

1 Exhibit 13 starting on page 20, 0-2-0. And is
2 everybody there? Okay, Mr. Jimmerson, you testified
3 earlier about a series of texts that caused you to
4 realize what I've called the crisis in the bookkeeping end of your firm. And this
5 about three pages, double sided. Are these the
6 texts?
7

8 A. They are.

9 Q. They are. Would you take us through text by
10 text here and explain what happened when you read
11 this and then what you did?

12 A. All right.

13 Q. And the panel will follow along with you.

14 A. Very good. So referring to our Exhibit F,
15 which is in evidence.

16 Q. It is. It's 13 F.

17 A. 13 F. Thank you. Ladies and gentlemen of
18 the panel, looking at the document on the top
19 left-hand page, the one that bears the 12:48 and it
20 shows a date, text message from Tuesday, November 26.
21 And the time is not clear, but it's about 5:40 in the
22 morning or a little bit later. What had happened was
23 on the night before, on the 25th of November, which
24 is Monday night, Leah had not come to work. She had
25 come to work for an hour.

1 Q. That's Miss Ballard?

2 A. Thank you. Miss Ballard had come to work
3 for an hour, said that she was ill and didn't feel
4 well and went home. In the days before that she had
5 represented to me, because I'm talking to her on a
6 daily basis, and to Miss Kahn, who's talking to her
7 on almost a daily basis, that everything is going
8 well, the time sheets are being done, the pre-bills
9 are being done, the trust accounts are being
10 adjusted, as they're making payments and then we move
11 it over to the corporation, none of which turned out
12 to be true.

13 So we get word, a sense of what's going
14 on -- excuse me. Miss Kahn learns that Miss Ballard
15 has not done the time sheets.

16 Q. Yeah, let me direct your attention to the
17 third, fourth and subsequent lines. JJJ is you,
18 right?

19 A. That's right.

20 Q. "Still have 16 days that have to be
21 entered"?

22 A. They're already done. I've already filled
23 them out 16 days ago.

24 Q. Well, how long had she worked there at that
25 point?

1 A. Well, the 25th she'd been there 18 days,
2 plus the 17 days of training, rehearsal or practice.

3 Q. So it's fair to say that none of your --
4 really none of your time sheets had been entered?

5 A. Correct. Zero.

6 Q. And should they have been entered at that
7 point?

8 A. Of course. It should be done
9 contemporaneous to the submission to her. Of course.

10 Q. And JMJ is your son, right?

11 A. That's right.

12 Q. He has 18 days that hadn't been entered?

13 A. Correct. He's prepared them. She has them.
14 She's not entered them.

15 Q. Okay. And then the last paragraph, "I have
16 been trying to enter all the time sheets in the car
17 and will stay up and try to do my best."

18 A. This is Amanda Kahn driving to San Diego for
19 Thanksgiving holiday week, okay, doing the work from
20 her car on her computer.

21 Q. Okay.

22 A. So then I write, this is from -- this is
23 from Miss Kahn to me. So I try to be fair to
24 everybody so I create a group text, and so I include
25 Kim Stewart, my office manager and my secretary, I

1 include Shahana Pursell, our senior case manager
2 paralegal. I include Miss Ballard, and of course
3 myself, and then I say, "Leah, how did this happen?
4 The failure to enter these time sheets is holding up
5 our billing. This is our lifeblood. This cannot
6 repeat itself, period."

7 Q. Is that the first time you heard about this?

8 A. That's right.

9 Q. Okay. And then you get a response to
10 Mr. Jimmerson. Who is that from?

11 A. Leah Ballard.

12 Q. Please, what did she say?

13 A. "Mr. Jimmerson, it is my complete failure.
14 I got myself overwhelmed and did not communicate
15 that. I have gotten" -- and that's where it ends for
16 me. Oh, I see it's there. I see the top.

17 Q. Yeah.

18 A. It's my mistake. "I have gotten unorganized
19 and made a large mess. I take the responsibility for
20 it. I am willing to work to clean it up and help get
21 it in order to the best of my ability. I apologize
22 and it will not happen again."

23 Q. And you responded?

24 A. Yes. Next. And this is what I emphasized
25 in my testimony to Mr. Hooge to the State Bar's

1 question to me. "I don't like the concealment." To
2 have a failure is one thing, okay, but we are all
3 human. I'm not a quick-to-fire guy. I'm not a
4 tyrant. I want to work with my staff, okay. We've
5 invested a lot of time and money with this woman in
6 terms of training and the like, so I'm not
7 immediately thinking about termination for that.

8 But the lie, you know, the misrepresentation
9 that the work is being done, that the money's in the
10 bank, which caused me to make three transfers, that's
11 what's irritating. I mean, and I'm disappointed and
12 I'm trying to also respond reasonably, you know, not
13 raising my voice, talking to her in a sincere effort.
14 "I don't like the concealment. You never told me you
15 were, quote, overwhelmed, end quote, or behind. You
16 hid it from me. You have done a poor job." I am not
17 certain that I'm -- "I'm not certain what I am going
18 to do. The lack of candor is the most alarming. We
19 cannot have that."

20 Q. So you didn't fire her?

21 A. Did not.

22 Q. Okay. You're very upset?

23 A. I'm upset.

24 Q. What is her response?

25 A. Disappointed more than upset.

1 Q. Yeah. Okay. What's her response?

2 A. As everybody can read here, I understand. I
3 will need a check and it to be signed for the Goettl
4 bill to pay but otherwise I have the rest. I will
5 get them all paid so previously -- as previously
6 discussed my father can drive me in to print the
7 check for Goettl air.

8 Q. Okay. What's the Goettl air check?

9 A. We were -- Goettl is an air conditioning and
10 plumbing company. They were repairing damage done by
11 a homeless man on the roof of our building at 415
12 South Sixth Street, so it was a check to pay them for
13 their work. It was a sizable project.

14 But also what's concerning here, maybe to be
15 seen by the members of the commission here, the
16 board, panel, is her need to have her father drive
17 her now tells me that she's on prescription drugs and
18 can't drive.

19 Q. Yeah, I was going to ask you about that.

20 A. And so this is not known to me. She had
21 been in the military. She apparently hurt herself,
22 none of which she disclosed in an interview and the
23 like, okay. And she's not even working on this day,
24 on the 25th, or 26th of November. She doesn't work
25 the entire week of Thanksgiving week.

1 And so she says, I'm willing to come in, my
2 father will drive me and I'll pay the check. That's
3 not -- that's the most minor thing. That's one
4 check. It doesn't solve any of the failures that are
5 occurring. And so I appreciate her sincerity there,
6 and I appreciate her honesty because in your life
7 experience when do you have this kind of confession?
8 This is like Perry Mason, right? You have the person
9 admitting to the responsibility and the failure on
10 the witness stand. So I think that's unusual.

11 But what do you do? I don't fire her. You
12 act reasonably, okay. That's why I say I run a tight
13 ship. I really tried to do a good thing and the
14 right thing. So I get Amanda hired right on the
15 spot. I hire her, she agrees. I know I'm going to
16 have to raise her salary, okay, but I got to solve
17 the issue first and worry about the other mess. I've
18 got to take care of my clients.

19 Q. Next page. This is a screenshot. The first
20 one is an earlier text from Amanda to Leah, right?

21 A. Yes. This is the one that I mentioned
22 orally that she had sent to Leah when Amanda became
23 aware the time sheets weren't being done and that she
24 had been essentially lied to by Miss Ballard.

25 Q. Okay. Then the next one is on the 26th. It

1 starts out "hi, Amanda."

2 A. Right.

3 Q. What's that about and how do you react to
4 that?

5 A. Okay. So, "Hi Amanda. I'm sorry to leave
6 you with so much. I didn't realize there were so
7 many timesheets not entered. To be honest I got so
8 overwhelmed. My personal life has fallen apart and
9 my husband is causing me a lot of problems. He is
10 divorcing me. It's over really dumb stuff that is
11 not even true, but there isn't anything I can do.
12 I'm not sure if I should just put my resignation in
13 and quit at the law firm. I really have made a mess.
14 I got so disorganized and I got stuff working on the
15 building stuff with all the failure of the phone
16 system and all that. I feel unprepared and
17 completely failed. I'm not sure what to do at this
18 point. Sorry for the early text." Because it was
19 sent about 4:55 in the morning on Tuesday the 26th of
20 November 2019.

21 Q. Now, you testified earlier that you had
22 rehired Amanda?

23 A. Yes, on the 26th of November.

24 Q. And you guys got going on the billing and
25 then all of the account reconciliation, correct?

1 A. Yes. Leah Ballard didn't come to work that
2 week. She clearly flaked out. So Amanda and I
3 together did all the work all day Tuesday, Tuesday
4 'til midnight, Wednesday, Wednesday to midnight, and
5 the bills went out on Wednesday night or Thursday
6 morning, Thanksgiving day.

7 Q. Okay. And finally we have the last email
8 from Leah Ballard that is at page 23 of Exhibit 13 F.

9 A. Right. So now we have the Thanksgiving
10 holiday having passed. This is now the first
11 workday, Monday, December 2nd, and this is what we --
12 this is what she writes to Miss Kahn.

13 Q. And she's not writing to you, she's writing
14 to Amanda. That's fine.

15 A. That's fine. And Amanda's working for me at
16 the time formally. "Hi, Amanda. Wanted to thank you
17 for helping so much. I want you to know I am giving
18 my notice here. I haven't told them yet." Referring
19 I think to me. "But I am typing it up and giving it
20 to time. This is more than I can clearly handle and
21 it's really an unhappy environment. I think it's
22 better if I go somewhere else. I hope you had a
23 happy Thanksgiving. On top of everything I'm very
24 sick. So I may go home. I hope you can tell them no
25 to the work. I will help find someone if they need

1 it. This is just too much for me."

2 So what happened is she comes to work at
3 8:30 in the morning on Monday, December 2nd. She
4 sends this email to Amanda and goes home and she
5 accepts her resignation. There's nothing else to do.
6 She's not there anymore. And, you know, I sympathize
7 or empathize with her. I mean, she's going through a
8 lot, but it certainly did cause us a lot of trouble.

9 Q. That's enough on Leah Ballard. A woman
10 named Nicole Cruz has come up, and she, according to
11 Louise Watson, is the woman who notified the State
12 Bar about the alleged irregularities in your
13 finances. Is there a woman named Nicole Cruz?

14 A. There is.

15 Q. Okay. Tell us who that is and what
16 relationship she ever had to your firm.

17 A. She applied for and we accepted her position
18 as a legal secretary, or a legal assistant.

19 Q. That would be about when?

20 A. She -- first day of work was November 18th I
21 think.

22 Q. Okay. And how did things work out with
23 Miss Cruz?

24 A. She worked with us seven days only when I
25 terminated her.

1 Q. She was terminated why?

2 A. Because she had misrepresented her
3 qualifications to Kim Stewart, our office manager,
4 who initially interviewed her and hired her and to
5 me. She misrepresented that she was a third year
6 Boyd Law School student, and the quality of her work
7 was not representative of that, to say the least.

8 Q. What was it that led you to suspect that she
9 was not a third L at Boyd?

10 A. I asked her for the names of her professors
11 and she fumbled around and gave me names, but the
12 delivery, the response, the demeanor, you know, all
13 of us have common sense, put me on notice that maybe
14 she had been lying to me.

15 Q. So you terminated her for that reason?

16 A. I did.

17 Q. Did you tell her why you were terminating
18 her?

19 A. I absolutely did. Too many reasons. Of
20 course terrible work, misspellings. The word
21 "breach," she can't spell the word "breach." For a
22 three L she can't spell correctly, and many other
23 spellings. And just poor errors.

24 But also I called Dan Hamilton, the dean of
25 the law school, and as the panel knows, Mr. Edwards

1 certainly knows, Mr. David, maybe not Miss Hanson,
2 I'm an active member of the Bar. I'm well known. I
3 know Dan. He even tried to become president of UNLV
4 here in the last six months. I'm just saying that.
5 So he was responsive to me. "Jim, I've never heard
6 of this lady. I've checked with my registrar and
7 there's no one by this name."

8 And so, because I do protect the Bar, I
9 protect the Bar as well as I try to protect my
10 clients, so I wrote a letter to Miss Cruz on about
11 I'm going to say the 18th or 20th of December of 2019
12 and told her that perpetrating a fraud upon my firm
13 as well as the public that she's a third year law
14 student was not something that we were going to
15 tolerate, that I had notified Boyd law School and the
16 dean and that she would guide herself accordingly.
17 And I wrote that letter and sent it to the school,
18 which I'm battling now as the catalyst, as I look
19 back at it, for this ridiculous complaint that
20 Miss Watson received.

21 Q. Well, Miss Cruz. You said she was a
22 paralegal. Did she have any kind of --

23 A. Legal assistant.

24 Q. Legal assistant. Did she have any kind of
25 authority or responsibility for any type of financial

1 matters?

2 A. No, she never had anything to do with
3 anything with the accounting department or the like.
4 What I can tell now, looking back on it, she must
5 have had a girlfriend in Miss Ballard because she had
6 no knowledge, no involvement. I had two
7 conversations with Miss Cruz in the seven days she
8 worked with our firm only, and that was about her
9 work.

10 And so the answer is no, she had no
11 involvement with accounting, no knowledge. It's just
12 outrageous. It's just, you know, it really is
13 disappointing how you get a disgruntled employee who
14 you challenge because of her lies to you about Boyd
15 Law School and the harm she can do the public and
16 then she actually -- and I'm kind of disappointed,
17 although Miss Watson is a very quality gal, but she's
18 going to issue subpoenas based upon Nicole Cruz who
19 knows nothing about anything, and that's all. But it
20 is what it is.

21 Q. Let me conclude, and you've covered this in
22 your testimony, but I want to relate it back to the
23 Bar's trial brief. Page two. Well, it starts on
24 page one, line 24. There's an allegation that you
25 instructed another employee, Leah Ballard, to take

1 funds from the client trust account to cover payroll.

2 Did you instruct Leah Ballard to do that?

3 A. Absolutely not. And Leah Ballard's
4 statements make it clear why she quit. It had
5 nothing to do with any instructions from me. I never
6 instructed anybody to --

7 Q. We're not there yet.

8 A. But I'm also answering, this accusation of
9 being -- that really fries me. That really, really
10 is irritating because you work your whole life to
11 build a good reputation.

12 Q. Cruz, I'm reading from the trial brief, page
13 one, line 23, Cruz stated that she saw the text
14 message from you to Ballard with those instructions.
15 Is there any such text message?

16 A. Absolutely not. It's a damn lie. And the
17 State Bar should demand more before they make that
18 kind of accusation. They should have the document in
19 their possession. It is irresponsible for them to
20 include that kind of --

21 Q. Cruz claimed that, I'm still reading from
22 the trial brief, now going over to page two, Cruz
23 claimed that both she and Ballard knew that it was
24 theft.

25 A. Just sheer fabrication, made up nonsense.

1 How does this get into the State Bar complaint, which
2 my whole point is just so wrong.

3 Q. Cruz, this is still reading from the State
4 Bar's trial brief, Cruz told the State Bar that
5 respondent, you, told her and Ballard to look the
6 other way or they would be fired. Did you ever say
7 anything like that?

8 A. Never.

9 Q. And it actually says well, Cruz then says
10 that she and Ballard resigned.

11 A. Well, we know that's a lie. We know Ballard
12 resigned because of her complete failure. Miss Cruz
13 didn't resign, she was terminated by me, and I
14 followed up with a letter to her, copied to the
15 state -- copied to the Boyd Law School as to what she
16 had done and why I was firing her.

17 Q. Okay. Anything else we need to cover?

18 A. I don't believe so, except to say that I
19 understand the State Bar's role. I've been there.
20 But in the years when I was kind of leading the
21 charge, we would interview the respondents first. We
22 would give them a chance to try to explain rather
23 than quickly issuing subpoenas.

24 There are three transactions that the State
25 Bar legitimately should be asking me about. That's

1 what's being asked. These are billing errors. These
2 are failures of staff that caused the fallout, that
3 caused the thing. I wasn't given that chance.
4 Instead I face a complaint that is so outrage and so
5 false. The first seven paragraphs of the complaint
6 have a factual error in every single one of them, if
7 you just review it.

8 Q. I have.

9 A. So I feel like I'm here spending tens of
10 thousands of dollars in costs defending myself for
11 harm that never occurred, no intent to do anything
12 other than to practice law properly, and I have to go
13 through this. It's irritating, and of course it's
14 emotional, too, because I really do strive to be the
15 best lawyer I can for my clients and for my firm, for
16 my son who I hope to take a page out of my book.

17 And that's all. I just want to do a good
18 job. I want to complete my career the next ten
19 years, God allow me to do so, I'm 70 years old now.
20 I want to continue to be a leader, continue to try
21 cases. Mr. Edwards knows. He's certainly a fine
22 lawyer with a great record. Don't know Mr. David
23 very well but I know his work in mediation because
24 I'm a Supreme Court settlement judge for 25 years in
25 the initial group. So I just ask for a measured,

1 balanced deliberation and decision.

2 MR. KENNEDY: All right. Thank you. Let me
3 just check with Mr. Gilmore.

4 Have we covered what we wanted to cover on
5 this issue?

6 MR. GILMORE: Yeah, want to take a couple
7 minute break?

8 MR. KENNEDY: Yeah, can we just take a
9 couple minute break and see if we've covered
10 everything? The dismissal with prejudice of 5.3 kind
11 of mixed up my outline, but if we can take a couple
12 minutes to talk.

13 CHAIRMAN EDWARDS: Let's take a five-minute
14 break.

15 MR. KENNEDY: Yeah, thank you.

16 CHAIRMAN EDWARDS: Let's be back at 12:38.

17 (A recess was taken.)

18 MR. KENNEDY: Mr. Jimmerson is on his way
19 back in. We have Mr. Nady, who is on his way. He'll
20 be here at 1:00 o'clock, and he would be our last
21 substantive witness. We have other witnesses and
22 testimony on the sanction issue, if a violation is
23 found. But on the merits all we have left is
24 Mr. Nady.

25 And I will tell you he's going to come in

1 and say, I had that conversation with Mr. Jimmerson
2 and I told him you can take 10,000, you can take as
3 much as you want, go ahead, just do the work, but go
4 ahead and take the money now. But that's what he's
5 going to say.

6 CHAIRMAN EDWARDS: Okay. So your direct of
7 Mr. Jimmerson is complete?

8 MR. KENNEDY: Yes.

9 CHAIRMAN EDWARDS: Okay. Is there cross
10 from the Bar?

11 MR. HOOGE: No, thank you, Mr. Chair. I
12 think we have no further questions.

13 CHAIRMAN EDWARDS: Okay. And so,
14 Mr. Kennedy, you're not -- there's not another
15 witness for you to call right now because Mr. Nady is
16 not coming in until 1:00, right?

17 MR. KENNEDY: Right. He'll be here at 1:00.

18 CHAIRMAN EDWARDS: Okay. Let's go ahead and
19 take our lunch break. Miss Hanson, how much time do
20 you think you need?

21 COMMISSIONER HANSON: I'm not available from
22 1:00 to 2:00.

23 CHAIRMAN EDWARDS: 1:00 to 2:00, okay. So
24 we will reconvene at 2:00 o'clock.

25 COMMISSIONER HANSON: Okay. Sounds good.

1 MR. KENNEDY: See you then back at 2:00.

2 COMMISSIONER HANSON: Okay.

3 (A lunch recess was taken.)

4 CHAIRMAN EDWARDS: All right. Let's go back
5 on the record. I want to apologize. I should have,
6 before we had taken a break before lunch, asked the
7 panel if they had questions for Mr. Jimmerson.

8 Miss Hanson, do you have any questions for
9 Mr. Jimmerson?

10 COMMISSIONER HANSON: No, I don't. Thanks.

11 CHAIRMAN EDWARDS: Mr. David?

12 MR. GILMORE: He's muted, guys.

13 COMMISSIONER DAVID: No, I do not.

14 CHAIRMAN EDWARDS: Okay. Mr. Gilmore, I do,
15 hopefully just a very few questions for
16 Mr. Jimmerson. Can we put him back on?

17 MR. GILMORE: We can. Yeah, I'm going to
18 have him jump into that seat then.

19 THE WITNESS: Mr. Edwards and members of the
20 panel, can you see me?

21 CHAIRMAN EDWARDS: Yes.

22 THE WITNESS: Thank you, sir.

23 EXAMINATION

24 BY CHAIRMAN EDWARDS:

25 Q. I just want to confirm that what I think I

1 heard your testimony, so I'll keep it short, but you
2 rely on daily cash reports to determine what's been
3 paid to your firm, right?

4 A. I do. I have, of course, my own memory from
5 day-to-day, but yes, sir. That's right.

6 Q. I'm sorry, one more time?

7 A. My own memory from day-to-day, but yes, we
8 typically, traditionally, routinely have daily cash
9 reports, yes, sir.

10 Q. Okay. And it was Miss Ballard that was
11 tasked with preparing those daily cash reports?

12 A. After November 7th; that's right.

13 Q. Okay. And shortly after that you stopped
14 receiving those daily cash reports?

15 A. Correct. Approximately the 11th or 12th of
16 November, yes, Mr. Edwards.

17 Q. Okay. And so for each of the November
18 transfers that we're talking about, you did not have
19 the benefit of those cash reports?

20 A. That's true.

21 CHAIRMAN EDWARDS: Okay. Nothing further.
22 Thank you.

23 THE WITNESS: Thank you, Mr. Edwards. Thank
24 you, Mr. Chair.

25 CHAIRMAN EDWARDS: Debbie, can you please

1 swear in the witness.

2 Thereupon--

3 CRAIG JAY NADY

4 was called as a witness by the Respondent, and having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GILMORE:

8 Q. All right. Mr. Nady, good afternoon. If
9 you would, state your name just for the record.

10 A. My full name is Craig Jay Nady, N-a-d-y.

11 Q. Okay. You typically go by "Jay"?

12 A. Jay is -- you call me Craig when you're a
13 bill collector.

14 Q. Jay, it is. Okay. Jay, if you would, tell
15 the panel a little bit about yourself.

16 A. I'm 74 years old this summer, unfortunately.
17 I'm still alive. I've been a boxing referee in Las
18 Vegas since 1972 in the state of Nevada. I ran Mills
19 Lane's campaigns for all, because he and I were best
20 friends when he was referee and a judge.

21 I went to the University of Nevada. I went
22 in the army in '70 and got out in '72. And in
23 college I was a football player and a boxer. I won a
24 couple of national titles in boxing. I was the -- I
25 wasn't first string All American but I was on that

1 list. I was second string in '68, and again in '69 I
2 was honorable mention.

3 And I started a taxicab company. I had an
4 armored car company I sold in two thousand ninety
5 (sic) something and then later I started a taxicab
6 company here in Las Vegas. The armored car company I
7 sold to Loomis.

8 COMMISSIONER DAVID: Excuse me. I can't
9 hear him.

10 MR. GILMORE: Maybe talk a little louder.

11 THE WITNESS: I can talk louder. Is that
12 better?

13 COMMISSIONER DAVID: Not much.

14 (Discussion off the record.)

15 THE WITNESS: Do you want me to start over?

16 COMMISSIONER DAVID: I was able to get most
17 of that. Go ahead.

18 BY MR. GILMORE:

19 Q. Do you mind telling us about the armored car
20 business?

21 A. I sold the armored car to Loomis and
22 basically bought a hotel in Bullhead City. And the
23 security company, I still own and operate, as well as
24 the taxicab company, which is A Cab Taxi company.

25 Q. Okay. So are you still presently in the

1 taxicab business?

2 A. I'm still in the -- I should say I've been
3 married for, how many years? Got married in '69 to
4 my first wife. Still married to her. I call her my
5 first wife. And I have two kids, one is an
6 accountant in Reno, and an attorney in Phoenix. I've
7 lived a pretty unique life. I think I've refereed
8 more boxing matches than anybody in history, because
9 I've been doing it for so long, I'm still working.

10 Recently I just wrote the articles for
11 instant replay in boxing. It's been a project I'm
12 pretty proud of. Next month I have -- over the next
13 eight weeks I have five weekends I'll be at boxing.
14 And then I run my taxicab company. And my wife was
15 Steve Wynn's secretary for 26 years and now she's
16 retired. That's all. That's pretty much my life, my
17 family.

18 Q. How long have you been in Las Vegas?

19 A. I actually moved down here part time in '90
20 when the armored car company sold, and then I lived
21 for -- yeah, I lived here. I worked in Laughlin a
22 little bit because I opened up a security business
23 down there when the armored car company didn't have a
24 restriction for Laughlin and Arizona, so I still
25 worked down there, but I lived up here. I've been

1 here since '90 something.

2 Q. Okay. And at some point have you met James
3 Jimmerson?

4 A. Met Mr. Jimmerson when I attempted to get a
5 taxicab license, which I think was -- is the first
6 and only license that was -- has been authorized
7 since somewhere like 1963 or '64 in Las Vegas. So
8 there was another one, Boulder Cab for Boulder went
9 through, but mine was the first one. At that time
10 Mr. Jimmerson was the head of the Taxicab Authority.
11 I was on the Athletic Commission in the mid '80s so
12 I -- which was kind of a fun deal, so I'm aware of
13 that.

14 Q. Okay. And if you would, describe for the
15 panel what interactions you may have had with
16 Mr. Jimmerson when he was on the Taxicab Authority.

17 A. Well, I was trying to get a license for the
18 Taxicab Authority. It's an extremely arduous and
19 aggressive proposition, and no one's been able to
20 break through it forever it seems like. I -- it
21 was -- it's a very emotional situation because I was
22 on the stand I want to say for about six weeks.

23 Mr. Jimmerson was the head of that board.
24 He was appointed by then governor, forgot who it was.
25 Anyway, he -- the way he ruled over the board, over

1 the aggressive intervenors, who was all the other cab
2 companies, it was a six-week trial of my character
3 and my ability to run a company. I became enthralled
4 with the way the man controlled the audience. He
5 controlled these very aggressive and very wealthy
6 taxicab owners and the board itself that the governor
7 had also appointed. I was always amazed by his
8 ability to control a crowd, the way he was -- he was
9 fair and honest. I made it a point to seek him out
10 afterwards as a friend.

11 Q. Okay. And then let's fast toward a little
12 bit. Did there come a point where you hired
13 Mr. Jimmerson as a lawyer for yourself or your
14 taxicab company?

15 A. I lost a class action lawsuit, a minimum
16 wage class action lawsuit, and I thought that I
17 had -- I thought that I had -- the judge had made a
18 serious mistake. And I knew I was going to go to the
19 Supreme Court with an appeal, and I asked him to join
20 the group that I had already started on it about five
21 years ahead. It was a bit late to ask him but I
22 didn't know where else to turn.

23 He was the -- is the best man I know. And
24 he was an attorney. And I needed his help, and I
25 asked him for it and he became -- he became a lawyer

1 for me. I think that was in I want to say October of
2 '19.

3 Q. Okay. And so I think you answered but why
4 is it that you chose him to help you out with that
5 particular matter?

6 A. Like I said earlier, he's an impressive man.
7 He -- the way he controlled at that Athletic
8 Commission -- the Taxicab Authority, the people in
9 that situation. He was smarter, faster, better. And
10 people, when he said "quiet," they were quiet. He
11 had total control and he knew everything.

12 And I needed someone like that because I
13 thought that I had a terrible judgment. I was trying
14 to stop the collection of that until it could get to
15 the Supreme Court, because the collection would have
16 ended the company, A Cab.

17 Q. Was the matter urgent from your perspective?

18 A. Oh, urgent? Yes. I was desperate. I
19 should have called -- I should have had him represent
20 me earlier. I didn't think the case could possibly
21 have been a loss, and so I gave him a call and said
22 I'd like for you to help me. I'm in a spot.

23 Q. Okay. And what did he tell you?

24 A. He said he'd be glad to help me. He said,
25 I'll need a \$10,000 deposit, and I said okay, I'll

1 give you 50. I sent him \$50,000 and I said, Don't be
2 shy. If you -- I would rather you do too much than
3 too little. I'm on the ropes here. I really need
4 your help.

5 Q. Okay. So it was your decision to send him a
6 \$50,000 --

7 A. It was my decision. He asked for 10, maybe
8 20. I don't think he even realized it until I sent
9 it to him that I did that.

10 Q. Okay. Was there -- do you recall a phone
11 call to Mr. Jimmerson around the December of 2019
12 time period where he called to speak with you about
13 your particular matter?

14 A. I thought it was a silly phone -- yes, I
15 remember the call. I thought it was silly that I
16 gave him a deposit, I figured the funds were his.
17 But he told me he was going to actually withdraw the
18 funds, and I said fine. I didn't care what or where.
19 I have tremendous trust in the man. He's one of the
20 best men that I know. I know a lot of bad people, a
21 lot of good people, but he's a good man. And never
22 mind. I won't go any further.

23 Q. Okay. So he called and had a conversation
24 with you asking if he can take money from you of the
25 amount that you put in deposit with his firm?

1 A. I remember that conversation, yes.

2 Q. Okay.

3 A. I thought it was kind of silly.

4 Q. And this may seem like a silly question but
5 did you authorize him to take that money to apply
6 toward the work that he was doing?

7 A. I told him he could take all of it if he
8 wanted.

9 Q. Okay. Did Mr. Jimmerson and others at his
10 firm work on your matter?

11 A. Yes. Significantly. And he was able to
12 stifle the, to end the collection on that debt, and
13 now we're before the Supreme Court on May the 1st,
14 which he'll be there for me.

15 Q. Okay. So the matter is still pending?

16 A. The matter is still pending, yes.

17 Q. Okay. Have you been happy with his
18 services?

19 A. Completely.

20 Q. Okay. And the other attorneys at his firm,
21 and you've been happy with their services?

22 A. I've been very happy with everything that
23 they've helped me with.

24 Q. Okay. Have you ever had any concerns about
25 the reasonableness of the fees that he's charged you

1 for the work that he's done?

2 A. No. Probably wouldn't have sent him 50 if I
3 ever thought it was unreasonable. This man has a
4 great bit of talent and respect, and I can't believe
5 I'm sitting here having to justify or defend him. I
6 don't think it's right.

7 MR. GILMORE: Okay. Panel Chair, nothing
8 further.

9 THE WITNESS: All right. Thank you.

10 MR. KENNEDY: You might have --

11 THE WITNESS: Oh, I'm sorry.

12 CHAIRMAN EDWARDS: Any cross from the Bar?

13 MR. HOOGE: No.

14 Thank you, Mr. Nady. Appreciate your time.

15 CHAIRMAN EDWARDS: Okay. Any questions from
16 the panel?

17 No? Okay.

18 Thank you, Mr. Nady.

19 THE WITNESS: Good luck.

20 MR. KENNEDY: Thank you, Jay.

21 Okay. We're changing seats here. And this
22 is Dennis Kennedy again. On the substantive issues,
23 the respondent rests.

24 CHAIRMAN EDWARDS: Okay. I was going over
25 the ABA guidelines for discipline, and I, just so the

1 other panel members know, we -- the parties agreed to
2 bifurcate. So we are going to first decide whether
3 there is a violation, and then if there is, we'll go
4 to a second essentially sentencing phase.

5 But I'd like the parties' input on -- in
6 this first phase are we literally only deciding
7 whether there was a rule violation and then we'll get
8 into mental state, extent of the injury, and that
9 sort of thing as part of the sentencing phase? If
10 you can help me draw the line, I'd appreciate it.

11 MR. KENNEDY: Yeah. This is Dennis Kennedy
12 again. I think that's our agreement and
13 understanding. But I do have a motion once we've got
14 all this resolved but before we break. Appreciate
15 it.

16 MR. HOOGE: Yeah, I would agree to that. I
17 concur.

18 CHAIRMAN EDWARDS: I guess, gentlemen, I'm
19 not quite sure what you're concurring to. Are we
20 simply deciding whether there's a rules violation and
21 we'll get to the rest of it later?

22 MR. HOOGE: Right. So there's four Lerner
23 factors. One, was there a rule violation, and I
24 think that's where we stopped. The other three are
25 mental state, injury, and aggravating/mitigating

1 circumstances. Those three all just go to
2 sanctioning, so I don't think they would be
3 appropriate in the first phase.

4 CHAIRMAN EDWARDS: Understood. Okay.

5 MR. KENNEDY: I'm sorry, don't mean to
6 interrupt.

7 CHAIRMAN EDWARDS: No problem. You said you
8 had a motion, Mr. Kennedy?

9 MR. KENNEDY: I do. And I think you know
10 what it is because you made a comment when they
11 wanted to dismiss their Rule 5.3 claim, and you let
12 them do that. And I said, well, it's central to
13 everything. And you said, well, okay, if it is, you
14 can do something with that. Well, I'm going to do
15 something with it now.

16 If you look at the complaint, paragraph 39
17 of the complaint, now I'll wait until the panel
18 members find it. That paragraph, by its own terms,
19 incorporates paragraphs 1 through 23. Paragraphs 1
20 through 23 are the 1.15 violation. Those paragraphs
21 are incorporated into the 5.3 claim. The 5.3 claim
22 has been voluntarily dismissed with prejudice. That
23 means I have prevailed on all the allegations in
24 paragraphs 1 through 23.

25 Therefore, I ask that the first claim be

1 dismissed. When you voluntarily dismissed the second
2 claim, and you have incorporated the allegations in
3 the first claim into the second claim, you lose the
4 first claim as well. Both claims are now dead. And
5 I ask for dismissal of the first claim. Call it what
6 you want; res judicata, collateral estoppel,
7 stipulated dismissal, but that first claim is gone,
8 period, matter of law and we walk.

9 CHAIRMAN EDWARDS: Okay. The State Bar?

10 MR. HOOGE: Thank you, Mr. Chair. I think
11 it's a novel argument but it does fail. If you look
12 at the heading right above the first paragraph that
13 says General Allegations, so 1 through 23 are all
14 general allegations. And so there -- Mr. Kennedy's
15 argument is basically because Count 2, which is
16 essentially the allegations in paragraphs 34 through
17 39 also incorporates the general allegations and,
18 therefore, the general allegations are all dismissed.
19 And that certainly was not the State Bar's intent. I
20 think that's a little bit of an overreach.

21 There if you notice in Count 1 the general
22 allegations are also included. And so I think it's
23 pretty obvious what general allegations are and what
24 the intent is behind the general allegations.

25 What we propose is that the remaining

1 allegations that are at play right now are simply
2 paragraphs 25 through 28, which are the basic RPC
3 1.15 allegations. And the other allegations, which
4 go to sanctioning are the 29 through 30, 31, and then
5 obviously you have the general allegations that are
6 incorporated which give a background to the actual
7 charges in Count 1.

8 CHAIRMAN EDWARDS: Mr. Kennedy?

9 MR. KENNEDY: Yeah. That doesn't make any
10 sense. I have prevailed on the allegations in
11 paragraphs 1 through 23. They're a part of the
12 second claim incorporated by reference. I have
13 prevailed on those. If I have prevailed on those,
14 there is no way I can be -- Mr. Jimmerson can be
15 liable for a Rule 1.15 violation.

16 You go through those first 23 paragraphs, if
17 you say finding in his favor, finding in his favor,
18 finding in his favor, that he wins all the way
19 through. That's why it's a lot of times not a good
20 idea to dismiss claims where you've got incorporation
21 by reference in them because you're dismissing a lot
22 more than just what's in that claim. That's what the
23 Bar did here, and we're entitled to judgment.

24 CHAIRMAN EDWARDS: Okay. By abandoning the
25 Count 2, based upon the evidence presented by the

1 parties, I don't believe that the Count 1 is
2 resolved, so the motion is denied.

3 Would you like to have -- would the parties
4 like to have closing statements before we go into
5 deliberations as to whether there's a rule violation?

6 MR. KENNEDY: Mr. Jimmerson would.

7 MR. HOOGE: Yes, Mr. Edwards, we would.

8 CHAIRMAN EDWARDS: Okay. So, State Bar,
9 you're up first.

10 MR. HOOGE: Thank you. I have a PowerPoint
11 I'd like to share my screen with. So as I just
12 briefly mentioned, the Lerner formula has four parts,
13 the formula that the Supreme Court uses in every
14 discipline case. The four factors, and this comes --
15 it's called the Lerner formula because it comes from
16 the Glen Lerner case of 2008.

17 But the first part of that formula is the
18 duty violated. And so we look at the rules, the
19 Rules of Professional Conduct, and we determine
20 whether or not those rules were violated. There's
21 also three other parts: The mental state, the
22 injury, potential or actual injury caused, and then
23 aggravating or mitigating factors. So at this phase
24 I'm not going to be discussing the second through the
25 fourth factors, I'm just going to address the first

1 factors. The first factors, so the duty violated.

2 A lawyer has multiple duties, when you look
3 at the Rules of Professional Conduct. There's duties
4 to clients, the public, the legal system, and the
5 profession. When we address Rule 1.15, we're
6 specifically talking about a duty to clients, and
7 sometimes their third parties, but this is the most
8 important, one of the most important duties, which
9 are the duties to the client.

10 And so as a result you'll see typically when
11 you get to sanctioning later, that a violation of the
12 client-related rules comes with more harsh sanctions.
13 So these are very, very important safekeeping and
14 others related to work with the client are so
15 important to the profession.

16 Another thing I want to point out is that
17 intent is not an element of Rule 1.15. And so I
18 think it's really beneficial that we're going through
19 this bifurcation because obviously, you know, you're
20 going to argue mental state later, but that's for the
21 actual sanctioning. That doesn't have anything to do
22 with the rule itself. You'll notice that if you look
23 at the rule itself, Rule 1.15, it doesn't mention a
24 mental state or intent anywhere. It doesn't say
25 knowing, it doesn't say negligent, and it doesn't say

1 intentionally. It doesn't have a mental state.

2 This isn't like a criminal case where you
3 have a mental state, you have like mens rea where the
4 State Bar has to prove a certain level of intent.
5 Again, that does come into play for sanctioning, but
6 not for the violation phase. There's no intent
7 required whatsoever for Rule 1.15. Again mental
8 state and injury are elements -- are not elements,
9 but they will be addressed in the penalty phase.

10 So if we take at look at paragraphs 25
11 through 28, essentially that's what left. That's
12 what we're talking about in this case. There's four
13 simple allegations. The first one is that he,
14 Mr. Jimmerson, improperly used his IOLTA trust
15 account to pay his payroll obligations. That's more
16 fully set forth in paragraphs 10 through 15.

17 So did he use his trust account to pay
18 payroll obligations? That's what was alleged and
19 that's the evidence that we heard. I asked him who
20 withdrew the 45,000. He admitted "that was me." And
21 your intent was to pay payroll? "Yes, that was my
22 intent." He also admitted that there were not funds
23 in the account to justify that withdrawal.

24 So, you know, without using any terms,
25 misappropriation, conversion, anything like that,

1 just the basic black letter law of the rule is that
2 he violated RPC 1.15. And so when we talk about
3 this, we're talking about the language in 1.15, which
4 says you have a duty as an attorney to appropriately
5 safeguard your client's property.

6 Now, the trust account is the client's. You
7 heard several times throughout the hearing where
8 Mr. Jimmerson himself would say "I had plenty of
9 money in the trust account." And that itself is such
10 a problem, because it's not his money. You know, how
11 many times did they say, well, there was never
12 insufficient funds? Again, it's not their money.

13 The insufficient funds has nothing to do
14 with the client's money. Their own funds in his
15 operating account, were there sufficient funds to
16 cover payroll in the operating account? No. And so
17 that's where the disconnect is so many times when we
18 see misappropriation cases, the attorney, in his
19 head, is treating the client trust account as their
20 own account. And when they need money, they withdraw
21 money from the client account and take money from
22 clients. That's clients' money. It's not theirs.

23 They have a duty -- Mr. Jimmerson had a duty
24 to appropriately safeguard that money, meaning he
25 doesn't let anyone touch that money until it's

1 justifiably withdrawn. It was not justifiably
2 withdrawn. The was a violation of 1.15.

3 He admitted that he made the transfers in
4 question. This is what he stated in his statement.
5 "I had to personally make one or two transfers from
6 the client trust account to our corporate account."
7 And you'll find that Exhibit 18 at page one. He also
8 admitted on the stand that they were not justified at
9 the time. He did not have money in the account to
10 justify those transfers. The only thing he could peg
11 it to were deposits that were made later in time.
12 And by definition that means he took money from
13 client, other clients, clients that had money in
14 there that were not -- that money was not supposed to
15 be withdrawn, he withdrew and took that money.

16 I think the best analogy is wallets. I know
17 no one uses wallets anymore because we're more of a
18 technologically savvy culture. Everyone just uses
19 their phone even or their Apple watch, but I think it
20 makes a good analogy. If everyone had a wallet and
21 they gave the wallet to Mr. Jimmerson, say "hold my
22 wallet," if Mr. Jimmerson goes into that wallet,
23 takes their money and spends their money, it doesn't
24 matter if just before he returns the wallet he
25 hurries and pays back that money. He misappropriates

1 the money the minute he takes it out of that wallet.
2 That's their money, and he took it out
3 inappropriately. All right.

4 And when you take a look, this is a snapshot
5 of Exhibit 13 at 115. I brought this up with
6 Mr. Jimmerson, but this is Denise Cashman, all right.
7 She pays \$36,000 to Mr. Jimmerson. Now, his argument
8 is, yeah, but I earned that, eventually. But there's
9 a big problem with that because you look at it and
10 the transfer, the first transfer was made on November
11 14th. She didn't even pay him until November 22nd.
12 So whose money was that? He took \$31,000 from
13 somebody.

14 So we've got this big basket of wallets.
15 Denise Cashman's wallet is not there, is not in the
16 basket. He reaches into the basket and he pulls
17 money out of someone else's wallet and says, I'm
18 going to pay myself for Denise Cashman. Thank you
19 very much.

20 A week later, two weeks later, Denise
21 Cashman comes over and puts her wallet in the basket
22 and he says, Oh, now we're all rectified because I'm
23 going to take money out of her wallet and put in this
24 other person's wallet because I already took money
25 out of this person's wallet. And that's the problem.

1 That's misappropriation. That's textbook
2 misappropriation. That's not safeguarding your
3 client's money. You can't do that. You can't
4 transfer this.

5 And I think it's really important to notice,
6 too, that there's split transactions. Why would you
7 take out \$31,000 on November 14th and then four later
8 on the 21st? Why was that? Why was it split?
9 There's no -- if you look through all of the
10 evidence, even the backup that he provided, there's
11 no explanation whatsoever as to why you would split
12 this up. If you had earned it, why not just take it
13 all out? She pays on November 22nd. On November 22nd
14 he should have just withdrawn a full 36,000, but you
15 see on the 14th he pulls out 31,000. Remember, her
16 wallet is not in the basket, so he's taking from
17 someone else's wallet.

18 But why 31,000? Why not pull out the 36,000
19 because he knew that's what was coming? And the
20 reason why is because on the 14th it was a \$40,000
21 flat transaction. And on the 21st it was a \$45,000
22 flat transaction. And so that's why the State Bar
23 says after the fact they tried to justify the
24 transactions. They tried to justify the withdrawals.

25 And Mr. Jimmerson admitted to this. On the

1 stand he said, I didn't really know what I was
2 allowed to take out, I just took it out. And so when
3 you do that, and just take it out and you don't know,
4 you have to go back after the fact and then you have
5 to fix up the invoices to make sure that they match.
6 And so that perfectly even \$40,000 number that that
7 perfectly even \$45,000 number, they're not going to
8 fit nicely into a bunch of invoices. You're going to
9 have to split up at least one invoice to make them
10 match. That's exactly what happened here.

11 This wasn't -- this invoice, this
12 transaction wasn't detailed on November 14th. It
13 couldn't have been because they didn't have the
14 money. This was all created after the fact.

15 Okay. So let's look at another part. So
16 that addresses paragraph 25 and 26, right. He
17 withdrew funds from his IOLTA to pay payroll. He
18 withdrew funds from his IOLTA without verifying the
19 balances. And he took from someone else's wallet.
20 Denise Cashman, for example, her wallet wasn't in the
21 basket.

22 Now we look at 27, Jay Nady. He just
23 testified, and he said, Hey, that was fine. I let
24 him take out advanced fees. I let him take it out.
25 I didn't care if he hadn't earned it yet. He's worth

1 it, I trust him. Great. And I think it's
2 problematic. I saw this a lot as a criminal
3 prosecutor. You know, you often get defense
4 attorneys asking highway patrolmen, for example,
5 about what the law was, and they would often testify
6 wrongly.

7 And I will note this: At the end of the
8 day, the panel is supposed to come up with not only
9 findings of fact but also conclusions of law. And
10 that's where it's really important to distinguish
11 between facts and law. And so when you have a fact
12 witness on the stand, you should never ask a fact
13 witness a legal conclusion. Especially Louise
14 Watson. She's an investigator, she's great at what
15 she does, but does she know the law? No.

16 She said, Oh, yeah, you can -- you can pay
17 someone in advance. Well, can you? Let's look at
18 the actual law. This is the actual law. This is
19 Rule 115. It says, all funds received or held --
20 sorry, my box is kind of in the way, okay -- for the
21 benefit of clients by a lawyer or firm, including
22 advances for costs and expenses -- including advances
23 for costs and expenses -- shall be deposited in one
24 or more identifiable bank accounts designated as a
25 trust account. Okay, that's the black letter law.

1 You can look it up. That's in Rule 115.

2 Now, do attorneys in Las Vegas say, hey, you
3 can get advances? Yeah, all the time. I hear this
4 all the time. I've given multiple trainings, CLE
5 trainings on this. And that is a common
6 misconception. But is it the law? No, you can't do
7 it. You cannot ask a client to give you an advance
8 and go spend that advance. It's against the rules.

9 You look at the next part. This is actually
10 subparagraph C of Rule 115. A lawyer shall deposit
11 into a client trust account legal fees and expenses
12 that have been paid in advance. Now, this is so
13 important they've actually stated it twice in the
14 same rule. To be withdrawn by a lawyer only as fees
15 are earned.

16 So it doesn't matter if you ask Louise if
17 that's okay, can I do that, Louise? Can I get
18 permission to do that? No. Louise doesn't have the
19 authority to tell him that he can violate 115. It's
20 black letter law. The rules says you can't do that.
21 And if the rules says you can't do that, you can't do
22 that. There's no twisting, no amount of slanting
23 that rule to change in into what it said into
24 something that it's not. It says you can't do that,
25 and you can't do that.

1 Let's say hypothetically that you did do
2 that. Let's say Mr. Jimmerson did call up and say,
3 hey, you know, I need \$10,000, Christmas is coming
4 up, things are tight, can I take the \$10,000? Okay,
5 let's say hypothetically that that's true. You know,
6 I don't have any reason to disbelieve that. If that
7 is true, what just happened? He essentially just got
8 an advance on his fees. That's what we call a loan.
9 A loan would violate Rule 1.8. So if he really did
10 do that, he just violated two rules, 1.8 and 1.15,
11 because the rules specifically state you can't take
12 out a loan from a client. You can't do it, okay.

13 So there's really no way to twist and turn
14 this and say that was appropriate because it's never
15 appropriate. You can never take an advance from a
16 client and spend it without doing the work. You just
17 can't do it.

18 I hear a lot of attorneys that say, well,
19 what if I just charge a flat fee? Again, you're
20 trying to twist the rule a little bit. But it's in
21 black letter. You know, this has never been up to
22 the Supreme Court in Nevada, but it has in multiple
23 states, other states, and they've all said the same
24 thing: You can't do it. Do we want to try to push
25 and make new law here in Nevada? I don't know. You

1 know, that's, again, that's up to the panel, but I
2 think the black letter is pretty clear. I don't know
3 how we can interpret this any other way.

4 Okay, he admitted that he withdrew \$10,000
5 at least partially before earning the fees. He says,
6 well, maybe I forgot some work that I did in
7 December. We don't know. He doesn't even know. He
8 just thinks he may have done some, but he admitted
9 that at least part of it was definitely done in
10 January and he hadn't earned it yet. So again, black
11 letter law, he absolutely violated 115.

12 Now let's look at the last paragraph, which
13 is 28. Respondent improperly transferred \$15,000
14 from his client trust account to his personal
15 Jimmerson family trust account. This is what Rule
16 115 says. A lawyer shall hold funds or other
17 property of clients or third persons that is a
18 lawyer's possession in connection with the
19 representation separate from the lawyer's own
20 property.

21 Now, the minute Mr. Jimmerson withdrew
22 \$15,000 from his client's money, he took out of their
23 wallet and he put it into his wallet, he just mixed
24 the money, even if, let's say, he didn't spend it. I
25 know it's Christmas. You know, obviously there's

1 some inferences that the State Bar could argue, but
2 let's just forget all that. Let's just say nothing
3 happened, the money was never touched. It's in his
4 personal account. It's mixed with his personal
5 money. That's now in his wallet with his own money.
6 That's not separate. That's the definition of
7 commingling.

8 Now he says, oh, but that was just a
9 mistake. I quickly paid it back a week later after
10 Christmas. Again there's no intent. This doesn't
11 say knowingly keep it separate, it doesn't say
12 mistakes are okay. It doesn't say negligent is okay.
13 It just says "shall," right. That's strict
14 liability. You shall keep it separate. If you don't
15 keep it separate, you violate the rule. There's no
16 intent element whatsoever. He violated the rule.

17 And again we'll get into intent and
18 knowledge later, but for the purposes of just the
19 rule violation, was there a rule violation?
20 Absolutely. 25 through 28 on every single one of
21 these counts there is without a doubt a violation of
22 RPC 1.15. He admitted he withdrew the \$15,000.
23 There's no question. His only defense is, well, it
24 was a mistake. That's the problem. There's no
25 mistake defense to a 1.15 violation. And again

1 that's pretty clear in the case law. It's basically
2 a strict liability offense.

3 What affect -- if you truly believe that it
4 was a mistake, will it affect sanctioning? Sure,
5 absolutely it will. Obviously intentional misconduct
6 gets a much higher sanction than accidental
7 misconduct or negligent misconduct. But for the
8 purposes of violation, absolutely there is a
9 violation.

10 So I just went over this, but after the
11 \$15,000 transfer, they were not separate. That's a
12 violation. And I'll stop there until we get to the
13 penalty phase, but again I reiterate the focus for
14 the panel should be on paragraphs 25 through 28. And
15 every paragraph establishes clear and convincingly
16 through the documents. There's really no other way
17 to put it. Thank you.

18 CHAIRMAN EDWARDS: Mr. Kennedy?

19 MR. KENNEDY: Yes, sir. Thank you. Let me
20 start where Bar Counsel left off, because if there
21 ever was a good example of someone desperately trying
22 to revive or maintain claims they haven't proved, you
23 just heard it.

24 Let's go to the Jay Nady matter. Mr. Nady
25 said he had 50,000, I told him go ahead and take a

1 \$10,000 advance against fees to be earned. That's
2 okay. If you need more, take it. I asked Louise
3 Watson, if the client agrees to that, there's nothing
4 wrong with that, is there? And she said no. To top
5 it off, Chairman Edwards then said, Let me just clear
6 this up with you, and he asked her the same question.
7 And she answered the same way. She said no. If the
8 client says that's okay, then it's okay.

9 What do we now have? The Bar presented one
10 witness. One witness. Louise Watson. Now they're
11 trying to impeach her and disavow her testimony.
12 What does that tell you, panel members? When you
13 start impeaching and disavowing your own expert
14 witness in a case, that tells you you're in trouble.
15 And they're in trouble on that. Louise Watson said
16 that's not a problem.

17 Let's go to the other transfer, which I said
18 is really a nonissue, that's the \$15,000 that
19 Mr. Jimmerson explained went into the wrong account
20 by mistake. The Bar says, oh, well, strict
21 liability, got to be sanctioned for that. You can't
22 do that. Mr. Jimmerson said, well, we discovered
23 that the following Monday and moved the money back
24 where it should go. I took a distribution and that
25 was that.

1 You know what the Bar says? Well, you know,
2 it was around Christmastime. They said that twice.
3 You want to talk about desperation? Saying that that
4 transfer occurred around Christmastime and asking you
5 to draw some sort of an inference when the money was
6 replenished, that again is desperation on these
7 claims, and it stinks.

8 Let me go back to the top of the page. I
9 ask you to keep in mind the two claims that were made
10 here. Claim number one is what I call the Ballard
11 chaos. That we saw her text message, we heard
12 Mr. Jimmerson's testimony. That's probably an
13 appropriate description of what was going on. Chair
14 asked Mr. Jimmerson, you relied on getting cash
15 report? Yes, I did. And then you didn't get them?
16 No, there was a point where I wasn't getting them.
17 Mr. Jimmerson said, I was relying on my own
18 estimation of the fees.

19 Then we had the fallout. The fallout are
20 the three checks from the trust account that were
21 fallout from the Ballard chaos. The Bar quickly in
22 this case, when it was obvious they couldn't prove
23 anything on that 5.3 claim, they dismissed it and
24 walked away from it with prejudice. It was very
25 obvious that all of those allegations that they made

1 about Mr. Jimmerson, about no training, no
2 supervision, no policies and all of that, those
3 allegations went nowhere. Bar realized it, dumped
4 that claim and went away and said, We can't prove any
5 of that. In fact, they have no evidence of any of
6 it. So what did they do? They said, well, let's
7 grab onto the fallout and see what we can do with the
8 fallout. Despite the fact that we can't do anything
9 about the cause of the fallout, let's grab onto that.

10 So what have they got? Their witness said,
11 I got a tip from a woman I never met, Nicole Cruz,
12 and she called me and admitted she had no personal
13 knowledge of anything, but the next day I went out
14 and issued subpoenas for Mr. Jimmerson's bank
15 accounts, firm account, business account, payroll
16 account, and his personal accounts. Didn't talked to
17 him, didn't notify him, just went out and got all
18 that information based on a conversation with
19 somebody I didn't even know if that was a real
20 person, and then got thousands of pages of documents.
21 And she did the subpoenas the next day after getting
22 a tip from the woman that she never met.

23 Then what we have is when Mr. Jimmerson is
24 finally contacted by the Bar in March, the next day
25 he's not hiding anything. He sent them copies, the

1 initial copies of the bank account statements saying,
2 listen, I'll give these to you, and I'll put together
3 the rest of the stuff, which he does in April. More
4 communications with the Bar in May.

5 And I asked Louise Watson, the Bar's chief
6 investigator and their only witness, were these
7 truthful responses? Were they candid? And she said
8 yes. And I asked her, Well, where does this argument
9 of a cover-up come from? And she says, I have no
10 idea. No idea. Well, we know that there was no
11 cover-up. Mr. Jimmerson was completely honest about
12 it. He described the central event, which was the
13 Ballard chaos, and freely admitted that he'd been
14 mistaken. He thought money was there, and it didn't
15 come in until later.

16 We also know that there was no harm. And
17 the Bar didn't allege harm. All the Bar said was,
18 well, this might have harmed somebody. But look at
19 the timing. Look at the timing. The Bar comes in in
20 October of 2020. This is eleven months, you know,
21 after November, ten months after December when
22 everything has resolved itself, the Bar comes in and
23 files a complaint. And it says in the complaint
24 theft and a cover-up, failure to supervise, failure
25 to train. Every bit of that is false. Every bit of

1 that in that complaint is false.

2 Now, I leave it to you to try to understand
3 and determine why they would say those things,
4 because nobody here today has said anything. I asked
5 their principal witness what about -- what about
6 this? What about this cover-up? She said, I don't
7 know anything about it. How about theft? I don't
8 know anything about it. We don't have any witnesses
9 for any of that stuff.

10 Here's where all of that takes us. The Bar
11 walked away, they ran away from the 5.3 allegation
12 and dismissed it with prejudice saying they had no
13 evidence to support any of those allegations that
14 they had made. Not one piece of evidence at all. In
15 fact, their own witness destroyed those claims with
16 her testimony. The Bar's own witness, Louise Watson,
17 says there was no threat, there was no loss.
18 Mr. Nady, that was okay.

19 And so all we've got is you have two --
20 three transactions where Mr. Jimmerson says, I
21 believed I was acting properly. Put these three
22 transactions into context in terms of time, they all
23 occurred during the Ballard chaos.

24 And if you read Ballard's text messages,
25 that's a good term for it. She said, I screwed

1 everything up. I don't know what I'm doing. I'm way
2 over my head. I've got to get out of here.

3 Mr. Jimmerson said, I was relying on you having done
4 all of the work you're supposed to be doing. Good
5 grief, you didn't do any of it. And she didn't. So
6 they have to spend the end of November and into
7 December getting everything squared up again, and
8 they did.

9 And the problem with this is the Bar comes
10 along ten months later and says, you know, we see
11 everything that happened. Nobody lost any money, no
12 bad checks, everything is fine. But you know what,
13 with our 20/20 hindsight, we think you made a couple
14 errors here. Mr. Jimmerson said, well, I did, okay,
15 but I corrected them. Everything was fine. I fully
16 cooperated with the Bar, and now you're coming back
17 saying I have to be disciplined because I've made
18 these errors despite the fact no losses, and
19 everything was corrected. And there is no question,
20 I don't think here, that this was not Mr. Jimmerson's
21 doing. He was relying on somebody that he thought he
22 could trust, and it turned out that he couldn't.

23 So taking the full view of this in terms of
24 the time, the cause of the problems, Mr. Jimmerson's
25 actions during and after the Ballard chaos, the Bar

1 files a complaint accusing him of all sorts of
2 misconduct: Theft, cover-up, failure to train,
3 failure to supervise and all of this. And here's the
4 problem. Here's the problem. That complaint is now
5 on file. It will live and haunt him forever. It
6 will live and haunt him forever. All he can say is,
7 well, the Bar abandoned the 5.3 claim. Oh, well,
8 yeah, but look what they said about you, and look at
9 this: Theft and cover-up. What's he going to do
10 about that?

11 The Bar's only witness said those things
12 didn't happen. But you know what, the Bar is now
13 saying, well, we need to save this, so let's pick out
14 these three transactions, we admit nobody lost any
15 money, we admit that the harm was potential only, and
16 when we came along it was almost a year later, so
17 there certainly wasn't any harm, potential or
18 otherwise, but we need to save this case, and so
19 that's what we're doing, as thin a reed as this is.

20 Well, what I'm telling you is the only fair
21 and just decision under these circumstances,
22 especially given the Bar's own witness who doesn't
23 back them up, the Bar's dismissal of the 5.3 claim,
24 which is very significant, an admission, I got no
25 evidence of something that I pled and serious

1 accusations, now Jimmerson is going to have to live
2 with those. Nothing we can do about it, the only
3 just decision that this panel can make is to say,
4 look, based on everything we see, there is no
5 sanctionable misconduct. There is no violation of
6 the rule.

7 The Bar has put Mr. Jimmerson through hell
8 with this and all of those allegations, which they
9 admit they can't prove and a lot of them they have no
10 evidence of, so they're hanging on by the thinnest of
11 reeds. So, well, you know, we found something going
12 back here looking through thousand of pages over many
13 years in all the accounts they had and found a couple
14 things, and so he's got to be punished for this. No
15 he doesn't.

16 Based on all the facts here, the claims and
17 the Bar's own admission that they can't prove them,
18 the only just resolution of this is for the panel to
19 say, look, he could have done a better job, and he
20 told you that, but despite the fact that he could
21 have done a better job, we don't find that he
22 violated the rules. I'm done.

23 You're muted, Tom.

24 CHAIRMAN EDWARDS: Sorry. That was
25 brilliant. I can't repeat it.

1 I'm having a hard time, Mr. Kennedy,
2 reconciling your position asking \$10,000 from
3 Mr. Nady and the language in 1.15 sub C.

4 MR. KENNEDY: Yeah. If you do the research
5 on the question, and we've got the annotated model
6 rules here, and I'll ask Mr. Gilmore to find the
7 section and the page, it is clearly appropriate,
8 clearly appropriate to give an advance on fees, I
9 mean, or an advance on retainers. Louie Watson was
10 right, and I applaud her for saying that.

11 I'm looking at the 9th edition of the
12 Annotated Model Rules of Professional Conduct, and
13 I'm on page 91. And you can ask clients to advance
14 fees, period. I mean, she's correct. And when you
15 think about it, why couldn't you? Why couldn't you
16 say to a client, Give me some money now and I'll do
17 the work in the next month? There's nothing wrong
18 with that, as long as the client says, yeah, I agree
19 with that, that's fine. That's fine. And Louise
20 Watson said, Yeah, that's good with me. She said
21 that to me and she said that to you.

22 I know what the rule says. It says a
23 retainer is the property of the client until it's
24 earned. Of course it is. But when the client comes
25 in and says, you know what, I'll give you an advance

1 out of that retainer, well, that's fine. The client
2 has the authority to make that decision. Suppose the
3 client says, I'll give you an advance and you told
4 the client, no, sorry, you can't do that. Of course
5 you can do that. You can take a fee that's earned
6 when paid. We do that from time to time.

7 So we're representing you in matter X, the
8 fee is \$50,000, give it to us. It's earned when paid
9 and we will deliver you this opinion on this lis
10 pendens in 14 days. Those things are done all the
11 time. It's just there's nothing wrong with it.
12 Their own witness said so, so that's good enough for
13 me. And I suspect, Mr. Edwards, you asked her the
14 same question, I suspect it's good enough for you.

15 CHAIRMAN EDWARDS: Any questions from the
16 panel members before we go into deliberations?

17 All right. Anything else from the parties?

18 MR. JIMMERSON: On behalf of Jim Jimmerson,
19 this is Jim, I just want to thank all three of you
20 for the effort you're going to give. Regardless of
21 how you come out on this issue, thank you very much.

22 MR. KENNEDY: That goes for all of us.

23 CHAIRMAN EDWARDS: Thank you.

24 All right, Kristi, you're going to help us
25 into a breakout room?

1 MS. FAUST: I am. I will put you in there
2 right now.

3 CHAIRMAN EDWARDS: Thank you.

4 (A recess was taken.)

5 CHAIRMAN EDWARDS: So we are back on the
6 record. The panel deliberated as part of our
7 bifurcated proceeding simply on the issue of whether
8 we are finding a rule violation. The panel has
9 unanimously decided that there is a rule violation of
10 1.15 as to each of the five transactions at issue.

11 The key evidence of those findings being the
12 bank records that we reviewed and Mr. Jimmerson's
13 testimony. We believe there is a strict liability
14 standard. As to the \$10,000 advance from Mr. Nady,
15 we believe that 1.15(c) only allows those funds to be
16 withdrawn as they are earned and not in advance, and
17 that is the basis of our findings.

18 Would you like to take a -- would you like
19 to proceed right to the sentencing phase or would you
20 like to take a break?

21 MR. KENNEDY: We're ready to go here.

22 CHAIRMAN EDWARDS: Bar?

23 MR. HOOGE: Yes, I'm ready.

24 CHAIRMAN EDWARDS: Okay. All right. Well,
25 State Bar, it's your floor.

1 MR. HOOGE: All right. I'm going to address
2 the final three Lerner factors. And the first factor
3 we have to look at is the lawyer's mental state.
4 Now, typically there's three different mental states.
5 There's intentionally, knowingly, or negligently.
6 Intentionally means you do something with a purpose
7 to -- of self gain. So you're going to do something
8 to benefit yourself, specifically with that intent.

9 Knowingly is a little bit different, meaning
10 you know, you know what you're doing and you know
11 that it's wrong. Now, you may not even have any
12 intent to gain out of it, and you just know that it's
13 wrong and you do it anyway.

14 Then there is negligent, meaning that you
15 violate a rule but it's more due to negligence, you
16 didn't -- just weren't -- didn't have enough
17 safeguards in place, didn't -- for whatever reason
18 made a mistake.

19 I already briefly mentioned this in the
20 initial guilt phase, but intent is not an element of
21 115, but it does significantly affect the baseline
22 sanction. So when you look at intent versus
23 knowledge versus negligence, usually what you have is
24 intent is disbarment, knowledge is suspension, and
25 negligence is a reprimand. That's your basic penalty

1 matrix, or, excuse me, it's not really a penalty but
2 sanctioning matrix.

3 But it's a little bit different when you
4 come to misappropriation. Misappropriation is one of
5 those, like I said, when it comes to client money,
6 it's one of the greater offenses that you can
7 actually have. And so, for example, if you look in
8 the ABA guidelines, standard 2.5, this is what it
9 says: Misappropriation is never a lesser misconduct.

10 Now, what it means is misappropriation --
11 lesser misconduct is anything that does not result in
12 a suspension or disbarment. So standard 2.5 says
13 really misappropriation, there's no negligence. You
14 can never get -- you should never get a baseline,
15 obviously, reprimand or something less than that.

16 And I have a couple quotes from some cases.
17 This is a Rhode Island case. It says continuing
18 public confidence in the judicial system and the Bar
19 as a whole requires that the strictest discipline be
20 imposed in misappropriation cases. And I think a lot
21 of times I see this. You know, a lot of attorneys
22 comment, well, why are you so harsh on misappropriation
23 cases? You know, why are you always going after
24 these? Why is it, you know, why not give them a
25 break? And that's the standard, the ABA standards.

1 It's just one of those things where it's so
2 important to the confidence of the public that
3 attorneys treat that money with utmost respect and
4 utmost protection. And so any time where you have
5 misappropriation, it's a big deal.

6 I think you've heard several times
7 throughout this case where Mr. Jimmerson or
8 Mr. Kennedy said, It's not a big deal. No big deal.
9 But it is. It's a really, really big deal. If you
10 look at the standards and the case law, and they say
11 yeah, it's always a big deal. It's never a little
12 deal.

13 In all the cases, sometimes there's cases
14 where let's say an attorney grabs the wrong checkbook
15 and the court says, okay, they've got some
16 mitigation, other things, we'll go with a reprimand.
17 You know, it's a one single incident, a minor amount,
18 they just mistakenly grabbed the wrong checkbook,
19 okay, you know. But typically misappropriation is
20 always going to be suspension or disbarment. It's
21 never going to be that lesser misconduct.

22 So you look at ABA standard 4.12. Okay.
23 Sorry, we're getting a little feedback there. 4.12
24 says knowledge is not required for suspension.
25 Again, I said the normal matrix is typically you have

1 intent gets disbarment, knowledge gets suspension,
2 negligence gets you a reprimand. That's not the
3 case. This is the one situation where the ABA
4 standards say it doesn't follow the traditional
5 matrix. Knowledge is not required for suspension.

6 For example, I don't know if any of you know
7 Luis Rojas, but he was an attorney here in Las Vegas
8 and he had really no knowledge of what was going on
9 in his practice. He had a bookkeeper, and this is
10 what we typically see is the bookkeeper defense
11 where, hey, you know, a lot of money was
12 misappropriated but I didn't do it, it was my
13 bookkeeper. My bookkeeper did it all and I didn't
14 touch any of it.

15 And so the court said, okay, it wasn't you,
16 you didn't have intent. In fact, he didn't really
17 have knowledge. He wasn't involved in any way, but
18 it was his trust account and he was ultimately
19 responsible and he got a two-year suspension for not
20 protecting his clients' assets. Not protecting his
21 clients' money. His bookkeeper stole the money out
22 of the trust account and he was essentially blameless
23 except for the fact that he didn't protect it. He
24 didn't do his job to protect it and he got a two-year
25 suspension.

1 Then we look at ABA 4.11 and it talks about
2 disbarment is appropriate if the respondent knowingly
3 converts. And that's where it gets a little
4 confusing because typically disbarment is intent.
5 And so when you look at the case law and the ABA
6 standard guidebook itself, the standard book says
7 that intentional and knowingly are often used
8 interchangeably. And when you look at all the cases
9 from the various states, a lot of times the courts
10 get confused. Is it an intentional standard, is it a
11 knowing standard, because this is disbarment, this is
12 very serious, but what's the standard?

13 And so the ABA standards say knowing. But
14 ultimately the focus is on deliberate conduct. So
15 was it a mistake or was this deliberate? And so you
16 have a really interesting case here where
17 Mr. Jimmerson says it was deliberate, I did it, but I
18 didn't know what I was entitled to. So essentially
19 his defense is, I didn't know, I withdrew it anyway
20 thinking I was probably entitled to it, but it turns
21 out I wasn't entitled to it, so I want more of a
22 negligence standard.

23 Well, the question is if you know that you
24 didn't know, is that knowing or is that negligence?
25 Again negligence doesn't matter, it's still a

1 suspension standard, but is it a disbarment standard?
2 Because he knows that he doesn't have the backup. He
3 didn't look at the backup. He knows that he can't
4 verify that he's entitled to take that out. And it
5 turns out he wasn't entitled to take that out, but he
6 did. And so his only defense is, well, I knew that I
7 didn't know how much I was entitled to, so I just
8 made my best guess. I made an estimate.

9 So our position is, look, if you -- if
10 you're taking that money out, then you knowingly take
11 the money out. Now, you knowingly act to take it
12 out. It's no defense to say, yeah, but I didn't
13 verify that I was entitled to it so you can chalk it
14 up to negligence. Well, if you didn't verify that
15 you were entitled to it, it's still knowingly taking
16 the money out.

17 And so that's going to be a tough one. I'm
18 sure the panel is going to have to debate that for
19 some while, but if you know that you don't know, what
20 standard is that? I would argue, I posit it to you
21 that that's a knowing standard. That's not
22 negligence. Negligence is when you grab the wrong
23 checkbook. When you know that you're not entitled to
24 it, or you just turn a blind eye and don't verify
25 that you're entitled to it, that's knowing. And so,

1 again, that's going to be a question of fact for the
2 panel to determine, you know, what was his level of
3 mental state.

4 The evidence again demonstrates knowledge.
5 And, you know, I quoted this before but I did not
6 know -- this is what Mr. Jimmerson said, I did not
7 know what exact amount I was entitled to transfer.
8 So, again, if you don't know what you're entitled to,
9 and you take it out anyway, what mental state is
10 that?

11 If a friend gives me a wallet, and I don't
12 know if he owes me any money or not, and I take all
13 his money out of his wallet and I spend it and it's
14 gone, and then later he comes back and says, Oh, I
15 didn't owe you anything, and I say, Oh, sorry, I
16 didn't know that you didn't owe me any, I thought you
17 did maybe, I wasn't sure, that's -- I knowingly took
18 it. All right. So that's a knowing misappropriation.

19 You look at this. I think this is something
20 that Mr. Jimmerson, to his credit, acknowledged. I
21 took the money out to make payroll. And so this
22 slide is almost moot at this point, but I'll go over
23 it anyway. We notice that his November 22nd through
24 27th payroll was 46,000. He said himself, I didn't
25 have enough money to cover it, I only had the 2500,

1 so he had \$44,000 deficit, and he was looking for
2 money to cover that deficit.

3 He's already admitted that, so it's kind of
4 an unusual circumstance where we already have the
5 respondent admitting to everything that I was going
6 to argue in the closing. So it's, again, very
7 unusual but that's the question. He admits, hey, I
8 took it out for payroll. I didn't know how much I
9 was entitled to, but I just did my best guess and
10 took out what I needed and then turns out I wasn't
11 entitled to it. And so, again, you can find this at
12 Exhibit 18, page one.

13 And that's the question. That's the \$64,000
14 question is this taking money out to cover your
15 payroll, that's really, really bad. And I think so
16 many times in the Las Vegas area I hear, well, it's
17 not that big a deal. But it is. It's a really big
18 deal. Anywhere else it's a big deal.

19 And, again, the purpose of sanctions is not
20 to punish the attorney. In fact, quite the opposite.
21 The purpose really is to protect the public and then
22 also teach members of the Bar what's appropriate.
23 And so it's so hard when you have the culture that
24 says, hey, it's okay to do this kind of stuff, and
25 Mr. Jimmerson, for example, didn't think twice about

1 pulling that out of his accounts and covering his
2 payroll. And at some point you have to say, no.
3 Look, that's not appropriate. You can't do this.

4 And so when you're talking about sanctions,
5 you think, okay, what's best going to protect the
6 public? If we say, hey, we're going to give you a
7 mulligan, we're going to let you slide, is that going
8 to protect the public or are the members of the Bar
9 going to read that in the Bar magazine and Bar
10 journal and say, hey, everybody gets a mulligan.
11 It's no big deal.

12 And that's when it gets into a slippery
13 slope. It's really hard if we don't follow the
14 standards exactly when we say, hey, it's not a big
15 deal, when it is a big deal, then we end up with the
16 Rob Grahams of the world and \$17 million is gone and
17 it is a slippery slope.

18 And so if your purpose is to protect the
19 public, we have to follow the ABA guidelines. And I
20 know it's really tough because Mr. Jimmerson is a
21 good guy. You know, he's seems like a nice guy.
22 He's doing what he thought was okay, no big deal, I'm
23 just borrowing from them. I took from my client.
24 But it's all against the rules. You couldn't do it.

25 So what do we do here in this case where he

1 clearly violated the rules. It all spells out
2 exactly for serious sanctions, he's admitted to it
3 all, and he says, well, just, you know, look the
4 other way, give him a mulligan this time and he won't
5 do it again. That's great for him but what does it
6 do for the public and what does it do to the Bar?
7 What are we telling to the Bar?

8 And that's the real purpose of sanctions is
9 not to punish him at all. In fact, it doesn't have
10 anything to do specifically, you know, with him
11 necessarily, it's all about protecting the public and
12 teaching the Bar.

13 So he transferred what he needed, not what
14 he was entitled to. We know that. He's admitted
15 that. And that, you can't do that. That's so wrong.
16 And is it hard because Mr. Jimmerson jumped into the
17 deep end on the first time? He doesn't have any
18 prior history, but he did something that was so wrong
19 and he jumped into the deep end on his very first
20 jump. So, you know, what do we do about that? Well,
21 just stick to the book. We go by the book. Is it
22 harsh? Maybe, but it's by the book, right. And so
23 he did. He misappropriated other clients' money to
24 cover payroll. He knowingly converted.

25 And, I'm sorry, I actually want to go back.

1 I did say, you know, he has a clean record. He
2 technically doesn't have a clean record, and we would
3 move to admit State's Exhibit 2. He has a reprimand
4 from a while back. It is quite old, but he does have
5 some history.

6 And so what we have here is we have no
7 knowledge. He knew that he had no justification to
8 back it. So he knew that he didn't know. And you
9 think, okay, so what does that mean? That means he
10 knowingly converted. If you go in there to your
11 friend's wallet and you grab money thinking, hey, he
12 might owe me money so I'm just going to take it, and
13 you don't actually have any justification, he doesn't
14 really owe you money, you just converted his money to
15 your money, and you did that knowingly. So I don't
16 think there's really any way to argue around that.

17 Number three, the potential or actual injury
18 caused. This one is by far the most frustrating one
19 to argue for us because constantly when you have
20 something like this, misappropriation, you do have
21 attorneys that are very good at shuffling accounts.
22 And we always get the same argument that, hey,
23 eventually I paid everybody back, everyone was made
24 whole, so no harm, no foul, right. Well, no. And
25 that's the problem is, you know, personal gain is not

1 an element. It doesn't matter if, you know, that
2 \$10,000 for Jay Nady actually was to buy Christmas
3 presents or not. It doesn't matter. The harm is
4 different.

5 So misappropriation for the firm, let's say
6 he was just trying to cover payroll. That's still
7 grounds for disbarment, right, because you're taking
8 from someone else, even if you later repay that. If
9 I go rob a bank and I take the money home, let's say
10 I don't spend a dime, the next day I feel guilty and
11 I go back and I drop the money off at the bank and I
12 run away, they can still prosecute me for bank
13 robbery. So I think we get this in our head that,
14 hey, you know, no harm, no foul, he paid it back.
15 And that's certainly a mitigating factor, but it only
16 goes so far.

17 And so this is just a case that backs this
18 that misappropriation is grounds for disbarment, and
19 even if you're doing it for your firm and you're not
20 buying a yacht or buying that house in the Caymans or
21 whatever, it doesn't matter. It doesn't have to go
22 to the attorney.

23 In Re: Gamage is an interesting case. Same
24 thing. You had a couple and, you know, essentially
25 they were stealing from the firm, or, excuse me,

1 stealing from the clients to bolster the firm to keep
2 the firm alive. And they were not disbarred, they
3 got five years and a day, so a very long suspension.

4 So the clients came out okay is not a
5 defense. Even if a client gets their money back, the
6 misappropriation, and this is a quote, harmed the
7 public and the profession because it eroded the
8 public's trust in lawyers and reflects poorly on the
9 profession. And that's a Minnesota case from 2018.

10 So, you know, when you look at the harm, the
11 harm is really the potential for harm, and the harm
12 to the clients, because you look at these type of,
13 when you have this, we call it kiting where you're
14 taking from one client, putting it in your corporate
15 account or your firm account and later paying it
16 back. When you're doing that, over time we've seen
17 sometimes attorneys don't pay it back on time. They
18 get so far behind that it becomes a real problem.

19 Now, that didn't happen with Mr. Jimmerson,
20 great, but there's that potential. I think even he
21 mentioned, hey, you know, short of a catastrophe.
22 Well, what if there was a catastrophe? What if he
23 had a heart attack right after some of those
24 transfers and he never actually did the work to make
25 that money? You know, who's going to pay that back?

1 Who's going to pay that \$30,000 back to whoever lost
2 out on their money because Denise Cashman never did
3 pay the 36,000 to Mr. Jimmerson because he was dead?
4 You know, that didn't happen, but thank goodness it
5 didn't happen. That money was all put at risk by
6 Mr. Jimmerson.

7 All right, so there's the potential to
8 actually harming the client, even though there's no
9 actual harm, and there is the actual harm to the
10 reputation of the Bar and the profession.

11 And then we look at aggravating and
12 mitigating factors. You know, one thing I wanted to
13 mention. I'm sure there's going to be some good
14 mitigation. Mr. Jimmerson's going to put on some
15 witnesses. I will give him this, he's fairly
16 straightforward. I've never had a respondent be as
17 open and honest as Mr. Jimmerson. Generally they're
18 obfuscating as much as possible and dancing around in
19 circles, and he was pretty straightforward.

20 You know, when I asked him what was the
21 purpose of the transaction, he said, yeah, you know,
22 it was to make payroll. There -- I've never seen a
23 respondent do that. Most respondents will do
24 whatever they can to, you know, get around that, not
25 tell the truth. But here's the problem: How much

1 mitigation is going to change it? You know, how much
2 mitigation do you need.

3 In the Gamage case what happened was the
4 Gamages, they had literal misappropriation, knowing
5 misappropriation, and the standard was disbarment.
6 It went to the Supreme Court and they thought, oh,
7 you know, that's kind of harsh. Let's give them five
8 years and a day suspension. And Justice Hardesty
9 dissented and said, Look, these are serious crimes,
10 or not crimes, but serious offenses. This is
11 egregious. This should be disbarment. I know it's
12 harsh, but you have to be. You have to be for this
13 type of stuff.

14 Few other acts of misconduct impugn the
15 integrity of the Bar or place the public more at risk
16 than the misuse of client funds. That's what he said
17 in his dissent. He was not happy with the five years
18 and a day. You know, we have a guidebook. Let's
19 stick to the guidebook. Why are we always trying to
20 bend the guidebook when we've got it? Conversely all
21 cases of misappropriation, disbarment will be the
22 only appropriate sanction unless it appears that the
23 misconduct resulted from nothing more than simple
24 negligence.

25 Again it goes back to, okay, what is a

1 simple negligence? If you know that you don't know
2 whether or not it's legitimate and you take it out,
3 is that simple negligence? Is that the same thing as
4 grabbing the wrong checkbook? No, I don't think so.
5 Not at all.

6 All right. So, again, this is, can't
7 remember what case. Oh, it's a Colorado case, but
8 disbarment is virtually automatic. So my point is if
9 you're going to mitigate, it's got to be something
10 pretty substantial. And so when you're talking
11 about, okay, let's say he did it knowingly, that's
12 disbarment.

13 If you're going to go down from that,
14 there's got to be substantial mitigation. If you
15 say, no, you know, he was just negligent, okay, then
16 that's suspension, and you say, okay, well, let's go
17 down from suspension, let's give him a break here.
18 Again you've got to have some pretty substantial
19 mitigation. And there's just not a whole lot there.
20 It requires truly compelling mitigation.

21 That's another. I think was a Utah case.
22 Yeah, In Re: Corey.

23 I spoke about this. Purpose of discipline
24 is not to punish but to protect the public. And so a
25 lenient sanction really fails to adequately deter

1 misconduct. And I know it's harsh, you know. I
2 think the argument that, who was it, Justice
3 Pickering once said it's just so draconian. Now, of
4 course, you know, she's looking at the attorney
5 saying, let's give him another shot. You know, let's
6 give him a mulligan, and, you know, there's some
7 argument to that.

8 But when you stop thinking about how this is
9 going to affect the attorney and you start thinking
10 about, okay, what's the best way to protect the
11 public and what's the best way to get the Bar in line
12 and protect the reputation of the Bar, then you have
13 a different point of view. You have a different
14 frame of mind.

15 It definitely lowers the public confidence
16 in the profession when your entire sanction is all
17 about how are we going to help this attorney out.
18 And that's what we see a lot. Yeah, you know, he
19 violated the rules but let's do what's best for him.
20 You know, we'll go back to grievants sometimes and
21 they'll be like, well, what about me? You know, what
22 about this guy, we're putting him back on the street,
23 we're doing this, and, you know, what are we saying
24 to the other attorneys? And they get really
25 frustrated, and we deal with that all the time.