

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

2
3 IN RE: PETITION FOR)
 REINSTATEMENT,)
4 TERRY L. WIKE, ESQ.)
 Nevada Bar No.: 7211)
5)
6 Petitioner.)
7

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14 **PETITIONER’S OPENING BRIEF**
15 **IN SUPPORT OF PETITION FOR REINSTATEMENT**
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INTRODUCTION

This matter follows the hearing on Respondent's Petition for Reinstatement and the unanimous decision of the Panel, as supported by counsel for the State Bar of Nevada, that Petitioner be reinstated to the practice of law. This recommendation for reinstatement, comes before the Supreme Court, after the Panel found by clear and convincing evidence that Petitioner satisfied the criteria in SCR 116, except for the fact that had not paid outstanding fees and costs of the prior disciplinary matters.

In accord with *Shoen v. State Bar of Nevada*, 136 Nev. Adv. Op. 30, May 28, 2020, the Panel found that Petitioner presented good and sufficient reasons as to why the fees and costs were not paid. One of the good and sufficient reasons that the Panel considered for not paying the fees and costs was because Petitioner had filed for bankruptcy. Petitioner informed the Panel that because of his bankruptcy, the debt for the prior disciplinary fees and costs under SCR 120 were likely discharged in bankruptcy pursuant to 11 U.S.C. §§727(b), 523(a), as held in *In re Taggart*.¹ In contrast, the State Bar argued to the Panel, that the prior fees and costs under SCR 120 were fines, penalties or forfeitures, and thus were non-dischargeable under 11 U.S.C. § 523(a)(7), citing *In re Findley*.² However, the Panel chose not to determine whether the debt was discharged, but instead, conditioned Petitioner's full reinstatement upon the repayment of the debt.

¹See email from Petitioner of July 1, 2021, regarding objections to the State Bar's proposed recommendations [Vol. I, Part 6, ROA Page 0417] and Petitioner's Fifth Supplement to his Petition for Reinstatement to the practice of law, in response to the State Bar's Proposed Findings of Fact and Conclusions of Law [Vol. I, Part 6, ROA Page 0419 - Vol. I, Part 7, ROA Page 0420-0427]; see also, Petitioner's email reply of July 6, 2021 [Vol. I, Part 7, ROA Page 0431-0432]; and see *State Bar of California v. Taggart* (*In re Taggart*), 249 F3d. 987, 989 (9th Cir. 2001).

²See Findings of Fact, Conclusions of Law, and Recommendation After Reinstatement Hearing, p.4, ¶23 [Vol. I, Part 7, ROA Page 0439-0444]; see also, email from Bar Counsel of July 6, 2021 [Vol. I, Part 7, ROA Page 0432-0433]; and see *State Bar of California v. Findley* (*In Re Findley*), 593 F.3d 1048 (9th Cir. 2010).

1 Irrespective of the arguments made to the Panel, under 28 U.S.C. §1334, federal
2 bankruptcy courts have exclusive jurisdiction over the issue of whether fees and costs
3 incurred by the state bar in an attorney disciplinary actions have been discharged in
4 bankruptcy under 11 U.S.C. §§727(b), 523(a).³ The Bankruptcy Code also limits state
5 bar entities from conditioning state bar licensing upon the payment of a dischargeable
6 debt when an attorney exercises her/his right for bankruptcy relief. *Id.* Specifically,
7 under 11 U.S.C. §525(a), a government unit is prohibited from denying, revoking,
8 suspending, or refusing to renew a debtor's license solely because the debtor filed for
9 bankruptcy or failed to pay a dischargeable debt.⁴ Hence in the absence of the
10 Bankruptcy Court lifting its Stay and determining that the debt is non-dischargeable,
11 Petitioner believes the Panel erred in conditioning full reinstatement upon the payment
12 of the debt.
13

14 Accordingly, the issues for the Supreme Court are: (1) whether the Supreme Court
15 has jurisdiction to determine if the debt has been discharged in Petitioner's bankruptcy;
16 and (2) whether the Panel erred in conditioning Petitioner's full reinstatement upon the
17 payment of a dischargeable debt. Notably, the State Bar and the Panel support
18 Petitioner's reinstatement, regardless of how the Supreme Court decides these issues.⁵
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24 ³See *State Bar of California v. Taggart (In re Taggart)*, 249 F.3d 987, 989 (9th Cir.
25 2001); see also, *State Bar of California v. Findley (In Re Findley)*, 593 F.3d 1048 (9th
Cir. 2010).

26 ⁴See *Albert-Sheridan v. State Bar of California*, 19-60023 (9th Cir. 2020).

27 ⁵See Hearing Transcript, [Vol. II, Part 2, ROA Page 0470:6-11].
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I.

STATEMENT OF THE FACTS

On October 8, 2020, the Supreme Court of Nevada suspended Petitioner for six months and one day.⁶ The Court further ordered that Petitioner will be subject to the remainder of his stayed suspension from Docket No. 79305 and will be subject to the conditions on that stayed suspension. The conditions included a two year probationary period, during which Petitioner is to have a mentor and is to submit quarterly reports to the mentor and to the State Bar of Nevada. Lastly, the Court ordered that Petitioner shall pay the costs of the disciplinary hearings, including the administrative costs mandated by SCR 120(3). The costs for the prior disciplinary hearings, including the administrative costs under SCR 120(3), total \$21,138.18.⁷

On April 21, 2021, Petitioner filed his Petition for Reinstatement with the State Bar of Nevada.⁸ On May 28, 2021, the State Bar of Nevada convened a hearing based upon Petitioner's request for Reinstatement. At the hearing, the Panel and State Bar Counsel unanimously found that Petitioner has met the requirements for reinstatement pursuant to SCR 116, except for the payment of fees and costs for prior disciplinary matters. In considering the fact that the Petitioner had not paid the outstanding fees and costs owed to the State Bar of Nevada for the prior disciplinary hearings, the Panel and the State Bar found that Petitioner presented good and sufficient reasons as to why he

⁶See Order of Suspension, [Vol. II, Part 13, ROA Page 1067].

⁷See Memoranda of Costs, [Vol. II, Part 13, ROA Page 1077-1078 and Vol. II, Part 14, ROA Page 1103-1104].

⁸See Petition for Reinstatement, [Vol. I, Part 1-6, ROA 0001-0403].

1 failed to pay the outstanding fees and costs.⁹ Accordingly, the Panel and the State Bar
2 unanimously recommend that Petitioner be reinstated, but the Panel conditioned full
3 reinstatement upon Petitioner paying the prior disciplinary administrative fees during his
4 probationary period.

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7 **A. The Panel's Findings of Fact**

8 In finding that Petitioner met the requirements for reinstatement, the Panel
9 considered the following facts:

- 10 1. Petitioner has served his suspension of 6 months and one day.
- 11 2. Petitioner paid an advance of \$1,000 pursuant to SCR 116(4) to cover the
12 anticipated costs of the hearing.
- 13 3. Petitioner struggled financially during the suspension to the point that he
14 filed bankruptcy. He was willing but unable to pay the costs of the two previous
15 disciplinary hearings as a result. The Panel finds Petitioner's testimony credible and
16 good and sufficient reason why Petitioner should nevertheless be reinstated.¹⁰
- 17 4. Petitioner filed Affidavits of Compliance on March 12, 2020 in Case No.
18 79305 and on October 22, 2020, in Case No. 81340 as required.¹¹

21 ⁹See written Findings of Fact, Conclusions of Law, and Recommendations After
22 Reinstatement Hearing,, *citing Shoen v. State Bar of Nevada*, 136 Nev. Adv. Op. 30,
May 28, 2020, [Vol. I, Part 7, ROA Page 0442:19-25].

23 ¹⁰Petitioner testified about his financial condition in support of the good and
24 sufficient reasons why Petitioner had not paid the outstanding fees and costs. *See*
Hearing Transcript, (discussion of finances) [Vol. II, Part 2, ROA 0470:25 - 0474:4].
25 *See also*, Petitioner's 2019 and 2020 tax returns, [Vol. I, Part 5, ROA Page 0339 - Vol.
I, Part 6, Page 0381]; Petitioner's mortgage statement, [Vol. I, Part 6, ROA Page 0383];
26 *and* Petitioner's Notice of Bankruptcy Case Filing, [Vol. I, Part 6, ROA Page 0385].

27 ¹¹See Mentoring Agreement and Quarterly Reports, [Vol. I, Part 4, ROA Page
0209 - Vol. I, Part 5, ROA 0337].

1 5. Except for paying costs as mentioned above, Petitioner complied with all
2 other terms and conditions of the two suspension orders.

3 6. The Panel received no evidence that Petitioner engaged in or attempted to
4 engage in the unauthorized practice of law. Petitioner testified that he has not engaged
5 in the unauthorized practice of law. The Panel finds Petitioner's testimony credible.

6 7. Neither alcohol nor drug abuse were a causative factor of [Respondent's]
7 Petitioner's suspension. Thus, the Panel finds this condition inapplicable.

8 8. Petitioner testified that he recognized the wrongfulness and seriousness of
9 his actions. He has taken classes on Abacus and Quickbooks to learn bookkeeping. He
10 recognizes the importance of safekeeping client and third-party property. The Panel
11 finds [Respondent's] Petitioner's testimony credible.

12 9. The Panel received no evidence that Petitioner engaged in any other
13 professional misconduct since his suspension. Petitioner testified that he has not
14 engaged in any other professional misconduct since his suspension. The Panel finds
15 Petitioner's testimony credible.

16 10. Petitioner testified that he has kept abreast of changes in his practice field
17 during his suspension. He provided evidence of 14.25 credit hours of legal education,
18 including ethics and substance abuse. Ex. 8. The Panel finds that Petitioner has kept
19 informed about recent developments in the law and is competent to practice.

20 11. Petitioner provided letters of support from Tammi Littleman, Ex. 6; and
21 Jennifer Lovell, Ex. 7; and affidavits of support from Brad Mainor, Esq., Ex. 5; Charlie
22 Luh, Esq., Ex. 16; Craig Slater, Esq., Ex. 17; and [Clark Seegmiller, Esq., Ex. 20].¹²

23 ¹²The Declaration of Clark Seegmiller, Esq., is not reflected in the Panel's
24 findings, but was included in the exhibits to the Petition as indicated in the Hearing
25 Transcript, 7:5-16, [Vol. II, Part 1, ROA Page 0458, ln. 5-16]; *see also*, Declaration of

1 Notwithstanding the conduct for which the attorney was disciplined, the Panel finds that
2 Petitioner has the requisite honest and integrity to practice law.

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4 **B. The Panel's Conclusions of Law**

5 The Panel's conclusions of law, based upon the arguments at the hearing, are as
6 follows:

7
8 1. Relying on *In re Taggart*, 249 F.3d 987, 989 (9th Cir. 2001), Petitioner
9 argues that the disciplinary fees and costs are dischargeable in bankruptcy. At his
10 hearing, he expressed concern that being required to pay administrative costs would
11 violate bankruptcy law by preferring one creditor over the other.

12 2. The State Bar believes outstanding fees and costs owed to the State Bar of
13 Nevada are excepted from discharge in bankruptcy under 11 U.S.C. §523 because they
14 are [a] fines, penalties, or forfeitures payable to a governmental agency, which the State
15 Bar is, and are punitive and rehabilitative in nature. *In re Findley*, 593 F.3d 1048 (9th
16 Cir. 2010).

17 3. The Panel believes Petitioner should pay the \$21,138.15 in outstanding fees
18 and costs owed to the State Bar of Nevada arising from Petitioner's prior disciplinary
19 matters and, therefore, adopts the reasoning articulated in *In re Findley*.

20 4. Based upon the Petitioner's testimony and Exhibits 4-19, Petitioner has met
21 the requirements for reinstatement pursuant to SCR 116. Except that Petitioner has not
22 paid \$21,138.15 in outstanding fees and costs owed to the State Bar of Nevada arising
23 from Petitioner's prior disciplinary matters. However, Petitioner has shown a good and
24 sufficient reason why he failed to pay the outstanding fees and costs because Petitioner
25

26 _____
27 Clark Seegmiller, Esq., [Vol. II, Part 6, ROA 0640-0641].

1 experienced a time of financial difficulty and filed for bankruptcy. *See* Ex. 4; *see also*,
2 *Shoen v. State Bar of Nevada*, 136 Nevada Adv. Op. 30 May 28, 2020.

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4 **C. The Panel's Written Recommendation**

5 The Panels' recommendations are as follows:

6 1. Petitioner should be reinstated with the following conditions:

7 a. Petitioner shall serve a probationary period of 24 months supervised by the
8 State Bar;

9 b. During probation, Petitioner shall be subject to the same conditions imposed
10 in Supreme Court Case No. 79305 (February 27, 2020);

11 c. Petitioner must obtain a mentor during the probationary period who
12 practices in personal injury law and has experience and training in firm
13 accounting and client trust accounts;

14 d. Petitioner must submit quarterly reports to his mentor and the State Bar and
15 be subject to periodic audits by the State Bar;

16 e. Petitioner must pay the fees and costs of the previous disciplinary
17 proceedings of \$21,138.15; and

18 f. Petitioner will pay the hearing costs, which consist of \$2,500 pursuant to
19 SCR 120(5) and any "hard costs" of the proceeding such as transcript
20 expenses, with 30 days of the Supreme Court's order on reinstatement.¹³

21 *See* written Findings of Fact, Conclusions of Law, and Recommendations After
22 Reinstatement Hearing, [Vol. I, Part 7, ROA Page 0439-0444].

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27 ¹³As required, Petitioner submitted a \$1,000 deposit credited towards the costs of
the reinstatement proceedings, [Vol. I, Part 7, ROA Page 0449-0450].

1 **D. The Panel's Recommendation in the Event the Debt is Discharged**

2 The Panel made the following recommendation, in the event the debt was
3 discharged in bankruptcy, as set forth in the Hearing Transcript:

4 CHAIRPERSON LALLI: Mr. Freer, Ms. Kingsley, have I
5 forgotten anything?

6 MR. FREER: This is Alan Freer, for the record. I think the only
7 thing we forgot is the probation of 24 month is the - - is he pays off the
8 money or the Supreme Court says that it is not payable, then we would refer
9 back to the old disciplinary - - or probation period.

 So the extending of the probation period to the 24 months, the idea
is that it's - - the repayment concurrent with probation?

10 CHAIRPERSON LALLI: That is correct.

11 LAYMEMBER KINGSLEY: Yes.

12 CHAIRPERSON LALLI: And, obviously, I think it goes
13 without saying, if the Supreme Court addresses this issue, and we presume
14 they will, and believe that this amount should not be paid upon the ruling
15 of the bankruptcy court, obviously, they have - - the ultimate say on that,
16 and the payment of the fees and fines would be eliminated, but that would
17 be by the Supreme Court, not by this panel. This panel believes strongly
18 that those fees and costs should be paid.

 So that concludes our finding.
Mr. Hooge, anything you would like to say or need to add?

19 MR. HOOGE: No. Thank you. I'll prepare a draft on findings
20 for your review.

21 CHAIRPERSON LALLI: All right. Thank you.
22 Mr. Wike, anything you would like to add or anything you believe we
23 have not addressed?

24 THE PETITIONER: Just a point of clarification.
25 If the Supreme Court did discharge the debt, you guys are going to
26 apply the old probationary period. Will that include credit for more or less
27 for time served?

28 CHAIRPERSON LALLI: Yes.

 THE PETITIONER: Thank you.

See Hearing Transcript, [Vol. II, Part 4, ROA Page 0504:1-25 - 0505:1-4].

1 II.

2 JURISDICTION

3 ***The Federal Bankruptcy Courts have Exclusive Jurisdiction***
4 ***Over the Discharge of Debts in Bankruptcy Proceedings.***

5 Under the federal statute 28 U.S.C. §1334, bankruptcy courts have exclusive
6 jurisdiction over the discharge of debts in bankruptcy cases.¹⁴ The Bankruptcy Courts
7 and the Ninth Circuit Court of Appeals, have exercised their exclusive jurisdiction in
8 determining whether state bar entities may recover disciplinary hearing fees and costs
9 against an attorney, after the attorney has filed for bankruptcy protection. *State Bar of*
10 *California v. Taggart (In re Taggart)*, 249 F3d. 987, 989 (9th Cir. 2001); *State Bar of*
11 *California v. Findley (In Re Findley)*, 593 F.3d 1048 (9th Cir. 2010). Along with the
12 Bankruptcy Court's authority over these cases, 11 U.S.C. §525(a), prohibits a
13 government unit from denying, revoking, suspending, or refusing to renew a debtor's
14 license solely because the debtor filed for bankruptcy or failed to pay a dischargeable
15 debt. *Albert-Sheridan v. State Bar of California*, 19-60023 (9th Cir. 2020). Accordingly,
16 if the State Bar seeks to challenge Petitioner's bankruptcy discharge of the fees and costs
17 incurred in the prior disciplinary hearings, the State Bar must petition the Bankruptcy
18 Court to lift the automatic stay and request that the debt be non-dischargeable.
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25 ¹⁴U.S. Constitution, Article VI, Paragraph 2, Supremacy Clause; *see* Petitioner's
26 Fifth Supplement to his Petition for Reinstatement to the practice of law, in response to
27 the State Bar's Proposed Findings of Fact and Conclusions of Law [Vol. I, Part 6, ROA
Page 0419 - Vol. I, Part 7, ROA Page 0420-0427]; *see also*, Petitioner's email reply of
July 6, 2021[Vol. I, Part 7, ROA Page 0431-0432].

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III.

LAW & ARGUMENT

A. ***Petitioner's Debt for the State Bar of Nevada's Administrative Fees and Costs Incurred in the Prior Disciplinary Hearings were Discharged in Bankruptcy.***

Petitioner contends that the administrative fees and costs owed to the State Bar of Nevada for prior disciplinary matters were discharge in his bankruptcy, as they are not fines, penalties or forfeitures under SCR 120. Petitioner relies upon *In re Taggart*, 249 F3d. 987, 989 (9th Cir. 2001), which found that disciplinary fees and costs were dischargeable under 2001 Cal. Bus. & Prof. Code §6086.10, as they were neither a fine, penalty nor forfeiture. The court reasoned, that a debtor is entitled to a discharge of all pre-petition debts except for those listed in the Code under 11 U.S.C. §§ 727(b), 523(a). One of the exceptions that makes a debt non-dischargeable is when the debt is “for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.” 11 U.S.C. § 523(a)(7). Thus, when the court looked to the language of the 2001 Cal. Bus. & Prof. Code §6086.10, the court concluded that the debt was dischargeable as it was intended as compensation for actual pecuniary loss, and was not intended to be an additional fine, penalty or forfeiture imposed upon the attorney.

In contrast, the State Bar of Nevada contends that the administrative fees and costs are fines, penalties or forfeitures under SCR 120. The State Bar relies upon *In Re Findley*, 593 F.3d 1048 (9th Cir. 2010), which held in 2010 that the disciplinary fees and costs were no longer dischargeable. However, the State Bar overlooks the court’s reasoning in *Findley*, wherein the court found that in 2003 the California Legislature amended the 2001 Cal. Bus. Prof. Code §6086.10 in response to *Taggart*. That is, in

1 2003, Cal. Bus. & Prof. Code §6086.10 was amended and subsection (e) was added,
2 which now expressly provides that “. . . costs imposed pursuant to this action are
3 *penalties . . .*”. 593 F.3d at 1866. Notably, the court in *In re Findley*, clarified and
4 *upheld* its decision in *In re Taggart*, recognizing that after 2003, the California
5 Legislature expressly amended the statute to identify that such disciplinary fees and costs
6 are *penalties*.

7
8 The facts of the instant case, compel application of the holding in *Taggart* rather
9 than the holding in *Findley*, as the fees and costs in SCR 120 are not intended to be
10 penalties. In Nevada, SCR 120 expressly states that the state bar’s attorney disciplinary
11 fees and costs are recoverable for actual pecuniary loss, rather than as a fine, penalty or
12 forfeiture. SCR 120 provides:

13 1. An attorney subjected to discipline or seeking
14 reinstatement under these rules shall be assessed the costs, in
15 full or in part, of the proceeding, including, but not limited to,
16 reporter’s fees, investigation fees, witness expenses, service
costs, publication costs, and any other *fees or costs deemed*
reasonable by the panel and allocable to the proceeding.

17 2. If, for any reason, bar counsel is disqualified or has a
18 conflict of interest, the board of governors shall appoint an
attorney, ad hoc, to act in the place of bar counsel.

19 3. In addition to any costs assessed as provided for herein,
20 an attorney subjected to discipline shall be *assessed*
21 *administrative costs allocable to the proceeding*, but in any
case, shall not be less than the following amounts:

22 Reprimand: \$1,500
23 Suspension: \$2,500
Disbarment: \$3,000

24 4. A final assessment for costs and fees shall have the
25 force and effect of a civil judgment against the disciplined
26 attorney and shall be subject to all legally available
post-judgment enforcement remedies and procedure.

5. In addition, in any matter where any attorney is required to apply for reinstatement, administrative costs shall be assessed in any amount not less than \$2,500, and the attorney shall also be required to pay all costs previously assessed but not yet paid prior to the processing of the application for reinstatement.

As expressly stated in SCR 120(1), the State Bar is entitled to recover only “fees and costs deemed reasonable by the panel and allocable to the proceeding.” Under SCR 120(3) the attorney is “*assessed administrative costs allocable to the proceedings.*” Both subsections of SCR 120, limit the State Bar’s recovery of fees and costs as compensation for actual pecuniary loss. As such, the fees and costs under SCR 120 only serve as compensation for pecuniary loss and are thus dischargeable pursuant to 11 U.S.C. §§ 727(b), 523(a).

The court’s analysis in *Taggart* also compared California’s disciplinary statutes, which provided for monetary sanctions as punishment under Cal. Bus. & Prof. Code §6086.13, with the California disciplinary statutes that allow for the recovery of costs for actual pecuniary loss under §6086.10. The court found that because monetary sanctions under §6086.13 were contained in a separate statute, than the “actual expenses” and “reasonable costs” under §6086.10, the legislature did not intend such costs to serve as an additional punishment. 249 F.3d at 993.¹⁵ The court also “observed the similarities between attorney disciplinary costs imposed under §6086.10 and costs awarded to prevailing parties in civil litigation.” *Id.* The court concluded that the award of fees and costs to the prevailing party in civil litigation were not intended to punish the losing party, but rather to serve compensatory ends.

¹⁵See also, *In re Findley*, 593 F.3d 1048.

1 Similarly, SCR 120 only provides for the recovery of actual expenses and
2 reasonable costs, and is not intended to be an additional punishment. In *Shoen*, the
3 Nevada Supreme Court clarified that the disciplinary hearing fees and costs under SCR
4 120, are not intended to serve as an additional punishment upon the attorney.¹⁶ In
5 comparison, fines and penalties are allowed in reprimand cases as an additional
6 punishment under SCR 102(5)(6) and (7), which is a separate statute than SCR 120.
7 Accordingly, there is no indication that either the Nevada Supreme Court or the Nevada
8 Legislature intended that the administrative fees and costs under SCR 120 were to serve
9 as an additional punishment upon a suspended attorney, but rather, they were only
10 intended to serve a compensatory end.
11

12 Lastly, the Nevada Legislature under SCR 120(4) clarified that final assessment
13 of the fees and costs have the same effect as a civil judgment and are subject to all
14 legally available post-judgment remedies. One such remedy available to a debtor, is the
15 discharge of civil judgments for fees and costs in bankruptcy. 11 U.S.C. §§ 727(b),
16 523(a). Here, Petitioner exercised his right to file for bankruptcy, as a remedy for the
17 discharge of all his debts. Accordingly, even if the State Bar believes Petitioner's
18 application of *In re Taggart* is in error and the debt is non-dischargeable, the State Bar
19 must first file a motion to lift the stay with the Bankruptcy Courts in accord with 11
20 U.S.C. §362, before arguing to the Supreme Court that full reinstatement should be
21 conditioned upon the payment of the debt.
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26 ¹⁶136 Nev. Adv. Op. 30, *5, 464 P.3d at 403-04, citing *State Bar of Nevada v.*
27 *Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988)("[t]he purpose of attorney discipline is
28 to protect the public, the courts, and the legal profession, not to punish the attorney").

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1 a determination from the Bankruptcy Court before attempting to collect a dischargeable
2 debt.

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4 **C. *The Panel's Recommendation that Petitioner Remain on Probation***
5 ***until the Dischargeable Debt is Paid, is in Violation of 11 U.S.C.***
6 ***§525(a).***

7 The Panel made two recommendations depending on whether Petitioner's debt
8 for the prior disciplinary fees and costs was discharged. First, the written
9 recommendations by the Panel, state that Petitioner is required to pay the debt during
10 probation as a condition for full reinstatement.²⁰ Second, the recommendations by the
11 Panel in the Hearing Transcript, state that in the event the debt is discharged, Petitioner
12 should be fully reinstated consistent with the prior disciplinary period and with a
13 reduction for time served on probation.²¹

14 As demonstrated *supra*, neither the State Bar nor the Panel may condition full
15 reinstatement upon a dischargeable debt. Such a recommendation, without first seeking
16 relief from the Bankruptcy Court, is an express violation of 11 U.S.C. §525(a). By not
17 seeking relief from the Bankruptcy Court first, the State Bar may be in willful violation
18 of the bankruptcy stay. A violation of the automatic stay, under 11 U.S.C. §362(k)(1),
19 allows the debtor to recover actual attorney fees and costs, and in some cases, punitive
20 damages. Hence the State Bar should first seek relief from the Bankruptcy Courts before
21 seeking to enforce the written recommendations of the Panel.
22

23
24 _____
25 ²⁰See Findings of Fact, Conclusions of Law, and Recommendations after
26 Reinstatement Hearing, [Vol. I, Part 7, ROA Page 0443:1-18]; *see also*, Hearing
27 Transcript, [Vol. II, Part 3, ROA Page 0503:3-7].

28 ²¹See Hearing Transcript, (Panel's Recommendation in the Event the Debt is
Discharged) [Vol. II, Part 4, ROA Page 0504:1-25 - 0505:1-14].

1 The second disciplinary recommendation made by the Panel, as expressed in the
2 Hearing Transcript, was contingent upon whether the debt was discharged. The Panel
3 concluded that if the debt was discharged, Petitioner would only be required to serve out
4 his remaining probationary period with credit for time served.²² Accordingly, absent a
5 decision from the Bankruptcy Court, the Supreme Court should apply the second
6 recommendation of the Panel.
7

8 IV.

9 CONCLUSION

10
11 By clear and convincing evidence, the Panel found that Petitioner has satisfied all
12 of the criteria for reinstatement under SCR 116, except for the payment of the
13 outstanding prior disciplinary fees and costs. Even then, the Panel and the State Bar
14 agree that Petitioner demonstrated good and sufficient reasons for not paying the fees
15 and costs in accord with *Shoen*. Thus, the State Bar and the Panel recommend that
16 Petitioner be reinstated, even in the event that his debt for the fees and costs owing to the
17 State Bar have been discharged.
18

19 Respectfully, Petitioner believes that the issue over the discharge of the debt lies
20 exclusively within the Bankruptcy Court. If the Supreme Court agrees with Petitioner,
21 Petitioner requests that the Panel's second, and only, recommended discipline in the
22 event of the debt's discharge as set forth in the Hearing Transcript, be applied.
23
24
25

26 ²²See Hearing Transcript, (Panel's Recommendation in the Event the Debt is
27 Discharged) [Vol. II, Part 4, ROA Page 0504:1-25 - 0505:1-14].
28

1 DATED this 2nd day of August, 2021.

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9 *Petitioner Pro Se*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon all counsel through the Supreme Court’s E-File electronic service system this 2nd day of August, 2021.

s// Terry L. Wike