

1 Is it harsh? Is it draconian? I don't  
2 know, that's up for the panel. But will it help  
3 protect the public? Absolutely. Will it teach the  
4 Bar, hey, this is not appropriate? You know, how  
5 many people go straight back to the end of the Supreme Court  
6 magazine and read discipline first? I know a lot of  
7 people. I used to do that. Boy, I didn't realize  
8 you can't do that, or, oh, yeah, you know, you  
9 shouldn't do that. It teaches. It's a great  
10 teaching tool. And it elevates the profession and  
11 ultimately that's a key goal.

12 And so, you know, you look at the standards  
13 and the standards say, okay, that should be  
14 disbarment or suspension. We try so much for  
15 consistency. And it's necessary for the fairness,  
16 for fairness to the public and to the Bar. You know,  
17 we have an obligation to self regulate, but it comes  
18 with special responsibilities.

19 You know, self regulation means sometimes  
20 we've got to be tough. Sometimes we've got to follow  
21 the guidelines when the guidelines says, you know, if  
22 this is knowing, it's got to be disbarment, and if  
23 it's negligent it's got to be suspension. You got to  
24 go by the book. And so we have to put the public  
25 interest before the interest of our, you know, the

1     respondent in this case.

2             And so, you know, I do want to address a lot  
3     of times we get the fix-it ticket. And this is so  
4     hard for the State Bar because a lot of times it's,  
5     okay, well, you know, you screwed up but let's give  
6     you a warning with some conditions. Maybe we'll give  
7     you a reprimand with some conditions and just get an  
8     accountant to carefully watch your books.

9             And, you know, the problem is, and this  
10    comes from Hardesty's dissent, providing a means to  
11    remedy past harm caused by attorney's misconduct  
12    again is not the primary purpose of our current  
13    attorney discipline system. And so if you can  
14    protect the public by doing that, great. I mean, but  
15    your primary purpose is to look at how are we going  
16    to protect the public. And if we can teach the Bar,  
17    then great. But if our primary purpose is, hey,  
18    let's do whatever we can do, let's do what's best for  
19    Mr. Jimmerson, then that's the wrong frame of mind.

20            So just a couple of other points. And, you  
21    know, obviously this is going to go up to the Supreme  
22    Court, everything does on a contested hearing, but  
23    the Supreme Court reviews the panel's recommendation  
24    do novo. So whatever your recommendation is, know  
25    that the Supreme Court is really going to review that

1 de novo. So I think they give a lot of weight to it,  
2 it's very important what your recommendation is, but  
3 ultimately they're going to review that  
4 recommendation and see a de novo.

5 But and they do exercise independent  
6 judgment, and your recommendation is going to be very  
7 persuasive. The findings of fact -- the findings of  
8 fact, however, are you're going to give deference to  
9 those. So whatever your findings of fact are, you  
10 know, that's the primary job in that.

11 So, you know, I know it's -- I guess my  
12 point is it's going to be -- this is going to be a  
13 really tough deliberation. I certainly thank you for  
14 your time volunteering for this, but ultimately I  
15 think when you come at it, look at the baseline, look  
16 at the ABA standards, and go by the book as much as  
17 possible.

18 I know it's going to be tough and you're  
19 going to think, well, you know, how is this going to  
20 affect Mr. Jimmerson. That's natural. That's just  
21 being a human being. But ultimately also consider  
22 the true purpose of discipline which is to protect  
23 the public. How can we do that best? How can we  
24 also instruct the Bar?

25 And I think this type of stuff, you know,

1 the advanced fees and the just borrowing from the  
2 trust account and treating the trust account like  
3 it's your account, hey, I had plenty of money in my  
4 trust account. It was never -- there was never an  
5 insufficient fund notice. You know, I was always up  
6 a hundred thousand, 200,000, let's say a million.  
7 And so I can take from that and really no one was  
8 harmed. That's the wrong way to think, and we can't  
9 think like that anymore.

10 We need to change our community standards  
11 here in Las Vegas and let everyone know that's not  
12 the right way to think. We need to think of it like  
13 that's someone else's wallet, and we don't reach in  
14 and take money out of their wallet, we protect that  
15 as best we can. Thank you.

16 CHAIRMAN EDWARDS: Mr. Hooge, I thought I  
17 had the right version of the ABA standards pulled up,  
18 but I don't think that I do. Do you mind circulating  
19 that to the panel?

20 MR. HOOGE: The -- okay. Well, I just have  
21 it in a book. Are you talking about the cheat sheet  
22 or you want the actual --

23 CHAIRMAN EDWARDS: I've got the cheat  
24 sheets, but, yes, I was hoping to actually look at  
25 the standards you were citing to, 2.5 I think, 4.12.



1 MR. HOOGE: Yeah, we can make a book of --  
2 well, I do have actually, I have what we call our  
3 bench book which has all of the standards but without  
4 all of the annotations. I can provide you with that.

5 CHAIRMAN EDWARDS: Okay. Appreciate it.

6 MR. HOOGE: You can circulate that, right,  
7 Kristi?

8 MS. FAUST: Yes, as soon as I find it, I  
9 will circulate it.

10 CHAIRMAN EDWARDS: Mr. HooGE, if I  
11 understood your presentation, it seems like the  
12 determination as to what the, at least the baseline  
13 sanction is in this situation is entirely based upon  
14 the mental state. I didn't see it move the needle  
15 depending on the extent of the injury.

16 MR. HOOGE: That's correct.

17 CHAIRMAN EDWARDS: Okay. So regardless --  
18 so I guess the result is the same regardless of the  
19 extent of injury that we determine?

20 MR. HOOGE: You know, let me -- sorry, I'll  
21 pull out -- this is the newest ABA book, and I'll  
22 just read for you really quickly 4.11 and 4.12. So  
23 4.11 says, disbarment is generally appropriate when a  
24 lawyer knowingly converts client property and causes  
25 injury or potential injury to a client.

1           So you do have to find injury, but it's  
2 typically, like I said, it's serious injury for  
3 disbarment and regular injury for suspension. In  
4 this case it's just any injury or potential injury.  
5 So you have to find knowledge and then any injury, so  
6 you do have to find injury. Sorry, but I misstated  
7 that. But any injury not substantial injury.

8           And then it says 4.12, suspension is  
9 generally appropriate when a lawyer knows or should  
10 know that he's dealing improperly with client  
11 property and causes injury or potential injury to a  
12 client.

13           And so I'll just read the very first  
14 sentence. Courts commonly reserve suspension for  
15 lawyers who engage in misconduct that does not amount  
16 to knowing misappropriation or conversion of client  
17 property but rather deal with it improperly. And so  
18 it says the most common cases under 4.12 involve  
19 lawyers who commingle client funds with their own or  
20 fail to remit client funds promptly. So hopefully  
21 that gives some clarification.

22           CHAIRMAN EDWARDS: Okay. So I guess the  
23 little or no injury, according to those standards,  
24 doesn't come into play?

25           MR. HOOGE: Right. For both the standard is

1 any injury.

2 CHAIRMAN EDWARDS: Okay. All right.  
3 Unfortunately my tablet's getting ready to die so I'm  
4 going to have to switch devices. Can we take a  
5 five-minute break?

6 MR. GILMORE: Sure.

7 CHAIRMAN EDWARDS: Great. Thank you.

8 (Discussion off the record.)

9 CHAIRMAN EDWARDS: Okay. Back on the  
10 record. Mr. Hooge, you mentioned you had some  
11 housekeeping you wanted to discuss?

12 MR. HOOGE: Yeah. The State Bar would move  
13 to admit State Bar's Exhibit Number 2. It's just the  
14 affidavit of prior history, disciplinary history on  
15 Mr. Jimmerson. I mentioned that there was a  
16 reprimand from a while back.

17 CHAIRMAN EDWARDS: And respondent's  
18 position?

19 MR. GILMORE: No objection.

20 CHAIRMAN EDWARDS: It will be admitted.

21 (Thereupon Complainant's Exhibit  
22 2 was marked for identification.)

23 CHAIRMAN EDWARDS: And I guess for  
24 completeness of the record, I would like to admit,  
25 just so it's part of the standard, or part of the

1 record, the exhibit index the State Bar circulated  
2 prior to the start of the hearing. Is there any  
3 objection to that?

4 MR. GILMORE: No objection.

5 CHAIRMAN EDWARDS: Okay. What should we  
6 label that exhibit?

7 MR. GILMORE: I think the Bar stopped at 46,  
8 so I think that would be State Bar Exhibit 47.

9 CHAIRMAN EDWARDS: Okay. We will admit the  
10 exhibit index as Exhibit 47.

11 MR. YOUNG: If I could, Mr. Chair, I just  
12 wanted to chime in. We had a prior Exhibit 47 that  
13 was listed in our original exhibit list, so to avoid  
14 any confusion, I think we should admit that as  
15 Exhibit 49.

16 CHAIRMAN EDWARDS: Okay. 49 it is.

17 (Thereupon Complainant's Exhibit  
18 49 was marked for identification.)

19 MS. FAUST: And, Mr. Edwards, can I  
20 circulate Exhibit 2 now to everybody?

21 CHAIRMAN EDWARDS: Yes, please.

22 MS. FAUST: Okay.

23 CHAIRMAN EDWARDS: During the break the  
24 State Bar circulated the Office of Bar Counsel  
25 disciplinary panel handbook. Mr. Hooge, you

1 discussed 4.11 and 4.12 but not 4.13 and 4.14. Is  
2 that because you believed that the mental state is  
3 not applicable? I mean, it would be a negligent  
4 mental state or is there another reason?

5 MR. HOOGE: Right. So the -- that goes back  
6 to 2.5, which talks about misappropriation. So if  
7 you look at 4.13 and 4.14, it specifically talks  
8 about non-misappropriation misconduct. Let me pull  
9 it up really quickly.

10 So a reprimand is generally appropriate when  
11 a lawyer is negligent in dealing with client property  
12 and causes injury or potential injury to a client.

13 CHAIRMAN EDWARDS: I'm sorry, Mr. Hooge,  
14 which rule are you reading from right now?

15 MR. HOOGE: That's 4.13. So 4.13 does say  
16 negligence when dealing with client property, but  
17 then if you go back to, again, 2.5, 2.5 talks  
18 about -- and, I don't know, maybe I can put this on  
19 the screen. It's probably too small. But it says  
20 lesser misconduct is conduct that does not warrant a  
21 sanction restricting the respondent's license to  
22 practice. Conduct shall not be considered lesser  
23 misconduct if any of the following conditions  
24 apply -- considerations apply. And the first one is  
25 the misconduct involved the misappropriation of

1 funds.

2 So essentially what 2.5 says is any time you  
3 have misappropriation, then it should not fall below  
4 a suspension. So if you find that there's  
5 misappropriation, then 4.13 and 4.14 should never  
6 apply.

7 CHAIRMAN EDWARDS: Okay. And I guess -- I'm  
8 worried we're still not looking at the right document  
9 because my 2.5 defines reprimand, it does not give me  
10 the explanation you just gave me.

11 MR. HOOGE: Right. And so that's -- it's  
12 not in the standard itself. The standard itself says  
13 reprimand, also known as censure or public censure,  
14 is a form of public discipline, dah, dah, dah, dah.  
15 But then when you look at the guidelines in the book,  
16 it says that reprimands are always reserved for  
17 lesser misconduct, and then it lists all the stuff  
18 that should never be lesser misconduct. So any time  
19 there's misappropriation, it says there should not be  
20 a lesser misappropriation so a reprimand should not  
21 apply.

22 When you look at the case law under a  
23 typical 4.13 violation, then when you're talking --  
24 you're typically talking about, you know, not having  
25 records, for example, they just don't have any

1 records, there's no misappropriation but there's  
2 other impropriety, they violated the rule in some  
3 other way.

4 Say, for example, the Jay Nady thing,  
5 accepting advance of fees, that would score under a  
6 4.13, you know, like a negligent violation. Well, if  
7 you think that it's negligent or, you know, he knew  
8 or should have known the rule, then it would be 4.12.

9 But let's say hypothetically that allegation  
10 of the Jay Nady, that wasn't actually misappropriation,  
11 he took an advance fee with the consent of the  
12 client, then that could fall under 4.13 because it's  
13 not misappropriation, theoretically if you find that  
14 it was negligent.

15 I guess I apologize. So 4.13 or 4.14 could  
16 apply in this situation but not for the misappropriation  
17 charges.

18 CHAIRMAN EDWARDS: And I'm looking at your  
19 brief, and on page 15 you quote to it's like 9B of  
20 the ABA model rules of disciplinary enforcement. Is  
21 that similar to 2.5 that you read to me?

22 MR. HOOGE: Yeah. Actually 2.5 quotes 9B.

23 CHAIRMAN EDWARDS: Okay.

24 MR. HOOGE: It's the exact same language.

25 CHAIRMAN EDWARDS: So that's the language

1 you were reading to me? I didn't see anything in my  
2 handbook.

3 MR. HOOGE: Right.

4 CHAIRMAN EDWARDS: Got you. Okay. Panel  
5 members have any questions for Mr. Hooge?

6 No? All right. For the respondent?

7 MR. GILMORE: Yes. Thank you, Chairman and  
8 the panel members. Joshua Gilmore here. I know my  
9 name says Dennis Kennedy. I'd like to do two things.  
10 First, I would like to speak just to the legal  
11 arguments that were subsumed within Bar Counsel's  
12 closing here as it relates to the second phase of our  
13 hearing, because I think we need to correct the  
14 record.

15 The law is not as was stated in the -- I  
16 have tremendous respect for Bar Counsel, they do this  
17 all the time, but, panel Chair, your questions were  
18 appropriate because that is not the law. And you are  
19 not presented with an accurate and complete picture  
20 of the law as it relates to attorney discipline, and  
21 that's a big deal.

22 You know, and at the very end here we heard,  
23 "well, I apologize for that." Well, you know, we  
24 have somebody's livelihood at stake here. He have  
25 somebody's licensure. Somebody who's practiced more



1     than 40 years who uncontested has dedicated a  
2     tremendous amount of his time and career to the Bar,  
3     and we get an apology because we didn't correctly  
4     state the law? So that's troubling.

5             But what I'd like to do is first address  
6     sort of the legal standards, as you might have it, as  
7     it relates to what the panel is now being asked to  
8     do, which is to decide Mr. Jimmerson's fate in a  
9     sense, to decide whether, and if so, what discipline  
10    to impose.

11            I would like to start there, and then we  
12    have testimony from additional witnesses that we need  
13    to present. As it was discussed at the outset, this  
14    is a bifurcated hearing. So to that end, we did not  
15    present portions of Mr. Jimmerson's testimony that we  
16    may have otherwise gone through had this been a  
17    hearing done all at the same time, which often is the  
18    case, although not always.

19            We also have testimony from Amanda Kahn  
20    that's important for the panel to hear. We also have  
21    testimony from James M. Jimmerson, which is  
22    Mr. Jimmerson's son, that the panel needs to hear.  
23    And we still need to call our expert witness, Rob  
24    Bare. I know portions of his testimony are not  
25    necessary at this point, but there still is

1 significance to a part of the opinions that he  
2 reached in this case, and that relates to the  
3 remedial measures that were taken by Mr. Jimmerson  
4 when these issues were raised.

5 So but I -- and then of course I would like  
6 to at that point, once that additional testimony is  
7 presented to the panel, close by then discussing what  
8 the evidence looks like, what that testimony is, and  
9 how we apply it to the ABA standards. And, you know,  
10 we may not agree on a lot. I think the Bar and I at  
11 least agree that discipline is case by case, and we  
12 know that. And so we need to look at the facts of  
13 this case and decide how the law as applied to those  
14 facts lead to the conclusion that the panel reaches  
15 when making a decision as to the sanction.

16 But I'm compelled to correct the law before  
17 we get into that testimony, mostly because I want to  
18 ensure that the panel has the complete understanding  
19 of how the ABA standards apply in this situation, and  
20 what to be thinking about of course when ultimately  
21 deliberating for a second time to decide  
22 Mr. Jimmerson's fate.

23 So assuming, panel Chair, that's fair,  
24 that's the way I'd like to proceed.

25 CHAIRMAN EDWARDS: Okay.

1 MR. GILMORE: Okay. Well, and I want to  
2 start out with some of the questions that you had,  
3 Mr. Chairman. And one of the things you identified,  
4 and the Bar just left out of the argument, was 4.13  
5 and 4.14 of the ABA standards for imposing lawyer  
6 discipline. Those exist and yet what you're hearing  
7 today is really a model rule of lawyer disciplinary  
8 enforcement has somehow trumped or tossed aside  
9 sections 4.13 and 4.14, and that's not true for  
10 several reasons.

11 First off, in terms of 2.5 and just the  
12 layout of the ABA standards for imposing lawyer  
13 discipline, we have early on a description of the  
14 different types of discipline that can be imposed,  
15 and there's case law and examples about what a  
16 disbarment is, what suspension is, reprimand, and  
17 admonition. 2.5 is the general rule to guide what a  
18 reprimand is and it attempts to cover the different  
19 types of misconduct that may trigger a reprimand.

20 Then from there the ABA standards get far  
21 more specific, and we go on, and what we're talking  
22 about today is really section 4. And that's -- you  
23 heard the Bar cite 4.11 and 4.12. Those are specific  
24 rules, or sections rather, that we look to depending  
25 on the type of misconduct, the rule violation is at

1 issue in the case. And here we're looking at a 1.15  
2 violation, so we turn to 4.

3 Bar Counsel has basically told you today  
4 2.25, the section that generally talks about what a  
5 reprimand is, has somehow trumped 4.13 and 4.14.  
6 That's just not true. They won't find case law.  
7 There's none in their trial brief. I encourage you  
8 to ask them for case law to support the idea that 2.5  
9 has now done away with 4.13 and 4.14. That's  
10 absolutely wrong. There's nothing that says that.

11 And if you think about that from just a  
12 statutory interpretation perspective, we have a  
13 general rule and then we have specific rules.  
14 Certainly you would guide yourself by the specific  
15 sections, those being 4.13 and 4.14.

16 Secondly, and, Mr. Chairman, you asked them,  
17 because I'm looking at the same book that Mr. Hooge  
18 is, which is the annotated standards to the ABA  
19 disciplinary rules, and he is reading from what is  
20 page 79 on that book. That in turn quotes from rule  
21 9B of the Model Rules of Lawyer Disciplinary  
22 Enforcement. So I want to stop there because, first  
23 off, he's citing commentary from section 2.5 to argue  
24 to you that 4.13 and 4.14 don't exist anymore.  
25 Commentary. Not even the section itself. He is

1 citing commentary to that rule, to that section.  
2 I've never known commentary to now somehow allow  
3 other sections of the same book to have no meaning.

4 Second off, the Model Rules for Lawyer  
5 Disciplinary Enforcement, Nevada has not adopted  
6 those. We have our own set of rules. They're the  
7 Supreme Court rules. They guide this process. Is  
8 there overlap? Yes, but the key here, the Model  
9 Rules for Lawyer Disciplinary Enforcement discuss two  
10 types of hearings. In essence there's a full-blown  
11 hearing, which is what we have today under our  
12 current rules, under the Nevada Supreme Court rules  
13 under 105 where we have three panel members. Each  
14 side has an opportunity to present its case,  
15 openings. We've had motion practice preceding our  
16 appearances here today, disclosures. We've provided  
17 expert testimony.

18 The Model Rules of Lawyer Disciplinary  
19 Enforcement prescribe an expedited process, a process  
20 where you don't go through everything that we're  
21 going through and what led up here today, okay. And  
22 the closest analogy I would have under Nevada is that  
23 would have been historically when lawyers could  
24 appeal from what was a private reprimand, and you  
25 just went to a hearing and in essence to argue

1 whether it should be set aside or affirmed. The  
2 discipline couldn't go up. So that was an  
3 opportunity at that point for the lawyer to be able  
4 to be heard, because as we know, in front of a  
5 screening panel, lawyers aren't heard. You live by  
6 whatever the written material you put together, but  
7 the Bar presents its case to a screening panel.

8 We don't have that process anymore in  
9 Nevada. A complaint is filed, and then the process  
10 goes forward, as it has leading up to today. But the  
11 point is the section that Bar Counsel pointed to from  
12 Rule 9B, that section guides what types of cases are  
13 expedited and what types of cases go to a full-blown  
14 hearing. It does not somehow create mandatory  
15 baseline sanctions, as is being advocated here today  
16 by Bar Counsel. It does not. It is a rule that  
17 guides whether certain types of cases, we're going to  
18 handle it in an expedited fashion.

19 And what the rule there says is if we're  
20 dealing with misappropriation of client funds, which  
21 is the word, the trigger word that we're hearing from  
22 the Bar today, then that kind of case is not going to  
23 be expedited. So there is no basis to argue that  
24 4.13 and 4.14 simply do not apply.

25 So with that then I want to speak briefly on

1     what 4.13 and 4.14 says. So 4.13 says reprimand is  
2     generally appropriate when a lawyer is negligent in  
3     dealing with client property and causes injury or  
4     potential injury to a client. By all accounts on its  
5     face that section is talking about a 1.15 violation.  
6     Of course it is. It's talking about dealing with  
7     client property. That's the words that we see that  
8     is adopted. The ABA has said a reprimand is  
9     generally appropriate when a lawyer is negligent in  
10    dealing with client property and causes injury or  
11    potential injury to a client.

12             But there's also another option available to  
13    this panel as guided by the ABA, which, again, if  
14    there was -- a few things that Bar counsel and I may  
15    agree on it's that we do look to the ABA, okay, and  
16    we look at 4.14. Admonition is generally appropriate  
17    when a lawyer is negligent in dealing with client  
18    property and causes little or no actual or potential  
19    injury to a client. Again the ABA has said 4.14, you  
20    can, as a panel, impose an admonition, and it is,  
21    quote, generally appropriate, okay, when a lawyer is  
22    negligent in dealing with client property and causes  
23    little or no actual or potential injury to a client.

24             So the notion, as a general matter, that  
25    this panel is somehow facing two options, suspension

1 or disbarment, that's completely false. That's not  
2 the law at all. And there is nothing the Bar can  
3 cite that will support that argument.

4 Next, the Bar Counsel discussed that really  
5 injury doesn't matter. Well, actually it does, not  
6 only because of 4.13 and 4.14, but it also matters  
7 for purposes of 4.12. So you heard Bar Counsel speak  
8 to 4.12, and they do talk about that in their brief,  
9 but again we only get part of the story.

10 And I'm looking now at page 156 of the  
11 annotated standards from imposing lawyer sanctions.  
12 And as an aside to the panel members, I know that  
13 this book may not be available to everyone. I'm  
14 happy to make copies of the relevant pages from this  
15 book available. I don't know if it's on Westlaw or  
16 Lexis, but certainly if that would help assist the  
17 panel in any way in making its decision, I'm  
18 certainly happy to make the relevant sections of this  
19 book available.

20 But my point is if we look to 4.12, and  
21 Mr. Hooge said, well, you know, injury doesn't  
22 matter, and actually you don't even have to have a  
23 lawyer who knows. If I heard him correctly, he says  
24 he knows because he doesn't know. I'm not sure I  
25 know what that means. You can know because you don't



1 know, and that somehow is grounds for a suspension.

2 But if we look to 156, they say if you're  
3 trying to argue a suspension in a case where you have  
4 to say that he knows because he doesn't know, because  
5 I can't prove he knows, then you got to have client  
6 injury. You have to. It is a predicate, an absolute  
7 predicate.

8 And why? Well, that makes total sense,  
9 because if you take the Bar's argument, and let's say  
10 we take it to the extreme, any case involving  
11 misappropriation is a suspension, you hear that  
12 argument, you said, okay, so let's say, for example,  
13 the only evidence before the panel today was the  
14 \$15,000 banking error by Mr. Jimmerson, okay. And  
15 that's uncontested. It was a banking error. That's  
16 what he testified to. The Bar wants to draw an  
17 inference that there was some nefarious purpose  
18 behind that. The panel heard him. They will judge  
19 his credibility.

20 But let's assume hypothetically that was the  
21 only RPC violation before you today. What the Bar is  
22 telling you is that banking error: Suspension.  
23 That's it. That is -- you guys are hamstrung. You  
24 can only suspend or disbar. Disbar. The literal  
25 death penalty in this case, the death penalty is what

1 Bar Counsel is advocating. I mean, they don't  
2 actually tell the panel what they submit should be  
3 the recommendation, but by my account we heard more  
4 about disbarment than suspension.

5 But the point here is the Bar is saying,  
6 even if that's all Mr. Jimmerson had done, you have  
7 to suspend him. In fact, that could have been a \$1  
8 banking error and you have to suspend him. That's  
9 the Bar's position. Is that the message that we are  
10 going to send to lawyers here in Nevada? Not only is  
11 a 1.15 violation a strict liability offense, but if  
12 you do it, you're going to get suspended. That's  
13 what the Bar is advocating today.

14 I will make note there was a few years back  
15 the Bar -- the Board of Governors had recommended  
16 amending SCR 78, which is the rule dealing with  
17 lawyers maintaining their books and records, to ask  
18 about random audits and to give the Bar authority to  
19 conduct random audits of client trust accounts.

20 And through that briefing the Bar explained  
21 how they thought the benefit of a random audit would  
22 be if they come across lawyers that have some  
23 problems, okay, some mistakes, some accounting  
24 irregularities. It will be a way to educate them.  
25 It will be a way to make sure that we get them back

1 on the right foot so that that kind of stuff doesn't  
2 happen. And then if in certain cases we find that it  
3 is significant enough to warrant a referral to Bar  
4 Counsel, that's what we're going to do.

5 Now, that rule wasn't amended to allow for  
6 random audits, but I think that's significant because  
7 you say, well, wait a minute, just a few years ago  
8 the Bar was advocating that one of the benefits of a  
9 random audit was so that if we do that and find  
10 mistakes in lawyer's trust accounts, we can help  
11 them. We can fix it. Now what we hear is if we come  
12 across anybody that has an accounting irregularity,  
13 we're going to take your license. We're going to  
14 take your license away because we want everybody to  
15 know how strong we are on discipline.

16 On that point you will notice, we saw a lot  
17 of cites to the dissent from In Re: Gamage. Now, I  
18 certainly have tremendous respect for Justice  
19 Hardesty, but we have citations to a dissent to help  
20 convince this panel somehow that you have to be  
21 harsh, and maybe it's unfair, but you have to be  
22 harsh, okay. And if you find you're before an  
23 attorney who has misappropriated a dollar, you have  
24 to suspend him.

25 That's the message we want to deliver to

1 lawyers out there? That's the message? That doesn't  
2 make any sense. That's not what Rule 1.15 is  
3 designed for. It is certainly not what the ABA  
4 standards for imposing lawyer sanctions are intended  
5 for. Not at all. That is not the message, to create  
6 fear, because that's what that does. The Bar is  
7 trying to instill fear in lawyers.

8 And we have to remember, we have lawyers out  
9 there that are practicing at firms with 50, 60  
10 lawyers, and we have solo practitioners. Are we  
11 going to hold every lawyer to if any one of those  
12 lawyers at their firm has a dollar misappropriated  
13 we're going to suspend you? I submit to this panel  
14 today that is not the law. That is not what should  
15 come out of this hearing today.

16 And if that's what the Bar intends, then  
17 that's something that they need to submit to the  
18 Supreme Court under an amendment to the rules so that  
19 they have that power. But it is certainly not on  
20 Mr. Jimmerson's back that they cause the panel to  
21 somehow change or modify the law to make it not only  
22 a strict liability offense in terms of a 1.15  
23 violation, but also to say you're going to get  
24 suspended.

25 Now, I want to shift from that then to talk

1 about Nevada Rule of Professional Conduct 1.0A. And  
2 that's the guidelines for interpreting the Nevada  
3 Rules of Professional Conduct. And I want to go down  
4 to sub C of that rule. The first sentence, "Failure  
5 to comply with an obligation or prohibition imposed  
6 by a Rule is a basis for invoking the disciplinary  
7 process." That's why we're here today, right? We  
8 have a case where this panel has found that the Bar,  
9 that Mr. Jimmerson violated 1.15. The Bar had its  
10 concerns and filed a complaint, and you heard  
11 Mr. Jimmerson testify. I respect that you asked  
12 these questions, okay.

13 One of the things, you know, Bar Counsel  
14 credited him for, by all accounts, he's open and  
15 honest. Absolutely. Okay. He's not faulting the  
16 Bar necessarily for starting this process, he is  
17 faulting the Bar for not only overcharging the  
18 document, but now what we have is being tremendously  
19 aggressive in terms of the sanction that should come  
20 out of this proceeding.

21 The next part of 1.0AC, "The rules  
22 presuppose that disciplinary assessment of a lawyer's  
23 conduct will be made on the basis of the facts and  
24 circumstances as they existed at the time of the  
25 conduct in question," and, I want to emphasize this

1 part, "in recognition of the fact that a lawyer often  
2 has to act upon uncertain or incomplete evidence of  
3 the situation."

4 That's what we have here. The panel Chair  
5 appropriately said to Mr. Jimmerson, "Did you have  
6 those daily cash reports?" No. The answer was "no."  
7 The vehicle that he would use was unavailable to him.  
8 And is it a coincidence that this only occurred when  
9 the bookkeeper was not preparing those reports?  
10 Absolutely not. But the point here is our rule, this  
11 rule that was actually adopted by the Nevada Supreme  
12 Court, not just the ABA model rules on discipline  
13 that we look to for guidance, but I'm talking about  
14 1.0AC, our rule that this Nevada Supreme Court has  
15 adopted has said when we're in this context, when  
16 we're before a panel and deciding a lawyer's fate, we  
17 have to be recognizing the fact, quote, that a lawyer  
18 often has to act upon uncertain or incomplete  
19 evidence of the situation.

20 But if you take the Bar's position today,  
21 you violate the rule, you're done. That actually is  
22 directly contrary to what our Nevada Supreme Court  
23 has said. So I submit they're advocating a standard  
24 that would not only cause this panel to disregard  
25 portions of the annotated standards for imposing

1 lawyer sanction, to misinterpret a disciplinary rule  
2 that doesn't apply, because it only guides us when  
3 we're trying to decide whether we have an expedited  
4 hearing or a full-blown contested hearing, but it  
5 requires this panel to basically scratch that part of  
6 the language out of the rule. The Supreme Court  
7 really actually didn't mean that. There's a  
8 parenthetical that says, unless it's a case involving  
9 a 1.15 violation, but of course that's not what the  
10 rule says.

11 Now, I also want to read the very next  
12 sentence. I'm also under 1.0AC. "Moreover, the  
13 Rules of Professional Conduct presuppose that whether  
14 or not discipline should be imposed for a violation,  
15 and the severity of a sanction, depend on all the  
16 circumstances, such as the willfulness and  
17 seriousness of the violation, extenuating factors and  
18 whether there have been previous violations." Depend  
19 on all circumstances. Well, what the Bar is telling  
20 you here is, well, but there's actually an exception  
21 to that if it's a 1.15 case. That's not true. That  
22 is not true. There is no carve-out under 1.0AC when  
23 we're dealing with a 1.15 violation.

24 And that is all the more significant when  
25 we're in a 1.15 case because the Bar says, hey, I

1 don't have to prove he knew what he was doing, just  
2 to show that he violated the rule. It's a strict  
3 liability offense. But what they're advocating is  
4 actually a win on both sides. I don't have to worry  
5 about knowledge to prove the violation, and I don't  
6 have to worry about knowledge to know that you can't  
7 do any worse than a suspension. That is not the law.  
8 There is no case anywhere that they can cite to  
9 support that statement. And so it's important for  
10 the panel to know that, okay.

11 The Nevada Supreme Court has said, We don't  
12 discipline lawyers for every violation of the rule.  
13 We get it. There are going to be cases that are  
14 brought before panels where lawyers are not  
15 disciplined even if there is a finding of a rule  
16 violation. That comes right out of 1.0AC, which the  
17 Nevada Supreme Court here in our state has adopted.  
18 That's what guides this panel when they are deciding  
19 the appropriate discipline that needs to be entered  
20 in this case.

21 Now, the Bar says, well, look at all these  
22 cases we can cite from Colorado and I think New  
23 Mexico, and they pull all this case law to give us  
24 nice snippets about misappropriation, and they're  
25 using that word, and I heard words kiting, stealing



1 and shuffling accounts. And I'm going to get to the  
2 evidence after you hear the additional testimony.  
3 Those are the words.

4 I'm not sure if we were in the same hearing  
5 today because this is not a Ponzi scheme case, yet we  
6 have a reference to Rob Graham. I mean, we were for  
7 some reason picking out the extreme and applying it  
8 to Mr. Jimmerson, and yet there's not a client here  
9 speaking of any injury. And I think everybody would  
10 agree there's a lot of clients in Mr. Graham's case  
11 that were speaking to injury. Is his case this case?  
12 Not even close.

13 So you ask yourself, all right, I get it, a  
14 suspension is not the mandatory minimum baseline.  
15 Can I give him a reprimand? Can I give him a letter  
16 of caution? The answer is to both of those questions  
17 are yes. And I say that not only because we know  
18 that the ABA standards for imposing lawyer sanctions  
19 specifically allow that, but, and we put this in our  
20 trial brief, it's been done before.

21 So this panel is certainly not treading new  
22 territory, foreign territory to say, well, can I give  
23 Mr. Jimmerson a letter of caution? Can I give  
24 Mr. Jimmerson a letter of reprimand? Absolutely.  
25 Absolutely. And we just gave as an example, and this

1 was circulated to the panel I believe last week, it's  
2 on page five, examples right out of the Nevada  
3 Lawyer.

4 MR. KENNEDY: Of the trial brief.

5 MR. GILMORE: Of our trial brief, excuse me.  
6 Page five of Mr. Jimmerson's trial brief. We gave  
7 this panel examples, okay, issuing letters of caution  
8 for violations of 1.15, and then SCR 165, which was  
9 its predecessor. So we know that you have the power  
10 today to either reprimand Mr. Jimmerson or give him a  
11 letter of caution. And just to get to where I'll be,  
12 I believe the evidence and the correct result here is  
13 a letter of caution with conditions, and we will  
14 explain that.

15 But my point now is to make it clear to this  
16 panel that you should be thinking of that. You  
17 should be thinking of that, okay. And I will also  
18 point that the Bar, and I don't know if panel has  
19 looked at it, that Kristi this morning, she emailed  
20 around this ABA guidelines for discipline. I've  
21 never seen it, but the footnote 2 talks about how a  
22 letter of caution is an appropriate form of  
23 discipline that can be entered by this panel.

24 The Bar's own form that they sent around to  
25 you allows you to check off admonition, which can be

1 a letter of caution. It allows that. It also allows  
2 you to pick a reprimand. But what Mr. Hooge is  
3 telling you today is, well, no, my mistake, that form  
4 shouldn't have gone to you. Those two options are  
5 not on the table. That is completely false, and that  
6 not only comes from the rule, but we've seen it  
7 before.

8 So we know that panels, such as yourself,  
9 when you're presented with cases, you're going to get  
10 the Rob Graham cases, but you're also going to get  
11 cases that like this where you say, I have a lawyer,  
12 he has been as honest and credible as I can find. We  
13 see the mistakes that happened, and you're going to  
14 hear more about that. And you say, I don't feel like  
15 that sort of discipline is appropriate. That is at  
16 your disposal here today as panel members in deciding  
17 the appropriate sanction that can be entered.

18 And not only that, you can look to in Re:  
19 Discipline of Lerner. That's still good law. That  
20 case, in fact, the Bar, you know, and we as well, we  
21 look to that case because it guides us on the four  
22 factors that this panel considers when it is deciding  
23 discipline. And the Nevada Supreme Court there held  
24 that nonpublic discipline is appropriate, quote,  
25 where a lawyer, quote, engages in an isolated

1 instance of non-willful misconduct that causes little  
2 or no actual or potential injury. That's this case  
3 as we will submit after the panel hears the balance  
4 of the evidence.

5 So not only do you have the power of under  
6 the standards to impose a letter of caution or a  
7 reprimand, not only can you find prior disciplinary  
8 decisions entered by sister panels who have sat in  
9 the chairs that you panel members are sitting in  
10 today, but you find the Nevada Supreme Court saying  
11 that is a tool that is at your disposal. Of course  
12 it is. Of course it is. Because you go back to  
13 1.0AC, which says we're looking at all of the facts  
14 and circumstances, okay.

15 Every case is different, okay. This is not  
16 Rob Graham. It is reckless to suggest it. This is  
17 not a Ponzi scheme case. We don't have Porsches  
18 sitting outside of Mr. Jimmerson's office that he  
19 purchased with client funds. This is not that case.  
20 This is not a case where suspension is even on the  
21 table. But the notion that it's the only thing on  
22 the table is absolutely false.

23 I don't have to stop there. We can really  
24 look to Nevada law and know that you have that power,  
25 but we also put in our trial brief, and this starts

1 at page six, line four, a number of cases from other  
2 states where private discipline has been imposed for  
3 RPC 1.15 violations, including a case as recent as  
4 2020.

5 So it's not as if, well, you know, maybe the  
6 tide's changed. You know, we're going to be harsher  
7 on people now. 2020. So it's not just Nevada.  
8 We're not unique in this idea that in a case  
9 involving what is at best technical RPC 1.15  
10 violations that somehow your baseline without the  
11 ability to deviate is a suspension. We see it. We  
12 cite cases from South Carolina, West Virginia,  
13 California so the panel can see.

14 And what we know, if we want to go back to  
15 the annotated standards, and we quote this in our  
16 brief, that consistency is important. We know that.  
17 The Nevada Supreme Court said that as well in Re:  
18 Discipline of Reed that consistency is important. So  
19 not only would it be consistent to consider a letter  
20 of caution, for example, or a reprimand, although I  
21 submit this will be a letter of caution case, but not  
22 only is it appropriate to consider that in this case,  
23 but you would be consistent in doing that. And to  
24 take the position now that we're stuck at disbarment  
25 or suspension would be inconsistent with the law, and

1 that's not what would be appropriate.

2 If the Bar wants to change the law, if they  
3 want to advocate that the law should allow, should  
4 require that any misappropriation case, as they use  
5 that term, any instance where money has been moved  
6 out of trust too soon, by mistake, if they are now of  
7 the position that is suspension or above territory,  
8 then that's something that the Nevada Supreme Court  
9 needs to decide, not on Mr. Jimmerson's back,  
10 especially. Not at the risk that the Bar says, well,  
11 this is the case where we change the law and you're  
12 the person it's going to be done on and you're going  
13 to be disbarred or receive a, quote, significant  
14 suspension, as they put it.

15 This is a case involving, quote, sloppy  
16 bookkeeping. And why do I use that quote? Because  
17 again, the annotated standards 4.14 says an  
18 admonition is appropriate in a case involving sloppy  
19 bookkeeping. Of course. It has to be because we're  
20 human. We have to remember that. We're human, okay.

21 Mr. Jimmerson is trying to not only manage a  
22 firm, but he's representing clients. You'll hear  
23 from him. He is doing work for clients every day.  
24 Every day. He is not that absentee owner who's just  
25 waiting for checks every month so that he can go

1 splurge another vacation. He is doing work for  
2 clients. He's still doing trials, COVID aside, okay.  
3 Of course sloppy bookkeeping is something that we,  
4 you, as a panel, have to think about when you're  
5 deciding the type of discipline that need to be  
6 imposed in the case.

7 Now, the other thing I would like to talk  
8 about, just in terms of the law, and then we can  
9 shift to the testimony, one of the things that we  
10 included in our trial brief were reporting  
11 conditions. And the idea that the panel may consider  
12 as part of the discipline to be imposed in this case,  
13 if at all, because, again, the rules say whether or  
14 not discipline should be imposed, but we put in our  
15 trial brief, and comes out again of the ABA  
16 standards, we're not making it up, that the panel can  
17 be creative, and that comes out of section 1.3, and  
18 then more specifically, if we look at 2.8 of the ABA  
19 standards, and I'm going to focus specifically on sub  
20 G, other requirements that the state's highest court  
21 or disciplinary board deems consistent with the  
22 purposes of lawyer sanctions.

23 So what does that mean? That means this  
24 panel can come up with conditions to make sure the  
25 public is protected, because let's not forget, that's

1 what we're talking about. We're here to protect the  
2 public, I'm not going to disagree with that. Of  
3 course Mr. Jimmerson will tell you as much. He's  
4 here to protect the public as much as the next guy.  
5 That's what he wants to do. So we have to figure  
6 out, you, as a panel, have to figure out how do I  
7 protect the public.

8 Here the Bar says, well, you know, it's a  
9 fix-it ticket. That really is, you know, that falls  
10 on deaf ears. Quite the opposite. Quite the  
11 opposite. Mr. Jimmerson, you'll hear, is willing to  
12 self report to the State Bar for however long this  
13 panel chooses. And you say, well, what significance  
14 does that have? Well, as we know the Bar only runs  
15 down these cases if they get a grievance or the bank  
16 sends a notice because there was insufficient funds  
17 drawn on an account, right, because the Bar's not  
18 doing random audits.

19 Mr. Jimmerson will say, I will send my books  
20 to the Bar, okay. You got records from '19 to '20.  
21 Here we go. We're 16, 17 months out. However long  
22 you want me to report, I will show you that these  
23 were once in a career aberrations, okay. Because the  
24 panel has to assess his credibility. Is he being  
25 credible. Do we want to believe, okay, that what



1 happened here not coincidentally within this two-week  
2 window when this women was the bookkeeper for his  
3 firm, how do we know he's telling us the truth? How  
4 do you know that? Because he means what he says and  
5 he'll put his proverbial money where his mouth is and  
6 send the Bar that information.

7 Why does that matter? Because needless to  
8 say, if Mr. Jimmerson is back in front of you or  
9 another panel, and the Bar says, well, look at this,  
10 it's happening, here's, you know, a dozen more  
11 instances, he's going to be in a different spot. He  
12 understands that, okay. That's why the conditions  
13 are significant. And what do those conditions do?  
14 They protect the public.

15 We can't punish. This process, I will close  
16 this discussion, this process is not here to punish  
17 Mr. Jimmerson, okay. Quite honestly you'll hear he's  
18 been punished enough through all of this. And that  
19 doesn't even take into account his private life,  
20 which we may have to get to either through him or  
21 through his other son that's here, his son who's here  
22 today, okay.

23 We're not here to punish Mr. Jimmerson.  
24 That's not the purposes of attorney discipline. But  
25 you have to ask yourself wouldn't suspension or

1     disbarment, what purpose would that serve, taking  
2     somebody who's practiced law for 45 years, say,  
3     you're done, that's it. You're done. That can serve  
4     no purpose other than to punish him for hiring this  
5     women, okay. That is not, I submit to this panel,  
6     the purposes of this proceeding or any disciplinary  
7     proceeding.

8             So with that, Mr. Chair, unless you have any  
9     questions for me, what I'd like to do is start with  
10    Mr. Jimmerson, and then, like I said, I have several  
11    other witnesses that we'd like to hear from.

12            MR. HOOGE: Mr. Chair, can I be heard on  
13    that?

14            CHAIRMAN EDWARDS: Sure.

15            MR. HOOGE: I just --

16            CHAIRMAN EDWARDS: Well, I mean, I guess,  
17    I'm sorry. Let me, before we get there, I understand  
18    Miss Hanson has a hard stop at 5:00 or shortly  
19    thereafter, so I would want to keep that in mind.  
20    I'll hear Mr. Hooge's point, but it looks like  
21    unfortunately we need to continue to a different day.

22            MR. HOOGE: Well, that was partly going to  
23    be my objection, just that some of the witnesses, the  
24    only one that was actually disclosed as a character  
25    witness was the son, so we don't really have any

1 objection to that. The other two were not.

2 And I, you know, looking through Supreme  
3 Court Rule 102.5 in mitigation, I can't really see  
4 any one of those subparagraphs that would fit for  
5 Mr. Bare or the secretary, I can't remember her name.  
6 I apologize. But I don't think it would be relevant  
7 or within the scope of mitigation, so I would object  
8 to those. I think we've heard enough evidence. I  
9 request that we limit it to the scope of 102.5,  
10 mitigation and move this hearing along.

11 MR. GILMORE: Panel Chair, you're  
12 indulgence, unless -- if I can be heard on that.  
13 Miss Kahn certainly has relevant testimony. Let's  
14 look at mitigating factors. Unless the Bar is going  
15 to take the position that really we're not even  
16 thinking about those today, one of the mitigating  
17 factors, and again this comes right out of the  
18 pamphlet that they sent to you, and it's at 102.5.  
19 None of this comes as a surprise.

20 Timely good faith effort to make restitution  
21 or to rectify consequences of misconduct. Doesn't  
22 the panel want to hear what happened when  
23 Mr. Jimmerson learned about all of this? How could  
24 we close this hearing without hearing that? And  
25 Mr. Kennedy told you, unfortunately now way earlier

1 in this, time has a bit gotten away from us,  
2 Miss Kahn's the one to do that. She's the  
3 bookkeeper, okay. What happened when she found out?  
4 What did Mr. Jimmerson do? Did he tell her,  
5 whatever, it will fix itself. Nobody will find out,  
6 or did he say, stop what you're doing, I'm going to  
7 effectively double your salary, because I got to have  
8 you back, okay, and you got to fix this.

9 And what you're hearing today is the panel  
10 doesn't need to consider that, again in deciding  
11 Mr. Jimmerson's fate to not hear that, and now what  
12 we have perhaps is a Bar being strategic. Well,  
13 we're going to dismiss the 5.3 charge and now we'll  
14 take out his legs and we won't let what would be an  
15 obviously key witness for this panel to testify about  
16 what she did.

17 If you say, well, look, I don't need to hear  
18 about training of Miss Ballard, okay, fine. But to  
19 suggest that we don't care to hear what Miss Kahn has  
20 to say, right, the woman who's managing the books?  
21 You're here to protect the public, but the women  
22 who's doing that at his firm, we don't need to hear  
23 from her? I submit that would be grave error to  
24 preclude us. I'm quite frankly shocked that the Bar  
25 would not give us an opportunity to call her as a

1 witness. I don't see what purpose that serves other  
2 than hoping that this panel doesn't have a complete  
3 record.

4 The other thing then, and I believe  
5 Mr. Hooge said we don't need to hear from Rob Bare  
6 anymore. Well, actually, no, that's not true. And  
7 that touches on the same issue, which is what did you  
8 do? What did you do when you found out, okay. Did  
9 you say, yeah, I don't care. Nobody will figure it  
10 out. I don't self report my trust account.  
11 Hopefully I don't have a disgruntled former employee  
12 that comes around and on hearsay triggers this  
13 process. Is that what he did, or did he take swift,  
14 remedial measures? Judge Bare will speak directly to  
15 that. And, again, that's a mitigating factor. It's  
16 a mitigating factor.

17 The other thing, and actually if you want to  
18 look at the aggravating factors the panel has to  
19 decide, was Mr. Jimmerson indifferent. It's on this  
20 sheet. Judge Bare will tell you why he wasn't  
21 indifferent. And, you know, it's one thing for  
22 somebody to say, oh, trust me, look, I get it. I'm  
23 so sorry. Actions speak louder than words, right.

24 Let's be mindful, Mr. Kennedy discussed it,  
25 and you heard it from both Miss Watson and

1 Mr. Jimmerson. Before this was raised by the Bar,  
2 Mr. Jimmerson corrected these issues. Oftentimes you  
3 will find sort of a hand in the cookie jar, and then  
4 once the Bar shows up, now the lawyer is fixing  
5 things, right. And that's not this case though.  
6 What do we have?

7 CHAIRMAN EDWARDS: I'm sorry to interrupt,  
8 but I want to be respectful of Miss Hanson's  
9 schedule.

10 MR. GILMORE: I appreciate that. I would  
11 close with Judge Bare I believe should be heard.

12 MR. HOOGE: Mr. Chair, I just have one quick  
13 statement. I think that would be cumulative. We  
14 don't -- we didn't actually cross-examine  
15 Mr. Jimmerson too much on that. We would actually  
16 stipulate to that mitigating factor that he, you  
17 know, after the fact, we've stated in our complaint  
18 everyone was eventually paid back, but the harm was  
19 potential, not actual. And he did actually rectify  
20 the consequences. So we would stipulate to that, if  
21 that helps.

22 CHAIRMAN EDWARDS: Okay. Well, I'd like to  
23 turn now just to scheduling. When is the next time  
24 we can all get together as quickly as possible while  
25 it's fresh in our minds? And I guess, Mr. Gilmore,

1 do you think we can get this done in an afternoon or  
2 a morning?

3 MR. GILMORE: I'd want to think so. I mean,  
4 you know, you've heard -- I'm certainly not here to  
5 have Mr. Jimmerson rehash the facts. I don't want to  
6 do that. I certainly want to ask him -- I would  
7 expect 15 to 30 minutes with him. I don't know if,  
8 you know, Mr. Hooge may have cross, I don't know. I  
9 suspect with Miss Kahn probably about 30, maybe a  
10 little longer. Part of that is because she's never  
11 testified before, so we need to be mindful that it's  
12 someone who's not as familiar with this process.

13 Mr. Jimmerson's son I think would be 15  
14 minutes probably. Judge Bare I suspect would be, you  
15 know, 30 minutes. And then, as I said, I think it's  
16 appropriate, and while I'm mindful of everyone's  
17 time, I really am, but I think you've seen it today,  
18 it's important to make sure we have a record. I  
19 would like to be able to close relative to the  
20 evidence once the panel is heard.

21 So I want to think that can be done in maybe  
22 four hours if we do like a 9:00 to 1:00, kind of like  
23 what we did today. Ambitiously I think that could be  
24 done. Yeah, and obviously, you know, if it needed to  
25 start at, if, you know, people need to take breaks,

1 you know, a little bit here or there, we can try to  
2 squeeze in a witness and then, you know, be mindful  
3 or respectful of people's time.

4 CHAIRMAN EDWARDS: Okay. I can do it Monday  
5 morning up until 1:00. Miss Hanson, you're muted.

6 (Discussion off the record.)

7 MR. GILMORE: So like 1:00 on the 13th it  
8 sounds like?

9 COMMISSIONER HANSON: That's fine.

10 MR. GILMORE: Okay. And, panel Chair, if  
11 you would actually, for the benefit of Judge Bare,  
12 are you allowing him to testify, because I want to  
13 keep that in mind before we haul him back here on the  
14 13th.

15 CHAIRMAN EDWARDS: My inclination is based  
16 on the testimony I've heard, I would be shocked if  
17 the State Bar and the respondent could not stipulate  
18 to the vast majority, if not all, of the aggravating  
19 and mitigating circumstances. And if that's the  
20 case, it would seem that Mr. Bare's testimony would  
21 not be necessary.

22 MR. GILMORE: Yeah. I mean, the problem is,  
23 of course, you know, you, as panel members, and  
24 Miss Hanson, I know if you've got a hard stop we can  
25 continue later, but, you know, hearing it versus



1 reading it is two different things, right? I mean,  
2 we're already in Zoom where we have the ability to  
3 look at you.

4 You know, I think hearing, you know, someone  
5 speak to it, and let's be, you know, clear. The Bar  
6 already struck Judge Bare's written report, so that's  
7 not in front of you. They filed a motion to keep  
8 that out. And then, Mr. Chairman, you agreed that he  
9 be allowed to testify.

10 So I'm certainly happy to talk off-line with  
11 Mr. Hooge between now and the 13th, and I will do  
12 that, because I think that's appropriate, and see if  
13 we can't reach a resolution. But if not, we would  
14 submit that his testimony would still be relevant for  
15 this phase of the hearing.

16 CHAIRMAN EDWARDS: Okay. I guess during the  
17 motion in limine discussion I believe we concluded  
18 with Mr. Bare could testify as to standard of care.  
19 Is that still relevant?

20 MR. GILMORE: Yeah. And that's the remedial  
21 measures portion. So as I said, I mean, his  
22 opinions, for example, spoke to hiring and training,  
23 oversight during the time in which Miss Ballard was  
24 there, and then remedial measures. Because if you go  
25 to 5.3C, I think it's 2, it's speaks to what did the

1 lawyer do when you found out there was a problem.

2 And well, you say, well, we're not worried  
3 about 5.3 anymore. Well, we are because it's a  
4 mitigating factor. And in fact, the absence of  
5 remedial measures is an aggravating factor. And so,  
6 you know, it's part of the problem with trying to  
7 isolate the 1.15 violation from the 5.3 violation.

8 So, you know, it doesn't behoove us  
9 certainly to waste everybody's time. I submit that.  
10 We know that. It costs Mr. Jimmerson money and it  
11 takes up everybody's time, but you can't -- you can't  
12 isolate the 1.15 and the 5.3 in this case, especially  
13 since we're at a phase now where you're being asked  
14 to decide whether, and if so, how to discipline  
15 Mr. Jimmerson.

16 CHAIRMAN EDWARDS: Okay. Well, I guess off  
17 the top of my head I think we can separate 1.15 and  
18 the 5.3. If you think Mr. Bare's testimony is  
19 relevant to an aggravating or mitigating  
20 circumstance, then I'm open to considering it, but  
21 I'd much rather just sort that out hopefully via  
22 stipulation of the State Bar between now and when we  
23 reconvene.

24 MR. GILMORE: Understood. I'll reach out to  
25 Mr. Hooge and we'll try to get that squared up

1 between now and then -- and Mr. Young.

2 CHAIRMAN EDWARDS: Okay. Thank you,  
3 everybody. See you back here on the 13th.

4 (Thereupon the proceedings  
5 were concluded at 5:02 p.m.)

6 \* \* \* \* \*

CERTIFICATE OF REPORTER

STATE OF NEVADA )

SS:

COUNTY OF CLARK )

I, Deborah Ann Hines, certified court reporter, do hereby certify that I took down in shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated; and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 10th day of May, 2021.



Deborah Ann Hines, CCR #473, RPR

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