

Case No: OBC19-1111



Electronically Filed
Aug 10 2021 12:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
)
BRIAN C. PADGETT, ESQ.,)
Nevada Bar No. 7474)
)
Respondent.)

ORDER GRANTING
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

On October 22, 2020, Complainant, State Bar of Nevada (hereinafter, "State Bar") filed a Motion for Leave to File Amended Complaint ("Motion") against Respondent Brian C. Padgett, Esq., (hereinafter, "Respondent"). Having reviewed the Motion and the applicable law, Hearing Panel Chair Richard D. Williamson, Esq. (hereinafter, "Hearing Chair") hereby finds as follows:

Procedural History

The State Bar filed its original Complaint against Respondent on or about May 13, 2020. Pursuant to Supreme Court Rule ("SCR") 79, the State Bar sent a copy of the Complaint via first class and certified mail to Respondent's listed address at 611 South 6th Street, Las Vegas, NV 89101. On or about June 21, 2020, both of those mailings were returned to the State Bar of Nevada's Reno office.

On or about June 9, 2020, the State Bar filed a Notice of Intent to Proceed on a Default Basis ("Notice"). Again, the State Bar sent a copy of that notice to Respondent's SCR 79 address. In addition, the State Bar also sent a copy of that Notice to Respondent's alternate address at 11274 Gammila Dr., Las Vegas, NV 89141 via first class and certified mail. That Notice directed Respondent to file a responsive pleading to the State Bar's Complaint by June 29, 2020.

1 On or about June 21, 2020, copies of the Notice sent to Respondent's SCR 79 address via
2 certified and first-class mail were returned to the State Bar of Nevada's Reno office marked
3 "Return to Sender." On or about July 6, 2020, copies of the Notice sent to Respondent's alternate
4 address were returned to the State Bar of Nevada's Reno office marked "Return to Sender, Unable
5 to Forward."

6 On July 10, 2020, the State Bar filed a Declaration of Service According to SCR 109(1) in
7 Support of Entry of Default ("Declaration"), which set forth the State Bar's efforts to serve
8 Respondent. A copy of that Declaration was also emailed to Respondent's email address of
9 brian@briancpadgett.com.

10 To date, Respondent has failed to file any responsive pleading. Accordingly, on or about
11 July 13, 2020, the Hearing Chair signed, and the State Bar filed, an Entry of Default against
12 Respondent. A copy of that Entry of Default was emailed to Respondent's email address of
13 brian@briancpadgett.com.

14 Pursuant to Rule 17 of the Disciplinary Rules of Procedure, the Hearing Chair scheduled
15 an initial conference with the parties for July 21, 2020 at 10:00 a.m. At that time and place, the
16 Hearing Chair met telephonically with Gerard Gosioco, Esq., Assistant Bar Counsel, on behalf of
17 the State Bar. Respondent, though formally noticed, was not present on the call. During that call,
18 the Hearing Chair scheduled: (1) a telephonic pre-hearing conference to occur on October 12,
19 2020 at 10:00 a.m., and (2) a formal hearing to occur on October 15, 2020, starting at 9:00 a.m.

20 The State Bar made numerous attempts to personally serve Respondent throughout this
21 disciplinary process. Respondent did not appear at the telephonic pre-hearing conference or the
22 formal hearing. According to the State Bar, however, on the morning of the formal hearing, at
23 approximately 8:11 a.m. Pacific Time, Respondent emailed Mr. Gosioco requesting that the
24 formal hearing be continued. Ultimately, in response to this request and to provide Respondent
25 with every opportunity to defend himself, the Formal Hearing was continued.

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According to NRCP 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

The Hearing Chair further finds that the new allegations in the proposed Amended Complaint are direct continuations of, or directly pertain to, the allegations of the original Complaint and/or the disciplinary process in the instant matter. The Hearing Chair further finds that allowing the amendment will promote justice, serve to protect the legal process, and avoid duplicative disciplinary matters and proceedings. Overall, the Hearing Chair finds good cause to grant the Motion.

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As the original Complaint was already served in accordance with DRP 11(b)(1), the State Bar may serve the Amended Complaint pursuant to NRCP 5. See DRP 11(b)(3). In an abundance of caution, however, the State Bar is advised to mail a copy of the final Amended Complaint to

1 Respondent at all known addresses and also provide a courtesy copy of the Amended Complaint to
2 Respondent at the email address that he used on October 15, 2020.

3 Consistent with DRP 14, Respondent shall file a verified answer to the Amended
4 Complaint within twenty (20) calendar days of the date of mailing the Amended Complaint.

5 IT IS SO ORDERED.

6 Dated this 27th day of October, 2020.

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9 Richard D. Williamson, Esq.
10 Hearing Panel Chair
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Granting Motion for Leave to File Amended Complaint** was served electronically upon:

brian.padgett@icloud.com;

rich@nvlawyers.com; and

gerardg@nvbar.org.

Dated this 27th day of October 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

DEC 10 2020

STATE BAR OF NEVADA
BY *[Signature]*
OFFICE OF PAR COUNSEL

LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702)497-3204
Facsimile: (702) 368-0123
Email: brian.padgett@icloud.com

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,
vs.

Case No. OBC19-1111

BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474

Respondent,

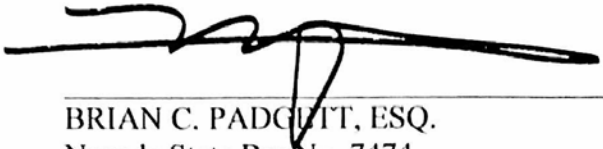
RESPONDENT'S REPLY TO

MOTION TO VACATE FILINGS, ORDERS AND DECISIONS - INCLUDING THE
AMENDED COMPLAINT; MOTION TO DISMISS AMENDED COMPLAINT

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this RESPONDENT'S
REPLY TO MOTION TO VACATE DECISIONS OR ORDERS FILED AFTER FIRST
COMPLAINT INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS
AMENDED COMPLAINT ("Motion to Vacate and Dismiss"). This Reply is made pursuant
to NRCP 60(b)(1) and (6) and NRCP 12(b)(3) and it is based upon

the following Memorandum of Points and Authorities.

Dated: December 9, 2020.



BRIAN C. PADGETT, ESQ.
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

1) Rule 15. Motion to Dismiss or For More Definite Statement

On the first page of ABC Gosioco's Opposition he suggests that all papers and pleadings and oral argument, if necessary, would be heard by the Panel Chair. This is incorrect. Rule 15(a) is clear: Any and all motions filed pursuant to this Rule shall be decided by the Disciplinary Board Chair, or Vice Chair if the Chair is unavailable, *even if a Hearing Panel Chair has already been appointed. See* Disciplinary Rules of Procedure Rule 15(a)(emphasis added).

It is important to Respondent that only the Chair or Vice Chair hear this matter so that Respondent does not waive his right to participate in the selection of the Hearing Panel. Respondent was not able to participate in the selection process of the Hearing Panel previously because he had no knowledge of the Complaint as set forth in the Motion to Vacate and Dismiss.

2) Filing a Motion to Vacate and Dismiss Rather Than Answer an Amended Complaint is Not A Stall Tactic as Suggested

The reason for filing the Motion to Vacate and Dismiss was not for purposes of delay. It is important that *all* due process rights of the Respondent be preserved. Answering the Amended Complaint would have waived the opportunity to participate in the selection of the Hearing Panel and Respondent would have been saddled with decisions of that Hearing panel that he was not able to participate in.

Participation in the selection of the Hearing Panel and participation in every step of the disciplinary process is an essential part of the Respondent's Due Process rights.

Respondent was not dilatory in not answering the initial Complaint and participating in the disciplinary process – he had no knowledge of the proceedings as set forth in the Motion to Vacate and Dismiss. Therefore, all of his due process rights in this matter should remain intact and those include being able to participate in and defend himself through the entire disciplinary process.

3) Respondent's New Office Address Was Available to ABC Gosioco But Notice Was Not Timely Given to Allow Respondent His Full Due Process Rights and Have Full and Fair Participatory Rights In Any Disciplinary Hearing

Aside from the notice of address change which was properly sent to the State Bar by Respondent's office in February 2020, when mail correspondence was sent to Respondent's downtown law office and returned to the State Bar Mr. Gosioco could have quickly found my address through the District Court portal and reviewed my active cases which are public record in order to get my current office address. The same logic applies when mail correspondence was sent to my former home address at 11274 Gammila Drive and returned (because I have not owned the house in approximately one year).

1 However, it wasn't until the end of September/ early October 2020 when Mr. Gosioco went
2 online and found Respondent's current office address via the District Court Portal. This was
3 approximately 4 months after the Complaint was lodged against Respondent. While Respondent
4 did not receive the initial service at this address as ABC Gosioco claims, other Bar staff did get in
5 touch with Respondent's lawyer who then informed Respondent of the hearing and he was able to
6 get in touch and the disciplinary hearing was held.

7
8 However, it is not viable for ABC Gosioco to say that Respondent therefore had prior
9 knowledge of the hearing and could have defended himself and so the Motion to Vacate and
10 Dismiss should be denied. At that time, a Notice of Default had already been entered, Respondent
11 did not have all of the filed pleadings in this case and he had no evidence or exhibits filed to defend
12 himself with. That is why the hearing was continued – due process requirements must be afforded
13 to a respondent in every bar proceeding. *See In re Schaeffer*, 25 P.3d 191, 204, *mod.* 31 P.2d 365
14 (Nev. 2000)(citing *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988). That
15 said, due process requires more than just a pause before the disciplinary hearing. Due Process
16 requires that Respondent be able to participate fully and fairly in every step of the disciplinary
17 process.
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CONCLUSION

Based upon the facts and argument set forth herein and in the Motion to Vacate and Dismiss and based upon those exhibits found therein, it is respectfully requested that the Respondent be given the relief requested so that he may be accorded full due process and be heard on the merits.

Dated this 9th day of December, 2020.



BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012

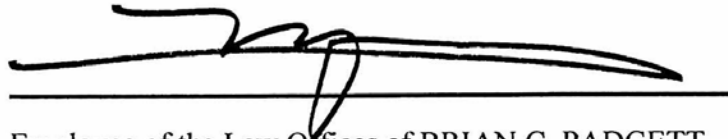
CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2020, I served the foregoing

RESPONDENT'S REPLY TO

**MOTION TO VACATE DECISIONS AND ORDERS FILED AFTER FIRST
COMPLAINT INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS
AMENDED COMPLAINT**

by emailing a true and correct copy thereof to the State Bar of Nevada and addressed to the
attention of the Disciplinary Chairman, Associate Bar Counsel and Louise Watson, CP.



Employee of the Law Offices of BRIAN C. PADGETT



FILED

DEC 11 2020

STATE BAR OF NEVADA

BY X
OFFICE OF BAR COUNSEL

LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702)497-3204
Facsimile: (702) 368-0123
Email: brian.padgett@icloud.com

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

Case No. OBC19-1111

BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474

Respondent,

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this RESPONDENT'S
MOTION FOR EXTENSION OF TIME TO FILE ANSWER AND VERIFIED RESPONSE
("Motion for Extension"). This Reply is made pursuant to State of Nevada Disciplinary

Law Offices of BRIAN C. PADGETT
Nevada's Eminent Domain and Property Rights Attorneys
611 South 6th Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 Facsimile: (702) 368-0123

Rules of Procedure 14 and 14(a) and it is based upon the following Memorandum of Points and Authorities.

Dated: December 10, 2020.



BRIAN C. PADGETT, ESQ.
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

**1) Motion for Extension of Time to File Answer Pursuant to State Bar of Nevada
Disciplinary Rules of Procedure 14(a).**

In order to preserve his Due Process rights, Respondent filed the Motion to Vacate Decisions and Orders Filed After First Complaint Including the Amended Complaint; Motion to Dismiss Amended Complaint ("Motion to Vacate and Dismiss") in lieu of filing an Answer to Complainant's First Amended Complaint. Thereafter, on December 9, 2020, Respondent also filed a Reply to Motion to Vacate and Dismiss.

As it is not entirely clear whether the above-referenced Motion can be filed *in lieu* of submitting a Verified Response or Verified Answer, Respondent now comes before the Disciplinary Chair and requests a 20 day extension of time to file an Answer to Complainant's First Amended Complaint if the Disciplinary Chair determines to deny Respondent's Motion to Vacate and Dismiss.

In an abundance of caution and while waiting for the Disciplinary Chair to make a determination on the Motion to Vacate and Dismiss and on the Motion for Extension of Time and so as not to have a default entered against him, Respondent also responds generally to those averments made by the Complainant through a Verified Response to First Amended Complaint in lieu of filing an Answer thereto as set forth below.

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/ / /

2) Verified Response to First Amended Complaint


STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, BRIAN C. PADGETT, being first duly sworn, do hereby swear under penalty of perjury to the following:

1. I am a resident of the State of Nevada.
2. In lieu of filing an Answer to the Amended Complaint, I hereby respond to the General Allegations and Counts One through Six found in the Amended Complaint as follows:
3. I generally deny all averments alleged herein including Counts One through Six and those General Allegations related thereto.
4. Should the Disciplinary Chair determine to deny Respondent's Motion to Vacate and Dismiss then Respondent shall thereafter file an Answer to Amended Complaint that addresses with more particularity those allegations found in the Amended Complaint.

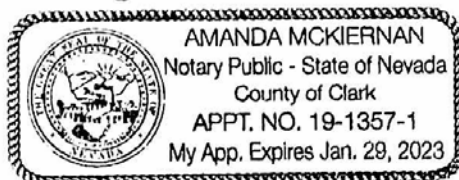
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge.

Executed this 18TH day of December, 2020.


BRIAN C. PADGETT

State of Nevada County of Clark
SUBSCRIBED AND SWORN BEFORE ME
this 18 day of December, 2020. By Brian Padgett


NOTARY PUBLIC



CONCLUSION

Based upon the pleadings set forth herein and in the Motion to Vacate and Dismiss, it is respectfully requested that Respondent's Motion for Extension of Time to File Answer pursuant to State Bar of Nevada Disciplinary Rule 14(a) be granted for those reasons set forth herein.

Dated this 10th day of December, 2020.



BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012

CERTIFICATE OF SERVICE

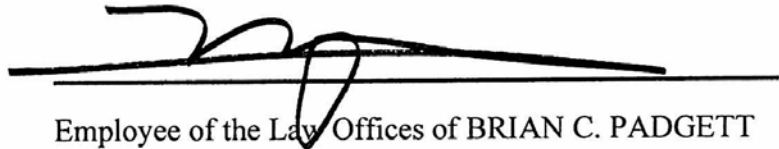
I hereby certify that on this 10th day of December, 2020, I served the foregoing

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

by emailing a true and correct copy thereof to the State Bar of Nevada and addressed to the attention of the Disciplinary Chairman, Associate Bar Counsel and Laura Peters, CP.



Employee of the Law Offices of BRIAN C. PADGETT



FILED

DEC 14 2020

STATE BAR OF NEVADA

BY [Signature]
OFFICE OF BAR COUNSEL

Case No.: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRIAN C. PADGETT, ESQ.,
Nevada Bar No. 7474

Respondent.

**ORDER DENYING MOTION TO
VACATE FILINGS, ORDERS AND
DECISIONS - INCLUDING THE
AMENDED COMPLAINT; MOTION
TO DISMISS AMENDED
COMPLAINT**

The Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint and Reply filed by the Respondent in the above referenced matter and the Opposition thereto filed by the State Bar of Nevada has come on regularly to the Chair of the Northern Nevada Disciplinary Board for decision.

Rule 15(c) of the Disciplinary Rules of Procedure provides that no replies may be filed to motions to dismiss absent good cause shown. While Respondent failed to provide a showing of good cause as to why his reply should be considered, it has been read and considered.

Respondent claims that he has been prejudiced by unfair surprise and a lack of notice of

1 the present action against him. However, the materials provided by Respondent and State
2 Bar show that Respondent had adequate notice of the disciplinary action against him.
3 Indeed, e-mails from Respondent show that he was aware of the formal proceedings against
4 him. Thus, Respondent's claim of unfair surprise and a lack of due process of the
5 proceedings against him are without factual support.

6 Accordingly, Respondent's Motion to Vacate Filings, Orders and Decisions -
7 Including the Amended Complaint; Motion to Dismiss Amended Complaint is denied.

8 **IT IS SO ORDERED.**

9 Dated this 14th day of December 2020.

10 NORTHERN NEVADA
11 DISCIPLINARY BOARD

12
13 By: 

14 ERIC A. STOVALL, Esq.
15 Disciplinary Board Chair
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Order denying MTD_121620

Final Audit Report

2020-12-14

Created:	2020-12-14
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUpEahkM4fAqy9bOjRPFXvC4Voq4ZpmYK

"Order denying MTD_121620" History

-  Document created by Laura Peters (laurap@nvbar.org)
2020-12-14 - 7:22:17 PM GMT- IP address: 71.94.199.108
-  Document emailed to Eric A. Stovall (eric@ericstovalllaw.com) for signature
2020-12-14 - 7:22:34 PM GMT
-  Email viewed by Eric A. Stovall (eric@ericstovalllaw.com)
2020-12-14 - 7:41:18 PM GMT- IP address: 24.182.54.134
-  Document e-signed by Eric A. Stovall (eric@ericstovalllaw.com)
Signature Date: 2020-12-14 - 7:42:05 PM GMT - Time Source: server- IP address: 24.182.54.134
-  Agreement completed.
2020-12-14 - 7:42:05 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Denying Motion to Vacate Filings, Orders and Decisions – Including the Amended Complaint: Motion to Dismiss Amended Complaint** was served electronically upon:

brian.padgett@icloud.com;

eric@ericstovalllaw.com; and

gerardg@nvbar.org.

Dated this 14th day of December 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

JAN 05 2021

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

Case No.: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRIAN C. PADGETT, ESQ.,
Nevada Bar No. 7474,

Respondent.

ENTRY OF DEFAULT

TO: BRIAN C. PADGETT, Esq.
1672 Liege Drive
Henderson, NV 89012

PROCEDURAL HISTORY

On or about May 13, 2020, the State Bar filed its Complaint against BRIAN C. PADGETT, ESQ. (hereinafter "Respondent") with the following Nevada Rules of Professional Conduct ("RPC") violations: COUNT 1 – Rule 1.15 (Safekeeping Property); COUNT 2 – Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); and COUNT 3 – Rule 8.1 (Bar Admission and Disciplinary Matters). Pursuant to Nevada Supreme Court Rule ("SCR") 79, the State Bar sent a copy of the Complaint via first class and certified mail to Respondent's listed address at 611 South 6th Street, Las Vegas, NV 89101. On or about June 21, 2020, both of those mailings were returned to the State Bar's Reno office.

1 On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis was filed.
2 The State Bar sent a copy of the Notice to Respondent's SCR 79 address, as well as
3 Respondent's alternate address at 11274 Gammila Drive, Las Vegas, NV 89141, via first
4 class and certified mail. The Notice directed Respondent to file a responsive pleading to
5 the State Bar's Complaint by June 29, 2020.

6 On or about June 21, 2020, copies of the Notice sent to Respondent's SCR 79 address
7 were returned to the State Bar's Reno office marked "Return to Sender." On or about July
8 6, 2020, copies of the Notice sent to Respondent's alternate address were also returned to
9 the State Bar's Reno office marked "Return to Sender, Unable to Forward."

10 On or about July 10, 2020, the State Bar filed a Declaration of Service According to
11 SCR 109(1) in Support of Entry of Default ("Declaration"), which set forth the State Bar's
12 efforts to serve Respondent. A copy of the Declaration was also emailed to Respondent's
13 email address of brian@briancpadgett.com.

14 On or about July 13, 2020, the Hearing Chair signed, and the State Bar filed, an
15 Entry of Default against Respondent.

16 Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), an initial
17 conference took place on July 21, 2020, at 10:00am Pacific Standard Time. The Hearing
18 Chair and ABC Gosioco were present on the call. Respondent, though formally noticed,
19 was not present on the call. Similarly, Respondent was not present for the DRP Rule 23
20 pre-hearing conference held on October 12, 2020, at 10:00am Pacific Standard Time.

21 On or about October 15, 2020, a Formal Hearing for the instant matter was set to
22 commence at 9:00am Pacific Standard Time. On or about October 15, 2020, at
23 approximately 8:11am Pacific Standard Time, Respondent emailed Assistant Bar Counsel
24 Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be
25 continued. Ultimately, the Formal Hearing was continued. Respondent's email was the

1 first correspondence he had with the State Bar and/or ABC Gosioco since on or about
2 February 26, 2020, which pertained to Respondent's other cases, OBC19-0604 and OBC19-
3 0798.

4 On or about October 22, 2020, the State Bar filed its Motion for Leave to File
5 Amended Complaint. The Amended Complaint charged Respondent with the following
6 RPC violations: COUNT 1 – Rule 1.15 (Safekeeping Property); COUNT 2 – Rule 5.1
7 (Responsibilities of Partners, Managers, and Supervisory Lawyers); COUNT 3 – Rule 8.1
8 (Bar Admission and Disciplinary Matters); COUNT 4 – Rule 8.1 (Bar Admission and
9 Disciplinary Matters); COUNT 5 – Rule 8.4 (Misconduct); and COUNT 6 – Rule 8.4
10 (Misconduct). On or about October 27, 2020, the State Bar's motion was granted.
11 Accordingly, the Amended Complaint was filed that same day, and pursuant to DRP Rule
12 14, Respondent's responsive pleading deadline was on or about November 16, 2020.

13 Respondent failed to file a responsive pleading by the deadline. Instead,
14 Respondent filed a Motion to Vacate Filings, Orders and Decisions - Including the
15 Amended Complaint; Motion to Dismiss Amended Complaint on or about November 16,
16 2020, and a Supplement on or about November 18, 2020 (hereinafter "Motion").
17 Accordingly, the State Bar filed another Notice of Intent to Enter Default on or about
18 November 17, 2020, which directed Respondent to file a responsive pleading to the State
19 Bar's Amended Complaint by December 10, 2020.

20 On or about December 2, 2020, the State Bar filed its Opposition to Respondent's
21 Motion. On or about December 14, 2020, Respondent's Motion was denied. As of the date
22 of the instant pleading, Respondent has not filed a responsive pleading to the State Bar's
23 Amended Complaint.

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5 The allegations set forth in the Amended Complaint filed on or about October 22,
6 2020, are deemed admitted.

Dated this 5th of January, 2021.

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16 /s/ Gerard Gosioco

20 | *Attorneys for the State Bar of Nevada*






2nd Entry of Default

Final Audit Report

2021-01-05

Created:	2021-01-05
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZazYsulrL0YUvyVngSbQVTp325jxPoqD

"2nd Entry of Default" History

-  Document created by Laura Peters (laurap@nvbar.org)
2021-01-05 - 10:44:22 PM GMT- IP address: 71.94.199.108
-  Document emailed to Richard Williamson (rich@nvlawyers.com) for signature
2021-01-05 - 10:44:52 PM GMT
-  Email viewed by Richard Williamson (rich@nvlawyers.com)
2021-01-05 - 11:07:39 PM GMT- IP address: 97.92.108.234
-  Document e-signed by Richard Williamson (rich@nvlawyers.com)
Signature Date: 2021-01-05 - 11:10:58 PM GMT - Time Source: server- IP address: 97.92.108.234
-  Agreement completed.
2021-01-05 - 11:10:58 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Entry of Default** was placed in the US mail in Reno, Nevada, postage pre-paid for certified and regular mail, addressed to:

Brian C. Padgett, Esq.
The Law Offices of Brian C. Padgett
1672 Liege Drive
Henderson, NV 89012

Additionally, the document was served electronically upon brian.padgett@icloud.com and gerardg@nvbar.org.

Dated this 5th day of January 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

JAN 28 2021

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

DANIEL M. HOOGE
Bar Counsel
Nevada Bar No. 10620
GERARD GOSIOCO
Assistant Bar Counsel
Nevada Bar No. 14371
3100 W. Charleston Blvd., Ste. 100
Las Vegas, Nevada 89102
(702) 382-2200

Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,
Complainant,

-vs-

BRIAN C. PADGETT, ESQ.,
Nevada Bar No. 7474

Respondent.

CASE NO: OBC19-1111

**STATE BAR OF NEVADA'S COMPREHENSIVE RESPONSE TO PROCEDURAL ISSUES
RAISED BY PANEL CHAIR**

COMES NOW, the State Bar of Nevada (hereinafter "State Bar"), by DANIEL M. HOOGE, Bar Counsel, through GERARD GOSIOCO, Assistant Bar Counsel ("ABC"), and hereby submits the attached Points and Authorities in support of State Bar of Nevada's Comprehensive Response to Procedural Issues Raised by Panel Chair.

This Response is based upon all papers and pleadings on file herein, the attached Points and Authorities in support hereof, and oral argument, if deemed necessary by the Panel Chair in this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

On May 13, 2020, the State Bar filed a Complaint against Respondent alleging the following Nevada Rules of Professional Conduct (“RPC”) violations: COUNT 1 – Rule 1.15 (Safekeeping Property); COUNT 2 – Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); and COUNT 3 – Rule 8.1 (Bar Admission and Disciplinary Matters). The State Bar sent a copy of the Complaint via first-class and certified mail to Respondent’s listed address at 611 South 6th Street, Las Vegas, NV 89101 pursuant to Nevada Supreme Court Rule (“SCR”) 79. On June 21, 2020, both mailings were returned to the State Bar’s Reno office marked “Return to Sender, Unable to Forward.”

On June 9, 2020, the State Bar filed and served a Notice of Intent to Proceed on a Default Basis. The State Bar sent a copy of the Notice to Respondent’s SCR 79 address. The State Bar sent another copy of the Notice to an alternate address at 11274 Gammila Drive, Las Vegas, NV 89141, via first-class and certified mail. The Notice directed Respondent to file a responsive pleading to the State Bar’s Complaint by June 29, 2020.

On June 21, 2020, copies of the Notice sent to Respondent’s SCR 79 address were returned to the State Bar’s Reno office marked “Return to Sender.” On July 6, 2020, copies of the Notice sent to Respondent’s alternate address were also returned to the State Bar’s Reno office marked “Return to Sender, Unable to Forward.”

On July 10, 2020, the State Bar filed a Declaration of Service According to SCR 109(1) in Support of Entry of Default (“Declaration”), which set forth the State Bar’s efforts to serve Respondent. A copy of the Declaration was emailed to Respondent’s email address of brian@briancpadgett.com. The State Bar did not receive any return emails stating that the Declaration was undeliverable.

On July 13, 2020, Rich Williamson, Esq. (hereinafter “Panel Chair”) ordered Entry of Default against Respondent. A copy of the Entry of Default was emailed to brian@briancpadgett.com. As with

prior emails, the State Bar did not receive any return emails stating that the Entry of Default was undeliverable.

Pursuant to Rule 17 of the Disciplinary Rules of Procedure (“DRP”), an initial conference took place on July 21, 2020. The Hearing Chair and ABC Gerard Gosioco (hereinafter “ABC Gosioco”) attended the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the DRP Rule 23 pre-hearing conference held on October 12, 2020.

On September 15, 2020, the State Bar filed a Notice of Hearing and a Final Disclosure of Documents and Witnesses. *See* Exhibit 1. The Notice and Final Disclosure were served on Respondent via first-class and certified mail to his SCR 79 address. *Id.* Copies of the Notice and Final Disclosure were also emailed to brian@briancpadgett.com. *Id.* The State Bar did not receive any return emails stating that the Notice and Final Disclosure were undeliverable.

The Panel Chair set a Formal Hearing for October 15, 2020, at 9:00 a.m. Pacific Standard Time (“PST”). *Id.* On October 15, 2020, at 8:11 a.m. PST, Respondent emailed ABC Gosioco, through brian.padgett@icloud.com, informally requesting a continuance of the Formal Hearing. Exhibit 2. Ultimately, the Panel Chair granted Respondent’s request for a continuance. *See* Exhibit 3. Respondent’s email was the first correspondence he had with the State Bar in this matter.¹

On October 22, 2020, the State Bar filed its Motion for Leave to File Amended Complaint. The Amended Complaint charged Respondent with violating the following RPCs: COUNT 1 – Rule 1.15 (Safekeeping Property); COUNT 2 – Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); COUNT 3 – Rule 8.1 (Bar Admission and Disciplinary Matters); COUNT 4 – Rule 8.1 (Bar Admission and Disciplinary Matters); COUNT 5 – Rule 8.4 (Misconduct); and COUNT 6 – Rule 8.4 (Misconduct). On October 27, 2020, the Panel Chair granted the State Bar’s motion. Exhibit 4.

¹ Prior to Respondent’s October 15, 2020, email, the last correspondence between him and ABC Gosioco pertained to Respondent’s other disciplinary cases, OBC19-0604 and OBC19-0798, on or about February 26, 2020.

Accordingly, the State Bar filed its Amended Complaint that same day. Exhibit 5. Respondent's Answer was due on November 16, 2020, pursuant to DRP 14.

On November 16, 2020, Respondent filed a Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint; Respondent filed a Supplement thereto on November 18, 2020 (collectively referred to as "Motion to Vacate"). Exhibit 6. The State Bar filed another Notice of Intent to Enter Default on November 17, 2020. Exhibit 7. The Notice was served on Respondent via certified and regular mail to 1672 Liege Drive, Henderson, NV 89012. *Id.* The Notice was also emailed to brian.padgett@icloud.com. *Id.* The State Bar did not receive any return emails stating that the Notice was undeliverable.

On December 2, 2020, the State Bar filed an Opposition to Respondent's Motion to Vacate. Exhibit 8. On December 9, 2020, Respondent filed a Reply to the State Bar's Opposition.² Exhibit 9. Per DRP 15(a), Eric Stovall, Esq. (hereinafter "Disciplinary Chair"), the Northern Nevada Disciplinary Board Chair received for consideration Respondent's Motion to Vacate, the State Bar's Opposition, and Respondent's Reply on December 10, 2020.³

On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response (hereinafter "Motion for Extension"). Exhibit 10. Per his request, Respondent's Motion for Extension was forwarded to the Disciplinary Chair. *Id.*

On December 14, 2020, the Disciplinary Chair filed an Order denying Respondent's Motion to Vacate. Exhibit 11. The Disciplinary Chair issued no ruling on Respondent's Motion for Extension. On January 5, 2021, the Disciplinary Chair signed an Entry of Default. Exhibit 12.

² It should be noted that pursuant to DRP 15(c), "[t]here shall be no replies filed, absent good cause shown."

³ DRP 15(a) states that "[a]ny and all motions filed pursuant to this Rule shall be decided by the Disciplinary Board Chair, or Vice Chair if the Chair is unavailable, even if a Hearing Panel Chair has already been appointed."

On January 13, 2021, Respondent, via email, made an informal request to stay the proceedings of the instant matter citing his recently filed Opening Brief in the Supreme Court (Docket No. 81918).⁴ Exhibit 13. The Panel Chair requested that the State Bar file a comprehensive response addressing the following issues: (1) whether the State Bar filed an opposition or response to Respondent's Motion for Extension and whether the State Bar has any arguments considering the "Verified Response"; and (2) whether the State Bar opposes Respondent's informal request to stay the instant proceedings and intends on filing an opposition thereto. *Id.* The State Bar responds as follows.

ARGUMENT

A. The State Bar Opposes Respondent's Motion for Extension.

The Amended Complaint was filed on October 27, 2020, which made November 16, 2020, Respondent's deadline to file a responsive pleading or request an extension. Exhibit 4. Respondent did not file a verified response or answer or request for an extension to file the same by the November 16, 2020, deadline. Accordingly, the State Bar filed a second Notice of Intent to Enter Default on November 17, 2020, which, for practical purposes, gave Respondent an extension to file a verified response or answer by December 10, 2020. Exhibit 7. However, on November 16, 2020, Respondent filed his Motion to Vacate, which was later denied on December 14, 2020. *See* Exhibits 8, 11. Per Nevada Rule of Civil Procedure ("NRCP") 12(a)(3)(A), Respondent should have filed his verified response or answer by December 28, 2020.⁵

On December 10, 2020, Respondent filed his Motion for Extension and requested that it be forwarded to the Disciplinary Chair. Exhibit 10. The State Bar received Respondent's Motion for Extension and forwarded the same to the Disciplinary Chair per Respondent's Request. *Id.*

⁴ Respondent's Opening Brief pertain to his other disciplinary cases, OBC19-0604 and OBC19-0798.

⁵ NRCP 12(a)(3)(A) states that "if the court denies the motion or postpones its disposition until trial, the **responsive pleading** must be served within 14 days after notice of the court's action." (emphasis added). NRCP 12 controls in this situation because the SCRs and the DRPs are silent on the time period to file a verified response or answer after a motion to dismiss is denied. *See* SCR 119.

Although Respondent's pleading included a Motion for Extension of Time to File Answer and a "Verified Response", the substance of the pleading demonstrates that it should be treated solely as a motion for an extension to file a verified response or answer for two reasons. *See* Exhibit 10. First, Respondent's pleading is perplexing. If Respondent truly intended for his pleading to be treated as a Verified Response, then it follows that there is no logical reason to also file a Motion for Extension of Time to File Answer and Verified Response. Second, Respondent concedes in his "Verified Response" that it is not an answer to the Amended Complaint.⁶ *See* Exhibit 10. Therefore, Respondent's "Verified Response" is nonconforming and should not be treated as a verified response or answer as mandated by DRP 14, but rather, a request for an extension of time to file an Answer.

The State Bar did not file an opposition or response to Respondent's Motion for Extension as it was moot. Respondent's Motion to Vacate stayed the deadline for his verified response or answer to be filed and was given an additional fourteen (14) days from the Disciplinary Chair's December 14, 2020, Order to file the same. NRCP 12(a)(3)(A); *see* Exhibit 11. Respondent was served with the Amended Complaint on October 27, 2020. Accordingly, Respondent has been provided an ample amount of time to sufficiently prepare a defense to the disciplinary violations he has been charged with. *See generally Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008). Respondent is, once again, merely attempting to stall even after being given time to respond.

To the extent the Panel Chair believes Respondent has demonstrated good cause to justify an extension, the State Bar respectfully requests that Respondent be granted an extension of seven (7) calendar days from the Panel Chair's ruling, by 5:00 p.m. PST, to file a conforming verified response or answer.

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⁶ Line item 2 of Respondent's "Verified Response" states the following: "*In lieu of filing an Answer* to the Amended Complaint, I hereby respond to the General Allegations and Counts One through Six found in the Amended Complaint as follows" (emphasis added).

B. The State Bar Opposes Respondent's Informal Request to Stay the Instant Proceedings.

On January 13, 2021, Respondent, via email, made an informal request to stay the proceedings of the instant matter citing his recently filed Opening Brief with the Supreme Court (Docket No. 81918). Exhibit 13. After filing five (5) Motions to Extend Time,⁷ Respondent filed his Opening Brief on January 12, 2021, which presented the following issues for the Nevada Supreme Court's review:

1. Whether the [State Bar] erred and substantially prejudiced [Respondent] by continuing forward with disciplinary proceedings against [Respondent] without providing appropriate notice or due process.
2. Whether the [State Bar] erred and substantially prejudiced [Respondent] by failing to disclose a clear and present conflict of interest between a Hearing Panel member and [Respondent].
3. Whether the [State Bar] violated [Respondent]'s Equal Protection Rights and substantially prejudiced [Respondent] by holding only one disciplinary hearing for two distinct and separate State Bar complaints.

See Exhibit 14.

Respondent, in his January 13, 2021, email, stated that his reason for requesting a stay of the instant proceedings is to "give the Supreme Court time to weigh in on my recently filed Appellant's Opening Brief regarding lack of notice/lack of Due Process." *See* Exhibit 13. However, Respondent's justification for his request is misguided.

The Formal Hearing for the instant matter was originally scheduled for October 15, 2020, at 9:00 a.m. PST. *See* Exhibit 4. That same day, at approximately 8:11 a.m. PST, Respondent emailed ABC Gosioco informally requesting that the Formal Hearing be continued based on an alleged lack of notice and/or due process issue. *See* Exhibit 2. Although the panel was reluctant to grant Respondent's informal request, the Formal Hearing was ultimately continued to "provide Respondent with every opportunity to defend himself." *See* Exhibit 3. As such, it is not necessary to stay the instant proceedings to give the

⁷ Respondent's Motions to Extend Time were filed on the following dates: (1) November 9, 2020; (2) December 8, 2020; (3) December 22, 2020; (4) January 8, 2021; and (5) January 12, 2021.

Nevada Supreme Court time to decide on Respondent's Opening Brief as any alleged lack of notice and/or due process issue in the instant matter has been cured by continuing the October 15, 2020, hearing. Moreover, Respondent's appellate arguments are irrelevant as the alleged lack of notice issue pending before the Nevada Supreme Court relates to grievances OBC19-0604 and OBC19-0798, not the grievance that led to the instant matter. Therefore, the State Bar opposes Respondent's informal request to stay the instant proceedings.

CONCLUSION

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Motion for Extension be treated as an untimely request for extension to file an Answer and to deny Respondent's informal request to stay the instant proceedings.

DATED this 28th day of January, 2021.

**STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL**

/s/ Gerard Gosioco

Gerard Gosioco, Assistant Bar Counsel
Nevada Bar No. 14371
3100 West Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200

Exhibit 1

Exhibit 1



FILED

SEP 15 2020

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
BRIAN C. PADGETT, ESQ.,)
BAR NO. 7474)
Respondent.)

NOTICE OF HEARING

To: Brian C. Padgett, Esq.
brian@briancpadgett.com

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for **October 15, 2020, beginning at the hour of 9:00 a.m.** The hearing will be conducted via Zoom (meeting # to be provided at a later date). You are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

DATED this 15th day of September 2020.

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco
(s) Gerard Gosioco (Sep 15, 2020 10:19 PDT)

Gerard Gosioco, Assistant Bar Counsel
Nevada Bar No. 14371
3100 West Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200 Case No: OBC19-1104



FILED

SEP 15 2020

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
BRIAN C. PADGETT, ESQ.,)
BAR NO. 7474)
Respondent.)

**STATE BAR'S FINAL DISCLOSURE
OF DOCUMENTS AND WITNESSES**

PLEASE TAKE NOTICE that the following is a list of witnesses and a summary of evidence which may be offered against Respondent at the time of the Formal Hearing, in the above-entitled complaint.

A. Documentary Evidence

Any and all documentation contained in the State Bar of Nevada's file including but not limited to, correspondence, emails, memorandums, text messages, notes, payments, invoices, bank records, receipts, billing entries and pleadings regarding grievance file numbers OBC19-1111.

Any and all documentation contained in records of the State Bar of Nevada regarding Respondent's licensure, compliance with reporting requirements, and disciplinary history.

The State Bar reserves the right to supplement this list as necessary.

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Exhibit#	Document	Bates Stamped
1.	Formal Hearing Packet	will be produced prior to hearing
2.	Affidavit of Prior Discipline	will be produced at the time of hearing
3.	Engagement Letter, dated March 6, 2012	SBN 001-SBN 007
4.	Complaint in Inverse Condemnation, filed with 2JD, Case No. CV12-01788, filed July 9, 2012	SBN 008-SBN 0027
5.	Client payments for deposition expenses	SBN 0028-SBN 0032
6.	Notice of Entry of Order, Stipulation to Dismiss with Prejudice, filed April 9, 2019, in Case No. CV12-01788.	SBN 0033-SBN 0036
7.	Stipulation and Order to Dismiss Inverse Condemnation Claim filed January 25, 2016, in Case No. CV12-01788.	SBN 0037-SBN 0039
8.	Stipulation and Order to Vacate Trial, filed June 1, 2016, in Case No. CV12-01788.	SBN 0040-SBN 0042
9.	August 16, 2016 email from John Di Francesco to Amy Sugden, Esq., and Robert Feron.	SBN 0043-SBN 0044
10.	August 16, 2016 email from Robert Feron to Amy Sugden, Esq., John Di Francesco.	SBN 0045-SBN 0046
11.	September 10, 2016 email from John Di Francesco to Amy Sugden, Esq.	SBN 0047-SBN 0048
12.	December 28, 2016 email chain between Amy Sugden, Esq., and clients	SBN 0049-SBN 0057
13.	February 17, 2017 email from Steve Silva, Esq., re: five-year rule.	SBN 0058-SBN 0059
14.	March 25, 2017 email from Steve Silva, Esq., to Amy Sugden, Esq.	SBN 0060
15.	Order filed May 4, 2017, in Case No. CV12-01788 re: Motion for Summary Judgment.	SBN 0061-SBN 0070
16.	Order filed May 4, 2017, in Case No. CV12-01788 re: Motion for Judgment on the Pleadings.	SBN 0071-SBN 0083
17.	July 6, 2017 email from Robert Feron to Amy Sugden, Esq., and John Di Francesco.	SBN 0084-SBN 0085
18.	July 22, 2017 email from Robert Feron to Amy Sugden, Esq., and John Di Francesco.	SBN 0086
19.	September 16, 2017, (re: labor day) email chain between Amy Sugden, Esq., John Di Francesco and Robert Feron.	SBN 0087-SBN 0089
20.	September 20, 2017 email from Amy Sugden, Esq., to Robert Feron and John Di Francesco.	SBN 0090-SBN 0091
21.	October 2, 2017 email from John Di Francesco to Amy Sugden, Esq.	SBN 0092
22.	November 30, 2017 email from Robert Feron to Amy Sugden, John Di Francesco.	SBN 0093

23.	December 29, 2017 email chain between Amy Sugden, Esq., and clients.	SBN 0094
24.	January 19, 2018 email from Steve Silva, Esq., to Amy Sugden.	SBN 0095-SBN 0096
25.	April 20, 2018 email from Amy Sugden, Esq. to Robert Feron, John Di Francesco.	SBN 0097
26.	April 21, 2018 email from John Di Francesco to Amy Sugden, Esq., Robert Feron.	SBN 0098
27.	Motion in Limine filed June 29, 2018, in Case No. CV12-01788.	SBN 0099-SBN 00116
28.	August 27, 2018 email chain between Amy Sugden, Esq., and Robert Feron.	SBN 00117-SBN 00118
29.	Case Docket CV12-01788	SBN 00119-SBN 00127
30.	Exhibits to Motion in Limine filed September 5, 2018, in Case No. CV12-01788	SBN 00128-SBN 00354
31.	November 28, 2018, letter to Brian Padgett, Esq., and Amy Sugden, Esq., from John Di Francesco, Robert Feron.	SBN 00355
32.	December 1, 2018 email chain between Brian Padgett, Esq., John Di Francesco and Robert Feron.	SBN 00356-SBN 00359
33.	March 15, 2019 email from Robert Feron to Brian Padgett, Esq., and Amy Sugden, Esq.	SBN 00360
34.	Initial Grievance received by the Office of Bar Counsel on September 4, 2019 (w/enclosures)	SBN 00361-SBN 00389
35.	Letter of Investigation from Louise Watson, Investigator, dated September 11, 2019.	SBN 00390
36.	October 11, 2019 email from Respondent Brian Padgett, Esq., to Louise Watson.	SBN 00391-SBN 00392
37.	Attorney response dated October 14, 2019, from Brian Padgett, Esq. (w/attachments).	SBN 00393-SBN 00648
38.	December 4, 2019 email to grievants from Louise Watson	SBN 00649
39.	December 9, 2019 email to grievants from Louise Watson	SBN 00650
40.	December 20, 2019 letter to Brian Padgett, Esq., from Louise Watson.	SBN 00651
41.	January 17, 2020 email chain between Loise Watson and Brian Padgett, Esq.	SBN 00652-SBN 00654
42.	January 22, 2020 response from Brian Padgett, Esq., to Louise Watson.	SBN 00655-SBN 00657
43.	January 25, 2020 email chain between Robert Feron and Louise Watson.	SBN 00658
44.	February 1, 2020 correspondence to Louise Watson from John Di Francesco and Robert Feron (w/attachments).	SBN 00659-SBN 00688

1	45.	March 7, 2020 correspondence from John Di Francesco and Robert Feron (w/attachments).	SBN 00689-SBN 00713
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3 The State Bar incorporates by reference all documents identified by Respondent in these
4 matters.

5 **B. Witnesses and Brief Statement of Facts**

6 1. Respondent, Brian C. Padgett, Esq., will be called and would be expected to testify
7 regarding his conduct and communications surrounding the events related to, and any and all
8 documents pertinent to, each of the charged violations of the Rules of Professional Conduct,
9 including but not limited to facts pertaining to the breach of his professional responsibilities as an
10 attorney, his mental state pursuant to ABA Standards, the harm resulting from his conduct, and
11 any aggravating and mitigating factors pursuant to Supreme Court Rule 102.5. Respondent is
12 expected to provide testimony regarding the facts and circumstances regarding OBC19-1111.

13 2. Louise Watson, an investigator with the State Bar of Nevada Office of Bar Counsel,
14 is expected to provide testimony regarding her investigation of OBC19-1111, including but not
15 limited to, information and documents provided by Respondent and Grievant(s), communications
16 with Respondent and Grievant(s), and Respondent's disciplinary history.

17 3. John Di Francesco is expected to offer testimony regarding the facts and
18 circumstances regarding Case No. OBC19-1111, including but not limited to, the facts and
19 circumstances surrounding the allegations contained in said grievance.

20 4. Robert Feron is expected to offer testimony regarding the facts and circumstances
21 regarding Case No. OBC19-1111, including but not limited to, the facts and circumstances
22 surrounding the allegations contained in said grievance.

1 5. Jaclyn Feron is expected to offer testimony regarding the facts and circumstances
2 regarding Case No. OBC19-1111, including but not limited to, the facts and circumstances
3 surrounding the allegations contained in said grievance.

4 6. Michael Sullivan, Esq., is expected to offer testimony regarding his actions as
5 successor counsel in the Second Judicial Court Case No. CV12-01788.

6 Dated this 15th day of September, 2020.

7
8 **STATE BAR OF NEVADA**
9 **DANIEL M. HOOGE, BAR COUNSEL**

10 */s/ Gerard Gosioco*
 /s/ Gerard Gosioco (Sep 15, 2020 10:19 PDT)

11 **Gerard Gosioco, Assistant Bar Counsel**
12 Nevada Bar No. 14371
13 3100 West Charleston Boulevard, Suite 100
14 Las Vegas, Nevada 89102
15 (702) 382-2200
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Padgett.Notice of Hearing Final Disclosure _091120

Final Audit Report

2020-09-15

Created:	2020-09-15
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA40OjgGVburlHYo6csqnkkgmV-JnlZZN

"Padgett.Notice of Hearing Final Disclosure _091120" History

-  Document created by Laura Peters (laurap@nvbar.org)
2020-09-15 - 5:17:28 PM GMT- IP address: 71.94.199.108
-  Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2020-09-15 - 5:18:05 PM GMT
-  Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2020-09-15 - 5:18:53 PM GMT- IP address: 68.104.81.227
-  Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2020-09-15 - 5:19:30 PM GMT - Time Source: server- IP address: 68.104.81.227
-  Signed document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) and Laura Peters (laurap@nvbar.org)
2020-09-15 - 5:19:30 PM GMT

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing Notice of Hearing, State Bar's Final Disclosures of Documents and Witnesses was sent by prepaid first-class regular and certified U.S. Mail to:

Brian C. Padgett, Esq.
611 S. 6th St.
Las Vegas, NV 89101

And via email to:

1. Brian C. Padgett, Esq. (Respondent): brian@briancpadgett.com
2. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 15th day of September, 2020.

By: Laura Peters
Laura Peters,
an employee of the State Bar of Nevada.

Exhibit 2

Exhibit 2

From: [Brian Padgett](#)
To: [Laura Peters](#); [Gerard Gosioco](#)
Subject: NV Bar Response
Date: Thursday, October 15, 2020 8:11:23 AM
Attachments: [NV Bar Response.pdf](#)

Ms. Peters and Mr. Gosioco:

Please see the attached response to recent disciplinary hearing activity.

You can reach me at this interim email address and at the physical address below:

Brian Padgett
Law Offices of Brian C. Padgett
1672 Liege Drive
Henderson, Nevada 89012

Please attention all email to this interim i-cloud address as our Law Office server is currently having a new firewall installed for the enhanced protection of the Law Office and its clients.



October 14, 2020

VIA USPS and E-MAIL: Laurap@nvbar.org

Laura Peters
State Bar of Nevada
Office of Bar Counsel
3100 W. Charleston Blvd. Ste. 100
Las Vegas, NV 89102

Re: Case Nos.: OBC19-0604; OBC19-0798; OBC19-1111

Dear Ms. Peters:

I was recently noticed that there may have been a disciplinary hearing held without my participation in the summer of 2020 and that a second disciplinary hearing is moving forward against me later this week.

Due to a lack of notice of proceedings as set forth below, I respectfully and humbly request that the State Bar of Nevada hold the upcoming hearing for case no. OBC19-1111 in abeyance and give me the opportunity to be heard on the merits as I noticed the State Bar of an address change for my law office in February 2020 and never received the Complaint for this matter nor for any subsequent filings as set forth below.

The same facts and request also apply to case nos. OBC19-0604 and OBC19-0798.

However, my recent review of the record for these two cases shows that there is an additional factor requiring that these Findings of Fact and Conclusions of Law be set aside – there is a clear and

present conflict of interest with one of the panel members that would have made it impossible to get an unbiased hearing.

In more detail, these reasons for my request for relief are set forth below:

LACK OF NOTICE OF PROCESS: Case Nos.: OBC19-0604; OBC19-0798; OBC19-1111

On October 11, 2019, I notified the State Bar that the Law Firm's server had been breached and approximately half of the Firm's archived emails were deleted from the server without our knowledge. This included many of those emails needed to respond to the State Bar's investigation.

Because of the breach and irregular email service subsequent to the breach, it was recommended by retired FBI Special Agent and Certified Fraud Investigator, Mick Elliott, that the Law Firm should work out of my home office at 1672 Liege Drive in Henderson, Nevada until the server could be secured and certain cases personally involving me were concluded. It was believed that the breach came from former employee Amy Sugden and I informed the Bar of this both in my October 11, 2019 email and my mailed February 24, 2020 response to the State Bar Complaint.

On February 24, 2020, I mailed a response to a State Bar Complaint for case nos. OBC19-0604 and OBC19-0798. At that time, I told your office that our expert investigator, Mr. Elliott, had advised me not to file an Answer and rather advise the State Bar, generally, that Mr. Elliott was investigating some of the people involved in both of these cases for conspiracy, trafficking, fraud and other crimes. The concern was that giving the State Bar more detailed information in a written response could inform some of the suspects before Mr. Elliott finished his investigation.

Our server was breached again in February 2020, and we later found that many PDF and Word documents were also stripped from our server. At that time, the decision was then made to take Mr. Elliott's direction and move full time to my home office and work from our computer hard drives.

As we made the move, my secretary, Connie P. Little mailed the State Bar a notice of change of address for USPS mail purposes: 1672 Liege Drive, Henderson, Nevada 89012. **Exhibit A.**

Shortly thereafter, in March 2020, our office email stopped delivering mail to us. We tried to restore the law office email quickly but we found, with COVID-19, it became extremely difficult to schedule tech support because they were flooded with demands from many companies to help their employees work from home.

Subsequently, and before we could receive service, our computer technician quarantined for COVID, I lost an uncle and then I got sick myself. As a result, it wasn't until September 2020, before we could safely get tech repair service and our email became operable and began to repopulate itself. **Exhibit B.** It is still not known what, if any, emails are missing and failed to repopulate.

Without proper notice of deadlines and filings I have been unable to properly defend myself. I had done my part to make sure the Bar had an avenue to reach me and yet it seems I have been "convicted in absentia" through no fault of myself or my office.

CONFLICT OF INTEREST: Case Nos.: OBC19-0604; OBC19-0798

Peter Ossowski, the layperson in the three person hearing panel for Case Nos.: OBC19-0604 and OBC19-0798 works for the Nevada Department of Transportation ("NDOT") and has worked on their "Project Neon" – a widening of the I-15.

I have made my career defending landowners in trial against NDOT when they take private property for public works projects like Project Neon. I am currently representing landowners in the path of Project Neon and NDOT may have liability for Just Compensation due and owing to several clients in excess of \$50 Million dollars.

NDOT and their employees have every reason to make sure my ability to practice law and defend landowners is hindered. For example: Between 2002-2005 NDOT was taking property in Reno, Nevada for a public project. As is my custom, I sent out notices to these landowners of their constitutional rights for the taking and damaging of their property. My first – and only – Bar Complaint (prior to the case numbers set forth herein) was filed against me by NDOT who tried to have me removed from practicing law at a time when they were in the process of taking private landowners' property for a different public works project.

Mr. Ossowski knows that I have been the biggest opponent of his employer - NDOT - in the courts over the last decade and as a result there is a clear and present conflict of interest between Mr. Ossowski, his employer – NDOT - and myself. He should not have been placed on the panel.

RELIEF REQUESTED:

Case Nos. OBC19-0604 and OBC19-0798: I request that the Findings of Fact and Conclusions of Law for these cases be set aside as I have been substantially prejudiced as a result of Mr. Ossowski's participation on the Hearing Panel for those reasons set forth above. I have also been prejudiced in an equal or greater measure by receiving no notice of filings or hearing dates in which to defend myself despite my advising the State Bar of my address change.

Prior to moving the Firm to my home office I made a written request to have the entire proceeding held in abeyance as a result of Mr. Elliott's investigation. Based upon the facts set forth above, I had no reason to believe my request had not been granted by the State Bar and that was why I received no further correspondence on these cases.

Case No. OBC19-1111: I request that the hearing scheduled for Thursday, October 15, 2020 be cancelled and the process reset as I have also been prejudiced by receiving no notice of filings or hearing dates in order to defend myself and be heard on the merits despite my advising the State Bar of my address change.

Thank you for your attention to this correspondence.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Brian C. Padgett", written over a horizontal line.

Brian C. Padgett