

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2

3 IN THE MATTER OF THE
4 DISCIPLINE OF
5 JAMES J. JIMMERSON, ESQ.,
6 NEVADA BAR No. 0264.

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8 **STATE BAR OF NEVADA’S**
9 **OPENING BRIEF**

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3 ABA, ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, 145 (2nd
4 ed. 2019) 11, 12, 13

1 **III. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

2 1. Whether the record supports the Panel’s finding that attorney
3 James J. Jimmerson (“Jimmerson”), Bar No. 0264, acted without a
4 dishonest or selfish motive when he misappropriated client property held
5 in trust to cover his payroll?

6 2. Whether a Public Reprimand is an appropriate sanction for
7 the misappropriation of client property?

8 **IV. STATEMENT OF THE CASE**

9 **A. Nature and Procedural History of the Case.**

10 This is a review of a decision recommending a Public Reprimand
11 pursuant to Supreme Court Rule (“SCR”) 105 (3)(b). A duly designated
12 Formal Hearing Panel (“Panel”) of the Southern Nevada Disciplinary
13 Board filed the Findings of Fact, Conclusions of Law and
14 Recommendation on June 21, 2021. The State Bar submitted the
15 corresponding Record on Appeal to the Court on July 21, 2021.

16 The Panel found that Jimmerson violated Rule of Professional
17 Conduct (“RPC”) 1.15 (Safekeeping Property) when he made five
18 withdrawals from a client trust account between November 14, 2019, and
19 December 20, 2019. The Panel found that Jimmerson effectively
20

1 borrowed funds from his clients when he withdrew amounts of \$40,000,
2 \$45,000, and \$60,000 in November 2019 (“November Withdrawals”).

3 The Panel recommended that Jimmerson receive a Public
4 Reprimand for violating RPC 1.15 (Safekeeping Property).

5 **B. Statement of Facts.**

6 Nicole Cruz (“Cruz”), a former employee of Jimmerson, submitted
7 a grievance against him. R. at 606. Cruz alleged that Jimmerson took
8 funds from his client trust account to cover payroll. R. at 606.

9 State Bar investigator Louise Watson (“Watson”) obtained
10 Jimmerson’s relevant bank account records from Nevada State Bank by
11 subpoena. R. at 606. Watson discovered five withdrawals during the
12 period in question which she could not relate to a specific client, payee,
13 or purpose. Watson asked Jimmerson to explain the withdrawals and
14 provide his accounting records. R. at 608, 1449-1451.

15 Watson reviewed the explanation, bank records and the accounting
16 records that Jimmerson provided. R. 607-608. Jimmerson initially
17 denied the “alleged misuse of our client’s Trust account” or any other
18 “unethical behavior.” R. at 899. Jimmerson claimed that the unidentified
19 withdrawals were fees he earned from various clients. R. at 611. However,
20 Watson discovered that many of the fees Jimmerson identified were

1 either not earned at the time of the withdrawals or not deposited into the
2 client trust account until later. R. at 613-621:1.

3 **Jimmerson Used Client Property to Cover Payroll**

4 Watson looked into Jimmerson's operating and payroll accounts
5 for instances in which he had insufficient funds to make payroll. R. at
6 608-609. Watson discovered that on November 20, 2019, Respondent's
7 payroll and operating accounts closed with balances of \$2,513.15 and
8 \$19,758.19, respectively. R. at 608-609, 3401, and 3164. Watson noted
9 that Jimmerson was unable to make his payroll and tax disbursements
10 on November 22, 2019. R. at 612.

11 Just as Cruz alleged, Watson confirmed that Jimmerson had
12 misappropriated funds from his client trust account to cover payroll.
13 Jimmerson transferred \$45,000 from his client trust account to his
14 operating account on November 21, 2019, before moving \$46,958.87
15 from his operating account to his payroll account. R. 609-612, 3164,
16 3399. This enabled Jimmerson to disburse \$46,772.53 from his payroll
17 account over the next few days. R. at 611-612. On November 22, 2019,
18 Jimmerson made direct deposit payroll payments of \$30,025 and wrote
19 payroll checks for \$5,861.26. R. at 3399. A few days later he issued a
20 \$703.47 payroll check and sent \$10,182.80 to the IRS. R. at 3399.

1 In response to the State Bar’s investigation, Jimmerson sent
2 records to the State Bar identifying the purpose for the \$45,000
3 withdrawal. R. at 897. He disputed the “malicious and false allegations
4 by Nicole Cruz” that he took money from clients to cover payroll. R. at
5 897. He claimed that the \$45,000 withdrawal was an amalgamation of
6 earned fees from 13 clients. R. at 922.

7 On cross examination, Jimmerson reversed course. He admitted
8 that he withdrew \$45,000 *to cover his payroll* as Cruz alleged. R. at
9 652:16-22. Jimmerson also admitted that—despite his purported
10 amalgamation of earned fees—his withdrawal lacked justification. R. at
11 655:7-19. He withdrew “someone else’s money” to cover his payroll. R. at
12 655:17-18. But Jimmerson “believed [the fees] were present.” R. at
13 646:24-25. He did not review client ledgers, balances, or invoices. He
14 did not identify any specific clients or amounts owed. Instead, he believed
15 it appropriate to take \$45,000 to cover his payroll “because [he] knew
16 that [his clients] had been paying their bills....” R. at 647:1-2.

17 Watson found other evidence of misappropriation. She discovered
18 two other suspicious transfers: a \$40,000 withdrawal on November 14,
19 2019, and a \$60,000 withdrawal on November 25, 2019.

1 Jimmerson attempted to justify the \$40,000 withdrawal by
2 claiming it as earned fees in four matters. R. at 970. Jimmerson provided
3 a check with notations identifying earned fees from four clients. R. at 970.
4 However, the notations themselves show that the bulk—\$32,499.02—of
5 the clients’ funds were not on deposit until after the withdrawal. R. at
6 970. For example, Jimmerson claimed he withdrew \$31,949.02 from the
7 trust account balance of Denise Cashman (“Cashman”), but she had no
8 money on deposit in the account. Jimmerson did not receive a deposit
9 from Cashman until November 22, 2019—eight days later. R. at 970, 979,
10 1574-1576, and 1658. Jimmerson misappropriated \$32,499.02 from
11 other clients through the \$40,000 withdrawal. R. at 614:5 – 616:1.

12 Similarly, Jimmerson attempted to justify the \$60,000 withdrawal
13 by claiming it as earned fees in 10 matters. R. at 1041, 3162. Again, the
14 notations themselves show that almost half—\$28,955.90—of the clients’
15 funds were not on deposit until after the withdrawal. Watson confirmed
16 through the bank records that Jimmerson misappropriated from his
17 clients. R. 1664. Jimmerson misappropriated \$28,955.90 from his clients
18 through the \$60,000 withdrawal. R. at 616:2 – 619:7.

Withdrawal of Unearned Fees from Jay Nady

On December 19, 2019, Jimmerson transferred \$10,000 from his client trust account to his corporate account purportedly for earned fees on the Jay Nady (“Nady”) matter. R. at 924. However, a January 25, 2020, invoice shows that Jimmerson did not perform the work until January 2020. R. at 1123-1124. Nady testified that Jimmerson called him in December 2019 to ask permission to withdraw the money. Nady told Jimmerson that “he could take all of it if he wanted.” R. at 709.

Withdrawal to the Jimmerson Family Trust

On December 20, 2019, Jimmerson transferred \$15,000 from his client trust account to a checking account belonging to the Jimmerson Family Trust without providing any client-linked purpose. R. at 621 - 622:12, 1664, 3452. As a result, Jimmerson improperly commingled trust funds with personal funds. Jimmerson claimed that he had made an error, and, on December 27, 2019, he transferred \$15,000 back into the trust account from his corporate account—not the Jimmerson Family Trust. R. at 1664, 3176.

Hearing

A Southern Nevada Disciplinary Board panel commenced a formal hearing on Friday, April 30, 2021 and concluded on Thursday, May 13,

1 2021. The panel heard testimony and received documentary evidence. It
2 took the parties' arguments under submission. The Panel informed the
3 parties of its decision via email on May 21, 2021.

4 The Panel issued its findings of facts and conclusions of law on June
5 21, 2021, recommending that Jimmerson receive a Public Reprimand for
6 his violation of RPC 1.15 (Safekeeping Property). R. at 550-559.

7 The State Bar of Nevada now timely submits its Opening Brief.

8 **V. STANDARD OF REVIEW**

9 Clear and convincing evidence must support the Panel's findings.
10 *See* SCR 105(2)(f). This Court described clear and convincing evidence as
11 "evidence which need not possess such a degree of force as to be
12 irresistible, but there must be evidence of tangible facts from which a
13 legitimate inference...may be drawn." *In re Schaefer*, 117 Nev. 496, 515,
14 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001), *cert. denied*, 534 U.S.
15 1131 (2002). The Court employs a deferential standard of review with
16 respect to the hearing panel's finding of fact, SCR 105(3)(b), and thus will
17 not set them aside unless they are clearly erroneous or not supported by
18 substantial evidence. *In re Hatcher*, 2016 Nev. Lexis 522, (June 14, 2016)
19 (*citing Sowers v Forest Hills Subdivision*, 129 Nev., Adv. Op. 9, 294 P.3d
20

1 427, 432 (2013)). In contrast, the Court considers a hearing panel's
2 conclusions of law and recommended sanction *de novo*. SCR 105(3)(b).

3 VI. ARGUMENT

4 A. THE EVIDENCE DOES NOT SUPPORT THE PANEL'S 5 FINDING THAT JIMMERSON'S ACTIONS WERE 6 UNSELFISH.

7 Use of client trust funds, even if returned to the client, constitutes
8 misappropriation.¹

9 Merriam-Webster defines *selfish* as “concerned excessively or
10 exclusively with oneself: seeking or concentrating on one’s own
11 advantage, pleasure, or well-being without regard for others.”²

12 Absence of a selfish motive cannot mitigate misappropriation.³
13 Misappropriation occurs because a lawyer either knowingly converts,
14 should have known that he was misappropriating, or negligently
15 misappropriates.⁴ Absence of a selfish motive cannot apply in any of the
16 three mental states.

17
18 ¹ See, e.g., *Copren v. State Bar*, 64 Nev. 364, 385, 183 P.2d 833, 843
19 (1947).

20 ² “Selfish.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/selfish>. Accessed 19 Aug. 2021.

³ *In re Lieber*, 939 N.W.2d 284, 294 (Minn. 2020).

⁴ ABA Standards 4.11, 4.12, and 4.13, respectively.

1 First, knowingly converting client property necessarily requires a
2 selfish motive. Absence of a selfish motive cannot logically apply.

3 Second, negligent misappropriation cases are divided into two
4 mental states. Recklessly disregarding safekeeping requirements, which
5 is the should-have-known standard also necessarily requires a selfish
6 motive. Either the lawyer is selfishly using client money without
7 justification or selfishly saving time by neglecting his duty to justify every
8 withdraw. Either way absence of a selfish motive cannot apply.

9 Willful ignorance does not absolve a selfish motive.

10 Lawyers are not permitted the defense of ignorance
11 concerning their treatment of others' property. By requiring
12 lawyers to keep complete trust account records, Rule 4-
13 1.15(d) imposes an affirmative duty to inquire and
understand the information in those records. A failure to do
so does not protect the lawyer; it creates an inference that
the lawyer knew all that those records would have shown.

14 *In re Farris*, 472 S.W.3d 549, 568 (Mo. 2015).

15 “Even if [the lawyer] did not know [about the misappropriation],
16 compliance with Rule 4-1.15(d) would have shown him so. A mere glance
17 at his bank records would have dispelled the mist of ignorance in which
18 he now claims to have been operating.” *Id.*

1 Third, and finally, negligent misappropriation only applies to
2 “simple negligence” like grabbing the wrong checkbook.⁵ But the ABA
3 Standards already mitigate the baseline sanction for mental state.
4 Reducing a sanction for unselfishness overlaps the baseline reduction for
5 mental state.⁶ The Court should not double credit a lawyer for his
6 negligence by further reducing the sanction.⁷

7 Here, the Panel correctly found that Jimmerson “should have
8 known” that he was dealing improperly with client property.⁸ R. at 555:1-
9 14. It also found that the correct baseline sanction was a suspension
10 under ABA Standard 4.12. R. at 556:18-20. But it improperly credited
11 him with unselfish motive.

12 Jimmerson acted selfishly. He had insufficient balances in his
13 payroll and operating accounts to meet his obligations on November 22,
14 2019. He withdrew \$45,000 from his clients to cover his payroll and
15 other bills without identifying a purpose. R. at 652:16-22. He claimed a
16
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18

19 ⁵ See section V(B), *infra*.

⁶ *Lieber*, 939 N.W.2d at 294.

⁷ *Id.*

⁸ For the most serious allegations involving the three large withdrawals of \$40,000; \$45,000; and \$60,000; respectively.

1 generic purpose to withdraw earned fees. But, in reality, he converted
2 client property.⁹

3 Jimmerson took client property to cover payroll and keep his law
4 firm afloat. His exclusive concern was his and his firm's well-being. He
5 demonstrated no regard for his clients' interests until weeks later when
6 he reconciled the accounts. His motive cannot be anything other than
7 selfish.¹¹ When a lawyer treats entrusted client property like a loan to
8 offset cashflow problems, the lawyer acts with selfish motive.¹²

9 Jimmerson alleged and the Panel found that his "motive was to
10 avoid the work necessary to determine whether funds could be
11 withdrawn[.]" R. at 557:10-12. Essentially, the Panel mitigated
12 Jimmerson's actions as simple laziness.

13 But Jimmerson's actions were not simple laziness. He admitted
14 that he did not know what he was entitled to transfer. R. at 1449. His
15

16 ⁹ See, e.g., *Copren*, at 385, 183 P.2d at 843 (use of client funds for
personal purposes is misappropriation).

17 ¹¹ See *In re Discipline of Gamage*, Docket No. 78079, June 21, 2019, 443
18 P.3d 544, Unpub. Lexis 685, WL 2725525;¹¹ see also *People v. Rhodes*,
Presiding Disciplinary Judge Supreme Court of Colorado, No.
19 04PDJ044, (February 2005) (using client property to keep law firm
solvent was a selfish motive); *Disciplinary Counsel v. Streeter*, 138 Ohio
20 St. 3d 513, 516 (2014) (using client property to operate avoid laying off
firm employees was a selfish motive).

¹² *In re Disciplinary Proceeding Against Holcomb*, 173 P.3d 898, 910
(Wash. 2007).

1 intent was clear. “[He] needed to transfer the money to the payroll
2 company on Thursday afternoon, the 21st, so the payroll company then
3 could issue payroll checks to [his] employees on the 22nd.” R. at 652:4-
4 7. Jimmerson did not know what he was entitled to withdraw, but he took
5 money from clients anyway. He attended to his own financial concerns
6 without regard for the potential consequences to his clients. His motive
7 was selfish.

8 Jimmerson intentionally withdrew client funds to cover *his firm’s*
9 payroll. He personally benefitted from his misappropriation. He exposed
10 his clients to risk and violated the core of the trust those clients placed in
11 him so that he could keep his firm operating smoothly without interest
12 expense or financing costs.

13 Therefore, the evidence does not support the Panel’s finding that
14 Jimmerson acted unselfishly. On the contrary, the evidence clearly and
15 convincingly shows that he acted exclusively for his self-interests without
16 regard to his client’s interests. His motive to cover payroll should justify
17 an increase in the degree of discipline imposed under SCR 102.5(1)(b)
18 not mitigate his sanction.

19 **B. A PUBLIC REPRIMAND IS AN INAPPROPRIATE**
20 **SANCTION FOR MISAPPROPRIATION OF CLIENT**
PROPERTY.

1 Attorneys occupy a position of trust. Clients rely on their skill and
2 good judgment, but also on their honesty and integrity. “[T]rust and
3 honesty that are indispensable to the functioning of the attorney-client
4 relationship.”¹³

5 Misappropriation corrodes the public’s trust in the profession and
6 legal system. It feeds the unjustly overstated but real public belief that
7 the legal profession is dishonest, greedy, and corrupt. For this reason,
8 disbarment, the harshest sanction, “is generally appropriate when a
9 lawyer knowingly converts client property and causes injury or potential
10 injury to a client.”¹⁴

11 Of course, not all misappropriation cases warrant disbarment.
12 Courts should apply ABA Standard for Imposing Lawyer Sanctions 4.11,
13 baseline disbarment, when the evidence establishes a “knowing”
14 conversion. “Thus, for his behavior to be knowing, an attorney must be
15 consciously aware that he is using client funds without authorization
16 when he makes the withdrawal or transfer.”¹⁵

18 ¹³ *In re Discipline of Babilis*, 951 P.2d 207, 217 (Utah 1997).

19 ¹⁴ *In re Serota*, 129 Nev. 631, 635, 309 P.3d 1037, 1039 (2013); ABA,
20 ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, 145 (2nd ed.
2019).

¹⁵ *Utah State Bar v. Bates*, 2017 UT 11, ¶ 23, 391 P.3d 1039, 1045
(Sup.Ct.).

1 On the other hand, if an attorney does not know but “should know
2 that he is dealing improperly with client property and causes injury or
3 potential injury to a client,” then suspension is generally appropriate.¹⁶
4 The most common cases sanctioned under ABA Standard 4.12 involve
5 lawyers who commingle client funds in their operating account or
6 lawyers who delay distribution to clients. *Id.* Standard 4.12 also applies
7 to lawyers who knowingly disregard the rules and enable
8 misappropriation.¹⁷ Knowledge is not required for a suspension if the
9 lawyer “should have known.”¹⁸

10 Reprimands, the lowest sanction in Nevada, are inappropriate for
11 misappropriation cases. ABA Standard 4.13 states, “Reprimand is
12 generally appropriate when a lawyer is negligent in dealing with client
13 property and causes injury or potential injury to a client.”¹⁹ Reprimands
14 are a public censure that do not limit the lawyer’s right to practice.²⁰
15 Their purpose is to publicly identify lawyers who have violated ethical
16 standards and educate the members of the bar.²¹

18 ¹⁶ ANNOTATED STANDARDS at 155.

19 ¹⁷ *Id.* at 156-57.

¹⁸ *Id.* at 156.

¹⁹ *Id.* at 158.

²⁰ ANNOTATED STANDARDS at 77.

²¹ *Id.*

1 Reprimands, however, are reserved for lesser misconduct. Lesser
2 misconduct results in little or no injury and poses little threat of future
3 injury.²² The ABA Standards adopt the definition of lesser misconduct
4 first recognized in the ABA Model Rules for Lawyer Disciplinary
5 Enforcement (MRLDE). *Id.* at 79. It states,

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

10 (1) the misconduct involves the misappropriations of
11 funds;

12 ...²³

13 The ABA recommends against a reprimand in cases of
14 misappropriation. This Court recognized the ABA Standards in *In re*
15 *Lerner*, 124 Nev. 1232, 197 P.3d 1067 (2008). ABA Standard 2.5 is
16 consistent with this Court's precedent.²⁴

17 ABA Standard 2.5 agrees with ABA Standard 4.13. Both support the
18 proposition that a reprimand is only appropriate for lesser misconduct

19 ²² *Id.* at 80.

20 ²³ ANNOTATED STANDARDS at 79.

²⁴ See *In re Moore*, 116 Nev. 1393, 62 P.3d 1180, 2000 Nev. Lexis 149,
Docket No. 36700 (November 30, 2000) (stating that ordinarily
misappropriation generally warrants a sanction more than a small
actual suspension and probation) (citing *In re French*, 47 Nev. 469, 225
P. 396 (1924)).

1 from “simple negligence.” Neither recommend a reprimand when a
2 lawyer either knowingly misappropriates or recklessly disregards the
3 duty of safekeeping leading to misappropriation.

4 For example, the District of Columbia Court held that a lawyer’s
5 mistaken belief that he was entitled to client property must be
6 “objectively reasonable” for simple negligence.²⁵ When a lawyer
7 disregards his duty to ensure the safety and welfare of entrusted funds
8 and he manifests “a conscious indifference to the consequences of his
9 conduct for the security of those funds,” then his belief is “objectively
10 *unreasonable*.”²⁶

11 In this case, Jimmerson admitted to using client funds to cover his
12 payroll. He did not know how much client money he was entitled to
13 withdraw; he simply took what he needed . R. at 1449 at paragraph 2: In
14 10-12, and R. at 652:4-7. He did not identify specific work performed for
15 any specific client. He did not review client ledgers to confirm that any
16 specific client had advanced funds from which he could withdraw earned
17 fees. Jimmerson knowingly took money from clients with nothing more

20 ²⁵ *In re Gray*, 224 A.3d 1222, 1232 (D.C. 2020).

²⁶ *Id.* at 1233 (emphasis added).

1 than a generic belief that “these dollars were on hand.” R. at 653:22-23.

2 He came to that belief,

3 ... based upon, you know, many, many years of doing it, but
4 also based upon my knowledge of what the work we’re doing
5 and the payments we’re having, because as you know, these
6 were all earned fees.

7 R. at 654:4-8.

8 But they were not earned fees. Take the \$40,000 withdrawal on
9 November 14, 2020. Jimmerson tied the withdrawal to four clients. Only
10 one had money in trust. R. at 970. James Vance had deposited \$7,500.98
11 a week earlier on November 8. R. at 970. That meant that Jimmerson
12 misappropriated \$32,499.02 from other clients.

13 Ultimately, Cashman, another of the identified clients, paid
14 \$36,314.91 on November 22. R. 922. Jimmerson excused it as an
15 “accounting error, record bookkeeping error.” R. at 655. In his
16 perspective, he only ‘borrowed’ the money for eight days. By the end of
17 the month, he justified, “all of them were paid, which is why all of this
18 ties right to the zero dollar.” R. at 654:18-19.

19 It was not an accounting or bookkeeping error. Jimmerson knew
20 about the accounting issues when he made the November withdrawals.
Multiple times, he consciously decided to withdraw large sums without
identifying a purpose or client. He did not unwittingly withdraw the

1 sums. He did not mistakenly withdraw the sums. He consciously
2 withdrew the sums without regard to whether they belonged to a client.
3 He presented a “conscious indifference to the consequences of his
4 conduct for the security of those funds.” Thus, his conduct was objectively
5 unreasonable.

6 The Panel correctly found that Jimmerson “should have known”
7 that he was dealing improperly with client property.²⁷ R. at 555:1-14. It
8 also found that the correct baseline sanction was a suspension under ABA
9 Standard 4.12. R. at 556:18-20.

10 However, the Panel adjusted downward from a suspension to a
11 reprimand. This downward adjustment was inappropriate.

12 **Insufficient Mitigation**

13 As stated above, Jimmerson acted with a selfish motive—to cover
14 his payroll. The Court should consider this an aggravating not mitigating
15 factor.

16 The Panel’s conclusion that there were other mitigating factors is
17 also insufficiently supported or compelling to warrant such a significant
18 downward adjustment.

20 ²⁷ For the most serious allegations involving the three large withdrawals
of \$40,000; \$45,000; and \$60,000; respectively.

1 Jimmerson lost his son the previous April. R. at 661:21-25.
2 However, there was no evidence as to how this tragedy influenced
3 Jimmerson's conscious decision to withdraw those three large amounts
4 for payroll. There was no causal nexus between the tragedy and the
5 misconduct. While there is little case law on mitigation in lawyer
6 discipline, there is an abundance of analog case law on mitigation in
7 death penalty cases. For example, the Ninth Circuit Court of Appeals
8 recently held that although the Eighth and Fourteenth Amendments
9 require the sentencer to consider all mitigation evidence causally
10 unrelated to the crime, the sentencer is free to give causally unrelated
11 evidence "no weight."²⁸

12 Jimmerson ultimately reconciled the accounts. However, the
13 damage was done. He risked his clients' property. For example,
14 borrowing over \$30,000 from other clients on November 14 was only
15 rectified mostly by Cashman's payment on November 22. If Cashman had
16 not paid, then Jimmerson's clients—not Jimmerson—would have borne
17 the loss. Such "borrowing" can quickly snowball into millions of dollars
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²⁸ *Hedlund v. Ryan*, 854 F.3d 557, 585 (9th Cir. 2017).

1 in client losses.²⁹ Reconciliation and restitution do not address the
2 essence of the misconduct. It is like a gambling addict borrowing from an
3 unsuspecting family member. Sometimes the gambler wins and
4 reconciles. But the risk was real. The Rules of Professional Conduct
5 protect against the risk as much as the actual injury. Reconciliation and
6 repayment should not mitigate reckless conversion to a reprimand.

7 Jimmerson was candid at the hearing. However, his first response
8 to the State Bar denied the “alleged misuse of our client’s Trust account”
9 or any other “unethical behavior.” R. at 899. A month later, after State
10 Bar Investigator Louise Watson questioned Jimmerson about the three
11 November withdrawals, Jimmerson admitted to the impropriety. R. at
12 1449-50. Jimmerson admitted the violation when presented with
13 insurmountable evidence. A compelled admission is not “free and full
14 disclosure” and marginally “cooperative.”

15 Thus, Jimmerson’s misconduct warrants a suspension. The
16 mitigating factors fail to establish sufficiently compelling reasons to
17 reduce the sanction to a public reprimand. A suspension would serve as

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19 ²⁹ See *In re Graham*, 133 Nev. 1027, 401 P.3d 1066 (2017) (Lawyer
20 disbarred for misappropriating approximately \$17 million in client funds).

1 a deterrent to Jimmerson and other attorneys, protect the public, and
2 promote public confidence in the integrity of the profession.³⁰


3 **VII. CONCLUSION**

4 This Court should find that Jimmerson had a selfish motive when
5 he misappropriated trust funds so he could make his payroll business
6 expenses. This Court should also find that Jimmerson's selfish motive is
7 a substantial aggravating factor which weighs against any downward
8 deviation from the baseline sanction of suspension. Lastly, this court
9 should find, consistent with ABA Standard 2.5, that a Public Reprimand
10 is not appropriate when an attorney should have known he was
11 misappropriating client funds absent truly compelling mitigation.

12 The State Bar asks the Court to impose a six-month suspension.

13 Respectfully submitted this 20 day of August 2021.

14 **STATE BAR OF NEVADA**

15 
16 [Daniel Hooge \(Aug 20, 2021 11:04 PDT\)](#)

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20 ³⁰ See *In re Discipline of Reade*, 133 Nev. 711, 716 (November 16, 2017)
(discussing how suspension is designed to protect the public).

1 **VIII. CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complied with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this
5 brief has been prepared in a proportionally spaced typeface using
6 Microsoft Word for Office 365 in Georgia 14-point font size.

7 2. I further certify that this brief complies with the page or type
8 volume limitations of NRAP 32(a)(7) because, excluding the parts of the
9 brief exempted by NRAP 32(a)(7), it is proportionately spaced, has a
10 typeface of 14 points or more and contains 4,604 words.

11 3. Finally, I hereby certify that I have read the foregoing Stater
12 Bar of Nevada's Answering Brief, and to the best of my knowledge,
13 information and belief, this brief is not frivolous or interposed for any
14 improper purpose. I further certify this brief complies with all applicable
15 Nevada Rules of Appellate Procedure, including the requirement of NRAP
16 28(e), which requires every assertion in the brief regarding matters in the
17 record to be supported by appropriate references to the record on appeal.

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1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.

4 Dated this 20 day of August 2021.

5 **STATE BAR OF NEVADA**

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Dated this 20th day of August 2021.

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