

IN THE  
SUPREME COURT OF NEVADA

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Elizabeth A. Brown  
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IN THE MATTER OF DISCIPLINE OF  
JAMES J. JIMMERSON, ESQ.,  
NEVADA BAR NO. 0265.

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**RESPONDENT'S ANSWERING BRIEF**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
DISCIPLINE OF JAMES J.  
JIMMERSON, ESQ., NEVADA  
BAR NO. 0264.

Supreme Court Case No. 83255  
**RESPONDENT’S ANSWERING  
BRIEF**

**NRAP 26.1 DISCLOSURE**

Pursuant to Nevada Rule of Appellate Procedure 26.1, Respondent James J. Jimmerson, Esq. submits this Disclosure:

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Mr. Jimmerson is an individual attorney who is licensed to practice law in the State of Nevada (Bar No. 0264). He does not use a pseudonym. He was represented before the Southern Nevada Disciplinary Board, and remains represented before this Court, by Dennis L. Kennedy, Esq., and Joshua P. Gilmore, Esq., of the law firm Bailey ♦ Kennedy.

DATED this 20<sup>th</sup> day of October, 2021.

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy

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**I. JURISDICTIONAL STATEMENT**

This Court has jurisdiction over this appeal pursuant to SCR 105(3)(b) because this matter arises from a recommendation of a Hearing Panel of the Southern Nevada Disciplinary Board (the “Panel”) to publicly reprimand James J. Jimmerson, Esq., a well-respected family law attorney who has been practicing law in Nevada since 1976, for violating RPC 1.15. (ROA 550-59.)

**II. ROUTING STATEMENT**

This appeal is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(4) because it is a case involving attorney discipline.

**III. STATEMENT OF ISSUES**

Mr. Jimmerson disputes the assertion that he “misappropriated client property” (*see* Op. Br. at 1), because it wrongfully implies that he stole money from his clients (*see, e.g.*, ROA 653-55, 673). That aside, in deciding the two issues raised by the State Bar, this Court must also decide the following issues:

1. Whether the Panel’s factual findings are supported by substantial evidence; and
2. Whether a public reprimand is the appropriate sanction for Mr. Jimmerson’s violations of RPC 1.15 based on the facts and circumstances presented.

#### IV. STATEMENT OF THE CASE

##### A. Nature of the Case.

This cases arises out of a mistake made by Mr. Jimmerson in handling his trust account between November 14, 2019 and November 25, 2019. (ROA 3618-19.) During that ***11-day*** time period, he initiated three withdrawals (the “November Transfers”) of funds that he ***reasonably and in good faith believed*** had been paid into trust by several of his clients for whom the withdrawals were made. (*Id.* at 653-54, 680.) He did not have daily cash reports to confirm that these clients had, in fact, paid their bills—reports that he has historically relied upon in managing his trust account—because his long-time bookkeeper had just left the firm and had been replaced by a new bookkeeper who, unbeknownst to Mr. Jimmerson at the time, had fallen behind in her work. (*Id.* at 3510, 3538, 3567.) Once discovered, Mr. Jimmerson rehired his former bookkeeper and directed her to reconcile the trust account. (*Id.* at 350-225.) She did so, down to the penny. (*Id.* at 3530.) ***Mr. Jimmerson has never had issues in the past with his trust account and has not had any issues since.***<sup>1</sup> (*Id.* at 3590.)

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<sup>1</sup> There are two additional transfers from trust at issue in this matter that occurred in December 2019: the “Nady Transfer”; and the “Family Trust Transfer.” Neither serves as a basis for the State Bar’s claim that Mr. Jimmerson should be suspended for violating RPC 1.15. (ROA at 3641-42 (referring to these two transfers as being “more the reprimand level”).) While they are discussed below, the November Transfers are the focus of this matter.

**B. Course of Proceeding.**

On October 7, 2020, in response to a grievance submitted by a disgruntled former employee of The Jimmerson Law Firm (Nicole Cruz), the State Bar filed a Complaint against Mr. Jimmerson, charging him with violations of RPC 1.15 and 5.3.<sup>2</sup> (ROA 1-7.) The State Bar alleged that each of the November Transfers, the Nady Transfer, and the Family Trust Transfer constituted a violation of RPC 1.15. (*Id.*) Further, the State Bar alleged that Mr. Jimmerson did not properly train and supervise his non-lawyer employees with respect to “his trust account transactions” in violation of RPC 5.3. (*Id.*)

Mr. Jimmerson moved to dismiss the RPC 5.3 charge based on the lack of factual allegations supporting the charge. (*Id.* at 13-20.) The motion was opposed by the State Bar and denied by the Disciplinary Chair. (*Id.* at 21-37.)

On December 10, 2020, Mr. Jimmerson filed his Verified Answer to the Complaint. (*Id.* at 38-46.) From there, the Panel members were appointed by the Disciplinary Chair, as follows: Thomas Edwards, Esq., Chair; Ira David, Esq., Panel member; and Anne Hanson, Lay member. (*Id.* at 68-69.)

Prior to the hearing, Mr. Jimmerson retained former District Court Judge and former Bar Counsel Rob Bare as a testifying expert to opine on certain

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<sup>2</sup> Ms. Cruz’s grievance was not admitted into evidence at the hearing; nor did she testify at the hearing.

1 issues presented in the case. (*See id.* at 72-99.) The State Bar moved to  
2 preclude Judge Bare from testifying at the hearing, arguing, in part, that he was  
3 not qualified to do so.<sup>3</sup> (*Id.* at 122-55.) Although the Panel Chair precluded  
4 Judge Bare’s written expert report from being admitted into evidence at the  
5 hearing, the Panel Chair found that Judge Bare “may testify concerning the  
6 standard of care and whether Respondent met that standard.” (*Id.* at 519-22.)

7 At Mr. Jimmerson’s request, the Panel Chair bifurcated the hearing, with  
8 the first phase of the hearing focusing on whether Mr. Jimmerson violated the  
9 RPCs (e.g., the “guilt phase”) and the second phase of the hearing focusing on  
10 the discipline, if any, to be imposed by the Panel if it found one or more RPC  
11 violations (e.g., the “sentencing phase”). (*Id.*; *see also id.* at 710-11.) Further,  
12 upon stipulation of the parties, the Panel Chair pre-admitted certain exhibits  
13 into evidence (some of which have been filed under seal). (*Id.* at 524-27.)

14 The hearing commenced, via Zoom, on April 30, 2021 with the guilt  
15 phase.<sup>4</sup> (*E.g., id.* at 561-65.) Following opening statements (*id.* at 576-602),  
16 the Panel heard testimony from Louise Watson, the State Bar investigator who  
17

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18 <sup>3</sup> Judge Bare’s curriculum vitae was admitted into evidence at the hearing.  
19 (*See* ROA 3539-49.)

20 <sup>4</sup> Although Mr. Jimmerson requested to hold the hearing in-person, Mr.  
David and Ms. Hanson “could not be available for an in-person hearing for  
reasons other than COVID-19.” (ROA 521.)

1 reviewed Ms. Cruz’s grievance (*id.* at 603-39); Mr. Jimmerson (*id.* at 639-701);  
2 and Craig Jay Nady, a client of The Jimmerson Law Firm (*id.* at 702-10).

3 *During the hearing, and despite having opposed early dismissal of the*  
4 *charge, the State Bar voluntarily abandoned its RPC 5.3 charge due to a lack*  
5 *of evidence to support it. (Id. at 552; see also id. at 677-78.)* Indeed, the State  
6 Bar did not even mention the RPC 5.3 charge in its opening statement. (*See id.*  
7 at 576-79.)

8 Following closing arguments (*id.* at 715-38), the Panel deliberated and  
9 found that Mr. Jimmerson violated RPC 1.15 “as to each of the five transactions  
10 at issue.” (*Id.* at 739.) The parties then moved into the second phase of the  
11 hearing, with the Panel hearing opening statements. (*Id.* at 739-94.) Due to  
12 time constraints, the parties could not finish the hearing and agreed to continue  
13 it to another day. (*Id.* at 794-803.)

14 The hearing resumed on May 13, 2021. (*E.g., id.* at 3494-98.) The Panel  
15 heard testimony from Amanda Kahn, The Jimmerson Law Firm’s current  
16 bookkeeper/ office manager (*id.* at 3499-548); James M. Jimmerson, Esq., Mr.  
17 Jimmerson’s son and an attorney at The Jimmerson Law Firm (*id.* at 3552-62);  
18 Mr. Jimmerson (*id.* at 3562-605); and Judge Bare (*id.* at 3606-35). Following  
19 closing arguments (*id.* at 3636-46), the Panel deliberated and then took the  
20 matter under advisement “to think about the sanction” (*id.* at 3648).



**C. The Decision.**

On June 21, 2021, the Panel entered its Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing (the “Decision”). (ROA 550-59.) Starting with the duty violated, the Panel found that Mr. Jimmerson violated RPC 1.15 for each of the November Transfers, the Nady Transfer, and the Family Trust Transfer. (*Id.* at 553-54.) Next, with respect to Mr. Jimmerson’s mental state, the Panel found that Mr. Jimmerson “should have known” that he could not make each of the November Transfers and the Nady Transfer and that he was “negligent” when making the Family Trust Transfer. (*Id.* at 555.) Finally, with respect to injury to his clients, the Panel found as follows: (i) that the November Transfers caused “potential injury” to his clients, although the likelihood of such injury “was remote”; (ii) that the Nady Transfer caused “little or no injury” to the client, because Mr. Nady had consented to the transfer and because the fees were earned a short time later; and (iii) the Family Trust Transfer caused “little or no injury” to the clients because the issue was corrected “immediately when the error was discovered.” (*Id.* at 556.)

Based on the duty violated, Mr. Jimmerson’s mental state, and the potential injury to his clients associated with the November Transfers, the Panel determined that the “baseline sanction is a suspension pursuant to ABA Standard 4.12.” (*Id.*)

1 From there, the Panel made findings with respect to aggravating and  
2 mitigating factors. The Panel found two aggravating factors: (i) prior  
3 discipline; and (ii) Mr. Jimmerson’s “[s]ubstantial experience in the practice of  
4 law.” (*Id.* at 556-57.) The Panel then found six mitigating factors, as follows:

- 5 - “Absence of a dishonest or selfish motive”;
- 6 - “Personal or emotional problems based upon the passing of [Mr.  
7 Jimmerson]’s son”;
- 8 - “Timely good faith effort to make restitution or to rectify the  
9 consequences of misconduct based upon [Mr. Jimmerson’s] efforts to quickly  
10 audit and balance the trust account”;
- 11 - “Full and free disclosure to the [State Bar] or cooperative attitude  
12 toward the proceeding as [Mr. Jimmerson] was frank about the transfers”;
- 13 - “Remorse as [Mr. Jimmerson] conveyed that he is very sorry” and  
14 it is clear that he is “taking this seriously such that the risk of future violations  
15 ... seem remote” and
- 16 - “Remoteness of prior offenses in 1994.”

17 (*Id.*) “***Based upon the aggravating and mitigating circumstances, the Panel***  
18 ***unanimously f[ound] that a downward adjustment in the baseline sanction is***  
19 ***appropriate.***” (*Id.* at 558 (emphasis added).) The Panel recommended that Mr.  
20 Jimmerson be publicly reprimanded and pay the costs of the proceeding. (*Id.*)

**D. This Appeal.**

Unwilling to accept the Panel’s findings and recommendation, the State Bar has challenged the Decision in two respects. *First*, the State Bar claims that the Panel should have found that Mr. Jimmerson had a dishonest or selfish motive. (Op. Br. at 8-12.) The State Bar does not contest the Panel’s findings with respect to Mr. Jimmerson’s mental state or potential injury to his clients (including the remoteness of the potential injury and the absence of any actual injury); nor does the State Bar contest the Panel’s findings with respect to any other aggravating or mitigating circumstance. *Second*, the State Bar claims that Mr. Jimmerson should be suspended, not publicly reprimanded. (*Id.* at 13-21.)

**V. STATEMENT OF FACTS**

**A. Mr. Jimmerson and The Jimmerson Law Firm.**

Mr. Jimmerson has been practicing law in Nevada since 1976. (ROA 670.) He is AV-rated and recognized by various top lawyers publications. (*Id.*) For example, he is “one of the top 100 trial lawyers in family law” and a Fellow of the American College of Family Trial Lawyers. (*Id.*) As a way to “give back to the public,” he routinely teaches CLEs (including, most recently, in the area of drugs and alcohol), serves as a settlement judgment for the Nevada Supreme Court Settlement Program, and has dedicated countless hours of his

1 career to *pro bono* work for indigent clients. (*Id.* at 671-72, 3584-85.) Also,  
2 for many years, he served on the Board of Governors. (*Id.* at 640.)

3 Mr. Jimmerson is the owner of The Jimmerson Law Firm, which is a  
4 small, boutique law firm that works on complex matters and a wide range of  
5 cases. (*Id.* at 645, 3553.) Mr. Jimmerson’s primary area of practice is family  
6 law. (*Id.*) He takes his work “seriously” and endeavors to “lead by example.”  
7 (*Id.* at 3554; *see also id.* at 697 (testifying that he strives to be “the best lawyer  
8 [he] can be for [his] clients”).) Several witnesses testified that above all else, he  
9 is “honest.” (*Id.* at 706, 3507-08, 3561.) Even Bar Counsel acknowledged Mr.  
10 Jimmerson’s unwavering sincerity at the hearing, saying,

11 *I will give him this, he’s fairly straightforward. I’ve never had a*  
12 *respondent be as open and honest as Mr. Jimmerson.*

13 (*Id.* at 753 (emphasis added).)

14 **B. Bookkeeping at The Jimmerson Law Firm.**

15 Mr. Jimmerson takes seriously his obligation to supervise the trust  
16 account. (ROA 642; *see also id.* at 3504-05, 3512.). He has historically  
17 employed a bookkeeper to assist him in managing the firm’s finances. (*Id.* at  
18 3500-01.) Prior to November 2019, the position was held by Ms. Kahn. (*Id.*)  
19 At Mr. Jimmerson’s direction, she would meticulously track all debits from and  
20 credits to the trust account and regularly meet with Mr. Jimmerson to discuss

1 account activity. (*Id.* at 3502.) In fact, the firm has a written policy in place for  
2 managing the trust account, including “a page-by-page-by-page step-by-step  
3 [of] how you make a trust transfer online.” (*Id.* at 642-43, 679.)

4 One of the bookkeeper’s essential tasks at the firm involves preparing  
5 daily cash reports, which identify all activity in all accounts belonging to the  
6 firm, including the trust account. (*Id.* at 3502-03; *see also id.* at 679.) Mr.  
7 Jimmerson relies on the daily cash reports in determining when to withdraw  
8 funds from the trust account and routinely meets with his bookkeeper to discuss  
9 the reports. (*Id.* at 701, 3567; *see also id.* at 3503-04.)

10 **C. The Transition in Bookkeeping for The Jimmerson Law Firm**  
11 **from Amanda Kahn to Leah Ballard.**

12 In 2019, Ms. Kahn determined that she needed to take time away from  
13 work for personal reasons. (ROA 3508-09.) She helped train her replacement,  
14 Leah Ballard, who, by all accounts, was qualified for the position. (*Id.* at 3510;  
15 *see also id.* at 3516-26.) Ms. Kahn’s last official day was November 7, 2019.  
16 (*Id.*) That being said, even after she left the firm, Ms. Kahn stayed in contact  
17 with Ms. Ballard to answer her questions, and exchanged text messages with  
18 her to see how she was doing. (*Id.* at 3510-11, 3522; *see also id.* at 3536-38.)

19 For the first few days, Ms. Ballard was able to manage her duties and  
20 responsibilities as the new bookkeeper. (*Id.* at 3519.) But, by November 11,

1 2019, she had stopped preparing daily cash reports, and had stopped tracking  
2 activity in the trust account. (*Id.*) *Worse, when Mr. Jimmerson would check*  
3 *in with Ms. Ballard on a daily basis to see how she was doing, she would*  
4 *inform him that clients were paying their bills and that everything was fine.*  
5 (*Id.* at 683, 3566.) That same (false) assurance was given to Ms. Kahn—Ms.  
6 Ballard “never once mention[ed]” that she was “overwhelmed” and had stopped  
7 preparing daily cash reports. (*Id.* at 3528.)

8 **D. Mr. Jimmerson Reasonably and in Good Faith Initiates the**  
9 **November Transfers.**

10 By mid-November 2019, Mr. Jimmerson was no longer receiving daily  
11 cash reports from Ms. Ballard. (ROA 701, 3567.) However, he reasonably and  
12 in good faith believed that clients were continuing to pay their bills on a timely  
13 basis, as had been their past practices.<sup>5</sup> (*Id.* at 646-47.) As Mr. Jimmerson  
14 explained to the Panel:

15 I knew the clients and the cases that are going on ... Large bills,  
16 sizable bills because they’re intensive work, a lot is going on, very  
17 active cases... They all pay within 10 to 20 days of the billing  
18 dates.”  
19

---

20 <sup>5</sup> Monies received by the firm in November 2019 were for bills issued for  
services rendered and costs incurred in October 2019. (ROA 3564.)

1 (*Id.* at 3565; *see also id.* at 646 (“[T]hese clients are particularly reliable. They  
2 pay within 30 days, if not sooner.”).)

3 ***Further, he had asked Ms. Ballard if the clients were paying their bills,***  
4 ***and she told him – without equivocation – that they were.*** (*Id.* at 683 (“I’m  
5 talking to her on almost a daily basis, that everything is going well ... the trust  
6 accounts are being adjusted, as they’re making payments and then we move it  
7 over to the corporation, none of which turned out to be true.”).) He was “never  
8 advised that they weren’t paid.” (*Id.* at 3566.)

9 On November 14, 2019, Mr. Jimmerson made the first of the three  
10 November Transfers from the trust account of monies that he reasonably and  
11 “in good faith believed” represented fees that had been earned, billed, and paid  
12 by clients. (*Id.* at 643-47, 653-54, 680, 3563-67.) The other two November  
13 Transfers were made on November 21, 2019, and November 25, 2019. (*Id.*)  
14 These three transfers occurred “over eleven days when Miss Ballard [was] in  
15 charge of [the firm’s] books and records.” (*Id.* at 648.) ***Importantly, when he***  
16 ***made these transfers, Mr. Jimmerson did not know that certain clients had***  
17 ***not paid their bills in full.*** (*Id.* at 654, 3563-66.) The reason: He did not have  
18 “the benefit of those [daily] cash reports.” (*Id.* at 701.) As he told the Panel, “I  
19 believed the money was there or I would never take it....” (*Id.* at 3590; *see also*  
20 *id.* at 680 (“I didn’t have the information the money was not there. I was never

1 advised the money was not there.”.) The clients did pay their bills, several  
2 within a matter of days following the transfers; and as discussed below,  
3 “everything tie[d] back to the dollar.” (*Id.* at 654, 675, 680.)

4 Had Mr. Jimmerson known that the money was not there, he would never  
5 have made the transfers; he told the Panel that for the transfer on November 21,  
6 2019 that was used to help make payroll for the firm, he would have borrowed  
7 the money from another company that he owns. (*Id.* at 3576-79.) As Ms. Kahn  
8 told the Panel,

9 [I]n the past what happened is if we don’t have enough money in the  
10 corporation account, we have building accounts money we can  
11 transfer and we have his personal account we can transfer, we have  
his other company we can transfer.

12 (*Id.* at 3542; *see also id.* at 3543.)

13 **E. Ms. Kahn Replaces Ms. Ballard, Who Resigns After Admitting**  
14 **That She “Made a Mess” and “Got So Disorganized.”**

15 On November 25, 2019, Mr. Jimmerson learned, for the first time, that  
16 Ms. Ballard had fallen behind in her work; specifically, that she was not  
17 inputting time to prepare monthly bills for clients. (ROA 655, 680-81.) In a  
18 text message that she sent the next morning, she told Mr. Jimmerson that she  
19 “made a large mess.” (*Id.* at 917.) Further, she admitted that she had concealed  
20 what had happened, saying, “I got myself overwhelmed and did not



1 communicate that.” (*Id.*) Separately, she informed Ms. Kahn in a text message  
2 that she had become “so disorganized.” (*Id.* at 918.)

3 Mr. Jimmerson took immediate action upon realizing that Ms. Ballard  
4 was not doing her job. (*Id.* at 3581-82.) Most notably, he called and asked Ms.  
5 Kahn for help. (*Id.* at 688-89.) She agreed. (*Id.* at 3513, 3522-23.)

6 As part of inputting timesheets to prepare the bills, Ms. Kahn discovered  
7 that Ms. Ballard had not been preparing daily cash reports for Mr. Jimmerson’s  
8 review. (*Id.* at 3519, 26-27.) Ms. Kahn immediately called and notified Mr.  
9 Jimmerson, who was “speechless” and “completely shocked.” (*Id.* at 3519-20.)  
10 Right then and there, he told Ms. Kahn: “I need to bring you back.” (*Id.* at  
11 3520.) In doing so, he offered her a significant salary raise. (*Id.* at 3520-21.)

12 On December 2, 2019, Ms. Ballard resigned from the firm. (*Id.* at 691,  
13 3524.) In a text message that she sent to Ms. Kahn, she admitted that the job  
14 was “more than I can clearly handle” and “too much for me.” (*Id.* at 919.)

15 On December 3, 2019, Mr. Jimmerson met with Ms. Kahn to discuss  
16 reconciling the trust account. (*Id.* at 3525, 3582.) He told Ms. Kahn that  
17 reconciling the trust account was “a first priority.” (*Id.* at 3526-29.) ***She did so***  
18 ***by December 27, 2019, down to the last penny.*** (*Id.* at 3530.)  
19  
20

1           **F.     Mr. Nady Authorizes the Nady Transfer.**

2           In October 2019, Mr. Nady retained Mr. Jimmerson to represent his  
3           taxicab company in a matter. (ROA 706-07.) When doing so, he paid a  
4           \$50,000 retainer for deposit in the trust account even though Mr. Jimmerson  
5           had only asked for \$10,000, saying, “It was my decision.” (*Id.* at 708.)

6           In December 2019, Mr. Jimmerson called Mr. Nady to discuss work to be  
7           completed on his matter. (*Id.* at 708-09.) During the call, Mr. Jimmerson asked  
8           Mr. Nady if he could withdraw \$10,000 from the retainer. (*Id.* at 664, 708.)  
9           Mr. Nady told him that he could do so. (*See id.* at 709 (“I told him he could  
10          take all of it if he wanted.”).)

11          Based on his discussion with Mr. Nady, Mr. Jimmerson reasonably and  
12          in good faith believed that he could initiate the Nady Transfer. (*Id.* at 664.) As  
13          Mr. Jimmerson explained to the Panel, “There was no need for me to take the  
14          money out of trust to borrow. The accounts were very hefty by December 20th,  
15          and the money just sat there as part of overall funds.” (*Id.* at 3568.) Mr. Nady  
16          has been pleased with the work performed by Mr. Jimmerson. (*Id.* at 709-10.)

17           **G.     Mr. Jimmerson Inadvertently Makes the Family Trust**  
18           **Transfer.**

19          In December 2019, Mr. Jimmerson decided to make a distribution to  
20          himself from his firm’s corporate account. (ROA 659-60.) Unbeknownst to

1 him at the time, when making the transfer, Mr. Jimmerson “hit the wrong  
2 button,” and as a result, inadvertently transferred \$15,000 from the trust  
3 account. (*Id.* at 657.) He discovered the problem seven days later when Ms.  
4 Kahn brought it to his attention, and immediately directed her to transfer  
5 \$15,000 from the operating account to the trust account. (*Id.* at 657-58.)

6 During the hearing, the State Bar questioned Mr. Jimmerson as to why he  
7 did not return the money from the same account to which the funds were  
8 initially transferred, and (recklessly) implied that Mr. Jimmerson used the  
9 \$15,000 to buy Christmas presents.<sup>6</sup> (*Id.* at 659-60, 726-27.) Mr. Jimmerson  
10 explained to the Panel that because he had intended to make a distribution, he  
11 directed the funds to be returned from the corporate account. (*Id.* at 660.) He  
12 showed the Panel, using bank records that had been subpoenaed by the State  
13 Bar from Nevada State Bank, that he did not spend the money to buy Christmas  
14 presents (or anything else), and that the money was still in his personal account  
15 as of December 27, 2019, when he returned the money using funds in the  
16 corporate account. (*Id.* at 3570-72.) As he told the Panel,

17 The money stay[ed] there because I didn’t know I had taken it from  
18 the IOLTA account. I didn’t know it. And I didn’t need the money.

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19 <sup>6</sup> This was one of many times throughout the hearing in which the State  
20 Bar made comments about Mr. Jimmerson that were completely unsupported by  
the record in an unfair attempt to besmirch his character.

1 I didn't need it for Christmas presents. *I didn't use it for Christmas*  
2 *presents.*

3 (*Id.* at 3573 (emphasis added).) He also showed the Panel that the money was  
4 in his corporate account on December 20, 2019, when he initially sought to  
5 make the transfer. (*Id.* at 3574-75.)

6 Mr. Jimmerson has never had a situation arise like the Family Trust  
7 Transfer. (*Id.* at 661.) As he told the Panel, "It's the first time it's ever  
8 happened." (*Id.* at 3570.)

9 **H. Mr. Jimmerson is Candid, Forthright, and Responsive During**  
10 **the State Bar's Investigation.**

11 On March 12, 2020, Mr. Jimmerson received written notice that the State  
12 Bar had opened an investigation of his firm in response to Ms. Cruz's  
13 grievance. (ROA 3594.) The very same day, Mr. Jimmerson caused Ms. Kahn  
14 to send an email to the State Bar, providing a current balance of his trust  
15 account and supporting documentation. (*Id.* at 674, 3532; *see also id.* at 882-  
16 88.) He then prepared a complete and thorough written response to the  
17 grievance, which was sent to the State Bar on April 21, 2020.<sup>7</sup> (*Id.* at 897-900.)

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18  
19 <sup>7</sup> The State Bar argues that Mr. Jimmerson initially denied wrongdoing,  
20 then later admitted wrongdoing. (Op. Br. at 4.) This is false. The grievance  
itself was not admitted at the hearing, and Mr. Jimmerson explained to the  
Panel that the grievance contained obvious falsehoods. (ROA 694-96.)

1 Mr. Jimmerson included with his April 21, 2020 response a number of  
2 attachments totaling 546 pages. (*Id.* at 901-1446.) Among the attachments  
3 were a spreadsheet that detailed each and every transaction involving the trust  
4 account between November 1, 2019 and March 9, 2020 (*id.* at 921-92), together  
5 with backup documentation such as invoices and payment records (*id.* at 930-  
6 1446). Although the State Bar implied at the hearing that Mr. Jimmerson  
7 attempted to conceal the November Transfers during the investigation (*id.* at  
8 3594), Ms. Kahn explained – and demonstrated – that those transactions were  
9 specifically listed in the spreadsheet that accompanied the April 21, 2020 letter  
10 to the State Bar. (*Compare id.* at 3594, *with id.* at 3535-36.)

11       Importantly, the trust account reconciliation was not done in response to  
12 the State Bar’s letter of investigation. (*Id.* at 3532-33.) Rather, as noted above,  
13 the reconciliation was done, upon Mr. Jimmerson’s direction and instruction,  
14 several months prior. (*Id.* at 3530.) And, the trust account was “maintained  
15 and [has been] kept in order” ever since. (*See id.*)

16       As he told the Panel, “I tried to be as faithful and as full in my response  
17 [to the State Bar] by attaching every document that I thought was responsive to  
18 the letter.” (*Id.* at 3600-01.) Mr. Jimmerson supplemented his response on  
19 May 22, 2020, with additional information and documentation requested by the  
20 State Bar. (*Id.* at 1449-63.)

1 Separate and apart from receiving documentation from Mr. Jimmerson,  
2 the State Bar subpoenaed bank records, including monthly statements, from 18  
3 different accounts held by Mr. Jimmerson at Nevada State Bank, many of  
4 which have absolutely nothing to do with The Jimmerson Law Firm. (*Id.* at  
5 3465-68.) Pertinent records were admitted into evidence and considered by the  
6 Panel during the hearing. (*See, e.g., id.* at 551.)

7 **I. Judge Bare’s Expert Opinions.**

8 As noted above, Mr. Jimmerson retained Judge Bare to render certain  
9 expert opinions at the hearing. (ROA 3608.) He told Judge Bare to give him a  
10 “candid appraisal of the situation, be it good, bad or ugly.” (*Id.*) Because he  
11 did not testify until the second phase of the hearing, Judge Bare streamlined his  
12 opinions for the Panel “relevant to aggravating and mitigating factors.” (*Id.* at  
13 3609.) He testified that he approached the case by considering “what would the  
14 [P]anel expect Mr. Jimmerson to do” in this scenario. (*Id.* at 3609.) He opined  
15 that Mr. Jimmerson received an “A plus” on mitigating factors because he did  
16 “what we’d want him to do as an ethical lawyer” upon learning that Ms. Ballard  
17 had fallen behind in her work. (*Id.* at 3609-17; *see also id.* at 3621 (“You  
18 couldn’t expect anything more[.]”).) Further, he opined that Mr. Jimmerson  
19 made a “mistake” when initiating the November Transfers based on his  
20

1 evaluation of the evidence. (*Id.* at 3618-20.) When questioned about that  
2 opinion, he aptly posed the following hypothetical question:

3 *Do you think it's a coincidence this happened, all these happened*  
4 *when Miss Ballard is there and never happens any other time in*  
5 *45 years?*

(*Id.* at 3629 (emphasis added).)

6 Notably, despite having opportunity to do so (*see id.* at 52), the State Bar  
7 did not present an expert witness to rebut Judge Bare's opinions at the hearing.

## 8 VI. SUMMARY OF ARGUMENT

9 This Court should adopt the Panel's findings and affirm its  
10 recommendation, made following a two-day hearing after which the Panel  
11 deliberated and then issued its Decision.

12 Beginning with the State Bar's first argument, the Panel's finding that  
13 Mr. Jimmerson acted without a selfish or dishonest motive is supported by  
14 substantial evidence. Mr. Jimmerson testified – at length – concerning the  
15 circumstances underlying the trust account transfers at issue. Most notably, he  
16 said, “I never had any intention to take money that didn't belong to me....”  
17 (ROA 3583.) The State Bar did not present any evidence to the contrary, *let*  
18 *alone clear and convincing evidence.* According to Mr. Jimmerson, “I believed  
19 the money was there or I would never [have] take[n] it.” (*Id.* at 3590.) As he  
20 further explained to the Panel, had he known “the three draws [in November]

1 were for a moment in time even one day short ... I wouldn't have done it[.]”  
2 (*Id.* at 3576.) The State Bar did not give the Panel a reason to doubt Mr.  
3 Jimmerson's veracity. Three different witnesses testified at the hearing that he  
4 is an honest attorney. (*Id.* at 706, 3507, 3561.) The State Bar did not present  
5 any witness to say otherwise. In fact, Bar Counsel told the Panel that he “never  
6 had a respondent be as open and honest as Mr. Jimmerson.” (*Id.* at 753.) In  
7 sum, there is no basis for this Court to set aside the Panel's factual finding with  
8 respect to Mr. Jimmerson's motive.

9       Turning to the State Bar's second argument, SCR 102.5(2) permits a  
10 “reduction in the degree of discipline to be imposed” where an attorney presents  
11 mitigating circumstances. *See also* Am. Bar Ass'n, ANNOTATED STANDARDS  
12 FOR IMPOSING LAWYER SANCTIONS at 545 (2nd ed. 2019) [hereinafter,  
13 “ANNOTATED STANDARDS”] (noting that “a court may find the presence of  
14 multiple mitigating factors warrants a reduced sanction”). Here, the record is  
15 supported by substantial – in fact, compelling – evidence of numerous  
16 mitigating circumstances, and the State Bar's attempt to downplay those  
17 circumstances falls flat. So, too, does the State Bar's attempt to have this Court  
18 adopt a hard-and-fast rule precluding a downward deviation from the baseline  
19 sanction of a suspension in a case where a lawyer should have known that he  
20 was dealing improperly with client funds (even if only momentarily). Such



1 inflexibility would run afoul of the ABA Standards for Imposing Lawyer  
2 Sanctions (the “*ABA Standards*”). *See* ANNOTATED STANDARDS at 447 (“A  
3 baseline sanction under *any* given Sanctions Standard *can be adjusted* upward  
4 or downward ....”) (emphasis added).

5       The Panel’s Decision arises out of a two-day hearing with numerous  
6 witnesses and exhibits and argument by the parties. The Panel was careful with  
7 its review of the record and did not overlook or disregard any evidence. The  
8 recommendation of a public reprimand fits squarely within the *ABA Standards*,  
9 and fearmongering by the State Bar should not serve as a basis for taking away  
10 Mr. Jimmerson’s license to practice law—a privilege that he has enjoyed, and  
11 hopes to continue to enjoy, for many years to come. (ROA 697.)

## 12                                   **VII. ARGUMENT**

### 13           **A. Standard of Review.**

14       This Court conducts a de novo review of a hearing panel’s conclusions of  
15 law and recommendation for discipline. SCR 105(3)(b). That being said, the  
16 Panel’s recommendation “is persuasive.” *In re Discipline of Arabia, Bar No.*  
17 *9749*, 137 Nev., Adv. Op. 59, 2021 Nev. LEXIS 57, at \*22 (2021). This Court  
18 applies a deferential standard of review to a hearing panel’s findings of fact and  
19 will not set them aside unless they are clearly erroneous or unsupported by  
20 substantial evidence. *Id.*; *see generally Sowers v. Forest Hills Subdivision*, 129

1 Nev. 99, 105, 294 P.3d 427, 432 (2013). Substantial evidence is defined as  
2 “evidence that a reasonable person may accept as adequate to sustain a  
3 judgment.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

4 **B. The Panel’s Factual Findings are Supported by Substantial**  
5 **Evidence.**

6 SCR 102.5 provides a non-exhaustive list of aggravating and mitigating  
7 circumstances that may be considered by a disciplinary panel “in deciding what  
8 sanction to impose.” *See also* RPC 1.0A (stating that whether to impose  
9 discipline for an RPC violation “depend[s] on all the circumstances,” including  
10 “extenuating factors”). The presence or absence of aggravating and mitigating  
11 circumstances is a question of fact. ANNOTATED STANDARDS at 444-46.

12 Among the many circumstances to be considered by a disciplinary panel  
13 is an attorney’s motive. A dishonest or selfish motive is considered  
14 aggravating, while an absence of a dishonest or selfish motive is considered  
15 mitigating. *Compare* SCR 102.5(1)(b), *with* SCR 102.5(2)(b).

16 Based on the testimony and documents submitted, the Panel found that  
17 Mr. Jimmerson acted without a dishonest or selfish motive. (ROA 557.) The  
18 State Bar asks this Court to set that finding aside in favor of finding that Mr.  
19 Jimmerson “acted selfishly.” (Op. Br. at 10.) There is no reason to do so.  
20

1 As shown below, the Panel’s finding with respect to Mr. Jimmerson’s  
2 motive should be affirmed, because it is supported by substantial evidence.  
3 Further, the other findings with respect to mitigating circumstances, as well as  
4 Mr. Jimmerson’s mental state and the potential for injury to his clients, should  
5 also be affirmed, because they are also supported by substantial evidence.

6 1. The Evidence Establishes that Mr. Jimmerson Did *Not* Act  
7 With a Dishonest or Selfish Motive.

8 The State Bar wants this Court to reweigh the evidence and testimony,  
9 and to substitute its judgment for the Panel’s, in deciding Mr. Jimmerson’s  
10 motive. This Court should decline to do so. *See, e.g., Mitchell v. State*, 124  
11 Nev. 807, 816, 192 P.3d 721, 727 (2008) (“This court will not reweigh the  
12 evidence or evaluate the credibility of witnesses because that is the  
13 responsibility of the trier of fact.”); *Rose v. State*, 123 Nev. 194, 202-03, 163  
14 P.3d 408, 414 (2007) (noting that this Court will not substitute its judgment for  
15 that of the jury in deciding an appeal).

16 As shown at the hearing, Mr. Jimmerson did not act selfishly or with a  
17 dishonest motive when making the November Transfers.<sup>8</sup> (ROA 3580-81.) He  
18

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19 <sup>8</sup> The State Bar does not argue that Mr. Jimmerson acted with a selfish  
20 interest or dishonest motive in making the Nady Transfer or the Family Trust  
Transfer.

1 reasonably and in good faith believed that he could. (*Id.* at 643-47, 653-54,  
2 680, 3563-67.) He reasonably believed – based upon their history – that the  
3 clients had paid their bills (*id.* at 646-47, 3565); he did not know, until “after  
4 the fact,” that certain clients had not paid their bills (*id.* at 654, 3563-66); he  
5 had not received the daily cash reports from his bookkeeper (*id.* at 701); and  
6 Ms. Ballard (his momentary bookkeeper) repeatedly told him that the clients  
7 were paying their bills (*id.* at 683, 3566). Further, he told the Panel that he  
8 “never had any intention to take money that didn’t belong to [him] ... And [he]  
9 would never harm a client.” (*Id.* at 3583; *see also id.* at 680, 3590.)

10       The State Bar fails to explain why this Court should discredit or ignore  
11 this testimony. Instead, the State Bar suggests that this Court should infer from  
12 what happened that Mr. Jimmerson needed money to “keep his law firm afloat”  
13 due to “cashflow problems.” (Op. Br. at 11.) That is nonsense manufactured  
14 from thin air and imagination. Mr. Jimmerson told the Panel that he had money  
15 from other businesses which he would have used to make payroll in late  
16 November 2019, had he known that he could not make the withdrawals. (ROA  
17 3576-79.) Ms. Kahn confirmed in her testimony that Mr. Jimmerson has  
18 borrowed from his other companies in the past when he needed to do so. (*Id.* at  
19 3542-43.) Mr. Jimmerson further demonstrated for the Panel, using monthly  
20 statements that had been subpoenaed by the State Bar from Nevada State Bank,

1 that he had sufficient funds in another business account to cover payroll. (*Id.* at  
2 3576-78.) That banking information, together with the testimony from Mr.  
3 Jimmerson and Ms. Kahn, verified that Mr. Jimmerson did not selfishly take  
4 money from trust.<sup>9</sup> *See also* ANNOTATED STANDARDS at 494 (noting that “a  
5 paucity of evidence to demonstrate that the lawyer meant harm” is sufficient to  
6 support a finding that the lawyer “lacked a dishonest or selfish motive”).

7 Although ignored by the State Bar, the Panel also considered the context  
8 in which these November Transfers occurred: An 11-day time period during  
9 which Mr. Jimmerson’s prior bookkeeper, Ms. Kahn, had left the firm for  
10 personal reasons and his new bookkeeper, Ms. Ballard, had fallen behind in her  
11

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12 <sup>9</sup> The facts here easily distinguish this case from those cited by the State  
13 Bar; specifically, *In re Discipline of Gamage*, No. 78079, 2019 Nev. Unpub.  
14 LEXIS 685 (July 21, 2019) (unpub. disp.), where the lawyer knew that he was  
15 “missing from the trust account and then continued to misappropriate client  
16 funds to pay personal and business expenses,” *id.* at \*2; *Disciplinary Counsel v.*  
17 *Streeter*, 8 N.E.3d 920 (Ohio 2014), where the lawyer became overwhelmed  
18 with “high overhead and a lot of debt” and started depositing client funds in his  
19 operating account “to cover his personal and business expenses,” *id.* at 922-23;  
20 *In re Disciplinary Proceeding Against Holcomb*, 173 P.3d 898 (Wash. 2007),  
where the lawyer took out loans from his client “because he was unable to find  
funding elsewhere and was having cash flow problems,” *id.* at 910; and *People*  
*v. Rhodes*, 107 P.3d 1177 (Colo. 2005), where the lawyer knew that he was  
converting client funds “to pay overhead for his law firm,” *id.* at 1180. By  
citing these cases, the State Bar is attempting to force a square peg through a  
round hole—unlike the lawyers in those cases, Mr. Jimmerson did not  
knowingly take from the trust account to pay operating expenses for his firm; he  
made a mistake that he quickly rectified. (*E.g.*, ROA 649, 675.)

1 work without notifying Mr. Jimmerson. (*Id.* at 557 (noting the “brief period of  
2 time over which the improper transfers were made”).) Judge Bare emphasized  
3 in his testimony the importance of considering the November Transfers in  
4 context. (*Id.* at 3629.) The RPCs say the same thing. *See* RPC 1.0A(c) (“The  
5 Rules presuppose that disciplinary assessment of a lawyer’s conduct will be  
6 made on the basis of the facts and circumstances as they existed at the time of  
7 the conduct in question....”).

8       The Panel, upon weighing the evidence and deciding Mr. Jimmerson’s  
9 credibility, found that Mr. Jimmerson’s motive “was to avoid the work  
10 necessary to determine whether the funds could be withdrawn.” (*Id.* at 557.)  
11 The Panel further found that because Mr. Jimmerson “did not have his  
12 customary daily cash reports,” he was “required to investigate and specifically  
13 determine whether the clients had paid into the trust account.” (*Id.* at 555.)  
14 These findings explain why Mr. Jimmerson did not act selfishly.

15 ///

16 ///

17 ///

1 In sum, this Court should affirm the Panel’s finding that SCR 102.5(2)(b)  
2 applies to this case—not SCR 102.5(1)(b).<sup>10</sup>

3 2. The Panel’s Other Factual Findings are Supported by  
4 Substantial Evidence.

5 Although the State Bar does not challenge the Panel’s findings with  
6 respect to other mitigating circumstances, Mr. Jimmerson’s mental state, and  
7 injury to his clients, this Court can see that they are supported by substantial  
8 evidence. *See, e.g., In re Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078  
9 (2008) (identifying four factors, *i.e.*, “the duty violated, the lawyer’s mental  
10 state, the potential or actual injury caused by the lawyer’s misconduct, and the  
11 existence of aggravating and mitigating factors,” to be considered after a  
12 finding of misconduct) (citing *ABA Standard* 3.0). Each is discussed below.

13  
14 <sup>10</sup> As a means of hedging its bet, the State Bar alternatively argues that the  
15 “absence of a selfish motive cannot exist in a misappropriation case.” (Op. Br.  
16 at 9.) The State Bar’s own authority, *In re Petition for Disciplinary Action*  
17 *Against Lieber*, 939 N.W.2d 284 (Minn. 2020), proves to the contrary. There,  
18 the court held that the lack of a selfish motive “is not a mitigating factor for an  
19 attorney who has *negligently* misappropriated funds.” *Id.* at 294-95 (emphasis  
20 added). The court further held that the “[l]ack of a selfish motive *can be a*  
*mitigating factor* for intentional misappropriation.” *Id.* at 295 n.11 (emphasis  
added). Although the facts presented in that case are easily distinguishable  
from those presented here (*e.g.*, the lawyer had mismanaged the trust account  
for 34 months, lacked remorse, and had previously been disbarred for trust  
account misconduct), the holding makes clear that Mr. Jimmerson’s absence of  
a selfish motive *is* a factor for this Court to consider given that the State Bar is  
arguing (albeit incorrectly) that he intentionally misappropriated client funds.

a. *Substantial Evidence of Mitigating Circumstances.*

The Panel found evidence sufficient to support numerous mitigating circumstances. (ROA 557.) **First**, the Panel found that SCR 102.5(2)(c) applies “based upon the passing of [Mr. Jimmerson]’s son.” (*Id.*) At the hearing, Mr. Jimmerson briefly discussed the loss of his 25-year old son, Jacob Jimmerson, in April 2019. (*Id.* at 661.) His older son, James Jimmerson, testified about how Jacob’s passing had impacted Mr. Jimmerson, saying, “He’s forever changed.” (*Id.* at 3558-59.)

Despite offering condolences to Mr. Jimmerson at the hearing (*id.* at 662), the State Bar denies that Jacob’s passing should be given any weight in this case, claiming that it was “causally unrelated” to the November Transfers. (Op. Br. at 19.) Not true. Setting aside that the loss of a child is something that is never forgotten, on November 13, 2019—*one day prior to the first of the three November Transfers*—Mr. Jimmerson was asked to put the finishing touches on a “floragraph” that had been created by the Nevada Donor Network in honor of Jacob. (ROA 3559-60.) Mr. Jimmerson had met with members of the Nevada Donor Network “a number of times in the weeks and months leading up to that ceremony.” (*Id.*) With that in mind, it is clear why this particular mitigating circumstance is relevant and significant in determining Mr.



1 Jimmerson’s discipline. The State Bar’s argument to the contrary is distasteful  
2 and unnecessary.

3       **Second**, the Panel found that SCR 102.5(2)(d) applies because Mr.  
4 Jimmerson made “[t]imely good faith effort to make restitution or to rectify the  
5 consequences of misconduct based upon [his] efforts to quickly audit and  
6 balance the trust account.” (*Id.* at 557.) As shown above, several months  
7 *before* being contacted by the State Bar, Mr. Jimmerson had re-hired Ms. Kahn  
8 and directed her to reconcile the trust account. (*Id.* at 3519-30, 3525, 3582.)  
9 He was (and remains) conscious of protecting his clients. (*See, e.g., id.* at 672.)  
10 As Judge Bare opined, “A plus” for this mitigating factor.<sup>11</sup> (*Id.* at 3610-12.)

11       **Third**, the Panel found that SCR 102.5(2)(e) applies because Mr.  
12 Jimmerson made “[f]ull and free disclosure to the [State Bar] or [had a]  
13 cooperative attitude toward the proceeding as [he] was frank about the  
14 transfers.” (*Id.* at 557.) The evidence shows that Mr. Jimmerson went above  
15 and beyond in supplying information to the State Bar, including providing a  
16 spreadsheet that detailed each and every trust account transaction during the  
17 time period in question. (*Id.* at 921-92.) As he told the Panel, “I tried to be as  
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19 <sup>11</sup> The State Bar attempts to downplay this mitigating circumstance by  
20 arguing that “the damage was done.” (Op. Br. at 19.) The State Bar’s argument  
misses the mark—the Panel found that Mr. Jimmerson took immediate action to  
rectify the trust account issues to prevent damage from occurring. (ROA 557.)

1 faithful and as full in my response by attaching every document that I thought  
2 was responsive to the” State Bar’s letter of investigation. (*Id.* at 3600-01; *see*  
3 *also id.* at 674 (testifying that “[a]ll the documents provided were true and  
4 correct”).) He did not hide or conceal anything and, again, he was honest and  
5 forthright in explaining to the Panel what had happened. (*Id.* at 3579-81; *see*  
6 *also* Op. Br. at 20 (“Jimmerson was candid at the hearing.”).)

7 ***Fourth***, the Panel found that SCR 102.5(2)(m) applies because Mr.  
8 Jimmerson had shown remorse as he “conveyed that he is very sorry” and was  
9 “taking this seriously such that the risk of future violations ... seem remote.”  
10 (*Id.* at 557.) The evidence reflects that he accepted responsibility for what  
11 occurred (*id.* at 673, 3581); he was embarrassed and apologetic (*id.* at 3585);  
12 and he told the Panel that he “will not be back” (*id.* at 3588).

13 ***Finally***, the Panel found that SCR 102.5(2)(n) applies because Mr.  
14 Jimmerson’s prior disciplinary offense from 1994 is remote. (*Id.* at 557.) The  
15 State Bar agreed that his prior offense is “quite old.” (*Id.* at 750.)

16 In sum, substantial evidence supports the Panel’s findings with respect to  
17 all the mitigating circumstances.

18 b. *Substantial Evidence of Mr. Jimmerson’s Mental State.*

19 The Panel found that Mr. Jimmerson should have known that he could  
20 not make the November Transfers or the Nady Transfer and that he was

1 negligent in making the Family Trust Transfer. (ROA 555.) It is arguable that  
2 negligence would apply to all the transfers. *See* ANNOTATED STANDARDS at xxi  
3 (defining “knowledge” and “negligence” for purposes of the *ABA Standards*).  
4 Regardless, the Panel’s findings with respect to Mr. Jimmerson’s mental state  
5 are supported by substantial evidence. Stated simply, he did not know that his  
6 clients had not paid their bills, and he did not have daily cash reports reflecting  
7 activity in the trust account. (*E.g.*, ROA 680, 701.) Further, he believed that he  
8 could make the Nady Transfer based on Mr. Nady’s authorization, and clicked  
9 the wrong button when making the Family Trust Transfer. (*Id.* at 657, 664.)

10 In sum, substantial evidence supports the Panel’s findings with respect to  
11 Mr. Jimmerson’s mental state.

12 c. *Substantial Evidence of Remoteness of Potential Injury to*  
13 *Mr. Jimmerson’s Clients.*

14 In addressing injury to clients, the Panel did not find actual injury to any  
15 client, but instead found that “there was *potential* injury to the clients” arising  
16 from the November Transfers, although such potential injury was “remote”; and  
17 *little to no* injury to the clients arising from the Nady Transfer and the Family  
18 Trust Transfer. (ROA 556 (emphasis added).) These findings are supported by  
19 substantial evidence; to wit: (i) every client paid his or her bill, several within a  
20 matter of days, such that the November Transfers were fully accounted for, and

1 Mr. Jimmerson was not experiencing liquidity issues (*id.* at 654, 675, 680); (ii)  
2 Mr. Nady authorized the disbursal of funds from his retainer, and the work was  
3 performed to his satisfaction (*id.* at 663-64, 708-10); and (iii) the Family Trust  
4 Transfer was corrected as soon as the error was discovered (*id.* at 657-58).<sup>12</sup>

5 Accordingly, substantial evidence supports the Panel’s findings with  
6 respect to injury to client.

7 **C. This Court Should Adopt the Panel’s Recommended Form of**  
8 **Discipline and Impose a Public Reprimand.**

9 The State Bar makes two arguments in asking this Court to overturn the  
10 Panel’s recommended form of discipline. **First**, the State Bar argues that as a  
11 matter of law, Mr. Jimmerson must be suspended for violating RPC 1.15. (Op.  
12 Br. at 13-18.) **Second**, the State Bar argues that no basis exists to permit a  
13 downward deviation from the baseline sanction of a suspension to a reprimand.  
14 (*Id.* at 18-21.) Neither argument is correct, as shown below.

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19 <sup>12</sup> The lack of evidence of actual harm to clients is important for this  
20 Court’s consideration in reviewing the Panel’s Decision. *See* ANNOTATED  
STANDARDS at 540 (stating that “several courts view as mitigating the fact that  
no person was harmed by the lawyer’s misconduct”).

1. A Reprimand Is a Possible Sanction for an RPC 1.15  
Violation.

The State Bar asks this Court to hold that reprimands “are inappropriate for misappropriation cases.” (Op. Br. at 14-15.) In support, the State Bar cites an unpublished disposition issued by this Court in 2000 and Rule 9(B) of the ABA Model Rules for Lawyer Disciplinary Enforcement (“MRLDE”), as discussed in the ANNOTATED STANDARDS to *ABA Standard 2.5*. (*Id.*) Neither source of authority supports the State Bar’s position.

Beginning with this Court’s prior holdings, the State Bar cites *In re Moore*, No. 36700, 2000 Nev. LEXIS 149 (Nov. 30, 2000) (unpub. disp.), for the proposition that a reprimand is not possible in a misappropriation case. The argument fails for two main reasons.

**First**, in *In re Moore*, this Court noted that misappropriation of client funds “ordinarily suggests” the imposition of severe discipline. *Id.* at \*3. This Court did not say that severe discipline (e.g., a suspension) is imposed in every such case.

**Second**, the *In re Moore* decision did not establish mandatory precedent and, in fact, it is questionable whether the State Bar may even cite it here. *See* NRAP 36(c)(3) (permitting citation to unpublished dispositions issued “on or after January 1, 2016). Assuming (*arguendo*) it has some persuasive value,

1 then so does *In re Discipline of McNabney*, No. 30465, 1998 Nev. LEXIS 57  
2 (Mar. 23, 1998) (unpub. disp.). There, this Court approved a public reprimand  
3 for a lawyer whose chief operating officer had caused him to misappropriate  
4 over \$74,000 from the trust account. *See id.* at \*2-3. The *In re Discipline of*  
5 *McNabney* decision demonstrates that a public reprimand may be imposed in a  
6 misappropriation case. *See also In re Discipline of Fermoile*, No. 63620, 2014  
7 Nev. Unpub. LEXIS 1270, at \*3-4 (Aug. 1, 2014) (unpub. disp.) (affirming a  
8 hearing panel’s recommendation of a public reprimand for a lawyer who was  
9 found to have violated, *inter alia*, RPC 1.15).<sup>13</sup>

10 Turning to Rule 9(B) of the MRLDE, that rule has nothing to do with  
11 determining the appropriate level of discipline to impose for an RPC 1.15  
12 violation. Rather, the rule applies “[i]n determining whether misconduct should  
13 be treated as ‘lesser’ for purposes of Rule 18(H) (Hearings on Lesser  
14 Misconduct).” *See MRLDE, R. 9(B) Commentary*. Rule 18(H) of the MRLDE  
15 prescribes an expedited process for adjudicating “formal charges alleging lesser  
16 misconduct as defined in Rule 9(B).” MRLDE, R. 18. For example, this rule  
17 states that when dealing with a charge involving “lesser misconduct,” only a  
18 single adjudicator, “who shall be a lawyer,” presides over the hearing and shall

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20 <sup>13</sup> The State Bar self-servingly cited *In re Moore* but not *In re Discipline of McNabney* or *In re Discipline of Fermoile*.

(i) dismiss, (ii) recommend discipline no greater than a reprimand (with or without probation), or (iii) remand to a hearing committee if the allegation does not involve “lesser misconduct as defined in Rule 9(B). *See id.* Further, a prehearing conference “need not be held,” and the decision is subject to judicial review “only in cases involving significant issues of law or upon a showing that the decision constituted an abuse of discretion,” where the outcome cannot “constitute a restriction on the respondent’s right to practice.” *See id.*

When read together with Rule 18(H), *see, e.g., Watson Rounds, P.C. v. Eighth Jud. Dist. Ct.*, 131 Nev. 783, 789, 358 P.3d 228, 232 (2015) (noting that this Court will interpret a rule “in harmony with other rules”), it is clear that Rule 9(B) does not preclude the imposition of a public reprimand in a misappropriation case—it merely guides whether certain disciplinary cases may be handled in an expedited fashion. *See also* MRLDE, R. 11-18 (describing the recommended process for handling an attorney discipline case). The Nevada Supreme Court Rules do not contemplate an expedited process for “lesser misconduct” cases, and therefore, Rule 9(B) has no apparent application in Nevada.<sup>14</sup>

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<sup>14</sup> Even if Rule 9(B) did apply (it does not), courts still have the discretion to “impose a reprimand, even when the misconduct does not fit the definition of ‘lesser misconduct,’ [if] a suspension appears too severe and a private reprimand too lenient.” *See* ANNOTATED STANDARDS at 81.

1 As a practical matter, the notion that Rule 9(B) of the MRLDE somehow  
2 altered the guidelines imposed by the *ABA Standards* is nonsensical. If the  
3 ABA intended to foreclose a downward deviation from *ABA Standard 4.12* in  
4 all cases, it would have said so. The *ABA Standards* say no such thing because  
5 such a hard-and-fast rule would contravene the fact that each disciplinary case  
6 must be decided on its own. *See, e.g.,* ANNOTATED STANDARDS at 40-41.

7 Further, the argument contravenes the “Disciplinary Panel Handbook”  
8 that is given – by the State Bar – to panel members deciding disciplinary cases.  
9 (ROA 3473-515.) Nowhere in that handbook does it say that if a panel finds  
10 that *ABA Standard 4.12* applies, then no downward deviation could ever occur  
11 irrespective of mitigating circumstances.<sup>15</sup> (*See generally id.*) The “ABA  
12 Guidelines for Discipline,” which are also distributed to members of  
13 disciplinary panels, specifically say: “A baseline sanction under *any* given  
14 Sanctions Standard *can be adjusted upward or downward* depending on the  
15 weight [Panels] assign to the mitigating or aggravating factors in a given case.”  
16 (*Id.* at 3472 (citing *ABA Standard 9.0*) (emphasis added).) Those guidelines do  
17 not carve out an exception where a panel finds that *ABA Standard 4.12* applies.

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19 <sup>15</sup> Several times during the hearing, Bar Counsel referred to the “book” and  
20 directed the Panel to abide by it. (ROA 744, 749, 757, 759.) The State Bar  
cannot be heard to argue a result that contradicts its own book, which, again, it  
provides to its panel members.



1 Time and time again, this Court has recognized that even if the *ABA*  
2 *Standards* recommend a baseline sanction of a suspension for an RPC violation,  
3 the presence of mitigating circumstances may warrant a downward deviation to  
4 a public reprimand. *See, e.g., In re Stovall*, No. 79949, 2020 Nev. Unpub.  
5 LEXIS 912, at \*3-4 (Sept. 21, 2020) (unpub. disp.); *In re Crosby*, No. 80811,  
6 2020 Nev. Unpub. LEXIS 701, at \*2-3 (July 16, 2020) (unpub. disp.); *In re*  
7 *Hardy*, No. 74060, 2018 Nev. Unpub. LEXIS 662, at \*7-8 (July 19, 2018)  
8 (unpub. disp.); *In re Beguelin*, No. 72637, 2018 Nev. Unpub. LEXIS 415, at  
9 \*5-6 (May 11, 2018) (unpub. disp.); *In re Stubbs*, No. 72494, 2017 Nev. Unpub.  
10 LEXIS 831, at \*4 (Sept. 28, 2017) (unpub. disp.). The circumstances presented  
11 in a case may be such that a suspension is “excessive and unnecessary.” *In re*  
12 *Bumgarner*, No. 70426, 2016 Nev. Unpub. LEXIS 900, at \*3 (Oct. 21, 2016)  
13 (unpub. disp.).

14 In the end, the State Bar does not cite a single case holding that a  
15 downward deviation is prohibited in cases where the baseline sanction is a  
16 suspension under *ABA Standard* 4.12. For these reasons, this Court should  
17 decline to find that a downward deviation is not possible in this case. (*See also*  
18 ROA 3488 (reminding panel members that the *ABA Standards* permit  
19 “flexibility and creativity in assigning sanctions in particular cases of lawyer  
20 misconduct”) (quoting *ABA Standard* 1.3).)

2. This Court Should Reprimand – Not Suspend – Mr.  
Jimmerson.

The State Bar argues that Mr. Jimmerson should be suspended for making the November Transfers, and that he presented “insufficient mitigation” to justify a downward deviation to a public reprimand. (Op. Br. at 16-21.) This Court will find, as the Panel did, that the facts compel a different result.

As a preliminary matter, the State Bar’s argument for a suspension is premised on this Court finding that Mr. Jimmerson acted with a selfish motive. (See Op. Br. at 10-13, 18.) As shown above, no basis exists for this Court to disturb the Panel’s finding that Mr. Jimmerson acted without a selfish motive. (ROA 557.) Absent changing that finding, the State Bar’s argument for a suspension must fail.

In closing argument for the second phase of the hearing, the State Bar ***admitted*** that Mr. Jimmerson had presented “lots of mitigation.”<sup>16</sup> (ROA 3646.) At that time, the State Bar was asking the Panel to find that the baseline sanction for the RPC 1.15 violations is disbarment, pursuant to *ABA Standard* 4.11; but that the Panel should deviate downward to a suspension based on mitigating circumstances. (See *id.*) That did not happen; instead, the Panel

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<sup>16</sup> Prior to the second phase of the hearing, Bar Counsel told the Panel that Mr. Jimmerson would likely produce “some good mitigation.” (ROA 753.)

1 found that the baseline sanction is suspension, pursuant to *ABA Standard* 4.12,  
2 and then, based on mitigating circumstances, deviated downward to a public  
3 reprimand. (*Id.* at 556-58.)

4 Upset with the outcome, the State Bar is changing its approach. Now, the  
5 State Bar is arguing that Mr. Jimmerson did not present sufficient evidence of  
6 mitigation to warrant a downward deviation from the baseline sanction. (Op.  
7 Br. at 18-20.) At the same time, the State Bar is not arguing that *ABA Standard*  
8 4.11 applies—the State Bar asks this Court to find that *ABA Standard* 4.12  
9 applies. (*See id.*) Using the State Bar’s own words, it has suddenly “reversed  
10 course” in hopes of securing its desired outcome. (*Id.* at 4.) There is still “lots  
11 of mitigation,” and that mitigation warrants a downward deviation.

12 The facts are straightforward. During the 11 days in which the  
13 November Transfers occurred, Mr. Jimmerson was not only without his long-  
14 time bookkeeper whose last day was November 7, 2019 (ROA 3510), he was  
15 also without the daily cash reports that he had historically relied upon in  
16 managing the trust account (*id.* at 701, 3567.) He did not know that his new  
17 bookkeeper had fallen behind in her work (*id.* at 655, 680-81) or that certain  
18 clients had not paid their bills (*id.* at 654, 3563-66). His new bookkeeper  
19 repeatedly told him that the clients were paying their bills (*id.* at 683, 3565-66),  
20 which was consistent with the fact these clients routinely paid their bills, (*id.* at

1 646-47, 3565). Had he known that the clients had not yet paid their bills,<sup>17</sup> he  
2 would never have taken from trust. (*Id.* at 680, 3576-79.) He did not act out of  
3 any selfish interest. (*Id.* at 3576, 3583, 3590).

4 Expert testimony presented at the hearing confirms that Mr. Jimmerson  
5 made a mistake and took immediate remedial measures to correct the mistake  
6 once discovered. (*Id.* at 3609-21.) Mr. Jimmerson brought Ms. Kahn back, at  
7 increased pay, to reconcile the trust account. (*Id.* at 688-89, 3520, 3581-82.)  
8 Money was not missing from trust, nor did Mr. Jimmerson have to come out of  
9 pocket to make up for a shortfall because each of the November Transfers tied  
10 back to client payments, down to the penny. (*Id.* at 654, 675, 680.) Not a dime  
11 was unaccounted for. (*Id.*; *see also id.* at 3530.) In sum, he did not act  
12 selfishly, and he was quick to reconcile the trust account.

13 In communications with the State Bar, Mr. Jimmerson was candid,  
14 forthright, and responsive to all inquiries and cooperated with the investigation.  
15 (*Id.* at 674, 3532, 3600-01.) He displayed true remorse to the Panel (*id.* at 673,  
16 3581, 3588), and discussed what had occurred in his personal life around this  
17 same time (*id.* at 661).

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20 <sup>17</sup> As discussed above, the bills were all paid, several within days of the  
November Transfers. (ROA 654, 675, 680.)

1           Equally significant, the State Bar found no other trust account violations  
2 in the records subpoenaed from Nevada State Bank. If the problem was  
3 systemic or driven by an intent for Mr. Jimmerson to benefit himself at the  
4 expense of his clients, the State Bar would have discovered other  
5 transgressions. It did not. Indeed, Mr. Jimmerson offered to make additional  
6 (and future) trust account records available to the State Bar for review (*id.* at  
7 3589-90)—proof that these transactions were aberrations and nothing more.

8           The purpose of attorney discipline is to protect the public, the courts, and  
9 the legal profession—not to punish the lawyer. *State Bar of Nev. v. Claiborne*,  
10 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). A public reprimand would  
11 accomplish those goals in light of the compelling mitigating circumstances  
12 presented; a suspension would be harsh and punitive. Removing Mr.  
13 Jimmerson from the practice of law would not serve to advance any legitimate  
14 interest other than to punish him for making a mistake.

15           In support of its suspension argument, the State Bar cites several Nevada  
16 cases that have absolutely no place in this discussion, such as *In re Gamage*,  
17 No. 78079, 2019 Nev. Unpub. LEXIS 685 (June 21, 2019) (unpub. disp.), *In re*  
18 *Graham*, No. 72693, 2017 Nev. LEXIS 77 (Sept. 11, 2017) (unpub. disp.), and  
19 *In re Serota*, 129 Nev. 631, 309 P.3d 1037 (2013). In each of those cases, the  
20 lawyer knew that he was converting client property for his own use but did so

1 anyway. *See In re Gamage*, 2019 Nev. Unpub. LEXIS 685, at \*2-3 (finding  
2 that the attorney “continued to misappropriate client funds to pay personal and  
3 business expenses” even after discovering that funds were missing from trust,  
4 and that her clients “did not receive their funds” as a result); *In re Graham*,  
5 2017 Nev. LEXIS 77, at \*1-2 (indicating that the attorney stole \$17 million  
6 from his clients, lied about it, and abandoned his practice, resulting in  
7 “substantial, even overwhelming, harm [to] his clients”); *In re Serota*, 129 Nev.  
8 at 633-35, 309 P.3d at 1038-40 (indicating that the attorney took nearly  
9 \$320,000 from trust to invest in companies in which he held an ownership  
10 interest, for which he was later convicted of theft, a category B felony, and  
11 concealed his misconduct “until its discovery was imminent”).<sup>18</sup>

12 As shown above, this Court has previously approved reprimands for RPC  
13 1.15 violations. *See In re Discipline of Fermoile*, 2014 Nev. Unpub. LEXIS  
14 1270, at \*3-4; *In re Discipline of McNabney*, 1998 Nev. LEXIS 57, at \*2-3; *see*  
15 *also In re Discipline of Ahmad*, No. 65649, 2014 Nev. Unpub. LEXIS 2020, at  
16

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17 <sup>18</sup> Before the Panel, the State Bar also relied on *In re Discipline of*  
18 *Gewerter*, No. 73529, 2018 Nev. LEXIS 6 (Jan. 4, 2018) (unpub. disp.). (*See*  
19 *ROA 3645-46.*) Mr. Jimmerson filed a Supplement to his Trial Brief,  
20 explaining why that decision does not apply here. (*See id.* at 529-39.) Stated  
simply, the lawyer there was already suspended at the time, had been  
disciplined several times in the past, violated several duties owed to multiple  
clients, and did not establish evidence of *any* mitigating circumstances. *See id.*  
at \*2-3.

\*2 (Nov. 26, 2014) (unpub. disp.). *So, too, have other disciplinary panels, including in cases where ABA Standard 4.12 applied. See, e.g., Bar Counsel Report*, 28 NEV. LAW. 40, at 41-42 (OBC19-1296 & OBC19-1480); *Bar Counsel Report*, 27 NEV. LAW. 34, at 39-40 (OBC18-1016); *Bar Counsel Report*, 12 NEV. LAW. 44, at 45-46 (Nos. SG11-1737 & SG12-0903).

Accordingly, a public reprimand in this case would be consistent with discipline imposed upon other Nevada lawyers in RPC 1.15 cases.

The State Bar also cites non-binding caselaw, such as *In re Gray*, 224 A.3d 1222 (D.C. 2020), and *In re Farris*, 472 S.W.3d 549 (Mo. 2015), neither of which is applicable. Starting with *In re Gray*, the lawyer had “stopped tracking client funds in his trust account.” *Id.*, 224 A.3d at 1226; *see also id.* at 1229 (finding that the lawyer “essentially stopped monitoring in any meaningful way the status of his trust account”). He did not differentiate between his money and his clients’, he rarely looked at bank statements, and he made no attempt to periodically reconcile the trust account. *Id.* at 1229. He acted in reckless disregard of his fiduciary obligations “from 2007 until the bottom finally fell out in 2015.” *Id.* at 1231. Not surprisingly, the court rejected the argument that he had an objectively reasonable belief that he acted appropriately under the circumstances. *Id.* at 1232-33.

Turning to *In re Farris*, the lawyer had lied to his client (and the Bar) about his handling of settlement funds, had spent the money for himself in lieu of using it to pay the client’s medical bills, and had not paid any of it back. *Id.*, 472 S.W.3d at 551-54. Upon further review, it was discovered that the lawyer had done the exact same thing to another client, and then also destroyed the file. *Id.* at 554. At the hearing, the lawyer was indignant and offered excuses rather than explanations; he also failed to cooperate in the investigation. *Id.* at 555-56. Among other factors, the lawyer blamed his wife and then displayed a “dogged refusal to even attempt to make restitution in the face of indisputable evidence that he ha[d] misappropriated (and spent) \$93,000 he was supposed to hold in trust for his clients and their creditors.” *See id.* at 558-59. A “wealth of aggravating circumstances” and an absence of compelling mitigating circumstances resulted in the lawyer’s disbarment. *Id.* at 563-68.

The State Bar cites these dissimilar cases in hopes of securing an outcome driven by fear and not fact. The State Bar wants this Court to find that Mr. Jimmerson’s actions could have “quickly snowball[ed],” such that millions of dollars in client losses were potentially at stake. (Op. Br. at 19-20.) The Panel rejected this absurd conjecture, instead finding, based on the evidence presented and testimony received, that “the potential injury to the clients was remote” (*see* ROA 556)—a finding that the State Bar does not challenge on



1 appeal. As this Court has previously recognized, speculation about potential  
2 harm is not entitled to any weight. *In re Lerner*, 124 Nev. at 1246, 197 P.3d at  
3 1078. With that in mind, this Court should decline to discipline Mr. Jimmerson  
4 based on what could have happened under the worst-case hypothetical scenario.

5 In sum, this Court should adopt the Panel’s recommendation of a public  
6 reprimand based on compelling mitigating circumstances that are supported by  
7 substantial evidence—an outcome that also aligns with the purposes of attorney  
8 discipline, the *ABA Standards*, and relevant authority.

## 9 VIII. CONCLUSION

10 The State Bar failed to show that it was clear error for the Panel to find  
11 that Mr. Jimmerson acted without a dishonest or selfish motive. So, too, the  
12 State Bar failed to show that a suspension, rather than a public reprimand, is  
13 warranted in this case. Mr. Jimmerson does not pose a threat to his clients or  
14 the public; and there is no risk that the conduct will reoccur. This is not a case  
15 that warrants a suspension; particularly in light of substantial – indeed,  
16 compelling – mitigating circumstances, including unrefuted expert testimony  
17 indicating that Mr. Jimmerson went above and beyond to address the fallout  
18 arising from Ms. Ballard’s shortcomings. The Panel’s findings are supported  
19 by substantial evidence, and the recommendation for a public reprimand aligns  
20

1 with the compelling mitigating circumstances presented, the purpose of attorney  
2 discipline, the *ABA Standards*, and relevant authority.

3 Accordingly, this Court should affirm the Panel's factual findings and  
4 adopt its recommended form of discipline in its entirety.

5 DATED this 20<sup>th</sup> day of October, 2021.

6 BAILEY ❖ KENNEDY

7 By: /s/ Dennis L. Kennedy

8 DENNIS L. KENNEDY

9 JOSHUA P. GILMORE

10 *Attorneys for Respondent*

11 James J. Jimmerson, Esq.

**NRAP 28.2 CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[x] Proportionally spaced, has a typeface of 14 points or more, and contains 10,913 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

4 DATED this 20<sup>th</sup> day of October, 2021.

5 BAILEY ❖ KENNEDY

6 By: /s/ Dennis L. Kennedy

7 DENNIS L. KENNEDY

JOSHUA P. GILMORE

8 *Attorneys for Respondent*

9 James J. Jimmerson, Esq.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 20<sup>th</sup> day of October, 2021, service of the foregoing **RESPONDENT'S ANSWERING BRIEF** was made by electronic service through Nevada Supreme Court's electronic filing system and addressed to the following at their last known address:

DANIEL M. HOOGE  
BAR COUNSEL

Email: [danh@nvbar.org](mailto:danh@nvbar.org)

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**STATE BAR OF NEVADA**

/s/ Susan Russo

Employee of BAILEY ♦ KENNEDY