testimony.

5 Secondly, 50.155 also says we are allowed to
6 have anyone present whose presence is necessary to
7 the presentation of our case. That would be Amanda
8 Kahn. Ms. Kahn, while she's going to testify, is the
9 person that we will have to depend on to locate, when
10 questions come up, of the books and records of the
11 Jimmerson Law Firm. That includes personnel records,
12 it includes payroll, trust account and everything.
13 She is the one person who is able to locate that and
14 provide it either to us or to the Bar or to the panel
15 members if it comes up. And she has her laptop here
16 and has access to all that information.

17 So the expert is allowed to attend because
18 his testimony is going to be based on what he hears
19 and sees. And Miss Kahn is necessary to us because
20 she has all of the information at the ready. And I
21 can tell you that none of the rest of us are able to
22 access it.

23 CHAIRMAN EDWARDS: So, Mr. Kennedy, no
24 objection to excluding James M. Jimmerson from the
25 room?

1 MR. KENNEDY: That's correct. His testimony
2 may not even be necessary.

3 CHAIRMAN EDWARDS: Okay. State Bar's
4 response?

5 MR. YOUNG: Yeah, my response with the
6 expert in the room, obviously the State Bar's not
7 calling an expert, so he doesn't need to hear that
8 testimony. In addition, his testimony is limited to
9 any violations of 5.3. So to the extent that the
10 State Bar's witnesses are testifying not in relation
11 to 5.3, it would be improper for him to sit in and
12 hear that particular testimony.

13 With regard to Amanda Kahn, I find it
14 difficult to believe that the attorneys in the case
15 are not familiar with the documents to be able to
16 locate those documents on a request. And I do
17 believe that she is listed as a witness in this
18 particular case and will be testifying, so she should
19 be properly excluded while the other witnesses are
20 testifying.

21 CHAIRMAN EDWARDS: Mr. Kennedy, where is the
22 exception that allows Miss Kahn to stay in the room?

23 MR. KENNEDY: Let me open the evidence code.
24 It is NRS 50.155(2)(C). This section does not
25 authorize the exclusion of a person whose presence is

1 shown by a party to be essential to the presentation
2 of that party's files. That's Miss Kahn.

3 CHAIRMAN EDWARDS: And the proposed scope of
4 Miss Kahn's testimony is what?

5 MR. KENNEDY: Miss Kahn will be examined by
6 Mr. Gilmore. I'll have Mr. Gilmore sum it up. I
7 know what it is, but he'll be better able to sum it
8 up than me.

9 MR. GILMORE: Panel Chair, Miss Kahn was the
10 bookkeeper immediately preceding the retention of a
11 different bookkeeper, Leah Ballard. She was involved
12 in the training of Miss Ballard, stayed in
13 communication with her, and then returned and to the
14 present works at Mr. Jimmerson's firm as the
15 bookkeeper. So she had direct personal knowledge of
16 not only her involvement in the books, her
17 communications with one of the subject grievants at
18 issue in this proceeding, and then she was involved
19 in the legal steps that were taken after the prior
20 bookkeeper had resigned. So she has firsthand
21 knowledge.

22 She also can speak to policies at the firm
23 as it relates to the issue that we're dealing with.
24 And then of course depending on what happens later
25 today, if they are relevant, mitigating factors. So

1 her testimony is relevant for a variety of reason.

2 CHAIRMAN EDWARDS: Okay. And, Mr. Kennedy,
3 your position is that you cannot present your case
4 without Miss Kahn in the room?

5 MR. KENNEDY: That is my position. Our case
6 not only depends upon the documents that are in
7 evidence, but there's going to be a lot of testimony
8 about dates, times, amounts, and all these
9 transactions. She is the one who, when these matters
10 come up, can go to the records and find them;
11 otherwise, I'm going to have to ask for a break, have
12 her come in, find the date or the transaction or the
13 amount at issue, give it to me and then come back and
14 say, okay, we've located it.

15 We're dealing with books and records of a
16 law firm over a period of years. She's the one that
17 knows where everything is, and we need her here when
18 those things come up. Without her it's going to be
19 very, very difficult for us to defend this.

20 CHAIRMAN EDWARDS: Okay. Mr. Young?

21 MR. YOUNG: And, again, I really don't
22 understand why the attorneys in this case haven't
23 been -- aren't prepared to present the documents to
24 the witnesses. That seems a little bit unreasonable
25 to me actually.

1 CHAIRMAN EDWARDS: Okay. I am going to
2 exclude Miss Kahn. She sounds like a very important
3 witness and should be subject to the exclusionary
4 rule.

5 MR. KENNEDY: Okay. And Judge Bare stays, I
6 take it?

7 CHAIRMAN EDWARDS: Correct.

8 MR. KENNEDY: All right. Amanda, we'll be
9 in touch.

10 CHAIRMAN EDWARDS: Okay. Are we ready to
11 proceed with opening statements?

12 MR. KENNEDY: I'm ready to go.

13 MR. YOUNG: The State Bar has one last
14 additional housekeeping matter. This case obviously
15 does include a certain amount of bank records that
16 there's going to be referenced by both parties. In
17 that light the State Bar has prepared an index of the
18 transactions as the panel got -- that will guide the
19 panel members as the testimony is being given, if
20 they so choose to review the index.

21 We can present that index to the panel
22 Chair, and if he's willing then we can produce it to
23 the other panel members for their following along.
24 We would make that request. This is a request that
25 the other -- Mr. Kennedy and Mr. Gilmore did not

1 stipulate to, but we would make the request to the
2 panel Chair at this time to present that index of the
3 transactions to Mr. Chair for his review, and then it
4 could be, you know, assuming that it's authorized as
5 an index, we could present that to the other panel
6 members to follow along through the exhibits that
7 have already been pre-admitted during the hearing.

8 CHAIRMAN EDWARDS: Mr. Kennedy?

9 MR. KENNEDY: Our objection is based on
10 foundation. Somebody has to say, yeah, I prepared
11 this and it's accurate and here's how I did it. That
12 was our only objection to it, and we don't have any
13 foundation for it.

14 MR. YOUNG: And the State Bar is not
15 offering it as an exhibit or evidence in the
16 particular case, it's simply a guide to aid in the
17 panel members as the evidence is presented.

18 CHAIRMAN EDWARDS: It sounds like a summary
19 of voluminous records, and I think it would assist
20 the panel to have the document, so we'll circulate
21 it.

22 MR. YOUNG: Thank you. I'll have Miss Faust
23 at this time, she has that PDF, and she can circulate
24 it to Mr. Edwards. Or, Mr. Edwards, are you asking
25 to have it circulated to the entire panel?

1 CHAIRMAN EDWARDS: Yes, please.

2 MR. YOUNG: Thank you.

3 MS. FAUST: It has been sent.

4 CHAIRMAN EDWARDS: Did the rest of the panel
5 receive the attachment?

6 Okay. Any other housekeeping?

7 MR. YOUNG: No, sir. With that the State
8 Bar is ready to proceed with opening statements.

9 CHAIRMAN EDWARDS: Please do.

10 MR. YOUNG: Great. Thank you. I appreciate
11 the panel members spending their time. I know that
12 their time today is important, and you guys are
13 serving on a voluntary capacity, so we appreciate
14 that, without further ado.

15 This case is about a pattern of, at
16 Mr. Jimmerson's law office, of misappropriating
17 clients' funds by making lump sum transfers out of
18 his trust account without justification and then
19 depositing those funds into his corporate account so
20 he can meet his firm obligations, such as payroll.

21 The State Bar anticipates that the evidence
22 is going to show that on or about November 20th,
23 2019, Mr. Jimmerson's payroll account closed with a
24 balance of only \$2500 in that account. Similarly,
25 his corporate operating account closed with a balance

1 of only roughly \$19,000. Together those two amounts
2 were not enough to make his following payroll
3 disbursements.

4 The very next day, on November 21st,
5 Mr. Jimmerson withdrew \$45,000 out of his client
6 trust account without a client-linked purpose or
7 justification. He sent the money to his corporate
8 account and then funneled it to his payroll account.

9 The evidence will show that thereafter, on
10 November 22nd through November 27th, 2019,
11 Mr. Jimmerson disbursed approximately \$46,000 from
12 his payroll account before the next deposit in his
13 payroll account was made in December.

14 The evidence will establish that these
15 disbursements would not have been possible but for
16 the use of his client trust funds. The evidence will
17 show that Mr. Jimmerson later tried to justify
18 withdrawing the money by claiming that it was for
19 earned fees; however, we are going to show you that a
20 large portion of those claimed fees were not
21 justified. They were not actually on deposit for him
22 to transfer until after he made the withdrawal and
23 sent the withdrawal to his payroll account.

24 The evidence is also going to show that on
25 November 9th, excuse me, November 14th and

1 November 25th, 2019, Mr. Jimmerson made similar lump
2 sum transfers in the amounts of \$40,000 and \$60,000
3 respectively out of his trust account. And again
4 we're going to show you that those withdrawals were
5 not justified until later. The clients did not have
6 funds on deposit for Mr. Jimmerson to withdraw out of
7 his trust account.

8 Following that pattern, on December 19,
9 2019, Mr. Jimmerson withdrew \$10,000 out of his
10 client trust account. He claimed it was for fees
11 related to the Jay Nady matter; however, we are going
12 to show you that Mr. Jimmerson didn't earn those fees
13 until January of 2020, as evidenced by his own
14 invoice for the work performed on the Jay Nady
15 matter.

16 A final piece of the pattern we will show
17 you that Mr. Jimmerson transferred \$15,000 from his
18 client trust account into his personal family trust
19 account without justification. Now, this pattern of
20 these transfers from Mr. Jimmerson shows that he has
21 a pattern of misappropriating client funds in
22 conducting these lump sum transfers.

23 Mr. Jimmerson's conduct violated Rule 1.15,
24 safekeeping of client funds, and we're going to ask
25 the panel to find that he violated that ethics rule.

1 Thank you.

2 CHAIRMAN EDWARDS: Mr. Kennedy, would you
3 like to make an opening statement or wait?

4 MR. KENNEDY: I would. And what I'm going
5 to do is I'll move the computer monitor over here
6 closer to me so I don't have to talk so loud. In
7 fact, Mr. Gilmore is going to give me a hand on that.

8 Yeah, there we go. Okay. Everybody good?
9 Everybody can hear me? Okay. Good morning, again.
10 Here is what the case is about. Most of the time
11 lawyers are involved up to their eyeballs in the
12 actual practice of law, doing the things that lawyers
13 do. But as lawyers, to some extent, all of us also
14 operate businesses, and we have to run our law
15 practices as businesses. We've got billing, we've
16 got collections, we've got to pay vendors, and we've
17 go to deal with employees. This case involves the
18 business side of the law firm.

19 There are two parts to the case and two
20 issues. The Bar only spoke about one, and that's
21 some trust account transfers. But if you look at the
22 complaint filed in this case, there are two counts.
23 One count is under Rule 5.3. And 5.3 is lawyer's
24 responsibility for nonlegal personnel; your
25 responsibility for your assistant, your bookkeeper,

1 your paralegal, et cetera, et cetera. Mr. Jimmerson
2 is charged with violating Rule 5.3, something the Bar
3 said more about in its opening.

4 And Rule 5.3, and we'll get into it in a
5 little bit more detail from me, but especially with
6 Judge Bare, Rule 5.3 says that lawyers running a law
7 firm have to have a system in place where they make
8 reasonable efforts to ensure that their nonlawyer
9 assistants, in this case namely a bookkeeper, are
10 acting in accordance with the lawyer's professional
11 responsibilities.

12 And under Rule 5.3, if you are alleged to
13 have violated it, you look to see if a system was in
14 place so that you could ensure compliance with the
15 rule. And then if something went wrong, if you could
16 detect it and find out that there may not be
17 compliance with the rule, and then what did you do
18 about it when you found out that there was a problem.

19 In this case, if you look at the complaint,
20 and we're defending the complaint, we're not
21 defending what Bar Counsel argues, we have a charging
22 document that charges us with violating rules. If
23 you allege that Mr. Jimmerson violated Rule 5.3, then
24 what you look at in the analysis is first the hiring.
25 What happened in the hiring of this bookkeeper,

1 Miss Ballard. What -- after she's hired, what
2 happened in her training. Next, what happened in her
3 supervision after she started to work. Those are the
4 principal inquiries that we'll make at the outset.

5 And what the evidence will show here is that
6 Mr. Jimmerson performed as well as he could have in
7 selecting a candidate, in training the candidate,
8 Miss Ballard, in supervising her, both he and
9 Miss Kahn, and that problems ensued. And the
10 problems that ensued, and we are talking, as you will
11 see from the evidence, a very short period of time.
12 Miss Ballard started as a probationary employee in
13 October of 2019. She was hired and she began full
14 time as a bookkeeper on her own November the 7th of
15 2019.

16 The three transactions at issue, the
17 principal transactions, what the Bar mentioned,
18 occurred in a very short period of time after the 7th
19 when she started. The evidence will show you that
20 Mr. Jimmerson realized and found out on
21 November 25th, that's 18 days after she started, that
22 his books and records and accounts were a total mess.
23 And it is in that period that he wrote these three
24 checks that are at issue. There's two more but those
25 don't really play into the case. That's what the

1 evidence will show.

2 And then, because we're still talking about
3 Rule 5.3, when Mr. Jimmerson found out on
4 November 26th, what did he do. Because Rule 5.3, as
5 you can tell by reading it, and as our expert, Judge
6 Bare, will tell you, Rule 5.3 says, okay, let's see
7 what you did up until the time you found the problem,
8 then what did you do. What did you do when you found
9 the problem? And you will see that Mr. Jimmerson
10 jumped right on it.

11 One of the things he did was he hired back
12 Amanda Kahn, who had left, she'll tell you, to be,
13 and I don't say this in a derogatory way, a
14 stay-at-home mom with her daughter. Mr. Jimmerson
15 called her, she hadn't even been gone a month, he
16 said, You've got to come back, this is a disaster.
17 And she did.

18 And you will see from the evidence that
19 things got straightened out quickly. And by the end
20 of the year, by the end of December 2019, everything
21 was back on track. Clients were getting billed, they
22 were paying, the books and accounts were normalized,
23 and by the end of the year everything was back where
24 it should be in total and complete order.

25 So the first issue for the panel is the Rule

1 5.3 issue. The reason it's the first issue is that's
2 the big issue. That's the central issue in the case.
3 How did the problems happen? And the Bar realizes
4 that because it charged a violation of Rule 5.3. And
5 you will find, and the evidence will show you, I
6 don't think any doubt.

7 Question one, when an employee of a law firm
8 is not doing her job, and that's Miss Ballard,
9 Mr. Jimmerson had to have policies and procedures in
10 place to detect the problem and to deal with it.
11 Well, he sure did. He found it in less than 18 days,
12 I was going to say less than two weeks, but 18 days.
13 Then what did he do? Oh, he dealt with it. He
14 brought Amanda Kahn back to solve the problem, and
15 you will see what happened with Miss Ballard.

16 And we're not here to beat Miss Ballard up
17 or to disparage her in any way. As you'll see from
18 her texts to Amanda Kahn, she says, I have made a
19 mess of this. I have screwed this up royally. I'm
20 ill. I'm sick. I'm missing work. I'm in the middle
21 of a divorce and my husband is divorcing me. I can't
22 go on with this job.

23 And she resigned on December the 2nd. So
24 she had actually been there less than a month. She
25 went through training. She started on November the

1 7th and left on December the 2nd. And keep in mind
2 it's November, there's a string of holidays and
3 Veteran's Day.

4 So that is the Rule 5.3 issue is what
5 happened. Did Mr. Jimmerson find it and did he deal
6 with it, and the answer is going to be that he
7 certainly did.

8 The second issue, and this is what the Bar
9 focused on and didn't say a word about Rule 5.3,
10 which they charged. The second issue are these
11 checks. And I refer to this as this is the fallout
12 from the first issue. The first issues is the system
13 of bookkeeping, it turned into a real mess very
14 quickly.

15 The second issue is there's some problems
16 that arose from that. And there are -- the Bar
17 mentioned, and this is what they are, the five
18 transactions in the firm trust account. We'll
19 address each one. Two of the five I said earlier are
20 essentially irrelevant. One of them is money that's
21 transferred to a wrong account by Mr. Jimmerson. And
22 that account then is debited and the money comes back
23 out and goes to the correct account. So that just
24 can't violate any rule. It's just an error in a
25 transfer.

1 The second one is the one the Bar mentioned
2 with respect to Jay Nady. Mr. Nady had a retainer on
3 file with the firm for \$50,000 in the trust account.
4 Mr. Jimmerson called Mr. Nady, and Mr. Nady is going
5 to testify to this, Mr. Jimmerson called Mr. Nady and
6 said, I have a \$50,000 retainer. I'm going to be
7 doing a good deal of work on this file over the
8 Christmas holidays. Can I take \$10,000 now if I'm
9 going to do the work in a few weeks and then just
10 apply that to the bill. Mr. Nady said, Of course you
11 can. Go ahead. You need more than 10,000?
12 Mr. Jimmerson said no. Can I take the 10,000? Yes.

13 Well, I think it's pretty much black letter
14 law that there can't -- you cannot violate any ethics
15 rule by asking a client to apply a retainer to work
16 to be done where the client says yes, go ahead and do
17 it. It's that simple.

18 The three transactions that are at the heart
19 of this matter, and these are the fallout from the
20 problems with the firm's bookkeeping, are the three
21 transactions that were identified by the Bar:
22 November 14th, November 20th, and November 21st of
23 2019.

24 Now, what makes these three transactions so
25 significant? They all occur during the time period

1 when Miss Ballard is the bookkeeper and when the
2 books are a mess and screwed up. These are the
3 fallout from the problems with the bookkeeper.

4 As an aside, you will see that the Bar
5 looked at a lot of accounts prior to November of
6 2019, and a lot of accounts and a lot of transactions
7 after let's say the end of the year December of 2019.
8 There was not one suspicious transaction. There's
9 not one transaction that the Bar says here is a
10 violation.

11 The three alleged violations occurred when
12 the books and records were in chaos. Mr. Jimmerson
13 is going to tell you, when he testifies, he thought
14 that the money from these particular clients was
15 there. He's going to tell you that he had earned the
16 money by doing the work that the clients had been
17 billed for those fees. And he believed that those
18 fees had been paid and received by his firm, and so
19 he wrote these checks.

20 Now, there were no bad checks. There were
21 no checks that bounced. There were no NSF checks in
22 this case. The trust account had sufficient funds in
23 it to cover all these checks. And guess what,
24 Mr. Jimmerson's belief was wrong. The moneys had not
25 been received.

1 But guess what else? The money was received
2 shortly after that. So what happened was he wrote
3 checks against moneys he thought were in the account.
4 On the dates that he wrote the checks, the money
5 wasn't there yet, but the money came, meaning in one
6 instance it came the next day, and in the other
7 instance I think it came eight days later, and so
8 that's what happened. And he will tell you that this
9 is the fallout from his law firm's books and records
10 being a mess.

11 Now, the Bar, I can tell by their opening
12 statement, that they don't even mention Rule 5.3,
13 which they charged. The 5.3 issue is the main issue
14 in this case. The checks are the fallout off of the
15 main issue, the main issue being the disaster that
16 befell the finances of the firm. I don't mean
17 finance, I mean recordkeeping. The firm's finances
18 were fine, the records were a mess.

19 What Mr. Jimmerson will tell you in detail
20 is he will say, Miss Ballard was supposed to give me
21 daily cash reports. We all get those in law firms.
22 Money in, received, account balances, et cetera, et
23 cetera. Miss Ballard didn't do that. That was one
24 of the things she's supposed to do and she didn't do
25 it. She didn't get it done.

1 So what he was doing was he was operating on
2 his belief, and the way he had operated for years,
3 money earned, money billed, and from these clients
4 the money comes in. He was wrong in that the money
5 wasn't there. It came in a few days or eight days
6 later. But that's the fallout. The fallout is the
7 chaos in the financial reporting, it caused, it
8 enabled these checks to be written when they should
9 have been held or not written for a few more days.

10 But here's the point of that, and that's why
11 I call it the fallout, is there were no NSF checks.
12 No checks bounced. No checks bounced. Secondly,
13 there was no harm to any client as a result of this.
14 And I can say that confidently, because if you look
15 at the complaint that the Bar filed in this case,
16 there is no allegation that any client was harmed.

17 And if you want to look at the complaint,
18 it's paragraph 30 and paragraph 37 in the complaint,
19 the Bar says there was potential harm. Potential
20 harm from this. Okay, fine. But there's no actual
21 harm that occurred to any client. And as
22 Mr. Jimmerson will tell you, the idea that there was
23 even potential harm borders on nonsense.

24 Mr. Jimmerson has other businesses, and he
25 has other sources of money that if he thought that

1 there was a potential for harm and didn't believe
2 what he actually believed, he could have taken the
3 money from other sources and put it into his law
4 firm. So there really wasn't any potential harm, as
5 the Bar alleges.

6 But let's go back now that we finished the
7 fallout and the evidence that will show to Rule 5.3,
8 because that's the issue in this case. The rule is,
9 and I'm paraphrasing, but this is a pretty good
10 paraphrase, if you're the boss, if you're the
11 supervisor, you must make reasonable efforts to
12 ensure that your firm has measures in place to ensure
13 that your employees are behaving properly. That's
14 your obligation.

15 And here is detailed evidence that we're
16 going to present on that, because that's the issue
17 here is, first off, Mr. Jimmerson and Amanda, his
18 former bookkeeper, now current bookkeeper, who got
19 about a two-month hiatus, they'll testify that when
20 Amanda wanted to leave, they had to find somebody
21 new, so they put out ads, they did interviews, and
22 they decided to hire Miss Ballard. Who was
23 Miss Ballard, because that's the first stopping point
24 on the Rule 5.3 track.

25 Who was this woman? Well, Exhibit Y and

1 Exhibit Z are the two keys here. Exhibit Y is her
2 application, and Exhibit Z is her resume. And you
3 will see from the handwritten notes on the
4 application that her references were checked, and
5 Mr. Jimmerson will tell you that. This was a woman
6 who had a B.A. in business administration. She was
7 working on her master's in business administration.
8 And maybe most importantly of all, she was a captain
9 in the U.S. Army Reserve where she supervised 144
10 people and had a budget of \$30 million.

11 So Mr. Jimmerson will tell you, when she
12 applied for this job, I thought I had struck gold.
13 What a great employee this would be. And she is
14 hired and goes through training. Hired in October of
15 2019, she spends two and a half weeks with Amanda
16 training, going through every duty, every step.
17 There's a -- there will be testimony about the
18 employee handbook and how that was explained. And
19 Amanda said after two and a half weeks she was ready
20 to go. She was ready to be on her own.

21 And Mr. Jimmerson talked to her, everybody
22 agreed, this is someone who can do the job and is
23 ready to do it. So the point of this is, this isn't
24 an unqualified person that came in off the street.
25 This is somebody with very good qualifications, and

1 you can see this when you look at her application and
2 her resume.

3 Her duties generally are, or were, to take
4 the attorney's time and input it, to input costs onto
5 the bills, to prepare the draft bills for
6 Mr. Jimmerson, to keep track of daily cash reports
7 and payments. And there's a lot of other stuff but
8 those are the principal duties. She starts on
9 November 7th.

10 So then the next question is what sort of
11 supervision did she have. Mr. Jimmerson, like a lot
12 of us, is a very hands-on lawyer. He will tell you
13 that he's in the office essentially every day. Every
14 day, unless he's out of town. And he's there. He
15 interacts with his employees, and he'll tell you he
16 saw her pretty much every day she was there, asked
17 her, everything okay? How are things going, et
18 cetera, et cetera.

19 Amanda will tell you she was available via
20 phone and electronically to help Miss Ballard every
21 day, and that she spoke with Miss Ballard about the
22 bookkeeping at the firm and answered her questions
23 almost every day, almost every day, and that she had
24 no inclination or no clue that there were any
25 problems.

1 What happens is she starts on November the
2 7th. And what we call pre-bills or draft bills that
3 lawyers send to their clients, you don't send the
4 draft, you review the draft, you approve it, and it
5 goes out to the client, those have to be prepared
6 somewhere around or after the 20th of the month. So
7 Amanda will tell you, and there are text messages
8 confirming all of these conversations, Amanda will
9 tell you that on the 25th of November she went into
10 the firm's system and found that most of the attorney
11 time since Ms. Ballard started work had not been
12 entered for the lawyers.

13 And Amanda, she didn't panic, she was very
14 concerned about that. She communicated with
15 Miss Ballard the next morning before 6:00 a.m., they
16 had a conversation going back and forth, and
17 Miss Ballard said, Yeah, I haven't done any of this
18 stuff that I'm supposed to have done. I haven't done
19 anything. And she says, and again I'm not trying to
20 disparage her, she says, I have completely fouled
21 this up. This thing is a total mess, and it is my
22 fault, everything that has happened.

23 Well, this is where Amanda sends a
24 communication to Mr. Jimmerson November 26th and says
25 to Mr. Jimmerson, We have a disaster here. Our new

1 bookkeeper, Miss Ballard, hasn't done any of the
2 things she's supposed to do, and I don't know what
3 we're going to do about it. Remember, Amanda's not
4 even an employee at that point. I don't know what
5 we're going to do. This is a complete mess.

6 Of course Mr. Jimmerson, this is the first
7 time he learns of this, and of course he says, Oh, my
8 God. He gets in touch with Miss Ballard and he says,
9 Look, we can't do this. This is our lifeblood at
10 this firm. You haven't done any of the things you're
11 supposed to do. I don't know what I'm going to do,
12 but I have to get on this because we cannot go on
13 like this.

14 Yeah, and Mr. Jimmerson says to Amanda,
15 You've got to come back. You have to come back and
16 help me. I don't know what I'm going to do, but I
17 sure can't have Miss Ballard do it because she hasn't
18 done anything, and I don't know what's going to
19 happen.

20 Amanda come backs, to her everlasting
21 credit, and works basically, as she'll tell you,
22 about two straight days to get all of this stuff
23 squared up and to get the bills out, the time entered
24 and all of that. And to those of us who are lawyers,
25 you know what a process that is.

1 And then we have Miss Ballard, and we have
2 another text message from her saying, I don't know
3 what I'm going to do. Essentially my life is a
4 disaster. My husband is divorcing me. I'm ill. I
5 can't work. I've got to resign. And she does.

6 And nobody disparages her. Mr. Jimmerson
7 will tell you, because of her personal problems that
8 took complete precedence over her work for me, and
9 she said she's going to quit, and that's fine. Now I
10 have to go back and try to restore order here where I
11 thought everything was going on normally and
12 obviously has not been.

13 And he and Amanda and the rest of the people
14 at the Jimmerson Law Firm, having detected the
15 problem, restore order. And they'll tell you by year
16 end, by the next month, order was completely
17 restored. It actually was restored before then, but
18 everything was as it should have been by the end of
19 2019.

20 So by then all the bills were done, the
21 bills were paid, the accounts were balanced, no harm
22 came to any client. No bounce checks. No losses to
23 anybody. But a very difficult month of November, and
24 a difficult month of December restoring order.

25 Now, as you'll see from the evidence, it

1 will be self-evident that the problem here was not
2 negligent hiring. You can look at her resume and her
3 job application. This was a very, very, very well
4 qualified bookkeeper. And it was not due to lack of
5 supervision. She was trained for two and a half
6 weeks by somebody who knew the firm inside and out;
7 and at the end of that two and a half weeks, that
8 person who did the training, Amanda, said she's ready
9 to go. And Amanda remained available to her and
10 talked to her day-to-day throughout that point.

11 But by November 25 and November 26, it
12 became obvious she had been there, she hadn't done
13 anything that she was supposed to do. And that's
14 where the efforts to solve the problem begin.

15 Now, I'll stop there and tell you that at
16 that point we asked Judge Bare to analyze the
17 situation and to give you his opinion on how this was
18 handled. Hiring, training, supervision, et cetera.
19 And once the problem is discovered, what did you do.
20 Did you sweep it under the rug or did you jump on it
21 and get it solved? For those of you who don't know
22 him, Judge Bare has some experience in this area. He
23 was Bar Counsel for more than 15 years, and then he
24 was a District Court Judge for the next 10 years, and
25 he's now in private practice.

1 He'll give you his opinion on rule 5.3 and
2 Jimmerson and the Jimmerson firm's response to it.
3 He'll tell you in his own words, but essentially what
4 he will tell you is based on these facts, this was
5 handled from start to finish in about as good a way
6 as anybody could have handled it. You look at a
7 crisis and say, how did you perform? Judge Bare will
8 tell you this is how a lawyer and a law firm should
9 have done this. Couldn't have done any better than
10 they did once they found this.

11 And that is the 5.3 violation. Those are
12 all the essential facts. And Mr. Jimmerson will tell
13 you he did everything he could do. Judge Bare will
14 tell you in his own words, not mine, that
15 Mr. Jimmerson's performance was exemplary under the
16 circumstances.

17 Now, I know what you're thinking, I think.
18 Where does the Bar come into all of this? Because by
19 2019, the end of 2019, January 1 of 2020, there's no
20 involvement of the Bar at all. This is a problem
21 that the firm had. The firm knew what it had to do
22 and did it. And by the end of the year 2019,
23 everything was back to normal. The chaos was gone
24 and order had been restored.

25 At that point nobody had -- there had been

1 no NSF checks, nobody has lost any money, no client
2 had been harmed. There was a lot of turmoil at the
3 law firm, but over that two-month period it was all
4 resolved. So where was the Bar? Well, the Bar
5 wasn't involved at all. This is, I don't want to say
6 it's typical, but these are problems that law firms
7 have sometimes with employees is you have problems,
8 you resolve them and you resolve them to your
9 satisfaction. There's no client harm. If there is,
10 you got to deal with it.

11 But we had no interaction with the Bar
12 whatsoever. But three months later the Bar sends
13 Mr. Jimmerson a letter March 10th, 2020 and says,
14 Hey, we're inquiring about the activity in the trust
15 account, can you give us a response to that. One day
16 after Mr. Jimmerson gets that letter, and this is tab
17 10 in your exhibits, I'm pretty sure, now on one day
18 after getting the letter, Mr. Jimmerson says, Yeah,
19 look, let me send you the first batch of documents
20 here on my accounts. Here you go. Here they are.
21 And I'm happy to cooperate further with you. One
22 day.

23 And then there are two further inquiries
24 from the Bar to follow up, and that's tab 13. That's
25 April the 21st, that's 2020. The Bar comes back and

1 says, Could you give us some more information.
2 Mr. Jimmerson sends them, by my count, 549 pages of
3 stuff trying to address every issue and every concern
4 that he can think of. And there is a detailed cover
5 letter to that dated April 21st of 2020. It's a four
6 page single spaced cover letter where Mr. Jimmerson
7 addresses all of these issues that have come up.

8 And if you read that letter, and compare
9 it with his testimony that he'll give you today,
10 you'll see those facts haven't changed and his view
11 of those facts haven't changed. He has some opinions
12 that are expressed in the letter, but in terms of
13 saying to the Bar here's what happened, those haven't
14 changed.

15 And then there's another follow-up May 22,
16 and that is tab 18 of your exhibits, Mr. Jimmerson
17 responds again to the Bar's inquiries, another four
18 page single spaced letter with a number of
19 attachments saying here's the response to the rest of
20 your questions and an explanation for all of them.
21 And these all deal mainly with fallout with these
22 checks that were written during the period of chaos.
23 And that's -- and all of that happens through the end
24 of May of 2020.

25 So we are basically six months after the

1 problem is detected and solved that the Bar is
2 asking, Can you tell us what happened. Mr. Jimmerson
3 is saying, Sure, here you go. And we've produced way
4 over 500 pages, I haven't counted them all, of
5 records and explanation.

6 And then despite all of this, the
7 explanation, the records, in October of 2020 the Bar
8 files a complaint in this case. Now, that's almost a
9 year later. And the problem hasn't been solved for a
10 year, it's been solved for ten months, more or less.
11 The Bar's been given all the information, and the Bar
12 waits until October of 2020 to file the complaint.
13 Well, that's fine. That's the business we're in.
14 And we're here and we'll play the hand that the Bar
15 dealt.

16 The first hand that the Bar dealt was the
17 Rule 5.3 violation. I can't summarize it any better
18 than Judge Bare will summarize it for you. He'll
19 say, I've been doing this, the lawyer discipline
20 stuff, for a long time. The response to the Rule 5.3
21 chaos and crisis was about as good as you will ever
22 see. It was detected, it was resolved. Nobody lost
23 anything. And so on the Rule 5.3 claim, which is the
24 central claim in this case, I think the evidence will
25 lead you to the conclusion that there's no rule