

1 subject of inquiry.

2 Q. Okay.

3 A. She didn't say, Please explain the three
4 transactions. She asked me -- I mean, you have to go
5 back and look at her letter, but she says
6 provide us all the information you have. So I went
7 to work on providing everything that they needed, if
8 you just read it, the client trust ledger report from
9 November 1 to March 11th, the Jimmerson Law Firm
10 trust banking account screenshot of March 11, the
11 copy of the check numbers 1461, which she had asked
12 for in her letter of March 10, and --

13 Q. Okay. Mr. Jimmerson --

14 A. Yes, sir?

15 Q. Mr. Jimmerson, my question is in Louise
16 Watson's letter to you, she specifically provided you
17 with the grievance from Nicole Cruz who stated that
18 around the time that she was working, November 2019,
19 you had made improper withdrawals for --

20 MR. GILMORE: I'm going to object. That
21 document is not in evidence, and so he's basically
22 reading from a grievance that's not been in evidence.

23 THE WITNESS: And Ms. Cruz would not know.
24 She was incompetent. She never touched the books and
25 records of ours. She worked seven days in my law

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1 office.

2 MR. HOOGE: I'm going -- this goes to the
3 respondent's state of mind, it's not hearsay. I'm
4 just asking if he knew what the allegations were at
5 that time.

6 MR. GILMORE: That I have no objection to.
7 But if you're reading the allegations into the
8 record, then I would have objections to that.

9 THE WITNESS: If you're asking me if I read
10 the State Bar's letter of March 10th, yes, Mr. Hooge,
11 I read it ten times, not one time.

12 BY MR. HOOGE:

13 Q. You knew that the allegations were that in
14 November you improperly withdrew from your client
15 trust account to make payroll?

16 A. That's what the allegation was, yes, sir.

17 Q. Right. In this first response you stated,
18 These documents were sent to debunk the malicious and
19 false allegations by Nicole Cruz alleging that our
20 clients were harmed by failure to account for
21 respective trust funds. Now, would you agree that
22 that is not correct?

23 A. No, I wouldn't. The letter says
24 specifically, These documents were sent to debunk the
25 malicious and false allegations of Nicole Cruz, a

1 2-day -- I was mistaken, it was 7-day employee -- I
2 said 2-day employee -- of November of 2019 and/or
3 Leah Ballard, a 25-day employee (November 7th to
4 December 2) alleging that our clients were harmed by
5 failure to account for respective trust funds,
6 period. All of which you know is false and all of
7 which you recognize because you didn't claim that the
8 clients were harmed.

9 Q. Mr. Jimmerson, we just heard plenty of
10 testimony about how honest you are. What I want to
11 know --

12 A. That's up to you to decide. I'm not going
13 to say how I'm saying. That's not for me to say,
14 it's for you to --

15 Q. My question is why in this first letter,
16 when you know that those are the specific
17 allegations, and you now claim that they were
18 innocent mistakes that you discovered in December on
19 December 3rd, several months earlier, why didn't you
20 bring those to Miss Watson's attention in the first
21 letter? Why did you have -- why did you force her to
22 investigate it herself and then discover and send you
23 another response?

24 MR. GILMORE: Object, it's characterizing
25 allegations from a document that's not in evidence.

1 THE WITNESS: Mr. Hooge, that's unfair.

2 CHAIRMAN EDWARDS: Overruled.

3 THE WITNESS: That's unfair, Mr. Hooge, but
4 let me just say to you, it's okay. You have your job
5 to do. I respect it, I respect you, okay. I didn't
6 know what the Bar was looking for. I didn't know the
7 Bar was -- I was unhappy when you filed a complaint,
8 because I thought that I hopefully had convinced you
9 that through my correspondence and my behavior that
10 you, and the fact that you don't follow it up in
11 terms of asking for any trust issues later on, or
12 before, that in the year that you found yourself
13 three transactions, a year and three months you
14 looked them up, my books and records of the trust
15 account.

16 So anyway, that's my answer to you. I
17 didn't know to focus on that, those three
18 transactions or the rest of it. For example, why are
19 you not asking me why I didn't focus on Jay Nady?
20 Come on, you know those things don't lead to
21 violations.

22 But those three, I get it. Trust me, I get
23 it. But I didn't know what she was going for so I
24 provided everything. She didn't guide me and say, I
25 want to hear about these transactions. She had

1 referenced these allegations from a lady who had no
2 personal knowledge about anything involving the
3 accounting department. She never touched them. She
4 had no, you know, this is a lady who lied about being
5 a third year Boyd law student.

6 BY MR. HOOGE:

7 Q. So, Mr. Jimmerson, in your letter when you
8 mention the malicious and false allegations by Nicole
9 Cruz, you now are stating that the malicious and
10 false allegations by Nicole Cruz, to your
11 understanding, were not about taking money from the
12 trust account to make payroll, is what you're saying
13 now?

14 A. No, I'm not saying. I don't change any
15 story. No, that's not what I'm saying. I'm saying I
16 did not find out the three transfers in this letter
17 because I did not know that that was the focus of
18 Miss Watson. Her letter to me, which you're not
19 showing me, you know, I'm guessing, I'd have to pull
20 it up from elsewhere, which is not in evidence, was
21 asking generally about the operation of my trust
22 account, which I had already demonstrated my fidelity
23 by already sending her my trust account within two
24 hours of getting the letter.

25 The big thing is -- listen, one thing we

1 understand, you don't fool with the trust account,
2 Mr. Hooge. And you are right to be vigilant for any
3 lawyer who makes mistakes, as I did, regarding the
4 same. You're protecting the public, and so am I, as
5 a member of the public and lawyer.

6 MR. GILMORE: Dan, just to let you know, we
7 can watch what you're doing.

8 MR. HOOGE: Oh, you can?

9 THE WITNESS: Yeah.

10 MR. YOUNG: You need to stop your screen
11 share, if you're done with the document.

12 MR. HOOGE: I thought you can only see the
13 one exhibit, or the one. It's always done that in
14 the past. I apologize.

15 BY MR. HOOGE:

16 Q. All right. So if we admitted Louise
17 Watson's letter then right now, it's your statement
18 that it didn't mention anything about taking from the
19 trust account to make payroll?

20 A. I haven't memorized the letter. I would not
21 say that. You have it in front of you. You have me
22 at a disadvantage. What I'm saying to you is is that
23 I responded in full. I didn't cover up, as you
24 falsely allege in your opening, okay, or your trial
25 brief. You know that. But all I'm trying to get at

1 is I tried to be as faithful and as full in my
2 response by attaching every document that I thought
3 was responsive to the letter.

4 Q. All right. I've got one other line of
5 inquiry. Your position, correct me if I'm wrong, is
6 that there's no client harm as long as they're
7 eventually paid back; is that correct?

8 A. Definitely not. Definitely not.

9 Q. Okay.

10 A. You should not -- you should not exceed the
11 account moneys that are in your trust account.

12 Q. Okay.

13 A. And I haven't, but on this occasion,
14 45 years. So no, sir. I know why I'm here. Make no
15 mistake, I know I'm here. It's what punishment. And
16 I understand the findings of the board, it's what
17 punishment they decide to levy upon.

18 Q. So you would agree with me that improperly
19 taking client trust account, client money in a trust
20 account would cause them harm regardless of the time
21 that it's out of the trust account?

22 A. No, it causes potential harm. And the
23 question becomes does the nature of the potential
24 harm, is it small to be a letter of caution, or is it
25 medium, if you will, and it should be a public

1 reprimand. That's the decision for the panel to
2 make.

3 What I'm saying to you is this: You have to
4 be fair to me, okay. I've never had an issue with
5 truthfulness. I had the funds to make this transfer
6 without -- in the cases that you see where you have
7 horrific, you know, lawyers who do horrific things,
8 they're taking -- they're just free-for-all with the
9 trust accounts. I had enough money to take it from
10 20 other pockets to pay the 40,000 or the 45,000, and
11 you know that and you see that, okay.

12 So you're absolutely right. The question I
13 didn't ask -- the answer I needed to have was when I
14 transfer \$40,000, are the \$40,000 owed to me from the
15 trust account. But the one thing you're not
16 accounting for is when you say that these are other
17 people's wallets, the trust account also includes the
18 Jimmerson Law Firm's wallet, because our credit card
19 statements, our credit card collections from a client
20 who chooses to pay by credit card, and most clients
21 these days are choosing to pay by credit card as
22 opposed to checks, are deposited into our IOLTA.

23 So we clear the account, we're supposed to,
24 I've learned, I know this, you clear the account,
25 what, every 30 days, if not sooner, okay, so you

1 don't leave your earned moneys that have been paid to
2 you in the trust account, you move them over to your
3 corporate account. But at any moment in time there
4 are moneys belonging to the Jimmerson Law Firm in the
5 trust account that are ready to be transferred over
6 and belong to the Jimmerson Law Firm.

7 So that's all I'm saying to you. No, you
8 should not make the mistake that I made of believing
9 the moneys were paid and make the transfer, rely upon
10 that good faith belief and then find out afterwards
11 that you were mistaken. I should have investigated
12 beforehand. I shouldn't have relied up the new
13 bookkeeper.

14 MR. HOOGE: Thank you. No further
15 questions.

16 THE WITNESS: Thank you, Mr. Hooge.

17 CHAIRMAN EDWARDS: Mr. Gilmore?

18 REDIRECT EXAMINATION

19 BY MR. GILMORE:

20 Q. Two minutes of follow-up. I'm going to
21 screen share here Exhibit 13. Mr. Jimmerson, do you
22 see this document?

23 A. Yes, sir, I do.

24 Q. And this is the spreadsheet that you
25 ultimately supplied to the State Bar, correct?

1 A. I did.

2 Q. And this spreadsheet identifies the 445,000
3 transfer that's at issue?

4 A. Yes, sir, it does.

5 Q. It also identifies the \$60,000 transfer at
6 issue?

7 A. It does specifically.

8 Q. And going back it identifies the \$40,000
9 transfer?

10 A. All three of them are there.

11 Q. So you provided the State Bar with
12 information related to those three transfers and
13 backup related to each of those transfer?

14 A. I did. I didn't call it out as to the item.
15 I think Mr. Hooge was trying to make that point, I
16 didn't highlight it, and I get it, but I provided
17 everything that I had. And you can see it. You can
18 read it as plain as day. It's all there.

19 Q. And, in fact, this spreadsheet identifies
20 every single transfer associated with each account?

21 A. Of course, even the ones that are not calling
22 into question, Miss Watson advised is appropriate.

23 MR. GILMORE: Okay. No further questions,
24 Mr. Chairman.

25 THE WITNESS: Thank you all, again. I

1 appreciate your time.

2 CHAIRMAN EDWARDS: Miss Hanson, any
3 questions for the witness?

4 COMMISSIONER HANSON: No, I'm good. Thanks.

5 CHAIRMAN EDWARDS: Mr. David?

6 COMMISSIONER DAVID: No questions.

7 CHAIRMAN EDWARDS: Okay. Thank you,
8 Mr. Jimmerson.

9 THE WITNESS: Thank you, Mr. Edwards.

10 MR. GILMORE: Judge. Our next and last
11 witness is former Judge Rob Bare. And, panel Chair,
12 with your indulgence, if you can -- I'll ask to admit
13 his CV into evidence then I'm going to not have to go
14 through that as quickly as I can, but still as
15 expeditiously just so the panel, if they are or are
16 not familiar with him, have that information at hand.
17 So I'd like to propose to, just his CV, to be clear,
18 propose to admit that as an exhibit.

19 CHAIRMAN EDWARDS: Any objection?

20 MR. HOOGE: No objection.

21 CHAIRMAN EDWARDS: Okay. That will be admitted.

22 MR. GILMORE: Okay. I'm not at a position
23 to email that around to the panel members. I won't
24 expect Kristi to do that for me, so I will -- I'm
25 happy to get that to the panel members, you know,

1 before or while you're in deliberations. If Kristi's
2 able to, I would certainly appreciate it, but I
3 understand if she's not able to.

4 MS. FAUST: I have a quick question though.
5 What would the exhibit number be?

6 MR. GILMORE: I think next in line for me in
7 terms of my disclosures would DD. So it would be
8 Exhibit DD. And if you have the ability, Kristi,
9 previous when we disclosed Judge Bare's expert
10 report, his CV would have been attached as Exhibit 1.
11 If you're able to basically extract that CV that was
12 attached as Exhibit 1 to his expert report and
13 circulate it around to the panel members.

14 MS. FAUST: I can do that.

15 MR. GILMORE: Okay. And then with that
16 then, if the court reporter would please swear him in.

17 (Thereupon Respondent's Exhibit
18 DD was admitted into evidence.)

19 Thereupon--

20 ROB BARE

21 was called as a witness by the respondent, and having
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GILMORE:

25 Q. Please state your name for the record.

1 A. Rob Bare.

2 Q. Okay. Judge Bare, you're a former district
3 court judge?

4 A. Yes.

5 Q. How long did you serve on the bench?

6 A. Ten years.

7 Q. Okay. Prior to serving on the bench, what
8 were you doing?

9 A. I started my legal career in 1989 as a
10 member of the United States Army Judge Advocate
11 General's Corps. I was a trial lawyer. I served
12 there for four and a half years, and then I came to
13 Nevada in 1993 where I was fortunate to be hired by
14 the State Bar of Nevada as an Assistant Bar Counsel,
15 and then within about two years I became the Bar
16 Counsel to the State Bar. I stayed at the State Bar
17 for a total of 17 years. And I was lucky, I'm sure
18 Mr. Hooge can appreciate this, to have the position
19 as Bar Counsel for 15 years.

20 Q. Okay. I want to be short with you so we can
21 be respectful of the panel members' time.

22 A. Well, you know, on that note, Miss Hanson,
23 Mr. David, Chairman Edwards, during the time I was
24 sitting here, I of course saw the time urgency, and I
25 did just take some time to create notes designed to

1 expedite my testimony.

2 I know that you will probably want to get to
3 closing argument in ten minutes or so, if you're
4 going to deliberate from 4:00 to 5:00 so I've
5 condensed everything down now into really some quick
6 notes. I can relay them if you'd like.

7 Q. Yes. And just to set up for that,
8 Mr. Jimmerson hired you as an expert witness in this
9 case?

10 A. Yes. Mr. Jimmerson asked me to provide
11 expert opinion. He wanted it to be a candid
12 appraisal of the situation, be it good, bad or ugly.
13 He was really concerned about especially the failure
14 to supervise nonlawyers in his office, because he
15 took a lot of pride in his office, and so I took on
16 the mission and rendered the report as candidly and
17 straightforward and truthfully as I could.

18 Q. Okay. And what opinions did you reach?

19 A. Well, you know, in condensing my notes,
20 members of the panel, I want to tell you that as an
21 expert in this area, I'm proud to do it, when I was a
22 judge for the, a district judge for the ten years,
23 you know, I think about once a week another one of my
24 contemporaries, you know, a district judge, would
25 come talk to me any time there was an ethics issue.

1 In fact, lawyers haven't stopped calling me. They
2 still call me all the time, even when I was a judge.
3 I'm sure the Bar Counsel can appreciate that.

4 And so what I want to do today now in
5 condensing this opinion, or sets of opinions, is to
6 simply say as an expert because I would -- I think
7 the panel would truly appreciate, Mr. Jimmerson again
8 thinks it's vital, from a lawyerly perspective in
9 this situation what needs to be done, what would the
10 panel expect Mr. Jimmerson to do. Essentially what
11 is he ethically required to do.

12 Now we're in the sanction stage, so of
13 course I will streamline that relevant to aggravating
14 and mitigating factors as the panel has. So if the
15 panel looks at what I now notice was admitted as
16 Exhibit 50, 5-0, it looks to me sort of like a
17 verdict form that you might see in a civil or
18 criminal jury trial. It's a sheet designed to make
19 it such that there's no real cookie cutter style
20 discipline in Nevada.

21 So I'd ask the panel to consider of course
22 maybe referencing this Exhibit 50, and it has a
23 number of aggravating, mitigating factors. I want to
24 focus my opinion on a few of those that involve the
25 efforts specifically that I endeavored to explore and

1 provide to Mr. Jimmerson.

2 Exhibit 50, you know, it reminds me sort of
3 a grading form that a teacher or maybe even one of,
4 you know, Miss Hanson's professors may use. And I
5 think when the panel looks at this, they're going to
6 give Mr. Jimmerson A pluses in this effort, as a
7 panel should do, in grading him essentially on the
8 mitigating factors in the case.

9 You know, I find it interesting, you know, I
10 did 52 jury trials as a district judge, and I did
11 cover and did overflow in the criminal arena. And
12 there's this concept that you see all the time,
13 especially in criminal law, that has to do with a
14 consciousness of guilt. You know, what does somebody
15 do when they first find out that others are sort of
16 suspicious or know of something of professional or
17 personal concern. And what that person does when
18 they first have to deal with things is, you know,
19 what we call consciousness of guilt.

20 Here, if you look at the mitigating
21 circumstances, there's one here called timely good
22 faith effort to make restitution or rectify
23 consequences of misconduct. And here you have to
24 give Mr. Jimmerson an A plus on that, because you
25 heard Amanda, I don't need to repeat what Amanda told

1 you, but please, I know the panel will look at that,
2 but, I mean, that shows consciousness of surprise,
3 not of guilt, but of surprise.

4 He had -- this I think shows lack of
5 knowledge, but more than that it shows serious
6 professional concern. She testified that
7 Mr. Jimmerson was completely shocked, he was
8 speechless, but in my expert role what did
9 Mr. Jimmerson do? What is the evidence from my
10 perspective that shows what he did, what we would
11 expect him to do, and what we'd want him to do as an
12 ethical lawyer to show timely good faith effort to
13 rectify consequences.

14 Well, he told Amanda, "I need you back." He
15 immediately did that. He said to a woman who left
16 his firm to go be a stay-at-home mom to a
17 five-year-old, he respected that, but he cared so
18 much about what had happened and the shock that he
19 saw in these text messages that are in evidence that
20 he took her from -- I added it up, in addition to
21 making these notes, I think it comes out to \$37,000 a
22 year at the hourly rate she mentioned, he took her --

23 MR. HOOGE: Objection, Mr. Chair.

24 CHAIRMAN EDWARDS: Overruled.

25 THE WITNESS: He took her immediately to

1 50,000, along with a 15,000 bonus. So in order to
2 take care of this situation, talk about swift,
3 immediate remedial measures, he wants to convince his
4 now stay-at-home mom, who he, I think you can see the
5 relationship, 12 years, they love each other, come on
6 back and be with me, fix this, because I care about
7 it that much. And she was, of course, willing to do
8 that, and you heard from her.

9 And what did they do then? What did
10 Mr. Jimmerson do? What would you expect him to do?
11 You expect him to be hands on with her, and you heard
12 what she had to say. She's in the office as soon as
13 they could be, two or three hours, personal meeting
14 with the manager/owner of that law firm,
15 Mr. Jimmerson, to start to fix things. And by
16 December 27th, even with the holidays, everything is
17 fixed, that trust account is reconciled, and no
18 clients are harmed. You couldn't ask for anything
19 more, in my view, as to that mitigating factor.

20 In order to save time, I won't mention a
21 number of Supreme Court cases that I'm aware of that
22 where the Supreme Court, in the last few years
23 especially did discipline cases, has specifically
24 found that this type of activity they want to
25 encourage. And if you look at it, it's rewarded in

1 the ultimate discipline that you can see the court
2 hand out or address when there's good remedial
3 action, like, you know, and I haven't seen it quite
4 like this.

5 All right. Turning to another factor: Full
6 and free disclosure is another one of the mitigating
7 factors. Full and free disclosure to the
8 disciplinary authority. Well, I know there's some
9 contention because I've sat through this entire
10 hearing, and I respect that, but Mr. Jimmerson did
11 act as quickly as he possibly could, as far as I see
12 it. And I was at the Bar, like I say, 17 years and
13 it's rare to have somebody who gets a Bar grievance
14 fire off any kind of response essentially on day one.

15 And that's what he did. He said -- he told
16 Amanda, let's do this, as she said, right now. Let's
17 send a response to Louise Watson, Louise Watson, who
18 I hired, who is incredibly gifted, as shown in this
19 case, a good person who always tries to be candid and
20 do her best as well.

21 But what did Mr. Jimmerson do after that?
22 He supplements the response with a volunteer effort.
23 Again, you've heard that, what can I say, that's I
24 think another A plus in the grading of the mitigating
25 factors, full and free disclosure.

1 The Chairman of the panel, I know that
2 Mr. Edwards in the hearing said that RPC 1.15 is a
3 strict liability offense. I agree with that. It is.
4 It seems to me, though, as an expert in this area
5 that if you're dealing respectfully with sanctions
6 having to do with something that is strict liability
7 on the disciplinary front that affects the lawyer's
8 license, perhaps more than any other type of case,
9 any other area of disciplinary problem, the
10 safekeeping of property, that's strict liability, the
11 panel I think, and I know they will, should, in that
12 circumstance, devote deliberative energy to
13 Mr. Jimmerson's mental state, because that's what
14 this sanction, in my view, has to be about, his
15 mental state.

16 It's a strict liability offense, so as the
17 Supreme Court says in the Lerner case, mental state
18 is a factor. That's just a case that's just a few
19 years old. I think the panel has to do that and they
20 will do that.

21 Again, my notes, I'm almost finished. You
22 know, if you only knew the type of respect that I
23 have for the Bar and its counsel, it was the
24 highlight of my professional life, and I was a
25 district judge for ten years. It's the core of my

1 existence dealing with professional ethics. So I
2 don't mean any disrespect to Mr. Hooge or the Bar
3 Counsel, but I do want to say that there was a point
4 here, I think the Chairman saw this, and talked about
5 it, there was in the case so far, really it was
6 neglected, it wasn't mentioned. You know, half of
7 the legal standard that has to be applied to this
8 situation has not been mentioned yet, and that I saw
9 admitted as Exhibit 51 in the case, just, you know, a
10 few hours ago or an hour ago.

11 Exhibit 51 is the disciplinary handbook.
12 And I have it here. This is what it looks like. If
13 you look at this disciplinary handbook, again Exhibit
14 51 admitted here, it does say in its preface that
15 this handbook seeks to assist the panel members and
16 parties during disciplinary proceedings. So where
17 are we right now, acting as quickly as we can? Well,
18 we're right in the middle of a disciplinary hearing.

19 And so let's use it, as suggested in this
20 disciplinary handbook created by the Office of Bar
21 Counsel. Page 18, and I think respectfully,
22 Mr. Edwards, this goes to what you did have a concern
23 about that you indicated some confusion on when the
24 standards were mentioned. And, by the way, if you
25 look at the preface of the handbook, it talks about

1 the Bar thanks the ABA for allowing reprint of the
2 standards for imposing lawyer sanctions.

3 So just to be clear, when you look at this
4 page 18 that I'm suggesting you now look at in the
5 exhibit, what you're seeing there in 4.11, 4.12,
6 4.13, and 4.14, those are ABA standards that are
7 being applied that the Supreme Court now, especially
8 in the last few years, is specifically applying
9 relevant to the law to determine sanctions in a
10 discipline case. But page 18, violations of duties
11 owed to clients --

12 MR. HOOGE: I'm going to object to legal
13 argument.

14 CHAIRMAN EDWARDS: Overruled.

15 THE WITNESS: Failure to preserve the
16 client's property. And again I'm right on page 18,
17 the handbook, this, in my view, getting to my
18 experience as a district judge, this is your jury
19 instruction. That's what this really is having to do
20 with the sanctions at issue for Mr. Jimmerson's case
21 right now. What does it say? Failure to preserve
22 the client's property, that is safekeeping property
23 that is the RPC 1.15 violation.

24 Absent aggravating or mitigating
25 circumstance, so of course you can deviate up,

1 deviate down depending on whether you find more
2 aggravating or mitigating, I'm suggesting A plus on
3 mitigating. But here's the important part of this
4 that I would like to relate as an expert. If you
5 look at 4.11, the ABA standard, or 4.12, the ones
6 that were argued by the Bar, they have one
7 commonality by way of the mental state that the
8 Supreme Court in the Lerner case says you have to
9 consider, and that commonality is the word "knowing"
10 or "knowingly" or "should know." But "knowing" is
11 part and parcel of 4.11 and 4.12. Those both talk
12 only about suspension in the case of 4.12, and
13 disbarment in 4.11.

14 So what that means, of course, as a matter
15 of law in these panel jury instructions, if you will,
16 is that you must find that Mr. Jimmerson knew or
17 should have known, but he had knowledge that when, if
18 you're going to accuse him of misappropriation, which
19 is theft, which is embezzlement, which is fraud,
20 rightly so if he's going to be found guilty or
21 accused of that and then sanctioned, the word
22 "knowing" appears there as an element. So you would
23 have to respectfully find that he knew or should have
24 known that the client money wasn't there. That's up
25 to your discretion as panel members to come up with

1 that ultimate conclusion.

2 The evidence that, you know, as an expert my
3 view is clear that it was mistake. He made a
4 mistake. Well, if it was a mistake, what starts to
5 happen then in 4.13 and 4.14? Guess what element no
6 longer exists? Knowledge. There's a new element now
7 that you see for the first time, and it's referred to
8 as negligent or negligence. Mistake is negligence.
9 So if the panel believes it was a mistake, evidence
10 suggests that, well, then it's 4.13, 4.14. It's
11 either a reprimand or an admonition.

12 The next point that would have to be
13 considered is injury or potential injury to a client,
14 or in the case of 4.14, admonition, which talks about
15 letter of caution, because admonition is a letter of
16 caution in Nevada. Little or no actual or potential
17 injury to a client, along with negligence, that's a
18 letter of caution. So that explains all that.

19 And the last thing I want to say, and it's
20 in my report, is RPC -- I'd ask the panel to please
21 consider RPC. This is the Nevada Supreme Court rule
22 1.0A. And I have my book here. Failure to comply
23 with an obligation or prohibition imposed by a rule
24 is a basis for imposing a disciplinary process. The
25 rules presuppose that disciplinary assessment of the

1 lawyer's conduct will be made on the basis of the
2 facts and circumstances as they existed at the time.

3 So that's what we've been spending all this
4 effort on, I think, in the sanction phase. What was
5 Mr. Jimmerson's mental state at the time. Did he
6 have knowledge that he was using client money? No.
7 Did he make a mistake? Yes. His 45 years with good
8 reputation.

9 RPC 1.0A goes on to say most importantly,
10 moreover the rules presuppose that whether or not
11 discipline should be imposed for a violation and the
12 severity of the sanction depend on all the
13 circumstances such as willfulness, seriousness and
14 what have you. I wanted to, again, as an expert
15 respectfully make sure the panel knew that there is
16 no requirement of any sort of cookie cutter or any
17 disciplinary sanction whatsoever.

18 The panel has the ability, even in light of
19 finding the violation of safekeeping property, to
20 simply say letter of caution, and that could, in my
21 view, as they should, impose a letter of caution with
22 certain audit conditions. Conditions with an
23 independent CPA, one that the State Bar chooses to
24 audit that account for, I think what we used to do is
25 about two years, but I'm not real sure actually what

1 the Bar does on that now.

2 Anyway, I hope I summarized it. I
3 appreciate the ability to summarize. The last thing
4 I'd say is if in regard to the knowledge or
5 negligence item that I know the panel sees here, I
6 want to say I appreciate what Mr. Hooge said, because
7 I think it's the best evidence respectfully for
8 Mr. Jimmerson on the issue of whether he had
9 knowledge or whether he made a mistake, because he's
10 told you he made a mistake. Mr. Hooge said, page 193
11 of the transcript, line 16 and 17, "I've never had a
12 respondent be as and open and honest as
13 Mr. Jimmerson." He made a mistake.

14 BY MR. GILMORE:

15 Q. Okay. Judge Bare, have we covered the
16 opinions in as quickly a way as you were able to that
17 you were asked to render in this case?

18 A. Yes. Yeah, I created that summary note in
19 the last hour and a half.

20 Q. Okay. So in sum do you believe
21 Mr. Jimmerson, as an expert in the area of legal
22 ethics and professional responsibility, acted as you
23 would expect him to as a lawyer once the issues
24 related to his bookkeeper were brought to his
25 attention?

1 A. You couldn't expect anything more, so yes.

2 MR. GILMORE: Panel Chair, nothing further
3 from me. I pass the witness.

4 CHAIRMAN EDWARDS: For the State Bar?

5 MR. HOOGE: Thank you, Mr. Chair. I'll be
6 brief.

7 CROSS-EXAMINATION

8 BY MR. HOOGE:

9 Q. Mr. Bare, when you talk about 4.12, ABA
10 standard 4.12, as you read from the disciplinary
11 handbook, it says "know or should know." Are you
12 saying it's your professional opinion that
13 Mr. Jimmerson should not have known that he was
14 misappropriating funds?

15 A. Ultimately that's up to the panel. It is a
16 standard of know or should know. But since you asked
17 me, I would say yes, I don't think that the evidence
18 suggests at all, not even getting to clear and
19 convincing, that he should have known even.

20 We know he didn't know. I mean, that's
21 about, since you've asked me, it's about as clear as
22 it could be that Mr. Jimmerson did not know that when
23 he made the transfers that he was utilizing money
24 that was not earned. He didn't know that. What he
25 had by way of knowledge was in the shortcomings of

1 Ballard become the whole case really, as Mr. Kennedy
2 said from the beginning, but then that got dismissed
3 and sort of crippled the defense theory I think in
4 that regard. But, I mean, you know, Miss Ballard was
5 trained for two weeks. It was like 17 days.

6 Q. Mr. Bare, so are you saying that --

7 A. Well, I mean, to answer your question, I
8 mean, you know, I have to --

9 Q. You answered it. I'm not asking about
10 Miss Ballard, I'm asking about Mr. Jimmerson. Are
11 you saying that he didn't have a responsibility to
12 know the exact amount he was entitled to transfer?

13 A. Well, what I'm saying is consistent with
14 what the law requires, especially again 1.0A, look at
15 the circumstances as they existed at the time. I
16 think it would be disingenuous to say that
17 Mr. Jimmerson couldn't have done a better job, he
18 certainly could have, but his error was he relied
19 upon the new bookkeeper, after being trained for
20 17 days.

21 You know, Miss Kahn wasn't really gone. I
22 mean, she was available. And we're doing this
23 hearing virtually, right? We're living in a virtual
24 world. Miss Kahn was available virtually. And, in
25 fact, they talked 12 times. They talked all the time

1 while Miss Ballard was by herself.

2 So, I mean, you know, what I'm saying to you
3 is he had every reason in the world, Mr. Jimmerson,
4 to believe, based upon the training, the fact that,
5 you know, he saw Ballard every day there, you know,
6 you could see from the text, judge for yourself, I'm
7 answering your question, you asked me, you know,
8 Ballard decided for whatever even to conceal that she
9 wasn't doing the job and later admitted it and they
10 had to react to it.

11 So what I'm saying to you is as a lawyer he
12 had every reason, in my opinion, as you know from
13 probably reading my report, was that he had to just
14 act reasonably, and he did, he acted reasonably. He
15 felt as though what Miss Ballard was doing would make
16 the books be in shape reasonably to where, you know,
17 when he took out the money that it was there. I
18 mean, it was earned. There's no dispute that it was
19 earned.

20 Q. Okay. Mr. --

21 A. There's no dispute it was earned. The
22 question is --

23 Q. Okay. Let me ask you this: What are you
24 basing your opinion on? Your opinion is that it's
25 reasonable for an attorney to withdraw amounts that

1 he doesn't have any basis for. What case law are you
2 relying on?

3 A. Well, if you want to presuppose as part of
4 that question there's no basis, I would have to agree
5 with you. Yeah, if the lawyer has no basis, a
6 reasonability, in this case his mind, that the
7 money's not the firm's money or the lawyer's money,
8 yeah, of course, that's suspension, disbarment if
9 that happens. I agree. That's not what happened
10 here, though.

11 Q. Okay. Let me take a second to share my
12 screen here. Can you see where the cursor is?

13 A. I'm going to have to take off my glasses.

14 MR. GILMORE: Dan, can you zoom in maybe a
15 little bit for him?

16 BY MR. HOOGE:

17 Q. Right here where it says "because." Can you
18 read the next two sentences?

19 A. Sure. You want me to read them out loud?

20 Q. Yes, please.

21 A. Okay. No problem. "Because of these
22 failings/mistakes, I did not know what exact amount I
23 was entitled to transfer over from our trust account
24 to our corporate account. I made my best estimate
25 looking at the time we had expended from our

1 timesheets in ascertain what amount to transfer."

2 Q. And so you would agree with me that there's
3 no case law that supports that as negligence,
4 correct?

5 A. No, I can't agree because I would have to
6 look at that issue and be given an opportunity to
7 research it.

8 Q. Okay. So you would agree as an expert you
9 should know that there are plenty of cases that say
10 that is a should have known standard at a minimum,
11 correct?

12 A. I can't agree with that, no, because, again,
13 the idea is to look at all the facts and
14 circumstances at the time. There's no -- there is no
15 cookie cutter discipline. I mean, thank God for
16 that. It's about panels looking at what really
17 happened, and they have to do it. Look, one of the
18 tough things about this, as I'm sure you know --

19 Q. Mr. Bare. Mr. Bare --

20 A. -- is that we're dealing with a --

21 Q. Mr. Bare, that's not my question.

22 A. I'd like to finish my -- can I finish my
23 answer? I'd like to finish my answer.

24 Q. I'm going to object at this point to
25 nonresponsive answers. I'm trying to keep time

1 short. I'd ask you to answer yes or no. If you want
2 clarification, then your attorney, Mr. Gilmore, can
3 certainly follow up.

4 So I'm going to state this as explicitly as
5 I can, all right. You are saying that if an attorney
6 does not know the exact amount they are entitled to
7 transfer, and they just take an amount out without
8 knowing, you're saying that's okay, that's
9 negligence, that is not 4.12 standard?

10 A. It could be negligence, and in this case it
11 was negligence, if you look at the facts and
12 circumstances of the case known to the lawyer at the
13 time and what the lawyer did. That's why I mentioned
14 everything about Miss Ballard, the bookkeeper, the
15 training, the time, the reliance.

16 You know, I don't think it's -- I don't
17 think that it's ever easy to try to determine, if
18 you're a jury, or in this case a panel, what was
19 going on in the mind of the accused. But that's what
20 this case comes down to, it's everything having to do
21 with sanctions. Did he act with knowledge or was he
22 negligent?

23 Q. All right. Now, Mr. Bare, can you tell me
24 what the definition of "knowledge" is? Or
25 actually --

1 A. I can. I'll tell you what, I can do better
2 than that. I can tell you --

3 Q. Can you pull up --

4 A. I can pull up -- can I answer -- I'm going
5 to answer your question.

6 Q. Yes.

7 A. The Supreme Court of Nevada has determined
8 the definition of "knowledge" for purposes of
9 discipline cases, and they do that in RPC 1.0 where
10 it says 1.0F, they define "knowledge." So those
11 seven define it. "'Knowingly,' 'known,' or 'knows'
12 denotes actual knowledge of the fact in question. A
13 person's knowledge may be inferred from circumstances."
14 so actual knowledge that he's taking money that
15 wasn't his. Hum. It's up to the panel to determine
16 that, actual knowledge.

17 Q. Can you turn to page 19 of the handbook, the
18 disciplinary handbook?

19 A. Okay, I'm there.

20 Q. Okay. Would you read the definition of
21 "knowledge" that the ABA provides?

22 A. Where is it on that page?

23 Q. Page 19.

24 A. Page 19. I don't see it on page 19.

25 Q. Okay. How about I share my screen. Can you

1 see it now?

2 A. Okay. That's not page 19 of the handbook.

3 MR. GILMORE: I think you got a different
4 version.

5 THE WITNESS: That's not page 19 of Exhibit
6 51.

7 MR. HOOGE: Well, which Exhibit 51 did you
8 admit?

9 MR. GILMORE: This is Josh Gilmore. We
10 admitted the one that Kristi circulated back on
11 April 30th.

12 THE WITNESS: Maybe that's been removed. I
13 don't know. I don't see it.

14 MR. HOOGE: That's the one I'm using.

15 MR. GILMORE: Page 19 of the one she
16 circulated starts out "failure to preserve client
17 confidences, 4.2."

18 THE WITNESS: Well, I don't know what you
19 have there, but what I would say is, and I'm sure the
20 panel would agree, that the Nevada Supreme Court
21 decides to define knowledge for purpose of
22 disciplinary cases, then that's what they're going to
23 listen to.

24 BY MR. HOOGE:

25 Q. Right. So it's your opinion that the

1 circumstances here excused Mr. Jimmerson from
2 actually knowing, identifying clients in the
3 withdrawal because, according to you, he was relying
4 on his bookkeeper, who he already knew at the time
5 had made a mess of the books?

6 A. That is my opinion. I think, again, all the
7 facts and circumstances, including the reasonable
8 reliance on Ballard, who conceals everything she was
9 incompetent with, along with everything else the
10 panel knows. It's up to the panel. I've given a
11 professional opinion that it's negligence, it's a
12 mistake. He made a mistake.

13 Q. So the attorney doesn't have to have a
14 conscious awareness of all the circumstances; is that
15 what you're saying?

16 A. No, I am saying that. I'm saying that when
17 we look at all the circumstances known to
18 Mr. Jimmerson, he knew there was billings. He knew
19 that they were earned, and he made a mistake based
20 upon the reliance that Miss -- I mean, he's -- I
21 mean, you're asking me this. Do you think it's a
22 coincidence this happened, all these happened when
23 Miss Ballard is there and never happens any other
24 time in 45 years?

25 Q. You can't point to a single case that has a

1 similar set of facts where they decided it was
2 negligence?

3 A. Let me tell you, I was there 17 years, and I
4 could have been there another who knows how long, and
5 we still would get cases that are unique. I mean,
6 all these cases are unique. You can't make this
7 stuff up. I mean, I read the cases. I'm sure
8 everybody gets the Nevada Lawyer magazine and usually
9 flips right to the back. I mean, you can't make up
10 these facts. And but the beauty of it is that in
11 some ways that's what the panels do, they have to
12 look at the specific facts and make their decision.

13 Q. And --

14 A. But it's an interesting fact pattern.
15 There's no doubt.

16 Q. You don't have a degree in finance or
17 accounting or any related proficiency, correct?

18 A. No. My wife handles all that.

19 Q. And you don't have a degree in business
20 management, correct?

21 A. True, I don't.

22 Q. You've never managed a law firm yourself?

23 A. No. Well, I managed the office you have for
24 15 years, but no independent law office.

25 Q. So you're not a certified public accountant,

1 correct?

2 A. True.

3 Q. So your opinion is not based on your
4 experience, it's not based on any case law, it's
5 based on your meeting with the grievant, or, excuse
6 me, the respondent, is that correct, and reviewing --

7 A. No, I attached -- I attached an exhibit to
8 my report showing all the things I replied upon.
9 I've got -- I met with Amanda for probably eight
10 hours total now, as well. So, I mean, you heard her.
11 She's a much better witness than me on what you're
12 asking.

13 Q. And in your opinion you don't consider it
14 improper to have multipurpose split entry withdrawals
15 of flat, even amounts?

16 A. What I would say is that if the fees were
17 earned, the lawyer has the fair and ethical ability
18 to withdrawal them, if they're earned. That's the
19 error in the case. He made a mistake. He thought
20 they were earned. Well, I'm sorry, he thought they
21 were paid, not -- yeah, they were earned, not paid.
22 That's what I meant to say.

23 Q. And you didn't meet with or interview Louise
24 Watson, correct?

25 A. No, I didn't. I mean, yeah, I did not.

1 Q. About the case?

2 A. I did not.

3 Q. You didn't -- you didn't meet with or
4 interview Leah Ballard?

5 A. No. She wasn't available to me, as far as I
6 understood it.

7 Q. You didn't meet with or interview Nicole
8 Cruz?

9 A. She wasn't available to me, and I didn't
10 think she was relevant anyway regarding the case.

11 Q. Did you try to contact her?

12 A. No.

13 Q. And you're making \$650 an hour, correct?

14 A. That's correct, as a legal expert, that's
15 what I'm charging.

16 Q. So if any of the information upon which you
17 relied to make your opinion was incorrect, would that
18 change the basis for your opinion?

19 A. I think it's conceivable. Of course.

20 Q. Okay. If any information were missing,
21 would that change your opinion?

22 A. Well, I think that's conceivable, but we've
23 spent, you know, and the panel's spent and everybody
24 spent quite a bunch of time on the case. I don't
25 know what that could be, but I would have to say, of

1 course, as always, some new evidence could change
2 anything, but we know the case I think as well as
3 we're going to now.

4 MR. HOOGE: No further questions.

5 CHAIRMAN EDWARDS: Mr. Gilmore?

6 MR. GILMORE: Yeah, just I'll try to be
7 brief in my follow-up.

8 REDIRECT EXAMINATION

9 BY MR. GILMORE:

10 Q. Judge Bare, are the opinions that you gave
11 today relying in part on all of the testimony that
12 preceded your testimony?

13 A. In part.

14 Q. Okay. Have you had a chance to listen to
15 testimony from Mr. Jimmerson?

16 A. Yes.

17 Q. Okay. From Miss Kahn?

18 A. Yes.

19 Q. Okay. From Mr. Jimmerson's son?

20 A. Yes.

21 Q. Okay. From Mr. Nady?

22 A. Yes.

23 Q. Okay. Did the --

24 A. I was here for the whole hearing.

25 Q. Okay. Did anything about the testimony as

1 you heard it or the evidence that was received change
2 any of the understandings that you had when you were
3 preparing your written report?

4 A. No. In fact, all it did was reinforce it
5 because, again, if you look at the Exhibit 50, A plus
6 on all the mitigating factors that are relevant here.

7 Q. Okay. Bar Counsel also questioned if what
8 the basis of your opinions are. Are you relying on
9 your past experience as Bar Counsel?

10 A. Of course.

11 Q. Okay. Did that involve prosecuting cases
12 involving 1.15 violations?

13 A. Yes. I believe it was SCR 165, back in the
14 old days where we used to actually start these
15 hearings later and go real late. Yeah, once, yeah,
16 but oftentimes. Of course. Many times.

17 Q. Okay. So the opinions you're giving --

18 A. Some of the cases mentioned in the State
19 Bar's brief are my cases. I prosecuted Jeanne
20 Winkler. I'm the one that did the five-day hearing
21 in that case. I mean, so, yeah.

22 Q. Okay. So the expert opinions you're giving
23 are based in part on your past experience as Bar
24 Counsel?

25 A. Of course.

1 Q. Okay. Have you had an opportunity to read
2 the respondent, Mr. Jimmerson's, trial brief in this
3 case?

4 A. Yes.

5 Q. Okay. Did you see there in the trial brief
6 there were citations to several past disciplinary
7 decisions where private discipline was imposed for
8 1.15 violations?

9 A. Yes.

10 MR. GILMORE: Okay. No further questions.

11 CHAIRMAN EDWARDS: Okay. Ms. Hanson, any
12 questions for Mr. Bare?

13 Mr. David, any questions?

14 COMMISSIONER DAVID: No questions.

15 CHAIRMAN EDWARDS: No? Mr. Bare, thank you.

16 MR. GILMORE: All right. No further
17 witnesses. We'll try to make closings as quick as we
18 can. I think we're moving -- took a little longer on
19 some of the witnesses but we're still within that
20 hour.

21 CHAIRMAN EDWARDS: It's 4:00 o'clock now, so
22 how quickly can we do it?

23 MR. GILMORE: Understood. And Mr. Kennedy
24 is going to do the final closing, and I will
25 encourage him to be as expeditious as he can be.

1 He's going to sit at this computer, so I'm going to
2 mute this one and I'm going to go around and turn
3 off -- turn on the audio on that.

4 CHAIRMAN EDWARDS: Just so everybody knows,
5 and since the time restrictions we're working with,
6 Mr. Kennedy, I'm going to ask that you limit your
7 comments to ten minutes, and I'd ask the State Bar to
8 limit their response to five minutes.

9 MR. KENNEDY: Agreed, as difficult as that
10 may turn out to be.

11 Okay. Let's pull up Exhibit 50, the first
12 page of Exhibit 50. This Judge Bare referred to as
13 the jury instruction equivalent, and I think that's a
14 good way to look at it. When you deliberate, and he
15 went through this, and I'll go through it in a little
16 bit more detail, when you deliberate, let's start at
17 the top. What ethical duties did the lawyer violate?
18 What we know is it's 1.15, that's it.

19 And, Josh, can you highlight that up there,
20 see if we can do that. It's up there, 1.15.

21 You move on. What's the lawyer's mental
22 state? Okay, I think Judge Bare covered this pretty
23 well. The evidence covers it very well. It's
24 negligence. Mr. Jimmerson said, I thought I knew.
25 Earned, billed, and paid. I was right, earned. I

1 was right, billed. I was wrong, paid. It hadn't
2 come in yet. "That was my mistake," and he repeated
3 it over and over.

4 Next category. What was the extent of
5 injury caused by the lawyer's misconduct? The last
6 box is what you check: Little or no injury.
7 Remember in the complaint what the Bar said? The Bar
8 said potential injury. It didn't say actual injury.
9 I asked her about that, Miss Watson. She said no
10 actual, just potential.

11 Then we go down. Based on your findings
12 above, what's the baseline sanction? Well, it's
13 either reprimand or admonition. It's one of the two.
14 It's not disbarment and it's not suspension, it's a
15 reprimand or it's an admonition.

16 Where do we go from there? Let's go to the
17 next page of Exhibit 51. That's the aggravating and
18 mitigating circumstances. Judge Bare went through
19 these and he said Mr. Jimmerson gets an A plus here,
20 and that's what the evidence shows.

21 If you look at the aggravators, there is a
22 prior disciplinary offense, but if you look all the
23 way down in the lower right-hand corner, a mitigator
24 is remoteness of prior offenses. Well, it's 20,
25 what, 3 years ago. Yeah, 27 years ago, and those

1 cancel each other out.

2 If you look at the upper right hand -- well,
3 look at the lower left on aggravating circumstances,
4 substantial experience in the practice of law. Fine,
5 conceded. But then if you go to the top, you got a
6 pattern of misconduct or multiple offenses. Look at
7 that either way you want to look at it. I suppose
8 multiple offenses in a very short timeframe.

9 But go down to the mitigators. Almost every
10 mitigating factor here cuts in Mr. Jimmerson's favor.
11 I won't go through them all because Judge Bare did in
12 his report. What you've got is there's no dishonest
13 or selfish motive. There is -- there's somewhat of a
14 personal problem, which you heard about.

15 There's a good faith effort to make -- to
16 rectify consequences. There's full and free fair
17 disclosure to the disciplinary authorities. There's
18 clearly remorse. And he's a man of good, excellent
19 character and reputation. No evidence to the
20 contrary.

21 Can we pull up Exhibit 51, which is the
22 next, and go to page 18 on Exhibit 51. This, and
23 I'll wait until that comes up, this is, again, the
24 panel members have this. It's an admitted exhibit.
25 Judge Bare covered this in detail and did it better

1 than I could.

2 4.13 and 4.14. 4.1 talks about these are
3 the sanctions for 1.15 violations. 4.13 is reprimand
4 where the client is negligent and causes injury or
5 potential injury. Admonition is generally
6 appropriate when a lawyer is negligent and causes
7 little or no actual or potential injury.

8 When we started out in this closing
9 argument, what I said was we've got a choice between
10 a reprimand and an admonition. The key here, the key
11 distinction in 4.13 and 4.14, and I emphasize this is
12 the Bar's handbook which it gives to you and says
13 here's how you make these decisions. A reprimand is
14 where you've got injury or potential injury. And
15 4.14, admonition, where there's negligence and it
16 causes little or no actual or potential injury to a
17 client.

18 The injury here and the potential injury is
19 this in these cases. Mr. Jimmerson looked at three
20 things. Did I earn it, did I bill it, did I receive
21 it. He earned it, he billed it, he was wrong, he
22 didn't receive it when he made these withdrawals in
23 November, believing that he had, but those moneys
24 came in.

25 So the potential injury under 4.14, there's

1 no actual injury. And there's very little, and
2 that's the word used, little potential injury to a
3 client. The money did come. It was late. Late. It
4 came after he had made these withdrawals.

5 So what we ask you to do, in light of all of
6 the factors here, especially, especially the second
7 page of exhibit 50, which has the aggravators and the
8 mitigators, if it's a choice between 4.13, reprimand,
9 and 4.14, admonition, this is clearly an admonition
10 case.

11 And I don't know what the Bar's going to
12 tell you, but if you look at the first page of
13 Exhibit 50 down in footnote number 1, this is the
14 State Bar's writing, and it specifically references
15 the Nevada Rules of Professional Conduct, and it says
16 you can either have an admonition -- you can have an
17 admonition or a reprimand, which is public, or a
18 letter of caution.

19 So the admonition actually is a letter of
20 caution under the rule. That's what's appropriate
21 here, because what you have is you have several
22 events in a very discrete time period which are
23 explained by a problem, which Mr. Jimmerson explained
24 to you in great detail, and so did Amanda Kahn. And
25 this is the case for a letter of caution saying to

1 Mr. Jimmerson, You should not rely on your belief or
2 your understanding.

3 Believe me, he's never going to do that
4 again in any event, and if there is concern on behalf
5 of the Bar, they can say to Mr. Jimmerson, and just
6 to make sure that we don't have any more problems,
7 do, as he suggested, send us audited trust accounts
8 every 12 months or 18 months, 24 months, whatever it
9 is. This guys is not a danger to anybody, and we
10 know that. This is a case for an admonition, pure
11 and simple. We're teetering between an admonition
12 and other discipline, and it's clearly an admonition
13 case. I submit it.

14 CHAIRMAN EDWARDS: Thank you. The State
15 Bar?

16 MR. HOOGE: Thank you. I'll be brief. All
17 right. I think the principal issue here is mental
18 state. And respondent's closing essentially
19 addressed that. Did Mr. Jimmerson act intentionally,
20 knowingly, or negligently.

21 Now, I did want to bring up the Jay Nady
22 10,000 and the Jimmerson Family Trust 15K. There's
23 really no evidence. We don't have any evidence that
24 that was knowing or even should have known. I think
25 we're not disputing that that was negligent. So when

1 you look at the complaint, those are 27 and 28, you
2 know, we'd agreed those are more the reprimand level.

3 But what is very concerning to us is the 40,
4 45 and 60K. That's what's concerning. And there's
5 just no way that's negligent. You know, you look at
6 2.5, misappropriating is never misconduct, lesser
7 misconduct. I mean, I know earlier Mr. Gilmore said,
8 oh, well, that's -- I can't remember his exact words,
9 I'm paraphrasing, but he said that's just a
10 recommendation, that's not black letter law. It's in
11 the ABA manual. It's in the manual that the Supreme
12 Court cites in every single disciplinary case.

13 We look at ABA 4.11. A disbarment is
14 appropriate when a lawyer knowingly converts and
15 causes injury or potential injury. Injury is
16 interesting because even Mr. Bare admitted on the
17 stand that there was potential for injury. His
18 dispute was, well, there was no actually injury. And
19 the same thing with Mr. Jimmerson when he was on the
20 stand. There's no actual injury, I paid them all
21 back. Well, even if that's true, they still admitted
22 to potential injury, so that element is satisfied.

23 And I keep going back to Denise Cashman
24 because it's the perfect example. What was
25 Mr. Jimmerson thinking on November 14th? What was he

1 thinking? He admitted himself, I didn't have any
2 specific fees in mind. I didn't have any specific
3 clients in mind. I just pulled a round number. Now,
4 how in the world do you say that that's negligent?
5 There's no way. You're saying you should know.

6 The rules state very clearly every single
7 transaction, every withdrawal has to be documented.
8 It wasn't documented. He knew it wasn't documented.
9 He knowingly converted. There's no way around it.
10 Judge Bare, former Judge Bare did his best to dance
11 around that. I mean, I'll give him this, that was a
12 heroic effort, but there's just no way, no way in the
13 world that that's negligent.

14 And then you look at his first response.
15 This is so damming. He said, he admitted, I knew on
16 December 3rd, these documents were sent to debunk the
17 malicious and false allegations by Nicole Cruz. He
18 did a 500 page document dump and didn't mention the
19 allegation specifically once. Not once. And yet he
20 knew about those three transactions.

21 Are you telling me that he didn't know at
22 that time, that he just overlooked that? We knew
23 what the allegations from Nicole Cruz were. Louise
24 told us that. She specifically told him in her
25 letter. He knew and he didn't address them at all.

1 He completely glossed over them. He said those were
2 malicious and false allegations. Well, guess what,
3 they turned out to be pretty darn true. He said he
4 took money out to make payroll. That's exactly what
5 he admitted to. I don't know how you gloss over
6 that. I don't know how in the world you don't
7 respond to that in your first response. He was
8 hoping that she didn't catch it, but she did.

9 He alleged that our clients were harmed by
10 the failure to account for respective trust funds.
11 Yep, that's exactly what Louise Watson found.
12 Clients were harmed by his failure to account for
13 respective trust funds. Then she calls him out.
14 What does he say? Oh, I didn't know what exact
15 amounts I was entitled to transfer. Now he comes
16 clean. That's misappropriation. There's really no
17 way around that, right. He knowingly converted.

18 Even if you assume, well, okay, well, he
19 didn't -- he wasn't aware of all the circumstances,
20 you know, we'll give him a pass. Well, I don't know
21 how you get away from should have known. How you
22 are -- Judge Bare argued that he -- well, based on
23 the circumstances he shouldn't have known. Are you
24 kidding me? You look at RPC 1.15, you look at SCR
25 78.5, they tell in detail you have to keep records,

1 you don't take anything out unless it's tracked. Oh,
2 but he shouldn't have known. I don't know how you
3 can, with a straight face, say he shouldn't have
4 known. Of course he should have known.

5 This is what he said, he knew at the time,
6 this is proof of his knowledge, Miss Ballard also
7 failed to enter attorneys' timesheets and costs for
8 the clients to complete the pre-bills for the month
9 of November, making our trust transfer difficult. He
10 admitted that. He knew. He says right here, I knew.
11 I knew it was a mess, I knew I didn't know what to
12 bill, and I just took money anyway. Now, you can
13 dance around that all you want. Judge Bare can
14 massage those facts as much as he can, but it doesn't
15 change the fact, you can put lipstick on a pig but
16 it's still a pig.

17 Injury, I'm not really going to go over that
18 because they already admitted there was potential
19 injury.

20 So I wanted to bring up one final case, and
21 this is a case that just came out: Gewerter,
22 April 2021. He misappropriated \$10,000. \$10,000.
23 Took it from a client and immediately spent it. He
24 promised to pay it back. He tried to pay it back,
25 all right. There was some problems because it was a

1 credit card. It was still disbarment baseline.

2 The interesting thing, even more interesting
3 is they, even with all the mitigation that he had,
4 they still gave him a four-year suspension. And two
5 of the judges were not happy with that. They
6 dissented. They wanted disbarment.

7 So that's what we're talking about here.
8 There's really no way you can look at those three
9 transactions and say, oh, that was just negligent,
10 we're going to give him a -- we're going to caution
11 him. Again, that's just outside the realm of
12 anything that's reasonable.

13 And so when you're looking at this, again I
14 think the evidence is really undisputed. Just using
15 his own statements, using the records, this is
16 absolute knowing conversion. It's a disbarment
17 baseline. I do agree there's lots of mitigation. Of
18 course I'm not expecting disbarment. The court never
19 gives it out anyway, you saw even with Gewerter. But
20 does this need to be a suspension? Yes. Thank you.

21 CHAIRMAN EDWARDS: Great. Thank you,
22 everybody. Obviously I expect the panel is going to
23 be anxious to try to reach a decision, but to the
24 extent we need additional time, would there be any
25 objection to us essentially I guess entering a minute

1 order via email of our decision to the parties,
2 obviously be formalized via a formal order?

3 MR. KENNEDY: No, we'd have no objection to
4 that on behalf of respondent.

5 MR. HOOGE: No objection for the State Bar
6 either.

7 CHAIRMAN EDWARDS: Okay. I guess I have a
8 few questions. I hate to do this because I know
9 we're short on time. When we talk about suspensions,
10 I know there's some timelines that are special. You
11 know, six months and a day means something different
12 than six months, and I think the other threshold is
13 five years, but can you fill me in on what those
14 deadlines are?

15 MR. HOOGE: Any suspension less than six
16 months is automatic reinstatement. Over six months
17 requires a reinstatement hearing. And anything over
18 five years requires readmission, meaning you have to
19 have a reinstatement hearing and retake the bar exam.

20 CHAIRMAN EDWARDS: Got it. And at the end
21 of these decisions, we always order that the
22 respondent pay costs, right?

23 MR. HOOGE: Correct, pursuant to Supreme
24 Court Rule 120.

25 CHAIRMAN EDWARDS: Is there an additional

1 fee on top of that or is it just costs?

2 MR. HOOGE: And actual costs. So whatever
3 the hearing, the court -- the transcript and comes
4 out to be typically is the only cost.

5 CHAIRMAN EDWARDS: Got it. Okay.
6 Miss Hanson, any questions before we go into
7 deliberations?

8 Okay. Mr. David?

9 COMMISSIONER DAVID: No.

10 CHAIRMAN EDWARDS: Okay. Let's go off the
11 record please.

12 (A recess was taken.)

13 CHAIRMAN EDWARDS: Back on the record. The
14 panel has been deliberating, and we unfortunately
15 need more time. We think we've reached an agreement
16 as to mental state, extent of the injury, baseline
17 sanction, and aggravating and mitigating
18 circumstances but we want more time to think about
19 the sanction. And so we will -- we are going to
20 reconvene amongst ourselves and we will circulate an
21 email, if you will, a minute order with our decision.
22 Okay?

23 MR. KENNEDY: Sounds good.

24 MR. HOOGE: Good. Thank you, panel.

25 CHAIRMAN EDWARDS: All right. Thank you.

1 (Thereupon the proceedings
2 were concluded at 4:55 p.m.)

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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 1st day of June, 2021.



Deborah Ann Hines, CCR #473, RPR

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