IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF BRIAN C. PADGETT, ESQ. STATE BAR NO. 7474	)	**Case No.**

Volume II

RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS
AND TRANSCRIPT OF HEARINGS

Gerard Gosioco, Esq.
Assistant Bar Counsel
Nevada Bar #14371
3100 West Charleston Blvd., Ste. 100
Las Vegas, NV 89102

Attorney for State Bar of Nevada

Brian C. Padgett, Esq.
1672 Liege Drive
Henderson, NV 89012

Respondent

INDEX
ALPHABETICAL LIST OF DOCUMENTS

Exhibit 3

Exhibit 3

STATE BAR OF NEVADA

NORTHERN DISCIPLINARY BOARD

-o0o-

STATE BAR OF NEVADA,

Complainant, Case No. OBC19-1111

vs.

BRIAN C. PADGETT, BAR 7474,

Respondent.

_____/

Pages 1 to 15, inclusive.

HEARING

_____

Thursday, October 15, 2020
Reno, Nevada

JOB NO.: 671803

REPORTED via Zoom BY: CHRISTINA AMUNDSON
CCR #641 (Nevada)
CSR #11883 (California)

A P P E A R A N C E S

(Via Zoom)
RICH WILLIAMSON, ESQ.
NATHAN AMAN, ESQ.
GERARD GOSIOCO
STEVE BOUCHER
VICKI HETHERINGTON
LAURA PETERS
DAN HOOGE

-o0o-

BE IT REMEMBERED that Thursday, September 18, 2020, commencing at 9:19 a.m. of said day, before me, CHRISTINA M. AMUNDSON, a Certified Shorthand Reporter, the following proceedings were had:

MR. WILLIAMSON: This is Richard Williamson, Panel Chair for State Bar v. Padgett. His bar number is 7474.

MR. AMAN: This is Nathan Aman, another attorney representative of the panel.

MR. BOUCHER: Steve Boucher, layman.

MR. GOSIOCO: Gerard Gosioco, Assistant Bar Counsel.

MR. HOOGE: Dan Hooge, Bar Counsel. I'm just observing.

MR. WILLIAMSON: Okay. It looks like we have Laura as well. Yes.

MS. PETERS: Laura Peters for the State Bar.

MR. WILLIAMSON: Let's go on the record in the matter of State Bar v. Padgett. We -- bar counsel received a request from Mr. Padgett to move today's hearing and at this point I'd like to turn it over to you, Mr. Gosioco, to explain what efforts

the bar has made at least to provide service and through what means, what addresses, what email addresses so the panel has all the facts before it and we can decide where to go from here.

MR. GOSIOCO: Thank you, sir. So, as far as service is concerned, we did make several attempts to notice Mr. Padgett of these hearings, of these proceedings. Specifically, the complaint that was filed in this case was sent to Mr. Padgett's SCR 79 address via first-class and certified mail, but those mailings were returned to the State Bar's office on or about June 21, 2020.

On or about June 9th, 2020, a notice of intent to proceed on a default basis was filed and sent to Mr. Padgett's SCR 79 address as well as an alternate address we had on file, which is 11274 Gammila, which is G-a-m-m-i-l-a, Drive, Las Vegas, Nevada, 89149. Those were sent via first-class and certified mail as well.

As far as the mailing of the notice is concerned, that mailing was sent back to the State Bar's office on or about June 21, 2020, and as far as his alternate address, the mail that was sent to that address was also returned to the State Bar's

office marked "Return to Sender, Unable to Forward," on or about July 6th, 2020.

Now, a default was entered into this case on or about July 13th, 2020, so after default was entered, we attempted to personally serve Mr. Padgett at 1672 Liege, L-i-e-g-e, Drive, Henderson, Nevada, 89012 on or about September 29th, 2020, October 1, 2020, and October 3rd, 2020.

In addition, our office contacted attorney Garrett Ogata, who was Mr. Padgett's attorney on one of his criminal cases, to see if Mr. Ogata would be willing to accept service on Mr. Padgett's behalf. Mr. Ogata seemed hesitant to do so, however, he did advise that he would contact Mr. Padgett. Mr. Ogata subsequently informed us that he did text Mr. Padgett with our contact information and told him to contact us.

As Mr. Williamson stated earlier, up until about 8:11 this morning, the day of the formal hearing, we did not hear back from Mr. Padgett until he sent that email to Laura Peters and myself requesting that this matter be continued, but those are the attempts that we made to personally serve Mr. Padgett.

MR. WILLIAMSON: Okay. Thank you for that summary. While you were finishing up, I was briefly going to look at SCR 109.

MR. BOUCHER: How did he eventually find out about today's meeting, then?

MR. GOSIOCO: It's unclear at this point. I would assume that, once Mr. Ogata did text Mr. Padgett with our information, that he might have found out about the hearing, but at this point it's unclear to me.

MR. WILLIAMSON: And I just want to make sure I understand what the service address is. So, I know personal service was attempted at the Liege Drive address, which is the address he mentions in his letter. You also mentioned the default was sent to Gammila Drive address and then both the complaint and default were sent to the SCR address. And so I assume this is the address before -- well, I guess let me back up.

Mr. Padgett states in his letter that he believes he changed his SCR address at some point to the Liege address that you tried to personally serve. Is that correct, or does the bar have a record of that attempt to change the SCR address?

MR. GOSIOCO: That is correct. As far as whether or not we have a record, unfortunately, because we learned about this at 8:11 this morning, I didn't have time to discuss with the other staff whether or not this record was actually made.

But if you give me one second, I'm going to his contact information file to see whether or not it was -- a request was actually made. I know that we are very diligent about updating this information once received, so if you would spare me one second, I can look.

MR. WILLIAMSON: Sure.

MR. GOSIOCO: No, sir. It looks like the only address we still have on file for Mr. Padgett is an SCR address, which is 611 South Sixth Street, Las Vegas, Nevada 89101 and the Gammila address.

So, if a request was made, I do know that our staff is very diligent about updating that as soon as possible.

MR. WILLIAMSON: Okay. Again, you may not know this. I realize this just got dumped on you this morning. But do you know how you came to be aware of this Liege Drive address?

MR. GOSIOCO: It looks like Laura stated

that she had found the Henderson address on the Eighth Judicial District Court website. A Sixth Street address was his old office and nothing has been received there.

MR. WILLIAMSON: Okay. Got it. So, I guess I want to make a record and make a few statements and then I think we, the entire panel, needs to decide how to proceed.

No. 1, I do think if he never formally changed his address, under SCR 109.1, you know, the proper service can be registered or certified mail at the current address shown in the State Bar's records or other last known address and so it seems to me that would be the 611 South Sixth Street.

So, I do think service of the complaint and service of the default appear to be proper and I certainly think the bar has done everything that could be expected of it to try to give Mr. Padgett both formal and actual notice. At the same time, obviously, this is a serious matter and I'm reluctant to, when someone has professed that they have not received service, I'm a little hesitant to just charge ahead with a hearing, if truly he did not know.

And I'd hate to -- while I certainly don't want to inconvenience the panel's time this morning and I want to be respectful of our volunteer's time, I also -- it would be more disruptive if this went up to the supreme court and then they said, Hey, you should have made sure every effort was made to continue this upon Mr. Padgett's request and then it came back and we had to do the whole thing over again.

So, I'm sort of frustrated but tentatively inclined to grant Mr. Padgett's semi-informal request to continue this hearing, but I'd like to hear from the other panel members before deciding.

MR. AMAN: This is Nathan Aman. Obviously, I think Steve and I are fairly new to all of this background with the attempted service and everything that's gone on with this.

But I tend to agree, especially in light of the fact that it's 2020 and everything that's gone on in the world, that we need to take extra caution to almost believe people's stories because we don't really know. This is not a normal world, it seems like, in terms of where people are practicing from and their offices. So, I agree with Richard on

giving him an opportunity to, in a month or whatever it is that works for everybody, to actually address some of these issues.

MR. BOUCHER: I'm fine with that too. I just wondered when we talked to his partner and left him the message, did we leave the detail that he was having a hearing on this day or did he get the information from somewhere else? Like, we finally found his emails that we were sending him or that he was served?

MR. GOSIOCO: Give us one second. I know Laura's computer has had some feedback whenever she is un-muted. She's the one who actually contacted Mr. Ogata, so I believe she's typing right now.

MR. BOUCHER: We've had Mr. Padgett in the past, correct?

MR. GOSIOCO: That is correct. As far as what was told when Ms. Peters spoke to Mr. Ogata, Mr. Padgett's criminal attorney, Mr. Ogata told her that he would give him the hearing information for today, so I assume that's how.

But as far as your second question is concerned, we did have another hearing for Mr. Padgett on or about June 8th. The panel there

unanimously recommended that Mr. Padgett be suspended for five years and be required to retake the bar exam for violations of RPC 1.2, 1.4, 1.8, 1.15, 3.3, 8.1 and 8.4 and that matter is currently pending approval at the supreme court.

And in that case as well that was actually the last time up until this morning I personally spoke to Mr. Padgett. That was on or about February 26th of this year. That was the last contact I had with him and subsequently that matter also defaulted.

MR. BOUCHER: I'm all right extending it, if that's what the panel decides.

MR. WILLIAMSON: Okay. Well, then, I guess let's -- it sounds like everybody's in agreement that we're going to reluctantly extend this.

Do we want to select a date now or do that off-line when everybody has a chance to consult their calendars? Again. I want to be mindful of everyone's time. Why don't we -- let's do this, so we can give our court reporter a break.

We are going to extend this. I guess while we're still on the record, I would recommend that the State Bar send the entire hearing packet with

all the exhibits to the Liege Drive address that Mr. Padgett has stated should be the one to be used both by -- maybe one packet by registered or certified mail and one packet by regular mail, realizing you wouldn't have a confirmation that the regular mail comes back, but at least you're using the address he's recommended.

Hopefully, he just signs the little green card on the packet and then there's no question. But so that we don't have another statement where there's a suggestion of a different means of service, I know basically SCR 109.2 at this point you can do, essentially, Rule 5, an NRCP 5-type service and just do regular mail. And so I think if you do regular mail to the Liege address, it will be sufficient given that's the address he's now told us to use.

But, again, just to be overly cautious, why don't you also do the certified or registered to that same address. That way that's covered and whenever we reconvene, whoever's here I think we'll have an unassailable record of service at that point and, with that, I guess, let's go off the record and we can discuss.

MR. GOSIOCO: Actually, sir, prior to going off the record, sir, would you be able to -- I would like to establish a deadline for him to respond to our complaint at this point.

MR. WILLIAMSON: Sure.

MR. GOSIOCO: I don't know what you had in mind.

MR. WILLIAMSON: That's a good point. So, if you're gonna provide him with the whole packet including the complaint, we may -- rescheduling this may change depending on whether he files an answer.

And so why don't we just give him 20 days or -- 21 days from the date of mailing, not the date at which the green card's signed or anything else, but 21 days from the date of mailing. Again, I'd recommend you mail that both by regular mail and by certified or registered.

And then 21 days after that, if he still has not responded, I think then we can proceed in a default fashion. If he does respond, we may need a new scheduling order and everything else.

MR. GOSIOCO: Did you want to stick with 21 days as opposed to 20, because I do know according to the Disciplinary Rules of Procedure under Rule 12

typically respondents are given 20 days to respond, or would you rather have 21?

MR. WILLIAMSON: Fair point. 20. I default to NRCP in my brain every time, so if the SCR is 20, let's stick with 20. Thank you.

MR. GOSIOCO: That's pursuant to Rule 12 of the Disciplinary Rules of Procedure.

MR. WILLIAMSON: Perfect, thank you.

Anything else while we're on the record, I think we can go off the record.

MR. AMAN: My only point while we're still on the record would be to additionally email it to him, since it appears that he sent this via email USPS, and just do a received request, or whatever it's called, just so we can cover every possible avenue.

MR. WILLIAMSON: I think that's a good suggestion. Okay.

MR. GOSIOCO: Thank you. We will do that. But as far as any other representations from the State Bar, we have nothing further.

MR. WILLIAMSON: All right. If there's nothing further from the panel, then let's go off the record. (End of proceedings at 9:36 a.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHRISTINA MARIE AMUNDSON, a Certified Court Reporter in and for the states of Nevada and California, do hereby certify:

That I was present via Zoom for the purpose of acting as Certified Court Reporter in the matter entitled herein;

That said transcript which appears hereinbefore was taken in verbatim stenotype notes by me and thereafter transcribed into typewriting as herein appears to the best of my knowledge, skill, and ability and is a true record thereof.

DATED: At Reno, Nevada, this 17th day of October 2020.

Christina Marie Amundson, CCR #641

-o0o-

Exhibit 4

Exhibit 4

FILED

OCT 27 2020

STATE BAR OF NEVADA

BY _____

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 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.

On or about June 21, 2020, copies of the Notice sent to Respondent's SCR 79 address via certified and first-class mail were returned to the State Bar of Nevada's Reno office marked "Return to Sender." On or about July 6, 2020, copies of the Notice sent to Respondent's alternate address were returned to the State Bar of Nevada'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 that Declaration was also emailed to Respondent's email address of brian@briancpadgett.com.

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

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

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

Merits of the Motion

SCR 105 does not expressly address the subject of amended complaints. Yet, SCR 119(3) provides that "the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure apply in disciplinary cases." The Disciplinary Rules of Procedure ("DRP") similarly provide that "the Nevada Rules of Civil Procedure (NRCP) and Nevada Rules of Appellate Procedure (NRAP) shall apply in disciplinary cases." DRP 1(c).

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."

According to the Motion, the State Bar seeks permission to amend the Complaint to add allegations that are direct continuations of, or directly pertain to, the allegations of the Complaint and/or the disciplinary process in the instant matter.

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.

Conclusion

The Hearing Chair hereby grants the Motion. The State Bar is directed to file the Amended Complaint within seven (7) days.

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

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

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

IT IS SO ORDERED.

Dated this 27th day of October, 2020.

Richard D. Williamson, Esq.
Hearing Panel Chair

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

Exhibit 5

Exhibit 5

Case No: OBC19-1111

FILED

OCT 27 2020

STATE BAR OF NEVADA

BY _____

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.

AMENDED COMPLAINT

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

PLEASE TAKE NOTICE that pursuant to Nevada Supreme Court Rule ("SCR") 105(2) a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada, 9456 Double R Blvd., Suite B, Reno, Nevada, 89521, **within twenty (20) days of service of this Complaint.** The procedure regarding service is addressed in SCR 109.

GENERAL ALLEGATIONS

1. Complainant, State Bar of Nevada (hereinafter "State Bar") alleges that BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), Nevada Bar No. 7474, is an active member of the State Bar, has been licensed to practice law in the State of Nevada since December 28, 2000, and at all times pertinent to this Complaint, had a principal place of business for the practice of law located in Clark County, Nevada.

2. Respondent has engaged in acts of misconduct in violation of the Nevada Rules of Professional Conduct ("RPC"), requiring disciplinary sanctions.

3. On or about September 3, 2019, the State Bar received a grievance from John Di Francesco, Robert Feron, and Jacalyn Feron (hereinafter "Grievants") alleging that Respondent engaged in misconduct.

4. Grievants have owned commercial property (hereinafter "Subject Property") along the Truckee River since approximately 1990.

5. On or about March 11, 2003, the Board of County Commissioners of Washoe County approved the Truckee River Flood Management Project ("TRFMP") for the purpose of flood management.

6. The TRFMP was paired with an Early Land Acquisition Plan ("ELAP") to acquire properties in the affected project areas.

7. On or about April 24, 2005, the Subject Property was added to the list of properties to be acquired under the ELAP.

8. On or about February 9, 2006, Grievants received a letter from the TRFMP stating its intent to acquire the Subject Property for the project.

9. On, about, or between May 12, 2006, and October 29, 2007, the TRFMP acquired nearly every property adjacent to the Subject Property.

10. Between 2006 and 2012, there were multiple negotiations between Grievants and the TRFMP regarding the acquisition of the Subject Property which never came to fruition.

11. On or about March 6, 2012, Grievants retained the Law Offices of Brian C. Padgett ("LOBCP") to represent them in a lawsuit related to the TRFMP.

12. On or about July 9, 2012, the LOBCP, acting on behalf of Grievants, filed a Complaint against Washoe County, the City of Reno, the City of Sparks, and the TRFMP alleging inverse condemnation and pre-condemnation damages claims.

13. Attorney Amy L. Sugden (hereinafter "Ms. Sugden"), an employee of Respondent, became Grievants' primary legal contact throughout the seven years of their representation.

14. On many occasions during the pendency of the case, Grievants expressed to Ms. Sugden their desire to move the lawsuit, discovery, and depositions toward a trial date.

15. Ms. Sugden consistently ignored or stalled on completing these tasks.

16. Despite Grievants' requests, a trial date was ultimately never set.

17. The Five-Year Rule, as set forth in Rule 41 of the Nevada Rules of Civil Procedure ("NRCP"), for Grievants' Complaint was set to expire on July 9, 2017.

18. Ms. Sugden states that she had a "gentleman's agreement with opposing counsel" to extend the Five-Year Rule.

19. There is no documentation or stipulation extending or tolling the expiration of the Five-Year Rule.

20. Grievants were not aware of the Five-Year Rule, and its application to their civil case, until Ms. Sugden sent them an email on or about September 16, 2017.

21. On or about April 20, 2018, Grievants instructed Ms. Sugden to take depositions and to file a Motion in Limine.

22. Although Grievants provided LOBCP with approximately $7,500 for travel expenses and depositions, no depositions were scheduled and/or taken.

23. Louise Watson (hereinafter "Ms. Watson"), an investigator with the State Bar, inquired about the $7,500 payment.

24. Respondent stated that Grievants had an unpaid balance with LOBCP, and that any funds received would have been applied to the outstanding balance.

25. Respondent stated that he would supplement his response with the Grievants' actual balance owed but failed to do so.

26. On or about June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Motion in Limine to Exclude Evidence After August 2012 ("Motion in Limine").

27. Although an "Index of Exhibits" was included in the Motion in Limine, no exhibits were attached.

28. On or about August 7, 2018, Grievants sent Ms. Sugden an email inquiring about the status of the Motion in Limine.

29. On or about August 9, 2018, Ms. Sugden stated that opposing counsel's opposition was due on July 26, 2018, and that nothing had been filed.

30. Ms. Sugden also stated that she "can't file a reply without an opposition, but I can do a notice of 'non-opposition' and hopefully the Court will then grant our request in short order."

31. On or about August 23, 2018, Grievants emailed Ms. Sugden stating that they checked the court docket and found that a non-opposition was never filed.

32. On or about August 27, 2018, Ms. Sugden informed Grievants that a notice of non-opposition was submitted, and that she would follow up with her assistant to get them a file-stamped copy.

33. The court's docket reveal that nothing was filed by either party in August 2018.

34. On or about September 5, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Supplement to the Motion in Limine attaching the missing twenty-six (26) exhibits.

35. Around December 2018, Respondent took over Ms. Sugden's duties as Grievants' primary contact.

36. Respondent claims that on or about December 4, 2018, he spoke with Grievants about potential settlement ranges.

37. According to Respondent, Grievants agreed to get another appraisal done, and that they were directed to get back to Respondent regarding appraisal and directions for further negotiations.

38. Respondent stated that after months of not hearing from Grievants, he was contacted by Grievants' new counsel.

39. On or about March 12, 2019, Grievants hired attorney Michael Sullivan (hereinafter "Mr. Sullivan") to substitute Respondent as attorney of record.

40. On or about April 8, 2019, Mr. Sullivan, acting on behalf of Grievants, filed a Stipulation and Order for Dismissal with Prejudice after discussing their options with him.

41. On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis (hereinafter "Notice") was filed.

42. The Notice was sent to Respondent's SCR 79 address (611 South Sixth Street, Las Vegas, NV 89101), as well as his alternate address (11274 Gammila Drive, Las Vegas, NV 89141) via first class and certified mail.

43. On or about 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".

44. On or about June 24, 2020, Respondent filed a Complaint in the Eighth Judicial District Court and listed as his address 611 South Sixth Street, Las Vegas, NV 89101.

45. On or about July 6, 2020, copies of the Notice sent to Respondent's alternate address were returned to the State Bar's Reno office marked "Return to Sender, Unable to Forward".

46. On or about July 13, 2020, an Entry of Default was filed.

47. A search of Respondent's public pleadings revealed a third address for Respondent (1672 Liege Drive, Henderson, NV 89012) (hereinafter "Liege address").

48. On or about September 25, 2020, the State Bar requested that Nationwide Legal attempt to personally serve Respondent at the Liege address.

49. Nationwide Legal attempted to personally serve Respondent at the Liege address on or about (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020, but to no avail.

50. On or about October 5, 2020, the State Bar contacted attorney Garrett Ogata (hereinafter "Mr. Ogata"), Respondent's criminal defense attorney, to see whether he would be willing to accept service on Respondent's behalf.

51. Mr. Ogata advised that he would contact Respondent.

52. On or about October 12, 2020, the State Bar followed up with Mr. Ogata.

53. Mr. Ogata advised that he sent Respondent a text informing him of the Formal Hearing details and provided the State Bar's contact information.

54. On or about October 15, 2020, a Formal Hearing for the instant matter was set to commence at 9:00am Pacific Standard Time.

55. On or about October 15, 2020, at approximately 8:11am Pacific Standard Time, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be continued.

56. Ultimately, the Formal Hearing was continued.

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

58. In his email, Respondent included a letter where he alleged a lack of notice of process.

59. Respondent stated that in or around February 2020, he made the decision to work full time from his home office, 1672 Liege Drive, Henderson NV 89102.

60. Respondent also stated that his secretary mailed a notice of change of his address on or about February 28, 2020.

61. The State Bar has no record of such a request.

Count One

Rule 1.15 (Safekeeping Property)

62. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 60 as if fully incorporated herein.

63. RPC 1.15 states:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.
> (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
> (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

> (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

64. Respondent negligently failed to keep accounting documents pertaining to Grievants after November 2016.

65. Respondent's misconduct resulted in injury and/or potential injury to his clients.

66. In light of the foregoing, including without limitation paragraphs 2 through 65, Respondent has violated RPC 1.15 (Safekeeping Property).

Count Two

Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)

67. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 65 as if fully incorporated herein.

68. RPC 5.1 states:

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

> (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> (2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

69. Respondent, having direct supervisory authority over Ms. Sugden, negligently failed to make reasonable efforts to ensure that Ms. Sugden conformed to the Rules of Professional Conduct in her representation of Grievants.

70. Respondent's misconduct resulted in injury and/or potential injury to his clients, as well as the profession.

71. In light of the foregoing, including without limitation paragraphs 2 through 70, Respondent has violated RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers).

Count Three

Rule 8.1 (Bar Admission and Disciplinary Matters)

72. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 70 as if fully incorporated herein.

73. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
> (a) Knowingly make a false statement of material fact; or
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

74. Respondent intentionally failed to respond to a lawful demand for information from Ms. Watson by failing to provide a supplement to his previously submitted incomplete response.

75. Respondent's misconduct resulted in injury to the profession.

76. In light of the foregoing, including without limitation paragraphs 2 through 75, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Four

Rule 8.1 (Bar Admission and Disciplinary Matters)

77. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 75 as if fully incorporated herein.

78. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of material fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

79. Respondent intentionally made a false statement of material fact by stating that Ms. Sugden was not subject to his supervision.

80. Respondent's misconduct resulted in injury to the profession.

81. In light of the foregoing, including without limitation paragraphs 2 through 80, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Five

Rule 8.4 (Misconduct)

82. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 80 as if fully incorporated herein.

83. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

84. Respondent intentionally engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation by claiming to have informed the State Bar of his address change in or around February 2020.

85. Respondent's misconduct resulted in injury to the profession.

86. In light of the foregoing, including without limitation paragraphs 2 through 85, Respondent has violated RPC 8.4 (Misconduct).

Count Six

Rule 8.4 (Misconduct)

87. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 85 as if fully incorporated herein.

88. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

89. Respondent intentionally violated or attempted to violate the Rules of Professional Conduct through the acts of another and/or knowingly assisted or induced his secretary to violate or attempt to violate the Rules of Professional Conduct by submitting an affidavit from his secretary claiming that she mailed a notice of change of his address to the State Bar.

90. Respondent's misconduct resulted in injury to the profession.

91. In light of the foregoing, including without limitation paragraphs 2 through 90, Respondent has violated RPC 8.4 (Misconduct).

WHEREFORE, Complainant prays as follows:

92. That a hearing be held pursuant to SCR 105;

93. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120(1); and

94. That pursuant to SCR 102, such disciplinary action be taken by the Northern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

DATED this 27th day of October, 2020.

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 6

Exhibit 6

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

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

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

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

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this MOTION TO VACATE DECISIONS OR ORDERS FILED AFTER FIRST COMPLAINT INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS AMENDED COMPLAINT. This Motion 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: November 16, 2020.

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

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

On October 11, 2019, Respondent notified the State Bar that his law firm's server had been breached and approximately half of the Firm's archived emails were deleted from the server without his knowledge. **Exhibit 1.** This included many of those emails needed to respond to the State Bar's investigation and subsequent Complaint that is the subject of this Motion.

Because of the breach and impaired email service subsequent to the breach, it was recommended by retired FBI Special Agent and Certified Fraud Investigator, John M. Elliott, that the Law Firm should work out of Appellant's home office at 1672 Liege Drive in Henderson, Nevada, full time until the server could be secured and certain cases personally involving Respondent were concluded. **Exhibit 2.** It was believed that the breach came from former employees Amy Sugden and Ian Ritchie and Respondent informed the Bar of this both in his October 11, 2019 correspondence and his mailed February 24, 2020 response to the State Bar Complaint in two separate matters. **Exhibit 3.**

Respondent's law firm computer server was breached again in February 2020, and it was found that many PDF and Word documents were also stripped from the server. At that time, the

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

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

decision was then made to take Mr. Elliott's direction and move full time to Respondent's home office and work from flash drives and computer hard drives.

As the Law Office made the move, Respondent's secretary, Connie P. Little mailed the State Bar a notice of change of address for USPS mail purposes – temporarily changing the Law Firm address to Respondent's home office at 1672 Liege Drive, Henderson, Nevada 89012. **Exhibit 4.** For the rest of 2020, Law Firm mail was received at Appellant's home office. **Exhibit 5.**

Shortly thereafter, in March 2020, Respondent's office email stopped delivering mail to Law Firm staff. Respondent tried to restore the law office email quickly but 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. **Exhibit 6.**

Subsequently, and before the Firm could receive repair service, Respondent lost an uncle, the computer technician quarantined for COVID and Appellant got sick himself. **Exhibit 7.** It wasn't until September 2020, before the Firm could safely get tech repair service and the email became operable and began to repopulate itself. **Exhibit 8.** It is still not known what, if any, emails are missing and failed to repopulate.

Respondent was not served with a copy of the Complaint in OBC19-1111 or any subsequent documents in this matter until October 2020 – despite providing Complainant with Respondent's new office address in February 2020.[1] Without proper notice of deadlines and

[1] In October 2020, Counsel for Complainant says that for the first time he went online to the Eighth Judicial District Court's website and found Respondent's home office address from Respondent's filed pleadings.

However, he also says saw that Respondent filed a Complaint this summer and the pleading paper had the downtown law office address on it. It should be noted that working from Respondent's home office is a temporary condition and therefore letterhead and template addresses were not permanently changed on letterhead and pleading paper. This is no different that the Complainant noting in all Bar emails that staff is working from home during the

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

filings, Respondent has been substantially prejudiced and unable to defend himself because he had no knowledge of this case. When Respondent was made aware of the proceedings, he got in touch with Assistant Bar Counsel via correspondence and explained the facts as set forth herein. While the disciplinary hearing was held in abeyance, Associate Bar Counsel requested proof of Respondent's uncle's passing, Respondent's own medical condition in violation of HIPAA laws and more. All this despite Respondent being a member of the Bar in good standing for approximately 20 years.

Then, well before the time given to prove up these contentions, Associate Bar Counsel sought leave to file an Amended Complaint which was granted even though the rules do not allow for same. This Amended Complaint added charges without giving Respondent the opportunity to prove up his contentions. Further, this Amended Complaint did not come with a list of members ("Designation of Hearing Panel Members) of the Disciplinary Board pursuant to Rule 13 of the Disciplinary Rules of Procedure. This left Respondent unable to participate in the makeup of the hearing panel and automatically violates his due process rights in this case going forward.

LEGAL ARGUMENT

1. NEVADA COURTS HAVE A LONG HISTORY OF PROTECTING THE DUE PROCESS RIGHTS OF PARTICIPANTS IN CIVIL ACTIONS

Nevada courts have a history of protecting the due process rights of participants in civil actions. Decisions made in absence of one party are not favored by the law. As stated by the Nevada Supreme Court in *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 561, 598 P.2d 1147 (1979):

> [It is] the basic policy of each case decided upon its merits. In the normal course of events, justice is best served by such a policy. Because of this policy, the general observation may be made that an appellate court is more likely to affirm a lower court's ruling setting

COVID-19 pandemic and still keeping the 3100 W. Charleston Blvd. address on their email and letterhead even though they note they might not receive mail at that address. **Exhibit 9.**

aside a default judgment than it is to affirm a refusal to do so.

95 Nev. at 563 (Emphasis in original). *See also McNair v. Rivera*, 110 Nev. 463, 471, 874 P.2d 1240 (1994).

Furthermore, Section 1019 of the *Nevada Civil Practice Manual* (Third Edition 1993) entitled "The Notice of Hearing" states: "The failure to give notice and provide a hearing is a fatal procedural error because without proper notice the judgment is void and will be set aside. *Id.* at 158.

There is long standing precedent in our country that requires a judgment taken without any notice be set aside. The Supreme Court of the United States has held that a meritorious defense need not be shown where a default or default judgment is entered without any notice to the defendant. *See Peralta v. Heights Center, Inc.*, 485 U.S. 80, 108 S. Ct. 896, 99 L.Ed. 2d. 75 (1988). Nevada has long held to this precept as an essential due process right for all parties and it is applicable here to protect the due process rights of the Respondent.

2. THE HEARING PANEL'S DECISIONS SINCE FILING THE FIRST COMPLAINT – INCLUDING THE AMENDED COMPLAINT - SHOULD BE VACATED PURSUANT TO NRCP 60(B)(1)

"The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." *See Rodriguez v. Fiesta Palms, LLC,* 134 Nev. 654, 656, 428 P.3d 255,257 (2018), *quoting Nev. Indus. Dev., Inc. v. Benedetti,* 103 Nev. 360, 364, 741 P.2d 802 (1987). NRCP 60(b) provides the Court with authority to relieve Respondent from the hearing panel's decision:

> On motion and upon such terms as are just, the court may relieve a party on a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

See NRCP 60(b)(l).

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

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

"Once a proper showing of mistake, inadvertence, surprise or excusable neglect has been made by the movant . . . Rule 60(b) is to be liberally interpreted in favor of setting aside judgments." *Id., citing Smith v. Widman Trucking & Excavating, Inc.,* 627 F.2d 792, 795 (7th Cir.1980). "The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b)." *See Rodriguez,* 134 Nev. 654, 656, 428 P.3d 255, 257 (2018). "'Its determination will not be disturbed on appeal absent an abuse of discretion."' *Id., quoting Cook v. Cook,* 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

The threshold inquiry for this Court to determine whether relief under NRCP 60(b)(l) is appropriate is to analyze the *Yocham* Factors: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." *Id.* at 657, 428 P.3d at 257, *quoting Yocham v. Davis,* 98 Nev. 484, 486-487, 653P.2d 1215, 1216-1217 (1982), overruled for other reasons; *Epstein v. Epstein,* 113 Nev. 1401, 1405,950 P.2d771, 772 (1997) (tender of a meritorious defense to claim for relief was no longer required to support a NRCP 60(b)(l) motion). "[W]hen evaluating an NRCP 60(b)(l) motion, the district court must consider the state's underlying basic policy of deciding cases on the merits whenever possible." *Id., quoting Stoecklein v. Johnson Elec.,* Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

A. Analysis of *Yocham* factors.

1. PROMPT APPLICATION TO REMOVE THE JUDGMENT

Respondent quickly moved to gain relief from the hearing panel's decisions as soon as he was made aware of them. This Motion was filed within the mandatory time requirements set forth in NRCP 60(c)(1), which mandates motions filed pursuant to NRCP 60(b) "must be made within a reasonable time - and ...(3) no more than six (6) months after the date of the

proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. *Id.*

2. THE ABSENCE OF AN INTENT TO DELAY THE PROCEEDINGS

Respondent is not trying to delay the proceedings. As soon as he found out about the proceedings he got in touch with the Complainant and requested to participate fully in this matter according to his due process rights to do so. If anything, granting Respondent's relief requested - which case law overwhelmingly favors - will ensure the case is heard on the merits and will require fewer motions for remediation purposes.

3. LACK OF KNOWLEDGE OF PROCEDURAL REQUIREMENTS

This requirement is not applicable under the specific circumstances under which Respondent brought his Motion.

4. GOOD FAITH

This Motion is brought before the Disciplinary Chair in good faith and for justifiable cause.

3. THE HEARING PANEL'S DECISIONS SINCE FILING THE FIRST COMPLAINT – INCLUDING THE AMENDED COMPLAINT - SHOULD BE VACATED PURSUANT TO NRCP 60(B)(6)

Persuasive Federal law interpreting FRCP 60(b)(6) strongly suggests that it is appropriate for the Disciplinary Chair to vacate the Amended Complaint and all decisions or rulings coming after the filing of the Complaint pursuant to NRCP 60(b)(6). The threshold requirements for the Court to consider the Respondents' relief requested is discussed above. As such, courts have concluded "[t]he amendments to NRCP 60(b) incorporate FRCP 60(b)(6), which enables courts to provide relief when it is justified and NRCP(b)(1 - 5) do not apply. 27-JUN NVLAW 8. Therefore, notwithstanding NRCP 60(b)(1), this is a case where

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

extraordinary circumstances warrant the vacation of the Amended Complaint and all decisions or rulings coming after the filing of the Complaint addressed in this Motion to prevent a manifest injustice.

4. THE AMENDED COMPLAINT SHOULD BE DISMISSED PURSUANT TO NRCP 12(B)(3)

The Rules of Disciplinary Procedure do not provide for the filing an Amended Complaint. Therefore, the Amended Complaint should be set aside in its entirety for insufficient process pursuant to NRCP 12(b)(3).

5. ALLOWING COMPLAINANT TO FILE AN AMENDED COMPLAINT DOES NOT CURE THE PREJUDICE SUFFERED BY RESPONDENT

The Complainant failed to serve the original Complaint upon Respondent at the outset of this case (despite the Respondent's notice of address change). The Complainant then took a default judgment against Respondent without his knowledge and proceeded forward with the case against him – right to the doorstep of a disciplinary hearing. All decisions and rulings made since the start of this case have occurred without the participation of the Respondent and must be set aside pursuant to NRCP 60(b)(1) and (6) and 12(b)(3).

The filing of an Amended Complaint (with additional charges added) by Complainant and allowing Respondent to answer the amended pleading does not cure the prejudice to Respondent as set forth above. Therefore, all pleadings in this case must be set aside pursuant to NRCP 60(b)(1), (6) and NRCP 12(b)(3) in order to ensure that Respondent is not prejudiced and the case is heard on the merits.

/ / /

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

CONCLUSION

Based upon the facts and argument set forth herein 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 16th day of November, 2020.

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

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2020, I served the foregoing

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

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. BRIAN C. PADGETT, ESQ. Nevada Bar No. 7474 Respondent,	Case No. OBC19-1111

SUPPLEMENT 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 SUPPLEMENT TO MOTION TO VACATE DECISIONS OR ORDERS FILED AFTER FIRST COMPLAINT INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS AMENDED COMPLAINT. The Supplement consists of the signed Declaration of

John M. Elliott of Elliott Investigative Services, Inc. and it is attached hereto as "Exhibit A".

Dated: November 18, 2020.

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

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

Exhibit 7

Exhibit 7

Case No: OBC19-1111

FILED

NOV 17 2020

STATE BAR OF NEVADA

BY _____

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.

NOTICE OF INTENT TO ENTER DEFAULT

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

PLEASE TAKE NOTICE THAT unless the State Bar receives a responsive pleading in the above-captioned matter by **December 10, 2020**, it will proceed on a default basis and ***the charges against you shall be deemed admitted.*** Supreme Court Rule 105 (2) states in relevant part:

> A copy of the complaint shall be served on the attorney and it shall direct that a verified response or answer be served on bar counsel within 20 days of service . . . In the event the attorney fails to plead, **the charges shall be deemed admitted**; provided, however, that an attorney who fails to respond within the time provided may thereafter obtain permission of the appropriate disciplinary board chair to do so, if failure to file is attributable

to mistake, inadvertence, surprise, or excusable neglect. (Emphasis added.)

Additional copies of the First Amended Complaint previously served upon you accompanies this Notice.

DATED this 17th day of November, 2020.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: /s/ Gerard Gosioco
/s/ Gerard Gosioco (Nov 17, 2020 10:28 PST)

Gerard Gosioco, Assistant Bar Counsel
Nevada Bar No. 14371
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
(702) 382-2200

Padgett. NIED_111720

Final Audit Report 2020-11-17

Created:	2020-11-17
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAdmmxHZcrb7Yz4gUVVdMPxV5A0Mg_zayZ

"Padgett. NIED_111720" History

Document created by Laura Peters (laurap@nvbar.org)
2020-11-17 - 6:25:14 PM GMT- IP address: 71.94.199.108

Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2020-11-17 - 6:25:29 PM GMT

Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2020-11-17 - 6:28:00 PM GMT- IP address: 68.104.81.227

Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2020-11-17 - 6:28:21 PM GMT - Time Source: server- IP address: 68.104.81.227

Agreement completed.
2020-11-17 - 6:28:21 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Notice of Intent to Enter Default** along with a copy of the First Amended Complaint filed October 27, 2020, 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 17th day of November 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 8

Exhibit 8

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 OPPOSITION TO RESPONDENT'S MOTION TO VACATE FILINGS, ORDERS AND DECISIONS - INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENT

COMES NOW, the State Bar of Nevada (hereinafter "State Bar"), by DANIEL M. HOOGE, Bar Counsel, through GERARD GOSIOCO, Assistant Bar Counsel, and hereby submits the attached Points and Authorities in Opposition to Respondent's Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint and Supplement.

This Opposition 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.

MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

On or about May 13, 2020, the State Bar filed its Complaint against 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.

On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis was filed. On or about July 13, 2020, an Entry of Default was filed. The State Bar sent a copy of the Notice to Respondent's SCR 79 address, as well as Respondent's 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 or about 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 or about 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 or about 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 also emailed to Respondent's email address of brian@briancpadgett.com.

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

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

On or about October 15, 2020, a Formal Hearing for the instant matter was set to commence at 9:00am Pacific Standard Time. On or about October 15, 2020, at approximately 8:11am Pacific Standard Time, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be continued. Ultimately, the Formal Hearing was continued. Respondent's email was the first correspondence he had with the State Bar and/or ABC Gosioco since on or about February 26, 2020, which pertained to Respondent's other cases, OBC19-0604 and OBC19-0798.

On or about October 22, 2020, the State Bar filed its Motion for Leave to File Amended Complaint. The Amended Complaint charged Respondent with the following RPC violations: 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 or about October 27, 2020, the State Bar's motion was granted. Accordingly, the Amended Complaint was filed that same day, and pursuant to DRP Rule 14, Respondent's Answer deadline was on or about November 16, 2020.

On or about November 16, 2020, Respondent filed a Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint, and a Supplement on or about November 18, 2020 (collectively referred to as "Motion"). The State Bar responds as follows.

ARGUMENT

In his motion, Respondent alleges that his right to due process has been infringed upon in the instant disciplinary proceedings. Although Respondent correctly states that Nevada courts have a history of protecting due process rights, Respondent's argument is nonetheless misguided. *See In re Schaeffer*, 25 P.3d 191, 204, *mod.* 31 P.2d 365 (Nev. 2000) (citing *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988) (noting that due process requirements must be met in bar proceedings)).

In the context of administrative pleadings, the Nevada Supreme Court held that due process requirements of notice are satisfied where the parties are sufficiently apprised of the nature of the proceedings so that there is no unfair surprise and that the opportunity to prepare a defense is what defines due process. *See Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008). Here, Respondent's argument fails as he was sufficiently apprised of the nature of the proceedings so that there is no unfair surprise.

The State Bar has attempted to ensure that Respondent was apprised of the nature of these proceedings through various means. In the instant matter, the State Bar has sent pleadings via certified and/or first class mail to three different addresses: (1) 611 South 6th Street, Las Vegas, NV 89101; (2) 11274 Gammila Drive, Las Vegas, NV 89141; and (3) 1672 Liege Drive, Henderson, NV 89102. A copy of the Complaint was sent to the 6th Street address. *See* Exhibit 1. That copy was returned to the State Bar's office. *Id.* A copy of the Notice of Intent to Proceed on a Default Basis was sent to both the 6th Street address as well as the Gammila Drive address. *See* Exhibit 2. Similarly, both of those copies were sent back to the State Bar's office. *Id.* Lastly, copies of the Amended Complaint were sent to the 6th Street, the Gammila Drive, and the Liege Drive addresses. *See* Exhibit 3. All three copies – including the copy sent to the Liege Drive address – were returned to the State Bar's office. *Id.*

The State Bar, through Nationwide Legal, also attempted to personally serve Respondent with pleadings filed in the instant matter at the Liege Drive address on the following dates: (1) September 29,

2020[1]; (2) October 1, 2020; and (3) October 3, 2020. *See* Exhibit 4. It is worth noting that despite Respondent's complaints about lack of notice, Respondent was aware of when the formal hearing was set to commence based on his email to ABC Gosioco. Respondent's due process rights have not been violated as there was no unfair surprise; Respondent was sufficiently apprised of the nature of the proceedings. Therefore, Respondent's argument fails.

Even assuming an unfair surprise existed, Respondent's argument still fails as has been provided an ample amount of time to sufficiently prepare a defense to the disciplinary violations he has been charged with. *See Dutchess*, 124 Nev. at 712, 191 P.3d at 1167. The formal hearing was scheduled for October 15, 2020. After having no correspondence with Respondent since on or about February 26, 2020, Respondent sent an email less than one hour prior to the hearing's commencement to request a continuance. In response to Respondent's request, the Panel Chair granted a continuance of the formal hearing to "provide Respondent with every opportunity to defend himself." *See* Exhibit 5.

The State Bar was well within its right to file an amended complaint in the instant matter. *See generally*, *In re Sewell*, 1998 Nev. LEXIS 56 (1998) (demonstrating that the practice of filing amended complaints in disciplinary proceedings is accepted). The Amended Complaint which contained three additional charges was filed on or about October 27, 2020. Once a complaint is filed, Respondent has twenty (20) calendar days to file a verified response or answer. DRP 14. As such, Respondent's deadline to respond was on or before November 16, 2020. Even though Respondent had the opportunity to prepare a defense and file a response to the Amended Complaint or a dispositive motion pursuant to DRP 15, Respondent filed the instant motion instead.

Respondent had an ample amount of time to respond to the charges against him. Respondent had twenty days from the date the Amended Complaint was filed to respond to the charges contained therein.

[1] The process server, Sean Keseday, noted that although no one answered the door, he stated that could see movement inside the residence and that there was a white BMW in the driveway.

Moreover, Respondent had an additional twelve (12) days to respond to the first three (3) charges in the Amended Complaint as no changes were made to those counts from the original Complaint. The evidence suggests that Respondent is merely attempting to stall even after being given time to respond. Respondent's due process rights were not violated as he had more than enough opportunity to prepare a defense. Therefore, Respondent's argument fails.

CONCLUSION

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint and Supplement be DENIED.

DATED this 2nd day of December, 2020.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **OPPOSITION TO RESPONDENT'S MOTION TO VACATE FILINGS, ORDERS AND DECISIONS – INCLUDING THE AMENDED COMPLAINT; MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENT** was served via email to:

1. Rich Williamson, Esq. (Board Chair): rich@nvlawyers.com
2. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

Dated this 2nd day of December, 2020.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 9

Exhibit 9

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

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

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

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.

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

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

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).

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

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

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

/ / /

/ / /

/ / /

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

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

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

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

Exhibit 10

Exhibit 10

From: Brian Padgett
To: Laura Peters
Cc: Gerard Gosioco
Subject: Motion for Extension of Time to File Answer; Verified Response
Date: Thursday, December 10, 2020 5:34:29 PM
Attachments: Motion For Extension Of Time - Dec 10 2020 - 5-16 PM.pdf

---

Ms. Peters,

Would you please forward this to the Disciplinary Chair.

Thank you,

Brian C. Padgett

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

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

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

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

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

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

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

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.

/ / /

/ / /

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 10TH day of December, 2020.

BRIAN C. PADGETT

State of Nevada County of Clark
SUBSCRIBED AND SWORN BEFORE ME
this 10 day of December, 2020. By Brian Padgett

NOTARY PUBLIC

AMANDA MCKIERNAN
Notary Public - State of Nevada
County of Clark
APPT. NO. 19-1357-1
My App. Expires Jan. 29, 2023

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

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

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

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

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

From: Laura Peters
To: Brian Padgett; Eric Stovall (eric@ericstovalllaw.com)
Cc: Gerard Gosioco
Subject: RE: Motion for Extension of Time to File Answer; Verified Response
Date: Friday, December 11, 2020 8:43:00 AM
Attachments: Motion For Extension Of Time - Dec 10 2020 - 5-16 PM.pdf

---

Good Morning Gentlemen:

Please find the file-stamped Motion for Extension of time submitted for filing yesterday evening.

Thank you,

Laura

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Thursday, December 10, 2020 5:34 PM
To: Laura Peters <LauraP@nvbar.org>
Cc: Gerard Gosioco <gerardg@nvbar.org>
Subject: Motion for Extension of Time to File Answer; Verified Response

Ms. Peters,

Would you please forward this to the Disciplinary Chair.

Thank you,

Brian C. Padgett

Exhibit 11

Exhibit 11

Case No.: OBC19-1111

FILED

DEC 14 2020

STATE BAR OF NEVADA

BY _____

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 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

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

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

IT IS SO ORDERED.

Dated this 14th day of December 2020.

NORTHERN NEVADA
DISCIPLINARY BOARD

By: _____
ERIC A. STOVALL, Esq.
Disciplinary Board Chair

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

Exhibit 12

Exhibit 12

FILED

JAN 05 2021

STATE BAR OF NEVADA

BY _____

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.

On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis was filed. The State Bar sent a copy of the Notice to Respondent's SCR 79 address, as well as Respondent's 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 or about 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 or about 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 or about 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 also emailed to Respondent's email address of brian@briancpadgett.com.

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

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

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

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

On or about October 22, 2020, the State Bar filed its Motion for Leave to File Amended Complaint. The Amended Complaint charged Respondent with the following RPC violations: 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 or about October 27, 2020, the State Bar's motion was granted. Accordingly, the Amended Complaint was filed that same day, and pursuant to DRP Rule 14, Respondent's responsive pleading deadline was on or about November 16, 2020.

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

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

///

///

ORDER

IT APPEARING that the Respondent, BRIAN C. PADGETT, Esq., is in default for failure to plead or otherwise defend as required by law, **DEFAULT** is hereby entered against Respondent.

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

IT IS SO ORDERED.

Dated this 5th of January, 2021.

Richard Williamson (Jan 5, 2021 15:10 PST)

Rich Williamson, Esq., Hearing Panel Chair
Northern Nevada Disciplinary Board

Submitted by:
STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

/s/ Gerard Gosioco

GERARD GOSIOCO
Assistant Bar Counsel
Nevada Bar No. 14371
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102

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

Adobe Sign

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

Exhibit 13

Exhibit 13

From: Rich Williamson
To: Gerard Gosioco; Brian Padgett
Cc: Laura Peters; Nathan Aman; Steve Boucher (steveboucher@sbcglobal.net)
Subject: RE: State Bar of Nevada v. Brian C. Padgett, Esq.
Date: Thursday, January 14, 2021 11:21:21 AM

Mr. Gosioco,

That sounds good. Thank you for your attention to this matter.

Best regards,

Rich Williamson

_____
Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

From: Gerard Gosioco [mailto:gerardg@nvbar.org]
Sent: Thursday, January 14, 2021 11:20 AM
To: Rich Williamson; Brian Padgett
Cc: Laura Peters; Nathan Aman; Steve Boucher (steveboucher@sbcglobal.net)

Subject: RE: State Bar of Nevada v. Brian C. Padgett, Esq.

Mr. Williamson,

As requested, I will file a comprehensive response addressing the two procedural issues mentioned below on or before Thursday, January 28, 2021. If you have any further questions or concerns, please feel free to contact me at any time. Thank you.

Gerard Gosioco

From: Rich Williamson <rich@nvlawyers.com>
Sent: Thursday, January 14, 2021 11:13 AM
To: Brian Padgett <brian.padgett@icloud.com>; Gerard Gosioco <gerardg@nvbar.org>
Cc: Laura Peters <LauraP@nvbar.org>; Nathan Aman <naman@renonvlaw.com>; Steve Boucher (steveboucher@sbcglobal.net) <steveboucher@sbcglobal.net>
Subject: RE: State Bar of Nevada v. Brian C. Padgett, Esq.

Mr. Padgett and Mr. Gosioco,

Before setting the formal hearing, there are a few procedural issues that I would like to address:

First, Mr. Padgett asserts that he filed a Motion for Extension of Time to File Answer and Verified Response on December 10, 2020. Did the bar receive this filing on December 10, 2020? If not, does the bar have an opposition or other response to that document and/or the assertion that it was filed? In addition, does the bar have any arguments against considering the verified response that was included (and that has now been circulated)?

Second, although there is no formal motion, Mr. Padget has inquired about a potential stay of this proceeding? Does the bar oppose that request? If so, does the bar intend on filing an opposition?

I do not want to elevate form over substance, but it is also difficult for the panel to know whether items mentioned in email correspondence are ripe for decision or if they will be the subject of future briefing. I also want to be mindful of the panel's schedule. Therefore, before resetting the formal hearing, I request that the bar file a comprehensive response on these two points by Thursday, January 28, 2021. Pursuant to DRP 16(c), Mr. Padgett will then have five (5) judicial days to file a reply on these two items.

Alternatively, if the parties would like to expedite a decision on these issues, I am open to scheduling a telephonic hearing to allow both parties to orally argue their positions on these matters. Please let me know if either of you would like to request such a hearing in lieu of briefing. Otherwise, please follow the briefing schedule in DRP 16 and submit both matters to me after the time for briefing has expired. In that event, I will merely decide the matter on the papers.

Best regards,

Rich Williamson

_____
Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

From: Brian Padgett [mailto:brian.padgett@icloud.com]
Sent: Wednesday, January 13, 2021 5:30 PM
To: Laura Peters; Rich Williamson; Nathan Aman; Steve Boucher (steveboucher@sbcglobal.net)
Cc: Gerard Gosioco
Subject: Re: State Bar of Nevada v. Brian C. Padgett, Esq.

All,

Is there a provision allowed under the Bar Rules to request a stay of this proceeding?

The reason I ask is that I would like 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. I think that may have a direct impact on how this case is handled because, as it stands right now, I understand that I have no opportunity to participate in any substantive processes in this case other than the right to attend the hearing and be heard orally in limited fashion.

I ask that the Panel consider a stay of this proceeding until we have direction from the Supreme Court.

If I am correct on the notice issue - which is similar in this case - we could avoid trying this case twice.

Thank you for your consideration.

Brian Padgett

On January 13, 2021 at 3:49 PM, Laura Peters <LauraP@nvbar.org> wrote:

> Looks pretty open; if we can avoid Thursday's that would be good – we have a standing meeting every Thursday afternoon.
>
> Let me suggest:
>
> March 2, 2021; March 9, 2021 and/or March 16, 2021. Gentlemen?
>
> Thanks for your consideration,
> Laura
>
> ---
>
> **From:** Brian Padgett <brian.padgett@icloud.com>
> **Sent:** Wednesday, January 13, 2021 3:36 PM
> **To:** Laura Peters <LauraP@nvbar.org>
> **Cc:** Rich Williamson <rich@nvlawyers.com>; Nathan Aman <naman@renonvlaw.com>; Steve Boucher (stevebоucher@sbcglobal.net) <stevebоucher@sbcglobal.net>; Gerard Gosioco <gerardg@nvbar.org>
> **Subject:** Re: State Bar of Nevada v. Brian C. Padgett, Esq.
>
> Ms. Peters,
>
> I am not available in February 2021. What is available in March 2021?
>
> Thank you,
>
> Brian Padgett
>
> On January 7, 2021 at 10:23 AM, Laura Peters <LauraP@nvbar.org> wrote:
>
> > Good Morning Gentlemen:
> >
> > Happy New Year! I've been asked to contact you with potential hearing dates for the continued hearing in above-referenced matter. Please consider the following or, in the alternative, provide dates that would accommodate your schedules:

- Monday, February 15, 2021 with a pre-hearing conference 7-10 days beforehand.
- Wednesday, February 17, 2021 with a pre-hearing conference 7-10 days beforehand.
- Tuesday, February 23, 2021 with a pre-hearing conference 7-10 days beforehand.

Thank you,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel
Ph: 775-824-1382
Email: laurap@nvbar.org

Exhibit 14

Exhibit 14

LAW OFFICES OF BRIAN C. PADGETT
Brian C. Padgett, ESQ.
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702) 497-3204
Facsimile: (702) 368-0123
Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF BRIAN C. PADGETT, ESQ. NEVADA BAR NO. 7474	)	Case No. 81918

APPELLANT'S OPENING BRIEF

I. NRAP 26.1 DISCLOSURE

The undersigned certifies that the following are persons or 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.

1. Parent corporations and/or any publicly-held company that owns 10% or more of the party's stock:

   NONE.

2. Law Firms that have represented Appellant Brian C. Padgett:

   NONE.

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES

Cases

Other Authorities

IV. JURISDICTIONAL STATEMENT

A. Basis of Jurisdiction

This is an appeal from the Notice of Entry of Decision, filed July 30, 2020, (hereinafter "Decision") by Respondent State Bar of Nevada against Appellant Brian C. Padgett. This Court has jurisdiction over this appeal pursuant to Article 6, section 21 (1) of the Nevada Constitution and the Nevada Rules of Appellate Procedure (hereinafter "NRAP"), Rule 3D(b & c).

B. Timeliness of Appeal

Appellant Brian C. Padgett filed a Motion to Extend Time to File Opening Brief (First Request) on November 9, 2020 seeking a thirty (30) day extension of time – until December 9, 2020 - within which to file Appellant's Opening Brief. That request was granted by the Court.

Appellant then filed a Motion to Extend Time to File Opening Brief (Second Request) seeking a fourteen (14) day extension of time to file the Opening Brief until December 23, 2020 due to ongoing medical issues. This request was granted by the Court.

Appellant filed a Motion to Extend Time to File Opening Brief (Third Request) seeking a sixteen (16) day extension of time to complete the Opening Brief and deliver it to the Court on or before January 8, 2021. This request was approved by the Court.

Thereafter, Appellant filed a Motion to Extend Time to File Opening Brief (Fourth Request) seeking a three (3) day extension of time to complete the Opening Brief and deliver it to the Court on or before January 11, 2021. As of January 11, 2021 this Request was pending approval from the Court.

Finally, Appellant sought a final Motion to Extend Time to File Opening Brief (Fifth Request) seeking a one (1) day extension of time to complete the Opening Brief and deliver it to the Court on or before January 12, 2021. As of January 12, 2021 this Request was pending approval from the Court.

Pending Court approval of the two outstanding Motions to Extend Time, filing of the Opening Brief has been made within 64 days after service of the order. *See* NRAP 3D(d).

C. Appeal from Final Order of Judgment

This is an appeal from a Notice of Entry of Decision. *See* NRAP 3D(c)(1)(2).

V. ROUTING STATEMENT

Both the Constitution and NRAP 17(a)(3) require this appeal be heard by the Supreme Court. Nev. Const. Art. 6, Sec. 21(1).

VI. STATEMENT OF ISSUES PRESENTED FOR REVIEW

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

VII. STATEMENT OF THE CASE

This is an appeal from a disciplinary hearing held by the State Bar of Nevada without the presence of Appellant who had no notice of the hearing nor opportunity to defend himself on or after February 28, 2020.

VIII. STATEMENT OF FACTS

In the summer of 2019, Appellant was advised that two Bar Complaints had been filed against him. Prior to the filing of these Complaints, Appellant had only had one Bar Complaint filed against him during the entire course of his 20 year legal career in Nevada – and he successfully defended against it.

One case no. OBC19-0604, was filed by a client whose case was handled by attorney Amy Sugden who worked as an independent contractor for Appellant and attorney Kirby C. Gruchow, Jr. from the law firm of Leach, Johnson, Song and Gruchow. The other case no. OBC19-0798 was filed against Appellant by a former employee of Appellant's Nevada licensed marijuana company, Ian Ritchie. This complaint was filed with the assistance of attorney Amy Sugden who previously represented Appellant and his law firm and worked with the Firm for nine (9) years. Both Ms. Sugden and Mr. Ritchie were terminated for cause by Appellant in March 2019 when it was found they were assisting outside investors in the fraudulent corporate takeover of Appellant's Nevada licensed marijuana company.

While responding to the State Bar investigation, Appellant learned that his law firm's server had been breached and approximately half of the Firm's archived emails were deleted from the server without Appellant's knowledge. Appellant then notified the State Bar on October 11, 2019 as several of those emails needed to respond to the State Bar's investigations were deleted without authorization. *Exhibit A*.[1]

Thereafter, Appellant hired Elliott Investigative Services, Inc. and its President John M. Elliott to investigate the actions of Ms. Sugden and Mr. Ritchie,

[1] Attached to the Appellant's Opening Brief are supporting exhibits rather than citations to an Appendix as Appellant was not given notice of the disciplinary hearing and, therefore, the exhibits in the Appendix were created without his input.

among others related to racketeering activity and the fraudulent takeover of Appellant's Nevada licensed marijuana company. Mr. Elliott is a retired Special Agent with 25 years in service to the FBI. He is also a Certified Fraud Investigator. His firm focuses on the investigation of large scale racketeering activities and RICO violations. After reviewing the server breach, Mr. Elliott recommended that the Law Firm should work out of Appellant's home office at 1672 Liege Drive in Henderson, Nevada until the server could be secured and cases involving Appellant's marijuana licenses were concluded. *Exhibit B.*

On February 24, 2020, Appellant mailed a response to the State Bar Complaint for case nos. OBC19-0604 and OBC19-0798. *Exhibit C.* The response detailed the basis for Mr. Elliott's investigations and asked for a stay of proceedings until the investigation could be completed because it was believed there was a nexus between the State Bar complaints filed and the activities Mr. Elliott was investigating.[2]

Appellant's law firm computer server was breached again at the end of February 2020, and it was found that many PDF and Word documents were also stripped from the server. At that time, the decision was made to move full time to Appellant's home office and work from flash drives and computer hard drives.

---

[2] After Appellant's law office email was restored in September, 2020, Appellant found no correspondence indicating Associate Bar Counsel ever responded to Appellant's request to stay proceedings.

As the Law Office made the move to Henderson from downtown Las Vegas, Respondent's secretary, Connie P. Little mailed the State Bar a notice of change of address, temporarily changing the Law Firm address to Respondent's home office at 1672 Liege Drive, Henderson, Nevada 89012. *Exhibit D.* For the rest of 2020, the Law Firm's mail was received at Appellant's home office and this address was also available on the Clark County District Court Portal. *Exhibit E.*

Shortly thereafter, in early March 2020, Appellant's office email server stopped delivering email to Law Firm staff. Appellant tried to restore the law office email quickly but found, with COVID-19, it became extremely difficult to schedule tech support because tech firms were flooded with demands from many companies to help their employees work from home. *Exhibit F.*

Subsequently, and before the Firm could receive repair service, the computer technician who was scheduled to provide service was quarantined for COVID-19, Appellant lost an uncle and then got sick himself. However, during this time and while waiting for service, Appellant got a second email account as an interim stopgap and used that for filings on the District Court Portal.

It wasn't until September 2020, before the Firm received tech repair service and the Law Firm email account became operable and began to repopulate itself. It is still not known what, if any, emails are missing and failed to repopulate.

Despite the notice of change of Law Firm address to 1672 Liege Drive, Henderson, Nevada 89012 which was mailed to the State Bar at the end of February 2020 and despite this address and new email being available on the District Court Portal, the State Bar continued to send mail to Appellant's 611 S. 6th Street downtown law office address and to a home he had not owned in more than a year at 11274 Gammila Drive, Las Vegas, Nevada 89141. Even though these mailings were returned to sender, the State Bar continued to send mailings to the same addresses. These mailings included the selection of Hearing Panel members, Notice of Intent to Take Default, Entry of Default, the Notice of Disciplinary Hearing and Disciplinary Findings, among others.

Appellant spent the year battling racketeering activities meant to strip him of his marijuana licenses and the loss of a family member during the COVID-19 pandemic as well as his own personal health challenges. Appellant had no reason to believe his request had not been granted by the State Bar and believed that was why he received no further correspondence on these cases. However, the disciplinary process continued without his knowledge, without observing his due process rights and he was given no opportunity to participate in the selection of the Hearing Panel nor to defend himself against the charges levied at him.

After the Disciplinary Hearing was held without Appellant, Associate Bar Counsel admitted he went onto the Clark County District Court Portal and found Appellant's contact information.

IX. SUMMARY OF THE ARGUMENT:

1. Nevada Courts have a long history of protecting the Due Process rights of participants in civil actions.
2. The Respondent erred when it continued forward with proceedings against Appellant without providing appropriate due process to Appellant despite the fact that Appellant tendered his new mailing address to Respondent.
3. The Respondent erred and substantially prejudiced Appellant by failing to disclose a clear and present conflict of interest between a hearing panel member and Appellant.
4. The Respondent violated Appellant's Equal Protection Rights and substantially prejudiced Appellant by holding only one disciplinary hearing for two distinctly separate State Bar complaints.

X. LEGAL ARGUMENT

On an appeal from an adverse Hearing Panel determination that was taken absent the Appellant, this Court "may reserve such action or take any alternative action provided in this subsection." Nev. Const. art. 6, sec. 21(1). This Court "is

not bound by the Panel's conclusions of law. *In re Varain*, 114 Nev. 1271, 1276, 969 P.2d 305, 309 (1998). Factual determinations are reviewed to determine "whether the evidence in the record as a whole provides clear and convincing support" for the Panel's findings." *Id.*

This Court must exercise its independent judgment to ensure the sanction provided by the Panel is appropriate based on the Panel's findings of facts and this Court's independent review of the law based on those facts. *Goldman v. Nevada Com'n on Judicial Discipline*, 108 Nev. 251, 267-68, 830 P.2d 107, 118.

A. NEVADA COURTS HAVE A LONG HISTORY OF PROTECTING THE DUE PROCESS RIGHTS OF PARTICIPANTS IN CIVIL ACTIONS

Nevada courts have a history of protecting the due process rights of participants in civil actions. Decisions made in absence of one party are not favored by the law. As stated by the Nevada Supreme Court in *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 561, 598 P.2d 1147 (1979):

> [It is] the basic policy of each case decided upon its merits. In the normal course of events, justice is best served by such a policy. Because of this policy, the general observation may be made that an appellate court is more likely to affirm a lower court's ruling setting aside a default judgment than it is to affirm a refusal to do so.

95 Nev. at 563 (Emphasis in original). *See also McNair v. Rivera*, 110 Nev. 463, 471, 874 P.2d 1240 (1994).

Furthermore, Section 1019 of the *Nevada Civil Practice Manual* (Third Edition 1993) entitled "The Notice of Hearing" states: "The failure to give notice and provide a hearing is a fatal procedural error because without proper notice the judgment is void and will be set aside. *Id.* at 158.

There is long standing precedent in our country that requires a judgment taken without any notice be set aside. The Supreme Court of the United States has held that a meritorious defense need not be shown where a default or default judgment is entered without any notice to the defendant. *See Peralta v. Heights Center, Inc.*, 485 U.S. 80, 108 S. Ct. 896, 99 L.Ed. 2d. 75 (1988). Nevada has long held to this precept as an essential due process right for all parties and it is applicable here to protect the due process rights of the Appellant.

1. **Lack of Due of Process from Respondent Substantially Prejudiced Appellant and Renders the Judgment Void And It Must Be Set Aside**

On February 24, 2020, Appellant mailed a response to the State Bar Complaint for case nos. OBC19-0604 and OBC19-0798. This response detailed the basis for Mr. Elliott's investigation and asked for a stay of proceedings until the investigation could be completed because it was believed there was a nexus between the State Bar complaints filed and the racketeering activities being investigated as described above.

When the Law Firm made the move to Appellant's Henderson home office from downtown Las Vegas, Respondent's secretary, Connie P. Little mailed the State Bar a notice of change of address, temporarily changing the Law Firm address to Respondent's home office at 1672 Liege Drive, Henderson, Nevada 89012. For the rest of 2020, the Law Firm's mail was received at Appellant's home office as this address was also available on the Clark County District Court Portal.

Shortly thereafter, in early March 2020, Appellant's office email stopped delivering mail to Law Firm staff and Appellant had to create a backup email address for filing pleadings on the District Court Portal.

Despite the notice of change of Law Firm address to 1672 Liege Drive, Henderson, Nevada 89012 mailed to the State Bar at the end of February 2020 and despite this address and new email being available on the Clark County District Court Portal, the State Bar continued to send mail to Appellant's 611 S. 6th Street address and to a home he had not owned in more than a year at 11274 Gammila Drive, Las Vegas, Nevada 89141. Even though these mailings were returned to sender, the State Bar continued to send them to the same addresses. These mailings included the selection of Hearing Panel members, Notice of Intent to Take Default, Entry of Default, the Notice of Disciplinary Hearing and Disciplinary Findings, among others.

Despite Appellant mailing the Notice of Address Change to the State Bar and the availability of that contact information along with new email address available on the District Court Portal, Appellant was given no notice that proceedings moved forward without him.

Section 1019 of the *Nevada Civil Practice Manual* (Third Edition 1993) entitled "The Notice of Hearing" states: "The failure to give notice and provide a hearing is a fatal procedural error because without proper notice the judgment is void and will be set aside. *Id.* at 158.

Due process requires a judgment taken without any notice be set aside. The Supreme Court of the United States has held that a meritorious defense need not be shown where a default or default judgment is entered without any notice to the defendant. *See Peralta v. Heights Center, Inc.*, 485 U.S. 80, 108 S. Ct. 896, 99 L.Ed. 2d. 75 (1988).

After Appellant mailed in his response to the State Bar Complaints on February 24, 2020, he was given no further notice of the proceedings moving forward against him and the disciplinary hearing was held without him. Due Process requires that the judgment taken against Appellant in his absence be set aside. *Id.*

2. The Disciplinary Hearing Decision Should Also Be Set Aside Because Respondent Failed to Disclose a Substantial Conflict of Interest Between Appellant and a Hearing Panel Member

There is an important public interest that State Bar of Nevada disciplinary hearing panel members be unbiased and disinterested when selected to sit in judgment of one of their peers. If there is a conflict, those members have a duty of candor to disclose that conflict because it could adversely impact the lawyer being judged. NRPC Rule 3.3.

Appellant was not noticed of the proceedings moving forward after February 2020 and so was not able to participate in the Disciplinary Hearing. However, when Appellant did get the filed pleadings – after a decision had been made against him in both cases – these pleadings showed an obvious and profound conflict between the lay Hearing Panel member and the Appellant.

Peter Ossowski, the layperson in the three member Hearing Panel in this matter works for the Nevada Department of Transportation ("NDOT") and has worked on their "Project Neon" – a widening of the I-15.

Appellant has made his career defending landowners in trial against NDOT when they take private property for public works projects like Project Neon. Appellant's law firm is currently representing landowners in the path of Project Neon and NDOT may have liability for Just Compensation due and owing to

several landowner clients of Appellant in excess of $50 Million dollars. As a result, NDOT and their employees have every reason to make sure Appellant's ability to practice law and defend landowners is hindered.

This was not the first time NDOT has tried to disrupt Appellant's ability to practice law: Between 2002-2005 NDOT was taking property in Reno, Nevada for a public works project. As is Appellant's custom, he sent out notices to these landowners impacted by the project of their constitutional rights for the taking and damaging of their properties. NDOT filed a bar complaint against Appellant for sending out the mailings and sought to have Appellant suspended from practicing law at a time when NDOT was in the process of taking private landowners' property for this Reno, Nevada public works project.[3]

Approximately fifteen years later, it is impossible not to see the conflict of interest in this matter and understand that NDOT, through Mr. Ossowski, would have similar motivation to see Appellant suspended because of their prospective liability to Appellant and his clients in the Project Neon corridor. It is not reasonable that Mr. Ossowski was asked to be on the Hearing Panel and the State Bar did not know of his profession or his employer, NDOT. It is also unlikely that Appellant's area of practice was not known to the Hearing Panel. Appellant's law

---

[3] Appellant successfully defended himself against the NDOT Bar Complaint filed regarding a Reno, Nevada public works project.

firm is one of only two law firms in the State of Nevada that exclusively represents landowners in the area of eminent domain against condemning authorities such as NDOT. And yet, no one on the Hearing Panel disclosed this conflict of interest between Mr. Ossowski and Appellant in violation of their Duty of Candor - NRPC Rule 3.3.

Because this conflict of interest was not disclosed during the entirety of the disciplinary proceedings - in violation of NRPC Rule 3.3 - the only adequate remedy to cure the substantial prejudice to Appellant is to void the Hearing Panel Decision and the Notice of Entry of Decision and both must be set aside.

3. Respondent Violated Appellant's Equal Protection Rights By Holding One Disciplinary Hearing For Two Separate State Bar Complaints Involving Different Complainants and Facts

Respondents scheduled Appellant's Disciplinary Hearing to cover both case nos. OBC19-0604 and OBC19-0798 on the same day. In fact, these cases were also heard simultaneously by the same Hearing Panel.

Appellant is not aware of any State Bar disciplinary process that allows for two separate complaints to be heard simultaneously by the same Hearing Panel. This is a violation of Appellant's Equal Protection rights. It would be impossible for bias not to accrue against Appellant from one case into the next with the same

Hearing Panel and result in a greater penalty than might otherwise accrue, if any. That is the case here.

As Respondents have failed to provide Appellant with equal treatment to his peers under the laws, the only adequate remedy to cure the substantial prejudice to Appellant is to void the Hearing Panel Decision and the Notice of Entry of Decision and both must be set aside.

XI. CONCLUSION

The Respondent's Notice of Entry of Decision is void and must be set aside.

Appellant was given no notice of the Respondent's disciplinary proceedings moving forward and was given no opportunity to defend himself in violation of his Due Process rights. The Respondent also failed to disclose a substantial conflict of interest between a Hearing Panel member and Appellant. Finally, Respondent also held its disciplinary hearing against Appellant centered around two separate Complaints with different facts and different Complainants in violation of Appellant's Equal Protection rights.

DATED this 12th Day of January 2021.

LAW OFFICES OF BRIAN C. PADGETT

BRIAN C. PADGETT
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Appellant in Proper Person

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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font and Time New Roman.
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 proportionally spaced, has a typeface of 14 points or more and contains 4169 words.
3. Finally, I hereby certify that I have read this appellate 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.

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

DATED this 12th day of January, 2021.

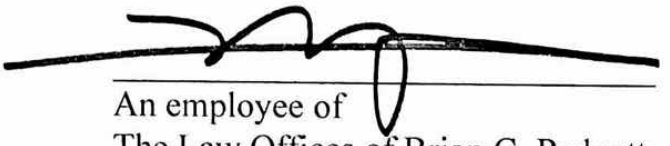
LAW OFFICES OF BRIAN C. PADGETT

BRIAN C. PADGETT
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Appellant in Proper Person

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that I am an employee of the LAW OFFICES OF BRIAN C. PADGETT, and that on the 12th day of January, 2021, I did serve by way of electronic filing, a true and correct copy of the foregoing **APPELLANT'S OPENING BRIEF** on the following:

Gerard Gosioco, Esq.
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, Nevada 89102



An employee of
The Law Offices of Brian C. Padgett

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S COMPREHENSIVE RESPONSE TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR** was served via email to:

1. Rich Williamson, Esq. (Panel Chair): rich@nvlawyers.com
2. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 28th day of January, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

FILED

FEB 09 2021

STATE BAR OF NEVADA

BY _____

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 REGARDING RESPONDENT'S MOTION FOR EXTENSION OF TIME TO FILE ANSWER, VERIFIED RESPONSE, AND INFORMAL REQUEST TO STAY PROCEEDINGS**

This matter commenced on May 13, 2020, when Complainant, State Bar of Nevada ("State Bar") filed a Complaint against Respondent Brian C. Padgett, Esq. ("Respondent"). Pursuant to Supreme Court Rule ("SCR") 79(1), Respondent is required to provide to the State Bar his permanent mailing address, permanent telephone number, and current email address. In accordance with SCR 79, SCR 109(1), and Rule 11(b)(1) of the Disciplinary Rules of Procedure ("DRP"), the State Bar properly served the Complaint on the Respondent.

Pursuant to DRP 17, an initial conference took place on July 21, 2020. The Hearing Panel Chair and Assistant Bar Counsel Gerard Gosioco ("ABC Gosioco") participated in the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the pre-hearing conference held on October 12, 2020.

This case was scheduled for a formal hearing to occur on October 15, 2020. That morning, Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing. Ultimately, the Hearing Panel Chair granted Respondent's request for a continuance. On October 27, 2020, the Hearing Panel Chair granted the State Bar leave to file an amended complaint.

On November 16, 2020, Respondent filed a Motion to Vacate Filings, Orders and Decisions – Including the Amended Complaint; Motion to Dismiss Amended Complaint ("Motion to Vacate"). The State Bar opposed that Motion to Vacate, and Respondent filed a reply brief. Eric Stovall, Esq., the Northern Nevada Disciplinary Board Chair, filed an Order denying Respondent's Motion to Vacate on December 14, 2020.

On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response (the "Motion for Extension"). On January 13, 2021, Respondent also informally requested a stay of the proceedings. Accordingly, on January 14, 2021, the Hearing Panel Chair requested a response from the State Bar on both the Motion for Extension and the informal request to stay. On January 28, 2021, the State Bar filed its Comprehensive Response to Procedural Issues Raised by Panel Chair. On Friday, February 5, 2021, Respondent filed his Reply to Procedural Issues Raised by Panel Chair.

Having reviewed the briefs submitted in support of and in opposition to the Motion for Extension, having considered the applicable law, and for good cause appearing, the Hearing Panel Chair hereby finds and concludes as follows: Respondent's request to stay the proceedings is denied; Respondent's Motion for Extension should be granted in part and denied in part; the default currently entered against Respondent is set aside; Respondent is granted an extension of seven (7) calendar days from the date of this order in which to file his verified response or answer to the Amended Complaint; and within seven (7) calendar days thereafter, the parties shall set this case for a formal hearing.

IT IS SO ORDERED.

Dated this 9th day of February, 2021.

Richard D. Williamson, Esq.
Hearing Panel Chair

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Regarding Respondent's Motion for Extension of Time to File Answer, Verified Response, and Informal Request to Stay Proceedings** was served electronically upon:

brian.padgett@icloud.com;

rich@nvlawyers.com; and

gerardg@nvbar.org.

Dated this 9th day of February, 2021.

Laura Peters

_____

Laura Peters, an employee of
the State Bar of Nevada

Case No: OBC19-1111

FILED

FEB 19 2021

STATE BAR OF NEVADA

BY

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.	**AMENDED SCHEDULING ORDER**

Pursuant to Rule 17 of the Disciplinary Rules of Procedure, the Hearing Chair Rich Williamson, Esq., met telephonically with Gerard Gosioco, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada and Respondent on February 22, 2021 at 10 a.m. primarily to reschedule a formal hearing date in this matter. Initial disclosures, discovery and pre-hearing motion deadlines, a date for the pre-hearing conference, and the concerns about a live versus remote hearing held via Zoom were also discussed.

During the Scheduling Conference, it was agreed that:

1. All documents may be served electronically, unless otherwise required by the Nevada Supreme Court Rules. Respondent's email address on file with the Office of Bar

Counsel is brian.padget@icloud.com. The State Bar address for receiving documentation is laurap@nvbar.org with a carbon copy sent to gerardg@nvbar.org.

2. The State Bar of Nevada's initial disclosures will be produced electronically on or before **March 1, 2021**, by 5 p.m.

3. Respondent will provide initial disclosures which shall be served on or before **March 9, 2021** by 5 p.m.

4. The parties shall file any Motions on or before **April 5, 2021**. Oppositions to the Motions should be filed on or before **April 19, 2021**, and any Replies in Support of the Motions should be filed on or before **April 26, 2021**. Fully briefed Motions will be addressed at the Pre-Hearing Conference.

5. At or before **April 28, 2021** by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing.

6. Respondent will submit his evaluation of the conditions relevant to holding the hearing remotely versus holding a live hearing by **April 21, 2021**; the State Bar will have an opportunity to respond by **April 28, 2021** when a final decision will be made by the Panel Chair.

7. The parties shall participate in a telephonic Pre-Hearing Conference with Chair Williamson on **May 19, 2021** at 10:00 a.m. Pursuant to Rule 23 of the Disciplinary Rules of Procedure, at the Pre-hearing conference (i) the parties shall discuss all matters needing attention prior to the hearing date, (ii) the Chair may rule on any motions or disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by either bar counsel or respondent as well as stipulated statement of facts, if any.

8. The hearing for this matter shall be set for 1 day, to wit **May 28, 2021**, starting at 9:00 a.m. and will take place either via Zoom or in person, pursuant to public health recommendations. The State Bar will, if needed, provide a meeting identification number prior to the hearing.

9. The Findings of Fact, Conclusion of Law, and Recommendation or Order in this matter shall be due **June 28, 2021**.

Based on the parties' verbal agreement to the foregoing during the telephonic Initial Conference and good cause appearing, IT IS SO ORDERED.

Dated this 19th day of February 2021.

NORTHERN NEVADA DISCIPLINARY BOARD

Richard D. Williamson (Feb 22, 2021 14:19 PST)

Rich Williamson, Esq.
FORMAL HEARING CHAIR

Submitted By:

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

By: /s/ Gerard Gosioco (Feb 22, 2021 13:49 PST)

Gerard Gosioco, Assistant Bar Counsel
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102
702-382-2200

Amended Scheduling Order_022221

Final Audit Report 2021-02-22

Created:	2021-02-22
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAARgr7UB1BHyQAlqDqshWYic2mGYBGs40

"Amended Scheduling Order_022221" History

Document created by Laura Peters (laurap@nvbar.org)
2021-02-22 - 9:47:48 PM GMT- IP address: 71.94.199.108

Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2021-02-22 - 9:48:26 PM GMT

Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2021-02-22 - 9:48:59 PM GMT- IP address: 24.253.18.70

Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2021-02-22 - 9:49:16 PM GMT - Time Source: server- IP address: 24.253.18.70

Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature
2021-02-22 - 9:49:17 PM GMT

Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2021-02-22 - 10:16:40 PM GMT- IP address: 97.92.108.234

Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
Signature Date: 2021-02-22 - 10:19:19 PM GMT - Time Source: server- IP address: 97.92.108.234

Agreement completed.
2021-02-22 - 10:19:19 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Amended Scheduling Order** was served electronically upon:

brian.padgett@icloud.com; rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 22nd day of February 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

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. BRIAN C. PADGETT, ESQ. Nevada Bar No. 7474 Respondent,	Case No. OBC19-1111

REPLY TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this REPLY TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR. This Motion is based upon the following Memorandum of Points and Authorities.

Dated: February 5, 2020.

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

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

Respondent filed his Motion to Vacate on November 16, 2020.

ABC Gosioco filed a Notice of Intent to File Default Judgment on November 17, 2020.

Respondent's Motion for Extension of Time (containing a Verified Response) was filed on December 10, 2020.

ARGUMENT

1. MOTION FOR EXTENSION OF TIME TO FILE ANSWER / VERIFIED RESPONSE

Respondent filed his Motion to Vacate on November 16, 2020. After this filing, ABC Gosioco filed a Notice of Intent to File Default Judgment on November 17, 2020. According to the Notice of Intent, the last day to file a Verified Response or Answer was December 10, 2020.

Respondent filed the Motion to Extend only because it seemed that ABC Gosioco did not recognize the Motion to Vacate as tolling the time to file an Answer due to his subsequent filing of the Notice of Intent to Take Default Judgment just one day after Respondent filed his Motion to Vacate.

When Respondent filed the Motion to Extend, he included the Verified Response in an abundance of caution in case the Disciplinary Chair did not grant the Motion to Extend.

Therefore, the Verified Response was filed in place of a Verified Answer. Respondent can stand on the Verified Response or will file a Verified Answer to Amended Complaint if requested by the Chair.

2. REQUEST TO STAY PROCEEDINGS UNTIL SUPREME COURT RULING

It was unclear whether the Panel Chair was going to allow Respondent to participate in discovery after filing an Answer to the Amended Complaint or whether the Panel Chair was going to send Respondent right to a hearing after Respondent filed an Answer (or Verified Response).

Therefore, in an abundance of caution, Respondent filed his Motion to Vacate. The Motion to Vacate was denied and scheduling for a hearing date began in earnest.

However, this same issue regarding lack of Notice and whether Respondent should be able to fully participate in the disciplinary hearing which had previously gone forward without him is currently being addressed by the Nevada Supreme Court via an Appellant's Opening Brief filed by this Respondent.

ABC Gosioco's Respondent's Answering Brief is due on February 11, 2021. Appellant's Reply Brief is due on March 11, 2021. All briefing will be completed in the next five weeks and an Opinion from the Supreme Court will be forthcoming. As one of the issues the Court will address is the same as in issue here, it makes sense to conserve resources, get a ruling from the Supreme Court and then proceed forward.

/ / /

/ / /

/ / /

/ / /

CONCLUSION

Based upon the facts and argument set forth herein it is respectfully requested that the Chair accept Respondent's Verified Response filed on December 10, 2020 or give him two weeks to file an Answer. It is also requested that all proceedings in this matter be stayed until the Supreme Court rules on core issues of notice and ability to participate in discovery similar to outstanding issues herein.

Dated this 5th day of February, 2021.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2021, I served the foregoing

REPLY TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR

by emailing a true and correct copy thereof to the State Bar of Nevada.

_____

Employee of the Law Offices of BRIAN C. PADGETT

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

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

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

RESPONDENT'S VERIFIED RESPONSE TO AMENDED COMPLAINT

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this RESPONDENT'S VERIFIED RESPONSE TO AMENDED COMPLAINT ("Response"). This Response is made pursuant to State of Nevada Disciplinary Rules of Procedure 14.

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. 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.

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 16TH day of February, 2021.

BRIAN C. PADGETT

SUBSCRIBED AND SWORN BEFORE ME
this ___ day of February, 2021.

NOTARY PUBLIC

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2021, I served the foregoing:

RESPONDENT'S VERIFIED RESPONSE TO AMENDED COMPLAINT

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

Employee of the Law Offices of BRIAN C. PADGETT

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. BRIAN C. PADGETT, ESQ. Nevada Bar No. 7474 Respondent,	Case No. OBC19-1111

OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

RESPONDENT BRIAN C. PADGETT, ESQ. hereby objects to the Complainant's initial disclosure of witnesses and documents as follows:

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

WITNESSES

1. Amy L. Sugden

Respondent objects to Ms. Sugden being called as a witness as she was legal counsel for Respondent Brian C. Padgett and the Law Offices of Brian C. Padgett and the scope of her testimony as listed by Complainant would result in a breach of attorney-client privilege.

2. Tyler Trewet
Nationwide Legal Nevada, LLC

Respondent objects to this process server giving witness testimony as Mr. Trewet was identified as giving false testimony against Respondent in Supreme Court Case No. 81918. *See Appellant's Reply Brief, Exhibit H.*

Respondent further reserves the right to object to the testimony of this witness should MacDonald Highlands Security confirm he also gave similar false testimony in this case.

3. Judith Mae All
Nationwide Legal Nevada, LLC

Respondent reserves the right to object to the testimony of this witness should MacDonald Highlands Security confirm this witness gave false testimony in this case.

4. Sean Keseday
Nationwide Legal Nevada, LLC

Respondent reserves the right to object to the testimony of this witness should MacDonald Highlands Security confirm this witness gave false testimony in this case.

5. The Respondent reserves the right to object to any and all witnesses listed by Complainant prior to the final May 2021 hearing in this matter.

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

OBJECTION TO DOCUMENTS

1. Respondent reserves the right to object to all documents listed by Complainant, including but not limited to the authenticity and/or genuineness of their documents listed.

DATED this 5th day of April, 2021.

LAW OFFICES OF BRIAN C. PADGETT

By: /s/*Brian C. Padgett*
BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474

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

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2021, I served the foregoing:

OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

by emailing a true and correct copy thereof to the State Bar of Nevada.

/s/*Brian C. Padgett*

Employee of the Law Offices of BRIAN C. PADGETT

FILED

APR 15 2021

STATE BAR OF NEVADA

BY _____

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 GRANTING STATE BAR'S MOTION TO COMPEL**

On March 25, 2021, Complainant, State Bar of Nevada (hereinafter, "State Bar") filed a Motion to Compel Production ("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 served a copy of the Complaint on Respondent. On or about June 9, 2020, the State Bar filed a Notice of Intent to Proceed on a Default Basis. On July 10, 2020, the State Bar filed a Declaration of Service According to SCR 109(1) in Support of Entry of Default, which set forth the State Bar's efforts to serve Respondent. Accordingly, on or about July 13, 2020, the Hearing Chair signed, and the State Bar filed, an Entry of Default against Respondent.

Pursuant to DRP 17, an initial conference took place on July 21, 2020. The Hearing Chair and Assistant Bar Counsel Gerard Gosioco ("ABC Gosioco") participated in the call. Respondent

failed to appear for the call. Similarly, Respondent was not present for the pre-hearing conference held on October 12, 2020.

This case was scheduled for a formal hearing to occur on October 15, 2020. That morning, Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing. Ultimately, the Hearing Panel Chair granted Respondent's request for a continuance. On October 27, 2020, the Hearing Chair granted the State Bar leave to file an amended complaint.

On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response (the "Motion for Extension"). On February 9, 2021, the Hearing Chair granted in part and denied in part the Motion for Extension by giving Respondent an extension of an additional seven (7) calendar days following the date of that order.

Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), the Hearing Chair met telephonically with ABC Gosioco and Respondent on February 22, 2021. During that scheduling conference, the parties and the Hearing Chair agreed that Respondent would provide his initial disclosures on or before March 9, 2021 by 5:00 p.m. This deadline was also set forth in the Amended Scheduling Order, which the Hearing Chair signed on February 22, 2021, and which was served on all parties that same day. The deadlines for initial disclosures were also consistent with DRP 17(a).

On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting an extension of his initial disclosure deadline until March 12, 2021. The State Bar objected to that request. Ultimately, the Hearing Chair primarily granted Respondent's request for an extension and gave Respondent "until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing." (Motion at Ex. 4.)

On March 11, 2021, at 4:38 p.m., Respondent produced his initial disclosures to the State Bar. (Motion at Ex. 6.) Unfortunately, the only named witness was the Respondent himself. (Id.)

In addition, Respondent's initial disclosures stated that he expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted "c/o Law Offices of Brian C. Padgett." Respondent failed to produce the identities of any of his witnesses, other than himself. Respondent's initial disclosures also vaguely referenced several categories of documents:

> 1. All expert reports, including blow-ups, if applicable, shall be forthcoming.
> 2. Any and all attestations from witnesses listed herein.
> 2.[*sic*] All documents obtained, generated or produced by Respondent in the DiFrancesco case, shall be forthcoming.
> 4. Case history of the Law Offices of Brian C. Padgett.
> 5. Correspondence between Respondent and the State Bar of Nevada.
> 6. Respondent reserves the right to object to all documents listed by Complainant, including but not limited to the authenticity and/or genuineness of their documents listed.

(Motion at Ex. 6, p. 3.)

Respondent did not provide any further specificity of the witnesses or documents he intends to use. Accordingly, within minutes of receiving Respondent's initial disclosures, ABC Gosioco responded and asked for the names of Respondent's witnesses. (Motion at Ex. 7.) Respondent did not respond to this request. Therefore, on March 16, 2021, ABC Gosioco again wrote to Respondent in an attempt to resolve this matter. (Motion at Ex. 8.) In response, Respondent stated:

> I have put out the request of former staff to see who is available. When they advise I will tell you.
> I used the placeholder as an interim move.
> Please be advised I may add or subtract witnesses as necessary. Just like process servers.

(Id.) In response, ABC Gosioco explained that "Witness names and documents need to be provided at the time Disclosures are due. Please submit those by ***tomorrow*** at ***5:00pm***." (Id. (emphasis in original).)

Nine (9) days after this exchange, Respondent still had not complied. Therefore, the State Bar filed the instant Motion. To date, Respondent has not opposed the Motion and there is no

indication on the record that Respondent has rectified his failure to provide complete disclosures, as required by the procedural rules and the Amended Scheduling Order.

Merits of the Motion

DRP 17(a) requires that "Respondent shall disclose all witnesses and documents no later than fifteen (15) calendar days after the initial case conference." The Amended Scheduling Order also provided that Respondent would provide his initial disclosures on or before March 9, 2021 by 5:00 p.m. Although the Hearing Chair provided a short extension to this requirement, the Hearing Chair required Respondent "to disclose all witnesses and documents he intends to use in this case." (Motion at Ex. 4.) The Hearing Chair also warned Respondent: "*Any information not timely disclosed may be subject to exclusion from the hearing.*" (Id. (emphasis added).)

Rule 16.1(a)(1)(A)(i) of the Nevada Rules of Civil Procedure ("NRCP") also provides that a disclosure of witness must contain "the name and, if known, the address and telephone number" of each individual likely to have discoverable information, including for impeachment or rebuttal.[1]

Moreover, DRP 17(a)(2) requires that "[a]ll disclosed documents shall be provided and identified with bates-numbering."

Here, Respondent failed to timely provide complete initial disclosures and then willfully failed to amend or supplement his incomplete disclosures when the State Bar attempted to confer with him regarding those failures. Instead, Respondent argumentatively (and confusingly) retorted that "I may add or subtract witnesses as necessary. Just like process servers." (Motion at Ex. 8.)

DRP 1(b) explains that the purpose of the disciplinary rules "is to expedite disciplinary hearings through procedures designed to streamline presentation of evidence, facilitate coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper administration of attorney regulation." "Litigation is not a game. It is the time-honored method of

---

[1] The Nevada Rules of Civil Procedure apply in disciplinary cases. SCR 119(3); DRP 1(c).

seeking the truth, finding the truth, and doing justice." Haeger v. Goodyear Tire & Rubber Co., 906 F. Supp. 2d 938, 941 (D. Ariz. 2012).

"If a party fails to make a disclosure required by Rule 16.1(a), 16.2(d), or 16.205(d), any other party may move to compel disclosure and for appropriate sanctions." NRCP 37(a)(3)(A). Likewise,

> If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:
>
> (A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;
>
> (B) may inform the jury of the party's failure; and
>
> (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).

NRCP 37(c)(1).

Given that more than one month has passed since Respondent's initial disclosures were due, and the parties' final disclosures are now due in less than two weeks, Respondent's failure to comply with his obligations has prejudiced the State Bar and is certainly not harmless. Moreover, given the Respondent's response to ABC Gosioco's attempts to confer, it is clear that Respondent's failure to provide adequate disclosures is willful.

Conclusion

Respondent has failed to comply with DRP 17, NRCP 16.1, and the Amended Scheduling Order. Respondent also failed to oppose the Motion and the record reveals no justification for Respondent's actions. Overall, the Hearing Chair finds good cause to grant the Motion. Therefore, the Hearing Chair hereby grants the Motion.

Respondent may testify as a witness at the hearing, but may not call any other witnesses except to provide testimony addressing the aggravating and mitigating factors set forth in SCR 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any

witnesses in lieu of testimony. Respondent may not introduce any expert reports at the hearing. Respondent may not introduce any documents obtained, generated or produced by Respondent in "the DiFrancesco case" unless those documents are expressly re-produced to the State Bar in this action with bates-numbering by 5:00 p.m. on Monday, April 19. Likewise, Respondent may not introduce any case history of the Law Offices of Brian C. Padgett or any correspondence between Respondent and the State Bar unless those documents are expressly produced to the State Bar with bates-numbering by 5:00 p.m. on Monday, April 19. Except as expressly set forth above, Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.

IT IS SO ORDERED.

Dated this 15th day of April, 2021.

Richard D. Williamson, Esq.
Hearing Panel Chair

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Granting State Bar's Motion to Compel** was served electronically upon:

brian.padgett@icloud.com; rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 15th day of April 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

FILED

APR 19 2021

STATE BAR OF NEVADA

BY _____

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 OPPOSITION TO RESPONDENT'S OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

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 Opposition to Respondent's Objection to Complainant's Initial Disclosures of Witnesses and Documents.

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.

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT PROCEDURAL HISTORY

On October 27, 2020, the State Bar filed its Amended Complaint. *See* Exhibit 1. On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response ("Motion for Extension"). *See* Exhibit 2. On February 9, 2021, the Panel Chair granted in part and denied in part the Motion for Extension by giving Respondent an extension of an additional seven (7) days following the date of that order. *See* Exhibit 3.

Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), the Panel Chair met telephonically with Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") and Respondent on February 22, 2021. *See* Exhibit 4. During that scheduling conference, the parties and the Panel Chair agreed that Respondent would provide his initial disclosures on or before March 9, 2021, by 5:00 p.m. *Id*. This deadline was also set forth in the Amended Scheduling Order, which the Panel Chair signed on February 22, 2021, and which was served on all parties that same day. *Id*. The deadlines for initial disclosures were also consistent with DRP 17(a).

On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting an extension of his initial disclosure deadline until March 12, 2021. *See* Exhibit 5. The State Bar objected to that request. *Id*. Ultimately, the Panel Chair primarily granted Respondent's request for an extension and gave Respondent "until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing." *Id.*

On March 11, 2021, at approximately 4:38 p.m., Respondent produced his initial disclosures to the State Bar. *See* Exhibit 6. Unfortunately, the only named witness was the Respondent himself. *Id*. In addition, Respondent's initial disclosures stated that he expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted "c/o Law Offices of Brian C.

Padgett." *Id*. Respondent failed to produce the identities of any of his witnesses, other than himself. *Id*. Respondent's initial disclosures also vaguely referenced several categories of documents but failed to produce any actual documents. *Id*.

Respondent did not provide any further specificity of the witnesses or documents he intends to use. Accordingly, the State Bar filed a Motion to Compel Production ("Motion to Compel") on March 25, 2021. *See* Exhibit 7. On April 15, 2021, the Panel Chair granted the State Bar's Motion to Compel which stated the following:

> Respondent may testify as a witness at the hearing, but may not call any other witnesses except to provide testimony addressing the aggravating and mitigating factors set forth in SCR 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any witnesses in lieu of testimony. Respondent may not introduce any expert reports at the hearing. Respondent may not introduce any documents obtained, generated or produced by Respondent in "the DiFrancesco case" unless those documents are expressly re-produced to the State Bar in this action with bates-numbering by 5:00 p.m. on Monday, April 19[, 2021]. Likewise, Respondent may not introduce any case history of the Law Offices of Brian C. Padgett or any correspondence between Respondent and the State Bar unless those documents are expressly produced to the State Bar with bates-numbering by 5:00 p.m. on Monday, April 19[, 2021]. Except as expressly set forth above, Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.

Id.

On April 6, 2021, Respondent filed the instant Objection to Complainant's Initial Disclosures of Witnesses and Documents (hereinafter "Objection to Initial Disclosure"). The State Bar responds as follows.

ARGUMENT

In his Objection to Initial Disclosure, Respondent objects to Amy L. Sugden (hereinafter "Ms. Sugden") and three process servers – Tyler Trewet, Judith Mae All, and Sean Keseday – providing testimony at the formal hearing. Objection p. 2. With regard to Ms. Sugden, Respondent objects to her

being called as a witness "as she was legal counsel for Respondent Brian C. Padgett and the Law Offices of Brian C. Padgett and the scope of her testimony listed by Complainant would result in a breach of attorney-client privilege." *Id*. However, contrary to Respondent's contention, Ms. Sugden never was counsel of record for Respondent or the Law Offices of Brian C. Padgett as it relates to the DiFrancesco matter. *See* Exhibit 8. Therefore, Respondent's objection to Ms. Sugden being called as a witness is without merit and should be denied.

Respondent's objections regarding the process servers providing testimony similarly should be denied. Respondent "objects to [Tyler Trewet] giving witness testimony as [he] was identified as giving false testimony against Respondent in Supreme Court Case No. 81918." With regard to Judith Mae All and Sean Keseday, Respondent stated that he "reserves the right to object to the testimony of [these witnesses] should MacDonald Highlands Security confirm [these witnesses] gave false testimony in this case." Pursuant to the Panel's Order granting the State Bar's Motion to Compel, "Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement." Therefore, Respondent's objection to these witnesses providing testimony is moot as he cannot introduce any documents or witnesses that were not fully identified in his initial disclosure statement and should be denied.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

CONCLUSION

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Objection to Complainant's Initial Disclosures of Witnesses and Documents be DENIED.

DATED this 19th day of April, 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS** was served via email to:

1. Rich Williamson, Esq. (Panel Chair): rich@nvlawyers.com
2. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 19th day of April, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 1

Exhibit 1

Case No: OBC19-1111

FILED

OCT 27 2020

STATE BAR OF NEVADA

BY _____

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.

AMENDED COMPLAINT

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

PLEASE TAKE NOTICE that pursuant to Nevada Supreme Court Rule ("SCR") 105(2) a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada, 9456 Double R Blvd., Suite B, Reno, Nevada, 89521, **within twenty (20) days of service of this Complaint.** The procedure regarding service is addressed in SCR 109.

GENERAL ALLEGATIONS

1. Complainant, State Bar of Nevada (hereinafter "State Bar") alleges that BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), Nevada Bar No. 7474, is an active member of the State Bar, has been licensed to practice law in the State of Nevada since December 28, 2000, and at all times pertinent to this Complaint, had a principal place of business for the practice of law located in Clark County, Nevada.

2. Respondent has engaged in acts of misconduct in violation of the Nevada Rules of Professional Conduct ("RPC"), requiring disciplinary sanctions.

3. On or about September 3, 2019, the State Bar received a grievance from John Di Francesco, Robert Feron, and Jacalyn Feron (hereinafter "Grievants") alleging that Respondent engaged in misconduct.

4. Grievants have owned commercial property (hereinafter "Subject Property") along the Truckee River since approximately 1990.

5. On or about March 11, 2003, the Board of County Commissioners of Washoe County approved the Truckee River Flood Management Project ("TRFMP") for the purpose of flood management.

6. The TRFMP was paired with an Early Land Acquisition Plan ("ELAP") to acquire properties in the affected project areas.

7. On or about April 24, 2005, the Subject Property was added to the list of properties to be acquired under the ELAP.

8. On or about February 9, 2006, Grievants received a letter from the TRFMP stating its intent to acquire the Subject Property for the project.

9. On, about, or between May 12, 2006, and October 29, 2007, the TRFMP acquired nearly every property adjacent to the Subject Property.

10. Between 2006 and 2012, there were multiple negotiations between Grievants and the TRFMP regarding the acquisition of the Subject Property which never came to fruition.

11. On or about March 6, 2012, Grievants retained the Law Offices of Brian C. Padgett ("LOBCP") to represent them in a lawsuit related to the TRFMP.

12. On or about July 9, 2012, the LOBCP, acting on behalf of Grievants, filed a Complaint against Washoe County, the City of Reno, the City of Sparks, and the TRFMP alleging inverse condemnation and pre-condemnation damages claims.

13. Attorney Amy L. Sugden (hereinafter "Ms. Sugden"), an employee of Respondent, became Grievants' primary legal contact throughout the seven years of their representation.

14. On many occasions during the pendency of the case, Grievants expressed to Ms. Sugden their desire to move the lawsuit, discovery, and depositions toward a trial date.

15. Ms. Sugden consistently ignored or stalled on completing these tasks.

16. Despite Grievants' requests, a trial date was ultimately never set.

17. The Five-Year Rule, as set forth in Rule 41 of the Nevada Rules of Civil Procedure ("NRCP"), for Grievants' Complaint was set to expire on July 9, 2017.

18. Ms. Sugden states that she had a "gentleman's agreement with opposing counsel" to extend the Five-Year Rule.

19. There is no documentation or stipulation extending or tolling the expiration of the Five-Year Rule.

20. Grievants were not aware of the Five-Year Rule, and its application to their civil case, until Ms. Sugden sent them an email on or about September 16, 2017.

21. On or about April 20, 2018, Grievants instructed Ms. Sugden to take depositions and to file a Motion in Limine.

22. Although Grievants provided LOBCP with approximately $7,500 for travel expenses and depositions, no depositions were scheduled and/or taken.

23. Louise Watson (hereinafter "Ms. Watson"), an investigator with the State Bar, inquired about the $7,500 payment.

24. Respondent stated that Grievants had an unpaid balance with LOBCP, and that any funds received would have been applied to the outstanding balance.

25. Respondent stated that he would supplement his response with the Grievants' actual balance owed but failed to do so.

26. On or about June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Motion in Limine to Exclude Evidence After August 2012 ("Motion in Limine").

27. Although an "Index of Exhibits" was included in the Motion in Limine, no exhibits were attached.

28. On or about August 7, 2018, Grievants sent Ms. Sugden an email inquiring about the status of the Motion in Limine.

29. On or about August 9, 2018, Ms. Sugden stated that opposing counsel's opposition was due on July 26, 2018, and that nothing had been filed.

30. Ms. Sugden also stated that she "can't file a reply without an opposition, but I can do a notice of 'non-opposition' and hopefully the Court will then grant our request in short order."

31. On or about August 23, 2018, Grievants emailed Ms. Sugden stating that they checked the court docket and found that a non-opposition was never filed.

32. On or about August 27, 2018, Ms. Sugden informed Grievants that a notice of non-opposition was submitted, and that she would follow up with her assistant to get them a file-stamped copy.

33. The court's docket reveal that nothing was filed by either party in August 2018.

34. On or about September 5, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Supplement to the Motion in Limine attaching the missing twenty-six (26) exhibits.

35. Around December 2018, Respondent took over Ms. Sugden's duties as Grievants' primary contact.

36. Respondent claims that on or about December 4, 2018, he spoke with Grievants about potential settlement ranges.

37. According to Respondent, Grievants agreed to get another appraisal done, and that they were directed to get back to Respondent regarding appraisal and directions for further negotiations.

38. Respondent stated that after months of not hearing from Grievants, he was contacted by Grievants' new counsel.

39. On or about March 12, 2019, Grievants hired attorney Michael Sullivan (hereinafter "Mr. Sullivan") to substitute Respondent as attorney of record.

40. On or about April 8, 2019, Mr. Sullivan, acting on behalf of Grievants, filed a Stipulation and Order for Dismissal with Prejudice after discussing their options with him.

41. On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis (hereinafter "Notice") was filed.

42. The Notice was sent to Respondent's SCR 79 address (611 South Sixth Street, Las Vegas, NV 89101), as well as his alternate address (11274 Gammila Drive, Las Vegas, NV 89141) via first class and certified mail.

43. On or about 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".

44. On or about June 24, 2020, Respondent filed a Complaint in the Eighth Judicial District Court and listed as his address 611 South Sixth Street, Las Vegas, NV 89101.

45. On or about July 6, 2020, copies of the Notice sent to Respondent's alternate address were returned to the State Bar's Reno office marked "Return to Sender, Unable to Forward".

46. On or about July 13, 2020, an Entry of Default was filed.

47. A search of Respondent's public pleadings revealed a third address for Respondent (1672 Liege Drive, Henderson, NV 89012) (hereinafter "Liege address").

48. On or about September 25, 2020, the State Bar requested that Nationwide Legal attempt to personally serve Respondent at the Liege address.

49. Nationwide Legal attempted to personally serve Respondent at the Liege address on or about (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020, but to no avail.

50. On or about October 5, 2020, the State Bar contacted attorney Garrett Ogata (hereinafter "Mr. Ogata"), Respondent's criminal defense attorney, to see whether he would be willing to accept service on Respondent's behalf.

51. Mr. Ogata advised that he would contact Respondent.

52. On or about October 12, 2020, the State Bar followed up with Mr. Ogata.

53. Mr. Ogata advised that he sent Respondent a text informing him of the Formal Hearing details and provided the State Bar's contact information.

54. On or about October 15, 2020, a Formal Hearing for the instant matter was set to commence at 9:00am Pacific Standard Time.

55. On or about October 15, 2020, at approximately 8:11am Pacific Standard Time, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be continued.

56. Ultimately, the Formal Hearing was continued.

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

58. In his email, Respondent included a letter where he alleged a lack of notice of process.

59. Respondent stated that in or around February 2020, he made the decision to work full time from his home office, 1672 Liege Drive, Henderson NV 89102.

60. Respondent also stated that his secretary mailed a notice of change of his address on or about February 28, 2020.

61. The State Bar has no record of such a request.

Count One

Rule 1.15 (Safekeeping Property)

62. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 60 as if fully incorporated herein.

63. RPC 1.15 states:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.
> (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
> (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

> (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

64. Respondent negligently failed to keep accounting documents pertaining to Grievants after November 2016.

65. Respondent's misconduct resulted in injury and/or potential injury to his clients.

66. In light of the foregoing, including without limitation paragraphs 2 through 65, Respondent has violated RPC 1.15 (Safekeeping Property).

Count Two

Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)

67. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 65 as if fully incorporated herein.

68. RPC 5.1 states:

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

> (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> (2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

69. Respondent, having direct supervisory authority over Ms. Sugden, negligently failed to make reasonable efforts to ensure that Ms. Sugden conformed to the Rules of Professional Conduct in her representation of Grievants.

70. Respondent's misconduct resulted in injury and/or potential injury to his clients, as well as the profession.

71. In light of the foregoing, including without limitation paragraphs 2 through 70, Respondent has violated RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers).

Count Three

Rule 8.1 (Bar Admission and Disciplinary Matters)

72. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 70 as if fully incorporated herein.

73. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
> (a) Knowingly make a false statement of material fact; or
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

74. Respondent intentionally failed to respond to a lawful demand for information from Ms. Watson by failing to provide a supplement to his previously submitted incomplete response.

75. Respondent's misconduct resulted in injury to the profession.

76. In light of the foregoing, including without limitation paragraphs 2 through 75, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Four

Rule 8.1 (Bar Admission and Disciplinary Matters)

77. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 75 as if fully incorporated herein.

78. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of material fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

79. Respondent intentionally made a false statement of material fact by stating that Ms. Sugden was not subject to his supervision.

80. Respondent's misconduct resulted in injury to the profession.

81. In light of the foregoing, including without limitation paragraphs 2 through 80, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Five

Rule 8.4 (Misconduct)

82. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 80 as if fully incorporated herein.

83. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

84. Respondent intentionally engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation by claiming to have informed the State Bar of his address change in or around February 2020.

85. Respondent's misconduct resulted in injury to the profession.

86. In light of the foregoing, including without limitation paragraphs 2 through 85, Respondent has violated RPC 8.4 (Misconduct).

Count Six

Rule 8.4 (Misconduct)

87. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 85 as if fully incorporated herein.

88. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

89. Respondent intentionally violated or attempted to violate the Rules of Professional Conduct through the acts of another and/or knowingly assisted or induced his secretary to violate or attempt to violate the Rules of Professional Conduct by submitting an affidavit from his secretary claiming that she mailed a notice of change of his address to the State Bar.

90. Respondent's misconduct resulted in injury to the profession.

91. In light of the foregoing, including without limitation paragraphs 2 through 90, Respondent has violated RPC 8.4 (Misconduct).

WHEREFORE, Complainant prays as follows:

92. That a hearing be held pursuant to SCR 105;

93. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120(1); and

94. That pursuant to SCR 102, such disciplinary action be taken by the Northern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

DATED this 27th day of October, 2020.

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 2

Exhibit 2

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

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

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

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

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

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

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

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.

/ / /

/ / /

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 10TH day of December, 2020.

BRIAN C. PADGETT

State of Nevada County of Clark
SUBSCRIBED AND SWORN BEFORE ME
this 10 day of December, 2020. By Brian Padgett

NOTARY PUBLIC

AMANDA MCKIERNAN
Notary Public - State of Nevada
County of Clark
APPT. NO. 19-1357-1
My App. Expires Jan. 29, 2023

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

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

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

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

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

Exhibit 3

Exhibit 3

FILED

FEB 09 2021

STATE BAR OF NEVADA

BY _____

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 REGARDING RESPONDENT'S MOTION FOR EXTENSION OF TIME TO FILE ANSWER, VERIFIED RESPONSE, AND INFORMAL REQUEST TO STAY PROCEEDINGS**

This matter commenced on May 13, 2020, when Complainant, State Bar of Nevada ("State Bar") filed a Complaint against Respondent Brian C. Padgett, Esq. ("Respondent"). Pursuant to Supreme Court Rule ("SCR") 79(1), Respondent is required to provide to the State Bar his permanent mailing address, permanent telephone number, and current email address. In accordance with SCR 79, SCR 109(1), and Rule 11(b)(1) of the Disciplinary Rules of Procedure ("DRP"), the State Bar properly served the Complaint on the Respondent.

Pursuant to DRP 17, an initial conference took place on July 21, 2020. The Hearing Panel Chair and Assistant Bar Counsel Gerard Gosioco ("ABC Gosioco") participated in the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the pre-hearing conference held on October 12, 2020.

This case was scheduled for a formal hearing to occur on October 15, 2020. That morning, Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing. Ultimately, the Hearing Panel Chair granted Respondent's request for a continuance. On October 27, 2020, the Hearing Panel Chair granted the State Bar leave to file an amended complaint.

On November 16, 2020, Respondent filed a Motion to Vacate Filings, Orders and Decisions – Including the Amended Complaint; Motion to Dismiss Amended Complaint ("Motion to Vacate"). The State Bar opposed that Motion to Vacate, and Respondent filed a reply brief. Eric Stovall, Esq., the Northern Nevada Disciplinary Board Chair, filed an Order denying Respondent's Motion to Vacate on December 14, 2020.

On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response (the "Motion for Extension"). On January 13, 2021, Respondent also informally requested a stay of the proceedings. Accordingly, on January 14, 2021, the Hearing Panel Chair requested a response from the State Bar on both the Motion for Extension and the informal request to stay. On January 28, 2021, the State Bar filed its Comprehensive Response to Procedural Issues Raised by Panel Chair. On Friday, February 5, 2021, Respondent filed his Reply to Procedural Issues Raised by Panel Chair.

Having reviewed the briefs submitted in support of and in opposition to the Motion for Extension, having considered the applicable law, and for good cause appearing, the Hearing Panel Chair hereby finds and concludes as follows: Respondent's request to stay the proceedings is denied; Respondent's Motion for Extension should be granted in part and denied in part; the default currently entered against Respondent is set aside; Respondent is granted an extension of seven (7) calendar days from the date of this order in which to file his verified response or answer to the Amended Complaint; and within seven (7) calendar days thereafter, the parties shall set this case for a formal hearing.

IT IS SO ORDERED.

Dated this 9th day of February, 2021.

Richard D. Williamson, Esq.
Hearing Panel Chair

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Regarding Respondent's Motion for Extension of Time to File Answer, Verified Response, and Informal Request to Stay Proceedings** was served electronically upon:

brian.padgett@icloud.com;

rich@nvlawyers.com; and

gerardg@nvbar.org.

Dated this 9th day of February, 2021.

Laura Peters

_____

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 4

Exhibit 4

Case No: OBC19-1111

FILED

FEB 19 2021

STATE BAR OF NEVADA

BY

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.	**AMENDED SCHEDULING ORDER**

Pursuant to Rule 17 of the Disciplinary Rules of Procedure, the Hearing Chair Rich Williamson, Esq., met telephonically with Gerard Gosioco, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada and Respondent on February 22, 2021 at 10 a.m. primarily to reschedule a formal hearing date in this matter. Initial disclosures, discovery and pre-hearing motion deadlines, a date for the pre-hearing conference, and the concerns about a live versus remote hearing held via Zoom were also discussed.

During the Scheduling Conference, it was agreed that:

1. All documents may be served electronically, unless otherwise required by the Nevada Supreme Court Rules. Respondent's email address on file with the Office of Bar

Counsel is brian.padget@icloud.com. The State Bar address for receiving documentation is laurap@nvbar.org with a carbon copy sent to gerardg@nvbar.org.

2. The State Bar of Nevada's initial disclosures will be produced electronically on or before **March 1, 2021**, by 5 p.m.

3. Respondent will provide initial disclosures which shall be served on or before **March 9, 2021** by 5 p.m.

4. The parties shall file any Motions on or before **April 5, 2021**. Oppositions to the Motions should be filed on or before **April 19, 2021**, and any Replies in Support of the Motions should be filed on or before **April 26, 2021**. Fully briefed Motions will be addressed at the Pre-Hearing Conference.

5. At or before **April 28, 2021** by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing.

6. Respondent will submit his evaluation of the conditions relevant to holding the hearing remotely versus holding a live hearing by **April 21, 2021**; the State Bar will have an opportunity to respond by **April 28, 2021** when a final decision will be made by the Panel Chair.

7. The parties shall participate in a telephonic Pre-Hearing Conference with Chair Williamson on **May 19, 2021** at 10:00 a.m. Pursuant to Rule 23 of the Disciplinary Rules of Procedure, at the Pre-hearing conference (i) the parties shall discuss all matters needing attention prior to the hearing date, (ii) the Chair may rule on any motions or disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by either bar counsel or respondent as well as stipulated statement of facts, if any.

8. The hearing for this matter shall be set for 1 day, to wit **May 28, 2021**, starting at 9:00 a.m. and will take place either via Zoom or in person, pursuant to public health recommendations. The State Bar will, if needed, provide a meeting identification number prior to the hearing.

9. The Findings of Fact, Conclusion of Law, and Recommendation or Order in this matter shall be due **June 28, 2021**.

Based on the parties' verbal agreement to the foregoing during the telephonic Initial Conference and good cause appearing, IT IS SO ORDERED.

Dated this 19th day of February 2021.

NORTHERN NEVADA DISCIPLINARY BOARD

Richard D. Williamson (Feb 22, 2021 14:19 PST)

Rich Williamson, Esq.
FORMAL HEARING CHAIR

Submitted By:

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

By: /s/ Gerard Gosioco (Feb 22, 2021 13:49 PST)

Gerard Gosioco, Assistant Bar Counsel
3100 W. Charleston Blvd, Suite 100
Las Vegas, Nevada 89102
702-382-2200

Amended Scheduling Order_022221

Final Audit Report 2021-02-22

Created:	2021-02-22
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAARgr7UB1BHyQAlqDqshWYic2mGYBGs40

"Amended Scheduling Order_022221" History

Document created by Laura Peters (laurap@nvbar.org)
2021-02-22 - 9:47:48 PM GMT- IP address: 71.94.199.108

Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2021-02-22 - 9:48:26 PM GMT

Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2021-02-22 - 9:48:59 PM GMT- IP address: 24.253.18.70

Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2021-02-22 - 9:49:16 PM GMT - Time Source: server- IP address: 24.253.18.70

Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature
2021-02-22 - 9:49:17 PM GMT

Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2021-02-22 - 10:16:40 PM GMT- IP address: 97.92.108.234

Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
Signature Date: 2021-02-22 - 10:19:19 PM GMT - Time Source: server- IP address: 97.92.108.234

Agreement completed.
2021-02-22 - 10:19:19 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Amended Scheduling Order** was served electronically upon:

brian.padgett@icloud.com; rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 22nd day of February 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 5

Exhibit 5

From: Brian Padgett
To: Rich Williamson
Cc: Gerard Gosioco; Laura Peters
Subject: Re: Initial Disclosures
Date: Tuesday, March 9, 2021 10:36:39 PM

Mr. Williamson:

Thank you for your consideration.

You will have my Initial Disclosures by Thursday, March 11, 2021 by 5:00PM.

Best regards,

Brian Padgett

On March 9, 2021 at 10:06 PM, Rich Williamson <rich@nvlawyers.com> wrote:

> Counsel,
>
> As these are initial disclosures, they could have been produced concurrently and Mr. Padgett's disclosures are not necessarily dependent upon what the State Bar produced. I am also concerned that Mr. Padgett's request came a mere one minute before the deadline. Most importantly, however, I am not even sure that I have discretion to change the initial disclosure deadlines.
>
> According to DRP 17(a):
> "Bar counsel shall disclose its witnesses and documents no later than five (5) judicial days after the initial case conference. Respondent shall disclose all witnesses and documents no later than fifteen (15) calendar days after the initial case conference." Therefore, according to the rule, the deadline was required to be today regardless of the scheduling order.
>
> Nonetheless, I think that we also need to keep in mind the purposes of the rules as set forth in DRP 1(b): "The purpose of these rules is to expedite disciplinary hearings through procedures designed to streamline presentation of evidence, facilitate coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper administration of attorney regulation." Accordingly, to the extent that I am even empowered to do so, I grant Mr. Padgett until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing.
>
> Respectfully,
>
> Rich Williamson

Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
Email: Rich@NVLawyers.com
Please visit our Website at: www.nvlawyers.com

From: Brian Padgett [mailto:brian.padgett@icloud.com]
Sent: Tuesday, March 09, 2021 7:04 PM
To: Rich Williamson
Cc: Gerard Gosioco; Laura Peters
Subject: Re: Initial Disclosures

Mr. Williamson:

Mr. Gosioco produced his Initial Disclosure on March 1, 2021.

He produced hundreds of documents in this disclosure.

Briefly, since Mr. Gosioco's disclosures, I have had substantial motions to draft in other matters including a Supreme Court Appellant's Reply brief due this week.

If you would like me to lodge this request in the form of a Motion I can do so.

Best regards,

Brian Padgett

On Mar 9, 2021, at 5:13 PM, Gerard Gosioco <gerardg@nvbar.org> wrote:

Mr. Williamson,

I am going to object to Mr. Padgett's last minute request for an extension. He was present on the phone call when all parties agreed to the deadlines on February 22, 2021. The State Bar timely filed its Initial Disclosure on March 1, 2021. He has had more than enough time to prepare his Initial Disclosure.

Gerard Gosioco

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Tuesday, March 9, 2021 4:59 PM
To: Rich Williamson <rich@nvlawyers.com>
Cc: Gerard Gosioco <gerardg@nvbar.org>; Laura Peters <LauraP@nvbar.org>
Subject: Initial Disclosures

Mr. Williamson:

Please accept this email as a request to extend my initial disclosure deadline until March 12,2021.

More time is needed in addition to the time given to review the volume of documents produced by Mr. Gosioco for the State and then find corresponding documents in our server.

Best regards,

Brian Padgett

On iPhone

Exhibit 6

Exhibit 6

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. BRIAN C. PADGETT, ESQ. Nevada Bar No. 7474 Respondent,	Case No. OBC19-1111

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

RESPONDENT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

RESPONDENT BRIAN C. PADGETT, ESQ. hereby produces the following initial witness list and documents:

WITNESSES

The following witnesses may testify at the hearing of the above-referenced matter:

1. Brian C. Padgett
   c/o Law Offices of Brian C. Padgett
   1672 Liege Drive,
   Las Vegas, Nevada 89012

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

Expected to testify regarding all of the facts and circumstances surrounding the subject case.

2. Employee A, Law Offices of Brian C. Padgett
c/o Law Offices of Brian C. Padgett
1672 Liege Drive,
Las Vegas, Nevada 89012

Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett.

3. Employee B, Law Offices of Brian C. Padgett
c/o Law Offices of Brian C. Padgett
1672 Liege Drive,
Las Vegas, Nevada 89101

Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett.

4. Certified Fraud Investigator
c/o Law Offices of Brian C. Padgett
Law Offices of Brian C. Padgett

Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett. Will also testify to investigative findings related to A.C.E. Legal, LLC.

6. All witnesses listed by the Complainant in this action.

7. All impeachment witnesses.

8. All witnesses necessary to authenticate documents or other evidence.

9. The Respondent reserves the right to object to any and all witnesses listed by Complainant.

The Respondent reserves his right to amend this List of Witnesses as the identity of other witnesses become known through discovery.

DOCUMENTS

The following documents may be utilized at the hearing of the above-referenced matter:

1. All expert reports, including blow-ups, if applicable, shall be forthcoming.

2. Any and all attestations from witnesses listed herein.

2. All documents obtained, generated or produced by Respondent in the *DiFrancesco* case, shall be forthcoming.

4. Case history of the Law Offices of Brian C. Padgett.

5. Correspondence between Respondent and the State Bar of Nevada.

6. Respondent reserves the right to object to all documents listed by Complainant, including but not limited to the authenticity and/or genuineness of their documents listed.

The Respondent incorporates into its List of Documents the description of each and every document listed by the parties herein and, further, reserves his right to amend this List of Documents as the identity or description of other documents become known through discovery.

DATED this 11th day of March, 2021.

LAW OFFICES OF BRIAN C. PADGETT

By: /s/*Brian C. Padgett*
BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474

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

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2021, I served the foregoing:

RESPONDENT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

by emailing a true and correct copy thereof to the State Bar of Nevada.

/s/*Brian C. Padgett*

Employee of the Law Offices of BRIAN C. PADGETT

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

Exhibit 7

Exhibit 7

FILED

MAR 25 2021

STATE BAR OF NEVADA

BY _____

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.	**MOTION TO COMPEL PRODUCTION**

Complainant, State Bar of Nevada (hereinafter "State Bar") hereby moves to compel BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), to produce witnesses and documents to the State Bar in the interest of justice. This Motion is based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, and upon such further evidence and argument as the Chair may request or entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

1. On February 22, 2021, a telephonic conference was primarily held to reschedule the formal hearing in the instant matter. *See* Exhibit 1.

2. Initial disclosures, discovery, and pre-hearing motion deadlines were also discussed. *Id.*

3. Panel Chair Rich Williamson (hereinafter "Panel Chair"), Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco"), and Respondent were present during the telephonic conference. *Id.*

4. The Amended Scheduling Order was completed and emailed to Panel Chair, ABC Gosioco, and Respondent on February 22, 2021. Exhibit 2.

5. The Amended Scheduling Order states that the State Bar's "initial disclosures will be produced electronically on or before **March 1, 2021**, by 5 p.m." Exhibit 1 (emphasis in original).

6. On March 1, 2021, the State Bar produced its initial disclosures to Respondent prior to the 5:00 p.m. deadline. *See* Exhibit 3.

7. The Amended Scheduling Order states that "Respondent will provide initial disclosures which shall be served on or before **March 9, 2021** by 5 p.m." Exhibit 1 (emphasis in original).

8. On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting to "extend [his] initial disclosure deadline until March 12, 2021." *See* Exhibit 4.

9. The State Bar objected to Respondent's request for an extension. *Id*.

10. Panel Chair granted Respondent's request for an extension and gave Respondent "until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case . . . [a]ny information not timely disclosed may be subject to exclusion from the hearing." *Id*.

11. On March 11, 2021, at 4:38 p.m., Respondent produced his initial disclosures to the State Bar. Exhibit 5.

12. Respondent failed to produce the identities of his witnesses as well as the actual documents he intends to use in the instant matter. *See* Exhibit 6.

13. Respondent's "Witnesses" include, in pertinent part:

> 1. Brian C. Padgett
> [. . .]
> Expected to testify regarding all of the facts and circumstances surrounding the subject case.
> 2. ***Employee A***, Law Offices of Brian C. Padgett
> [. . .]

> Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett.
> 3. ***Employee B***, Law Offices of Brian C. Padgett
> [. . .]
> Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett.
> 4. ***Certified Fraud Investigator***
> [. . .]
> Expected to testify regarding all of the facts and circumstances surrounding the Law Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of Brian C. Padgett. Will also testify to investigative findings related to A.C.E. Legal, LLC.
> 6. [*sic*] All witnesses listed by the Complainant in this action.
> 7. [*sic*] ***All impeachment witnesses.***
> 8. [*sic*] ***All witnesses necessary to authenticate documents or other evidence.***

Id. (emphasis added).

14. Respondent's "Documents" include, in pertinent part:

> 1. ***All expert reports, including blow-ups***, if applicable, shall be forthcoming.
> 2. ***Any and all attestations from witnesses listed herein.***
> 3. ***All documents obtained, generated or produced*** by Respondent in the *DiFrancesco* case, shall be forthcoming.
> 4. ***Case history*** of the Law Offices of Brian C. Padgett.
> 5. ***Correspondence*** between Respondent and the State Bar of Nevada.

Id. (emphasis added).

15. On March 11, 2021, ABC Gosioco sent Respondent an email asking him to produce the names of his witnesses. *See* Exhibit 7.

16. Respondent did not respond to ABC Gosioco's March 11, 2021, email.

17. On March 12, 2021, ABC Gosioco called Respondent and left a voicemail requesting a return call. *See* Exhibit 8.

18. Respondent did not return ABC Gosioco's March 12, 2021, phone call.

19. On March 16, 2021, ABC Gosioco emailed Respondent requesting that he "disclose the identities of [his] witnesses and send over the documents [he] intends to use during [his] formal hearing." Exhibit 8.

20. ABC Gosioco requested that Respondent provide witness names and documents by March 17, 2021, at 5:00 p.m. *Id*.

21. Respondent has not communicated with the State Bar since March 16, 2021, nor has he provided the State Bar with witness names or documents.

II. DISCUSSION

Respondent failed to comply with the Disciplinary Rules of Procedure ("DRP") and the Nevada Rules of Civil Procedure ("NRCP") regarding the disclosure of witnesses and documents. [1] DRP 17(a) states, in pertinent part, that "Respondent shall disclose ***all witnesses and documents*** no later than fifteen (15) calendar days after the initial case conference." (emphasis added). Further, the Rule states that "all identifications of witnesses shall include a summary of the subjects to which the witness is expected to testify" and "all disclosed documents shall be provided and identified with bates numbering." DRP 17(a)(1)-(2).

According to the Amended Scheduling Order, Respondent was required to produce his Initial Disclosure to the State Bar on or before March 9, 2021, at 5:00 p.m. *See* Exhibit 1. Rather than timely producing his Initial Disclosure, Respondent requested an extension arguing that "[m]ore time is

[1] The NRCP is made applicable to this proceeding pursuant to Supreme Court Rule ("SCR") 119(3) which states, "[e]xcept as otherwise provided in these rules, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure apply in disciplinary cases." Similarly, DRP 1(c) states, in pertinent part, "[e]xcept as otherwise provided in the Supreme Court Rules (SCR), the Nevada Rules of Civil Procedure (NRCP) and Nevada Rules of Appellate Procedure (NRAP) shall apply in disciplinary cases."

needed in addition to the time given to review the volume of documents produced by Mr. Gosioco for the State and then find corresponding documents in our server." *See* Exhibit 4. The State Bar objected to the request stating that Respondent was present on the phone call when all parties agreed to the deadlines on February 22, 2021, and that Respondent has had more than enough time to prepare his Initial Disclosure. [2] *Id*. Further, Respondent's disclosures are not necessarily dependent upon what the State Bar produced and could have been produced concurrently. Over the State Bar's objection, the Panel Chair gave Respondent until March 11, 2021, at 5:00 p.m. to produce his Initial Disclosure to the State Bar. *Id*.

On March 11, 2021, Respondent produced his initial disclosures to the State Bar. Exhibit 5. However, Respondent's Initial Disclosure is woefully incomplete and fails to comply with the letter or spirit of the disclosure requirements.

First, Respondent failed to identify a single witness's name. Rather than disclosing the identities of his witnesses, Respondent chose to list his witnesses as "Employee A," "Employee B," and "Certified Fraud Investigator." *See* Exhibit 6.

Second, Respondent vaguely describes the documents he intends to use during his formal hearing and, more importantly, fails to provide to the State Bar any of those documents as required by NRCP 16.1(a)(1). *See id*. Even after being given multiple chances to rectify the vagueness and incompleteness of his Initial Disclosure, Respondent still has yet to identify witness names or produce documents to the State Bar. *See* Exhibits 7-8.

Third, Respondent failed to comply with NRCP 16.1(2) regarding "Certified Fraud Investigator" and/or one of his other unnamed witnesses. According to the "documents" listed in his Initial Disclosure, Respondent intends to use "[a]ll expert reports, including blow-ups, if applicable."

[2] The instant matter has been pending for nearly eleven (11) months. All deadlines, including disclosure deadlines, were reset when Respondent appeared for the first time on the morning of the previously scheduled Formal Hearing on October 15, 2020.

See Exhibit 6. This implies that either the "Certified Fraud Investigator" and/or one of the other unnamed witnesses listed will be used as an expert witness. *Id*. The State Bar has not received a single document Respondent intends to use during his formal hearing, let alone a written report, and other required disclosures, regarding expert testimony.

DRP 1(b) states that the "purpose of these rules is to expedite disciplinary hearings through procedures designed to streamline presentation of evidence, facilitate coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper administration of attorney regulation." Respondent's failure to disclose the identities of his witnesses and produce the documents he intends to use completely undermines what the Disciplinary Rules of Procedure seek to accomplish. Moreover, Respondent's conduct severely prejudices the State Bar from justly and properly regulating attorney misconduct.

In the event Respondent continues to withhold witness names and documents from the State Bar, the State Bar respectfully requests that sanctions be issued against Respondent. NRCP 37(c) states, in pertinent part, that "[i]f a party fails to provide information or identify a witness as required by 16.1(a)(1) [. . .], the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." The Rule further states that in addition to or instead of this sanction, the court "may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1)." NRCP 37(c)(1)(C). NRCP 37(b)(1) sanctions include, but are not limited to, the following: (1) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (2) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; and (3) rendering a default judgment against the disobedient party.

/ / /

III. CONCLUSION

For the reasons set forth above, the State Bar respectfully requests that Respondent be compelled to produce the witnesses and documents he intends to use during his formal hearing no later than Thursday, April 1, 2021, at 12:00 p.m.[3] The State Bar requests that Respondent be barred from presenting any evidence or witnesses not disclosed by the deadline. The State Bar requests any other relief which the Panel Chair finds necessary and appropriate in this matter.

DATED this 25th day of March, 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

Attorneys for the Complainant

[3] The State Bar requests the opportunity to inspect Respondent's full and complete disclosures prior to the motion deadline. Per the Amended Scheduling Order, any motions shall be filed on or before Monday, April 5, 2021. *See* Exhibit 1.

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **MOTION TO COMPEL PRODUCTION** was deposited via electronic mail to:

1. Rich Williamson, Esq. (Panel Chair): rich@nvlawyers.com
2. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 25th day of March, 2021.

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

Exhibit 8

Exhibit 8

DECLARATION OF AMY L. SUGDEN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, AMY L. SUGDEN, do hereby swear under penalty of perjury that the assertions of this affidavit are true:

1. That I am over 18 years of age; I am a resident of the State of Nevada, and I am competent to testify on the matters set forth herein.
2. I am an attorney in good standing with the Nevada Bar and have had my Nevada Bar license since 2006.
3. From approximately June 2011 to March 2019, I worked as a contract attorney at the Law Offices of Brian C. Padgett ("LOBCP") and assisted in representation of clients that retained the LOBCP.
4. I was never counsel of record for the LOBCP nor was I ever counsel for Brian C. Padgett it relates to any matter with John DiFrancesco and/or Robert and Jacyln Feron.

I swear under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 19th day of April, 2021.

Amy L. Sugden

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

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

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

DEFENDANT'S RULE 60(b) MOTION TO SET ASIDE

ORDER GRANTING STATE'S MOTION TO COMPEL

Pursuant to NRCP 60, Defendant Brian C. Padgett, (hereinafter "Defendant") by and through his attorneys, the LAW OFFICES OF BRIAN C. PADGETT, hereby moves for an order setting aside the Order Granting Motion to Compel for those reasons set forth herein and based on the authorities set forth below. Defendant requests that he be allowed to fully participate in the disclosure of witnesses and documents.

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF RELEVANT FACTS

Initial Disclosures were made on March 11, 2021. Thereafter, ABC Gosioco filed a Motion to Compel on March 25, 2021. Respondent saw this as a Motion which was previously calendared and supposed to be filed not later than April 5, 2021 and to which Respondent would have until April 19, 2021 to file an opposition.

However, before Respondent could file his Opposition on April 19, 2021, an Order Granting State's Motion to Compel was filed on April 15, 2021. The Order penalized Respondent and severely limited the amount of evidence and witnesses he could disclose.

Respondent had no intention of failing to respond to the Motion to Compel, he just believed he had until April 19, 2021 to file an opposition. This is a case of mistake or excusable neglect and Respondent should not be limited in his disclosures and his due process rights as a result thereof. Respondent therefore respectfully requests that the Order Granting State's Motion to Compel be set aside so that Respondent may have a full opportunity to defend himself in this matter. Further, Respondent cannot prepare Final Disclosures in this case until this instant matter is heard.

II. LEGAL ARGUMENT

A. THE PANEL CHAIR SHOULD SET ASIDE THE ORDER GRANTING THE STATE'S MOTION TO COMPEL PURSUANT TO NRCP 60(b)

"The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." *See Rodriguez v. Fiesta Palms, LLC,* 134 Nev. 654, 656, 428 P.3d 255,257 (2018), *quoting Nev. Indus. Dev., Inc. v.*

Benedetti, 103 Nev. 360, 364, 741 P.2d 802 (1987). NRCP 60(b) provides the Court with the tool to relieve Appellant from the Hearing Panel's Entry of Decision:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

See NRCP 60(b)(l).

"Once a proper showing of mistake, inadvertence, surprise or excusable neglect has been made by the movant . . . Rule 60(b) is to be liberally interpreted in favor of setting aside judgments." *Id., citing Smith v. Widman Trucking & Excavating, Inc.,* 627 F.2d 792, 795 (7th Cir.1980).

1. **Defendant Meets the Criteria of NRCP 60 (b)(1) to Set Aside the Order Granting State's Motion to Compel**

Initial Disclosures were made on March 11, 2021. Thereafter, ABC Gosioco filed a Motion to Compel on March 25, 2021. Respondent saw this as a Motion which was supposed to be filed not later than April 5, 2021 according to a pre-set schedule and to which Respondent would file an Opposition pursuant to that pre-set schedule on April 19, 2021.

However, before Respondent could file his Opposition on April 19, 2021, an Order Granting State's Motion to Compel was filed on April 15, 2021. The Order penalized Respondent and severely limited the amount of evidence and witnesses he could disclose for failing to respond to ABC Gosioco's motion.

Respondent had no intention of failing to respond to the Motion to Compel - he believed he had until April 19, 2021 to do so. This is a case of mistake or excusable neglect and Respondent should not be limited in his disclosures as a result thereof. Therefore, the Respondent respectfully requests that the Panel Chair set aside the Order Granting State's

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

Motion to Compel pursuant to NRCP 60(b)(1) and allow the Respondent to fully participate and defend himself in this case.

2. Complainant Is Not Prejudiced by a Delay Caused by Setting Aside the Order

Courts have ruled that parties should be able to fully participate and defending themselves in cases and that the subject matter around which litigation is based is not time sensitive in comparison. *See Velasco v. Mis Amigos Meat Mkt., Inc*., 2009 U.S. Dist. LEXIS 20604, at *16 (E.D. Cal. Mar. 16, 2009) ("[A] mere delay in satisfying plaintiff's claim, if he should ultimately succeed at trial, is not sufficient prejudice to require denial of a motion to set aside default.").

In this case, Complainant will not be prejudiced by a delay caused by setting aside the Order Granting State's Motion to Compel. Defendant will quickly address any outstanding issues and supplement his disclosures and final disclosures accordingly.

3. Analysis of *Yocham* Factors

The threshold inquiry for this Court to determine whether relief under NRCP 60(b)(l) is appropriate is to analyze the *Yocham* Factors: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." *Id.* at 657, 428 P.3d at 257, *quoting Yocham v. Davis,* 98 Nev. 484, 486-487, 653P.2d 1215, 1216-1217 (1982), overruled for other reasons; *Epstein v. Epstein,* 113 Nev. 1401, 1405,950 P.2d 771, 772 (1997) (tender of a meritorious defense to claim for relief was no longer required to support a NRCP 60(b)(l) motion). "[W]hen evaluating an NRCP 60(b)(l) motion, the district court must consider the state's underlying basic policy of deciding cases on the merits whenever possible." *Id., quoting Stoecklein v. Johnson Elec.,* Inc., 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

a. Prompt application to remove Order.

This Motion is filed less than two weeks after the Order Granting State's Motion to Compel was filed and within the mandatory time requirements set forth in NRCP 60(c)(1), which mandates motions filed pursuant to NRCP 60(b) "must be made within a reasonable time - and …(3) no more than six (6) months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. *Id.*

b. The absence of an intent to delay the proceedings

Appellant is not trying to delay the proceedings by filing this Motion to Set Aside and only wishes to have a fair opportunity to participate and be heard on the merits.

c. Lack of knowledge of procedural requirements.

As stated above, Respondent believed that ABC Gosioco's Motion to Compel – dealing with disclosure issues – was a motion governed by the timeline previously established by the parties. Respondent believed that gave him until April 19, 2021 to file an opposition. As the Panel Chair entered an Order Granting State's Motion to Compel on April 15, 2021 Respondent did not fail to respond because he was dilatory, a failure to timely respond came about due to a lack of knowledge of procedural requirements as it appears that ABC Gosioco's Motion was not a Motion contemplated under the pre-set timeline schedule for filing documents. Respondent had no way of knowing how to distinguish the Motion to Compel from a Motion to be filed under the pre-set schedule.

Respondent believed he had until April 19, 2021 to file an Opposition to the Motion to Compel and that is also why he did not respond to ABC Gosioco's email requests – because he

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

felt a time had already been established to address any issues or concerns: Motions were to be filed on April 5, 2021; Oppositions filed on April 19, 2021; and Replies filed on April 26, 2021.

d. Good Faith

This Appeal is brought before the Panel Chair in good faith and for justifiable cause.

III. CONCLUSION

Based upon the facts and law set forth herein, Respondent respectfully requests that the Panel Chair set aside the Order Granting State's Motion to Compel and allow Respondent to participate fully in this case so he may be heard on the merits.

DATED this 28th day of April, 2021

LAW OFFICES OF BRIAN C. PADGETT

/s/ Brian C. Padgett

BRIAN C. PADGETT
Nevada Bar No. 7474
611 S. 6TH Street
Las Vegas, NV 89101
Phone: (702) 304-0123

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2021, a true and correct copy of

DEFENDANT'S RULE 60(b) MOTION TO SET ASIDE

ORDER GRANTING STATE'S MOTION TO COMPEL

was served electronically to all parties in accordance with the electronic service and filing order created in this matter.

/s/ Brian C. Padgett

An employee the Law Offices of BRIAN C. PADGETT

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

FILED

APR 28 2021

STATE BAR OF NEVADA

BY _____

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.	**STATE BAR OF NEVADA'S NOTICE OF HEARING**

TO: Brian C. Padgett, Esq.
1672 Liege Drive
Henderson, NV 89012

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for ***Friday, May 28, 2021, beginning at the hour of 9:00 a.m.*** The hearing will be conducted either at the Reno office of the State Bar of Nevada, located at 9456 Double R Blvd, Reno, NV 89521, or by audio/visual transmission (Zoom – meeting number will be provided at a later date).

///

///

///

You are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

DATED this 28th day of April, 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

FILED

APR 28 2021

STATE BAR OF NEVADA
BY
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.	**STATE BAR OF NEVADA'S SUMMARY OF EVIDENCE; FINAL DESIGNATION OF DOCUMENTS AND WITNESSES**

TO: Brian C. Padgett, Esq.
1672 Liege Drive
Henderson, NV 89012

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 number 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.

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	SBN001–SBN007
4.	Complaint in Inverse Condemnation, filed with 2JD, Case No. CV12-01788, filed July 9, 2012	SBN008–SBN0027
5.	Client payments for deposition expenses	SBN0028–SBN0032
6.	Notice of Entry of Order, Stipulation to Dismiss with Prejudice, filed April 9, 2019, in Case No. CV12-01788.	SBN0033–SBN0036
7.	Stipulation and Order to Dismiss Inverse Condemnation Claim filed January 25, 2016, in Case No. CV12-01788.	SBN0037–SBN0039
8.	Stipulation and Order to Vacate Trial, filed June 1, 2016, in Case No. CV12-01788.	SBN0040–SBN0042
9.	August 16, 2016 email from John Di Francesco to Amy Sugden, Esq., and Robert Feron.	SBN0043-SBN0044
10.	August 16, 2016 email from Robert Feron to Amy Sugden, Esq., John Di Francesco.	SBN0045-SBN0046
11.	September 10, 2016 email from John Di Francesco to Amy Sugden, Esq.	SBN0047-SBN0048
12.	December 28, 2016 email chain between Amy Sugden, Esq., and clients	SBN0049-SBN0057
13.	February 17, 2017 email from Steve Silva, Esq., re: five-year rule.	SBN0058-SBN0059
14.	March 25, 2017 email from Steve Silva, Esq., to Amy Sugden, Esq.	SBN0060
15.	Order filed May 4, 2017, in Case No. CV12-01788 re: Motion for Summary Judgment.	SBN0061-SBN0070
16.	Order filed May 4, 2017, in Case No. CV12-01788 re: Motion for Judgment on the Pleadings.	SBN0071-SBN0083
17.	July 6, 2017 email from Robert Feron to Amy Sugden, Esq., and John Di Francesco.	SBN0084-SBN0085
18.	July 22, 2017 email from Robert Feron to Amy Sugden, Esq., and John Di Francesco.	SBN0086
19.	September 16, 2017, (re: labor day) email chain between Amy Sugden, Esq., John Di Francesco and Robert Feron.	SBN0087-SBN0089
20.	September 20, 2017 email from Amy Sugden, Esq., to Robert Feron and John Di Francesco.	SBN0090-SBN0091
21.	October 2, 2017 email from John Di Francesco to Amy Sugden, Esq.	SBN0092
22.	November 30, 2017 email from Robert Feron to Amy Sugdent, John Di Francesco.	SBN0093

23.	December 29, 2017 email chain between Amy Sugden, Esq., and clients.	SBN0094
24.	January 19, 2018 email from Steve Silva, Esq., to Amy Sugden.	SBN0095-SBN0096
25.	April 20, 2018 email from Amy Sugden, Esq.to Robert Feron, John Di Francesco.	SBN0097
26.	April 21, 2018 email from John Di Francesco to Amy Sugden, Esq., Robert Feron.	SBN0098
27.	Motion in Limine filed June 29, 2018, in Case No. CV12-01788.	SBN0099-SBN00116
28.	August 27, 2018 email chain between Amy Sugden, Esq., and Robert Feron.	SBN00117-SBN00118
29.	Case Docket CV12-01788.	SBN00119-SBN 00127
30.	Exhibits to Motion in Limine filed September 5, 2018, in Case No. CV12-01788.	SBN00128-SBN00354
31.	November 28, 2018, letter to Brian Padgett, Esq., and Amy Sugden, Esq., from John Di Francesco, Robert Feron.	SBN00355
32.	December 1, 2018 email chain between Brian Padgett, Esq., John Di Francesco and Robert Feron.	SBN00356-SBN00359
33.	March 15, 2019 email from Robert Feron to Brian Padgett, Esq., and Amy Sugden, Esq.	SBN00360
34.	Initial Grievance received by the Office of Bar Counsel on September 4, 2019 (w/enclosures).	SBN00361-SBN00389
35.	Letter of Investigation from Louise Watson, Investigator, dated September 11, 2019.	SBN00390
36.	October 11, 2019 email from Respondent Brian Padgett, Esq., to Louise Watson.	SBN00391-SBN00392
37.	Attorney response dated October 14, 2019, from Brian Padgett, Esq. (w/attachments).	SBN00393-SBN00648
38.	December 4, 2019 email to grievants from Louise Watson.	SBN00649
39.	December 9, 2019 email to grievants from Louise Watson.	SBN00650
40.	December 20, 2019 letter to Brian Padgett, Esq., from Louise Watson.	SBN00651
41.	January 17, 2020 email chain between Loise Watson and Brian Padgett, Esq.	SBN00652-SBN00654
42.	January 22, 2020 response from Brian Padgett, Esq., to Louise Watson.	SBN00655-SBN00657
43.	January 25, 2020 email chain between Robert Feron and Louise Watson.	SBN00658
44.	February 1, 2020 correspondence to Louise Watson from John Di Francesco and Robert Feron (w/attachments).	SBN00659-SBN00688

45.	March 7, 2020 correspondence from John Di Francesco and Robert Feron (w/attachments).	SBN00689-SBN00713
46.	October 15, 2020 email from Respondent to ABC Gosioco and Laura Peters. (w/attachments)	SBN00714-SBN00727
47.	February 24, 2020 letter from Respondent. (w/attachments)	SBN00728-SBN00735
48.	October 3, 2020 summary of service.	SBN00736
49.	April 16, 2020 affidavit of due diligence.	SBN00737
50.	April 20, 2020 affidavit of due diligence.	SBN00738
51.	May 4, 2020 affidavit of due diligence.	SBN00739
52.	Affidavit of Mary Jorgensen.	SBN00740-SBN00742
53.	October 13, 2020 affidavit of due diligence.	SBN00743

The State Bar incorporates by reference all documents identified by Respondent in these matters.

B. Witnesses and Brief Statement of Facts

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

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

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

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

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

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

7. Amy Sudgen, Esq., is expected to offer testimony regarding the supervision provided to her by Respondent in the underlying case, No. CV12-01788.

8. Mary Jorgensen, the Member Services Director of the State Bar of Nevada, is expected to offer testimony regarding Respondent's SCR 79 contact information.

9. Laura Peters, a paralegal with the State Bar of Nevada, is expected to offer testimony regarding the efforts made to contact Respondent and/or correspondence with Respondent.

10. Kristi Faust, a paralegal with the State Bar of Nevada, is expected to offer testimony regarding the efforts made to contact Respondent and/or correspondence with Respondent.

11. Judith Mae All, a process server with Nationwide Legal Nevada, LLC, is expected to offer testimony regarding her attempts to personally serve Respondent.

12. Tyler Trewet, a process server with Nationwide Legal Nevada, LLC, is expected to offer testimony regarding his attempts to personally serve Respondent.

13. Sean Keseday, a process server with Nationwide Legal Nevada, LLC, is expected to offer testimony regarding his attempts to personally serve Respondent.

Dated this 28th day of April 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR'S NOTICE OF HEARING AND FINAL DISCLOSURE OF WITNESSES DOCUMENTS** was sent by prepaid first-class certified and regular U.S. Mail to:

Brian C. Padgett, Esq.
1672 Liege Drive
Henderson, NV 89012

And via email to:

1. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com

2. Brian C. Padgett, Esq. (Respondent): brian@briancpadgett.com

3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 28th day of April, 2021.

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

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

FILED

APR 29 2021

STATE BAR OF NEVADA
BY
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.

CASE NO: OBC19-1111

STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S RULE 60(b) MOTION TO SET ASIDE ORDER GRANTING STATE'S MOTION TO COMPEL

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 Opposition to Respondent's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel.

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.

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT PROCEDURAL HISTORY

On October 27, 2020, the State Bar filed its Amended Complaint. *See* Exhibit 1. On December 10, 2020, Respondent filed a Motion for Extension of Time to File Answer and Verified Response ("Motion for Extension"). *See* Exhibit 2. On February 9, 2021, the Panel Chair granted in part and denied in part the Motion for Extension by giving Respondent an extension of an additional seven (7) days following the date of that order. *See* Exhibit 3.

Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), the Panel Chair met telephonically with Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") and Respondent on February 22, 2021. *See* Exhibit 4. During that scheduling conference, the parties and the Panel Chair agreed that Respondent would provide his initial disclosures on or before March 9, 2021, by 5:00 p.m. *Id*. This deadline was also set forth in the Amended Scheduling Order, which the Panel Chair signed on February 22, 2021, and which was served on all parties that same day. *Id*. The deadlines for initial disclosures were also consistent with DRP 17(a).

On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting an extension of his initial disclosure deadline until March 12, 2021. *See* Exhibit 5. The State Bar objected to that request. *Id*. Ultimately, the Panel Chair primarily granted Respondent's request for an extension and gave Respondent "until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing." *Id.*

On March 11, 2021, at approximately 4:38 p.m., Respondent produced his initial disclosures to the State Bar. *See* Exhibit 6. Unfortunately, the only named witness was the Respondent himself. *Id*. In addition, Respondent's initial disclosures stated that he expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted "c/o Law Offices of Brian C.

Padgett." *Id*. Respondent failed to produce the identities of any of his witnesses, other than himself. *Id*. Respondent's initial disclosures also vaguely referenced several categories of documents but failed to produce any actual documents. *Id*.

Respondent did not provide any further specificity of the witnesses or documents he intends to use. Accordingly, the State Bar filed a Motion to Compel Production ("Motion to Compel") on March 25, 2021. *See* Exhibit 7. On April 15, 2021, the Panel Chair granted the State Bar's Motion to Compel which stated the following:

> Respondent may testify as a witness at the hearing, but may not call any other witnesses except to provide testimony addressing the aggravating and mitigating factors set forth in SCR 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any witnesses in lieu of testimony. Respondent may not introduce any expert reports at the hearing. Respondent may not introduce any documents obtained, generated or produced by Respondent in "the DiFrancesco case" unless those documents are expressly re-produced to the State Bar in this action with bates-numbering ***by 5:00 p.m. on Monday, April 19[, 2021]***. Likewise, Respondent may not introduce any case history of the Law Offices of Brian C. Padgett or any correspondence between Respondent and the State Bar unless those documents are expressly produced to the State Bar with bates-numbering ***by 5:00 p.m. on Monday, April 19[, 2021]***. Except as expressly set forth above, Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.

See Exhibit 8 (emphasis added).

Respondent failed to produce any documents to the State Bar by 5:00 p.m. on Monday, April 19, 2021. Accordingly, on April 20, 2021, ABC Gosioco sent an email to Panel Chair and Respondent updating them of the same. *See* Exhibit 9. In response, Respondent stated that he "counted the deadline as [April 20, 2021] to file" and that he "intend[s] to do so." *Id*. Respondent did not file anything on April 20, 2021.

Pursuant to the Amended Scheduling Order, "[a]t or before April 28, 2021 by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified

numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing." *See* Exhibit 4. Accordingly, the State Bar sent Respondent its Final Disclosure via email, regular mail, and certified mail on April 28, 2021. *See* Exhibit 10. Respondent failed to produce his Final Disclosure to the State Bar. Instead, Respondent filed the instant Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel (hereinafter "Motion to Set Aside") on April 28, 2021. The State Bar responds as follows.

ARGUMENT

I. RESPONDENT'S MOTION TO SET ASIDE SHOULD BE DENIED

"The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." *See Rodriguez v. Fiesta Palms, LLC*, 428 P.3d 255, 257 (Nev. 2018), *quoting Nev. Indus. Dev., Inc. V. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802 (1987). NRCP 60(b)(1) states that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect." Respondent's arguments are without merit as he fails to show any mistake, inadvertence, surprise, or excusable neglect that would warrant setting aside the Order Granting State Bar's Motion to Compel Production (hereinafter "Order"). Moreover, the State Bar would be prejudiced if the Order is set aside.

A. Respondent fails to demonstrate good cause to set aside the Order.

In his Motion to Set Aside, Respondent argues that he "had no intention of failing to respond to the Motion to Compel, he just believed he had until April 19, 2021 to file an opposition." Motion, p. 3. Respondent further argues that his failure to file an opposition is due to "mistake or excusable neglect," and that he "should not be limited in his disclosures as a result thereof." *Id*. However, Respondent's arguments are without merit.

After receiving an extension to file his Initial Disclosure, Respondent filed the same on March 11, 2021, but failed to produce the identities of his witnesses – other than himself – and any documents to the State Bar. *See* Exhibits 5-6. ABC Gosioco attempted on numerous occasions to confer with Respondent regarding those failures. *See* Exhibit 7. Respondent, however, did not amend or supplement those failures after ABC Gosioco's attempts to confer. As such, the State Bar filed its Motion to Compel on March 25, 2021. *Id*.

Respondent's argument that he had until April 19, 2021, to file an opposition is perplexing. He argues that he "had no way of knowing how to distinguish the Motion to Compel from a Motion to be filed under the pre-set schedule [aka the Amended Scheduling Order]." Motion, p. 5. The Amended Scheduling Order clearly states that "the parties shall file ***any*** Motions ***on or before*** April 5, 2021." *See* Exhibit 4 (emphasis added). Since a motion to compel production is a type of motion, there was no need to distinguish whether or not the State Bar's Motion to Compel filed on March 25, 2021, was "filed under the pre-set schedule." If Respondent intended to file an opposition to the State Bar's Motion to Compel, he should have done so in a timely manner.

The Amended Scheduling Order also clearly states that "[o]ppositions to the Motions should be filed ***on or before*** April 19, 2021." *Id*. Disciplinary Rule of Procedure ("DRP") 16(b) states that "[a]ll responses to motions filed pursuant to this Rule ***must be filed ten (10) judicial days after the motion is filed***." (emphasis added). Therefore, because the State Bar filed its Motion to Compel on March 25, 2021, Respondent's opposition was due on or before April 8, 2021. Even if we are to assume that Respondent used either the Washoe District Court Rules ("WDCR")[1] or the Eighth Judicial District Court Rules ("EDCR")[2] to calculate his deadline to file, Respondent's deadline to file an opposition still would

[1] WDCR 12(2) states that "[t]he responding party shall file and serve upon all parties, within 14 days after service of a motion, answering points and authorities and counter-affidavits."
[2] EDCR 2.20(e) states that "[w]ithin 14 days after the service of the motion . . . the opposing party must serve and file written notice of nonopposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied."

have been on or before April 8, 2021. Therefore, Respondent's argument that his failure to file an opposition "is a case of mistake or excusable neglect" fails.

B. The State Bar would suffer prejudice if the Order is set aside.

Respondent argues that the State Bar "will not be prejudiced by a delay caused by setting aside the Order Granting State's Motion to Compel," and that he "will quickly address any outstanding issues and supplement his disclosures and final disclosures accordingly." Motion, p. 4. However, the State Bar would suffer even more prejudice than it already has if the Order is set aside. As such, Respondent's argument is misguided.

Respondent's Initial Disclosure was due on March 9, 2021, by 5:00 p.m. *See* Exhibit 4. At 4:59 p.m. on March 9, 2021, Respondent requested for an extension to file the same. *See* Exhibit 5. Panel Chair gave Respondent until 5:00 p.m. on March 11, 2021, to file his Initial Disclosure. *Id*. Respondent filed his Initial Disclosure on March 11, 2021, but failed to disclose the identities of his witnesses – other than himself – and any documents he intended on using. DRP 17(a) requires that "Respondent shall disclose all witnesses and documents no later than fifteen (15) calendar days after the initial case conference." After numerous unsuccessful attempts to have Respondent comply with DRP 17(a), the State Bar filed its Motion to Compel.

On April 15, 2021, Panel Chair issued an Order granting the State Bar's Motion to Compel which stated the following:

> Respondent may testify as a witness at the hearing, but may not call any other witnesses except to provide testimony addressing the aggravating and mitigating factors set forth in SCR 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any witnesses in lieu of testimony. Respondent may not introduce any expert reports at the hearing. Respondent may not introduce any documents obtained, generated or produced by Respondent in "the DiFrancesco case" unless those documents are expressly re-produced to the State Bar in this action with bates-numbering ***by 5:00 p.m. on Monday, April 19[, 2021]***. Likewise, Respondent may not introduce any case history of the Law Offices of Brian C. Padgett or any correspondence between Respondent

> and the State Bar unless those documents are expressly produced to the State Bar with bates-numbering ***by 5:00 p.m. on Monday, April 19[, 2021]***. Except as expressly set forth above, Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.

Id. (emphasis added). Even after being given yet another opportunity to produce certain documents, Respondent failed to do so. *See* Exhibit 9.

Considering the fact that the rescheduled Formal Hearing is set for May 20, 2021, it is unreasonable to expect the State Bar to prepare for the hearing without having had the opportunity to review any documents or know the identity of any witnesses other than Respondent. Since the filing of Respondent's faulty Initial Disclosure on March 11, 2021, the State Bar has yet to receive any documents or any names of witnesses other than Respondent. *See* Exhibit 6. Lastly, Respondent failed to comply with the Amended Scheduling Order once again regarding Final Disclosures. *See* Exhibit 4. The Amended Scheduling Order states that "[a]t or before April 28, 2021 by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing." *Id*. The State Bar timely sent its Final Disclosure to Respondent via email, regular mail, and certified mail. *See* Exhibit 10. Although Respondent alleges that he "will quickly address any outstanding issues and supplement his disclosures and final disclosures accordingly," nothing was filed. Motion, p. 4. This matter has already been substantially continued because of Respondent's failure to participate in the disciplinary process. Further delays will prejudice the State Bar and the integrity of the disciplinary process, which is meant to protect the public from lawyers that fail to follow the Rules of Professional Conduct.

/ / /

/ / /

/ / /

CONCLUSION

Respondent has had multiple opportunities to cure his failure to adequately disclose documents and witnesses in this matter and he has neglected those opportunities. There is no reasonable assurance that any further opportunities will advance the evidence in this matter. Further, the State Bar will suffer prejudice if the Order is set aside because the already-once-continued hearing date is imminent.

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel be DENIED.

DATED this 29th day of April 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S RULE 60(b) MOTION TO SET ASIDE ORDER GRANTING STATE'S MOTION TO COMPEL** was served via email to:

1. Rich Williamson, Esq. (Panel Chair): rich@nvlawyers.com
2. Brian C. Padgett, Esq. (Respondent): brian.padgett@icloud.com
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): gerardg@nvbar.org

DATED this 29th day of April, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 1

Exhibit 1

FILED

OCT 27 2020

STATE BAR OF NEVADA

BY _____

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.	**AMENDED COMPLAINT**

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

PLEASE TAKE NOTICE that pursuant to Nevada Supreme Court Rule ("SCR") 105(2) a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada, 9456 Double R Blvd., Suite B, Reno, Nevada, 89521, **within twenty (20) days of service of this Complaint.** The procedure regarding service is addressed in SCR 109.

GENERAL ALLEGATIONS

1. Complainant, State Bar of Nevada (hereinafter "State Bar") alleges that BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), Nevada Bar No. 7474, is an active member of the State Bar, has been licensed to practice law in the State of Nevada since December 28, 2000, and at all times pertinent to this Complaint, had a principal place of business for the practice of law located in Clark County, Nevada.

2. Respondent has engaged in acts of misconduct in violation of the Nevada Rules of Professional Conduct ("RPC"), requiring disciplinary sanctions.

3. On or about September 3, 2019, the State Bar received a grievance from John Di Francesco, Robert Feron, and Jacalyn Feron (hereinafter "Grievants") alleging that Respondent engaged in misconduct.

4. Grievants have owned commercial property (hereinafter "Subject Property") along the Truckee River since approximately 1990.

5. On or about March 11, 2003, the Board of County Commissioners of Washoe County approved the Truckee River Flood Management Project ("TRFMP") for the purpose of flood management.

6. The TRFMP was paired with an Early Land Acquisition Plan ("ELAP") to acquire properties in the affected project areas.

7. On or about April 24, 2005, the Subject Property was added to the list of properties to be acquired under the ELAP.

8. On or about February 9, 2006, Grievants received a letter from the TRFMP stating its intent to acquire the Subject Property for the project.

9. On, about, or between May 12, 2006, and October 29, 2007, the TRFMP acquired nearly every property adjacent to the Subject Property.

10. Between 2006 and 2012, there were multiple negotiations between Grievants and the TRFMP regarding the acquisition of the Subject Property which never came to fruition.

11. On or about March 6, 2012, Grievants retained the Law Offices of Brian C. Padgett ("LOBCP") to represent them in a lawsuit related to the TRFMP.

12. On or about July 9, 2012, the LOBCP, acting on behalf of Grievants, filed a Complaint against Washoe County, the City of Reno, the City of Sparks, and the TRFMP alleging inverse condemnation and pre-condemnation damages claims.

13. Attorney Amy L. Sugden (hereinafter "Ms. Sugden"), an employee of Respondent, became Grievants' primary legal contact throughout the seven years of their representation.

14. On many occasions during the pendency of the case, Grievants expressed to Ms. Sugden their desire to move the lawsuit, discovery, and depositions toward a trial date.

15. Ms. Sugden consistently ignored or stalled on completing these tasks.

16. Despite Grievants' requests, a trial date was ultimately never set.

17. The Five-Year Rule, as set forth in Rule 41 of the Nevada Rules of Civil Procedure ("NRCP"), for Grievants' Complaint was set to expire on July 9, 2017.

18. Ms. Sugden states that she had a "gentleman's agreement with opposing counsel" to extend the Five-Year Rule.

19. There is no documentation or stipulation extending or tolling the expiration of the Five-Year Rule.

20. Grievants were not aware of the Five-Year Rule, and its application to their civil case, until Ms. Sugden sent them an email on or about September 16, 2017.

21. On or about April 20, 2018, Grievants instructed Ms. Sugden to take depositions and to file a Motion in Limine.

22. Although Grievants provided LOBCP with approximately $7,500 for travel expenses and depositions, no depositions were scheduled and/or taken.

23. Louise Watson (hereinafter "Ms. Watson"), an investigator with the State Bar, inquired about the $7,500 payment.

24. Respondent stated that Grievants had an unpaid balance with LOBCP, and that any funds received would have been applied to the outstanding balance.

25. Respondent stated that he would supplement his response with the Grievants' actual balance owed but failed to do so.

26. On or about June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Motion in Limine to Exclude Evidence After August 2012 ("Motion in Limine").

27. Although an "Index of Exhibits" was included in the Motion in Limine, no exhibits were attached.

28. On or about August 7, 2018, Grievants sent Ms. Sugden an email inquiring about the status of the Motion in Limine.

29. On or about August 9, 2018, Ms. Sugden stated that opposing counsel's opposition was due on July 26, 2018, and that nothing had been filed.

30. Ms. Sugden also stated that she "can't file a reply without an opposition, but I can do a notice of 'non-opposition' and hopefully the Court will then grant our request in short order."

31. On or about August 23, 2018, Grievants emailed Ms. Sugden stating that they checked the court docket and found that a non-opposition was never filed.

32. On or about August 27, 2018, Ms. Sugden informed Grievants that a notice of non-opposition was submitted, and that she would follow up with her assistant to get them a file-stamped copy.

33. The court's docket reveal that nothing was filed by either party in August 2018.

34. On or about September 5, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Supplement to the Motion in Limine attaching the missing twenty-six (26) exhibits.

35. Around December 2018, Respondent took over Ms. Sugden's duties as Grievants' primary contact.

36. Respondent claims that on or about December 4, 2018, he spoke with Grievants about potential settlement ranges.

37. According to Respondent, Grievants agreed to get another appraisal done, and that they were directed to get back to Respondent regarding appraisal and directions for further negotiations.

38. Respondent stated that after months of not hearing from Grievants, he was contacted by Grievants' new counsel.

39. On or about March 12, 2019, Grievants hired attorney Michael Sullivan (hereinafter "Mr. Sullivan") to substitute Respondent as attorney of record.

40. On or about April 8, 2019, Mr. Sullivan, acting on behalf of Grievants, filed a Stipulation and Order for Dismissal with Prejudice after discussing their options with him.

41. On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis (hereinafter "Notice") was filed.

42. The Notice was sent to Respondent's SCR 79 address (611 South Sixth Street, Las Vegas, NV 89101), as well as his alternate address (11274 Gammila Drive, Las Vegas, NV 89141) via first class and certified mail.

43. On or about 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".

44. On or about June 24, 2020, Respondent filed a Complaint in the Eighth Judicial District Court and listed as his address 611 South Sixth Street, Las Vegas, NV 89101.

45. On or about July 6, 2020, copies of the Notice sent to Respondent's alternate address were returned to the State Bar's Reno office marked "Return to Sender, Unable to Forward".

46. On or about July 13, 2020, an Entry of Default was filed.

47. A search of Respondent's public pleadings revealed a third address for Respondent (1672 Liege Drive, Henderson, NV 89012) (hereinafter "Liege address").

48. On or about September 25, 2020, the State Bar requested that Nationwide Legal attempt to personally serve Respondent at the Liege address.

49. Nationwide Legal attempted to personally serve Respondent at the Liege address on or about (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020, but to no avail.

50. On or about October 5, 2020, the State Bar contacted attorney Garrett Ogata (hereinafter "Mr. Ogata"), Respondent's criminal defense attorney, to see whether he would be willing to accept service on Respondent's behalf.

51. Mr. Ogata advised that he would contact Respondent.

52. On or about October 12, 2020, the State Bar followed up with Mr. Ogata.

53. Mr. Ogata advised that he sent Respondent a text informing him of the Formal Hearing details and provided the State Bar's contact information.

54. On or about October 15, 2020, a Formal Hearing for the instant matter was set to commence at 9:00am Pacific Standard Time.

55. On or about October 15, 2020, at approximately 8:11am Pacific Standard Time, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be continued.

56. Ultimately, the Formal Hearing was continued.

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

58. In his email, Respondent included a letter where he alleged a lack of notice of process.

59. Respondent stated that in or around February 2020, he made the decision to work full time from his home office, 1672 Liege Drive, Henderson NV 89102.

60. Respondent also stated that his secretary mailed a notice of change of his address on or about February 28, 2020.

61. The State Bar has no record of such a request.

Count One

Rule 1.15 (Safekeeping Property)

62. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 60 as if fully incorporated herein.

63. RPC 1.15 states:

> (a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.
> (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
> (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

> (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
> (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

64. Respondent negligently failed to keep accounting documents pertaining to Grievants after November 2016.

65. Respondent's misconduct resulted in injury and/or potential injury to his clients.

66. In light of the foregoing, including without limitation paragraphs 2 through 65, Respondent has violated RPC 1.15 (Safekeeping Property).

Count Two

Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)

67. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 65 as if fully incorporated herein.

68. RPC 5.1 states:

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

> (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> (2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

69. Respondent, having direct supervisory authority over Ms. Sugden, negligently failed to make reasonable efforts to ensure that Ms. Sugden conformed to the Rules of Professional Conduct in her representation of Grievants.

70. Respondent's misconduct resulted in injury and/or potential injury to his clients, as well as the profession.

71. In light of the foregoing, including without limitation paragraphs 2 through 70, Respondent has violated RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers).

Count Three

Rule 8.1 (Bar Admission and Disciplinary Matters)

72. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 70 as if fully incorporated herein.

73. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
> (a) Knowingly make a false statement of material fact; or
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

74. Respondent intentionally failed to respond to a lawful demand for information from Ms. Watson by failing to provide a supplement to his previously submitted incomplete response.

75. Respondent's misconduct resulted in injury to the profession.

76. In light of the foregoing, including without limitation paragraphs 2 through 75, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Four

Rule 8.1 (Bar Admission and Disciplinary Matters)

77. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 75 as if fully incorporated herein.

78. RPC 8.1 states:

> An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
>
> (a) Knowingly make a false statement of material fact; or
>
> (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

79. Respondent intentionally made a false statement of material fact by stating that Ms. Sugden was not subject to his supervision.

80. Respondent's misconduct resulted in injury to the profession.

81. In light of the foregoing, including without limitation paragraphs 2 through 80, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

Count Five

Rule 8.4 (Misconduct)

82. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 80 as if fully incorporated herein.

83. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

84. Respondent intentionally engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation by claiming to have informed the State Bar of his address change in or around February 2020.

85. Respondent's misconduct resulted in injury to the profession.

86. In light of the foregoing, including without limitation paragraphs 2 through 85, Respondent has violated RPC 8.4 (Misconduct).

Count Six

Rule 8.4 (Misconduct)

87. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 85 as if fully incorporated herein.

88. RPC 8.4 states:

> It is professional misconduct for a lawyer to:
> (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) Engage in conduct that is prejudicial to the administration of justice;
> (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
> (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

89. Respondent intentionally violated or attempted to violate the Rules of Professional Conduct through the acts of another and/or knowingly assisted or induced his secretary to violate or attempt to violate the Rules of Professional Conduct by submitting an affidavit from his secretary claiming that she mailed a notice of change of his address to the State Bar.

90. Respondent's misconduct resulted in injury to the profession.

91. In light of the foregoing, including without limitation paragraphs 2 through 90, Respondent has violated RPC 8.4 (Misconduct).

WHEREFORE, Complainant prays as follows:

92. That a hearing be held pursuant to SCR 105;

93. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120(1); and

94. That pursuant to SCR 102, such disciplinary action be taken by the Northern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

DATED this 27th day of October, 2020.

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 2

Exhibit 2

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

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

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

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

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

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

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

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.

/ / /

/ / /

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 10TH day of December, 2020.

BRIAN C. PADGETT

State of Nevada County of Clark
SUBSCRIBED AND SWORN BEFORE ME
this 10 day of December, 2020. By Brian Padgett

NOTARY PUBLIC

AMANDA MCKIERNAN
Notary Public - State of Nevada
County of Clark
APPT. NO. 19-1357-1
My App. Expires Jan. 29, 2023

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

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

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

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

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