

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE:

DISCIPLINE OF
BRIAN C. PADGETT, ESQ.
STATE BAR NO. 7474

Electronically Filed
Aug 10 2021 12:20 p.m.
Case No. Elizabeth A. Brown
Clerk of Supreme Court

Volume III

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

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Exhibit 3

Exhibit 3



FILED

FEB 09 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRIAN C. PADGETT, ESQ.,

Nevada Bar No. 7474

Respondent.

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.


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

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

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

21 IT IS SO ORDERED.

22 Dated this 9th day of February, 2021.

23 
24 _____
25 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



FILED

FEB 19 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

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

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

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

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

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

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

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

19 7. The parties shall participate in a telephonic Pre-Hearing Conference with
20 Chair Williamson on **May 19, 2021** at 10:00 a.m. Pursuant to Rule 23 of the Disciplinary
21 Rules of Procedure, at the Pre-hearing conference (i) the parties shall discuss all matters
22 needing attention prior to the hearing date, (ii) the Chair may rule on any motions or
23 disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary
24 matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by
25 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

Plb. _____

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

Is/ 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

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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



FILED

MAR 11 2021

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

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

Respondent,

Case No. OBC19-1111

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

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

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

Exhibit 7

Exhibit 7



FILED

MAR 25 2021

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

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



FILED

APR 15 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

**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

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

3 This case was scheduled for a formal hearing to occur on October 15, 2020. That morning,
4 Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing.
5 Ultimately, the Hearing Panel Chair granted Respondent's request for a continuance. On October
6 27, 2020, the Hearing Chair granted the State Bar leave to file an amended complaint.

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

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

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

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

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

- 6 1. All expert reports, including blow-ups, if applicable, shall be forthcoming.
- 7 2. Any and all attestations from witnesses listed herein.
- 8 2.[sic] All documents obtained, generated or produced by Respondent in the
DiFrancesco case, shall be forthcoming.
- 9 4. Case history of the Law Offices of Brian C. Padgett.
- 10 5. Correspondence between Respondent and the State Bar of Nevada.
- 11 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.

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

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

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

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

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

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

3 **Merits of the Motion**

4 DRP 17(a) requires that “Respondent shall disclose all witnesses and documents no later
5 than fifteen (15) calendar days after the initial case conference.” The Amended Scheduling Order
6 also provided that Respondent would provide his initial disclosures on or before March 9, 2021 by
7 5:00 p.m. Although the Hearing Chair provided a short extension to this requirement, the Hearing
8 Chair required Respondent “to disclose all witnesses and documents he intends to use in this
9 case.” (Motion at Ex. 4.) The Hearing Chair also warned Respondent: “*Any information not*
10 *timely disclosed may be subject to exclusion from the hearing.*” (Id. (emphasis added).)

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

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

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

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

24
25 ¹ The Nevada Rules of Civil Procedure apply in disciplinary cases. SCR 119(3); DRP 1(c).

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

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

5 Likewise,

6 If a party fails to provide information or identify a witness as required by Rule
7 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use
8 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:

9 (A) may order payment of the reasonable expenses, including attorney fees,
caused by the failure;

10 (B) may inform the jury of the party’s failure; and

11 (C) may impose other appropriate sanctions, including any of the orders
listed in Rule 37(b)(1).

12 NRCP 37(c)(1).

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

18 **Conclusion**

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

23 Respondent may testify as a witness at the hearing, but may not call any other witnesses
24 except to provide testimony addressing the aggravating and mitigating factors set forth in SCR
25 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any

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

10 IT IS SO ORDERED.

11 Dated this 15th day of April, 2021.

A handwritten signature in black ink, appearing to read "R. Williamson", is written over a horizontal line.

12
13 Richard D. Williamson, Esq.
14 Hearing Panel Chair
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Order Granting 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

Exhibit 9

Exhibit 9

From: [Gerard Gosioco](#)
To: [Laura Peters](#)
Subject: FW: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)
Date: Thursday, April 29, 2021 10:30:46 AM

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Tuesday, April 20, 2021 11:15 AM
To: Gerard Gosioco <gerardg@nvbar.org>; Richard Williamson <rich@nvlawyers.com>
Subject: Re: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)

Mr. Gosioco,

I counted the deadline as today to file.

I intend to do so.

Brian Padgett

On Apr 20, 2021, at 8:45 AM, Gerard Gosioco <gerardg@nvbar.org> wrote:

Good Morning Mr. Williamson,

I just wanted to provide a brief update on the above-entitled matter. Pursuant to your Order on the Motion to Compel Production signed on April 15, 2021, Mr. Padgett had until 5:00pm yesterday to reproduce certain documents with bates-numbering if he intends on introducing them at the formal hearing. The State Bar has not received any correspondence from Mr. Padgett between the time we received your Order and 5:00pm yesterday. If you have any questions or concerns, please feel free to contact me at any time. Thank you.

Respectfully,

Gerard Gosioco

Assistant Bar Counsel
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
Telephone: (702) 382-2200
www.nvbar.org

<Outlook-cejqppca.png>

Notice of Confidentiality: The information transmitted is intended only for the person

or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to gerardg@nvbar.org. Thank you for your patience and cooperation during this difficult time.

Exhibit 10

Exhibit 10

From: [Laura Peters](#)
To: [Richard Williamson](#)
Cc: [brian@briancpadgett.com](#); [brian.padgett@icloud.com](#); [Gerard Gosioco](#)
Subject: FW: State Bar v. Brian C. Padgett, Esq.
Date: Wednesday, April 28, 2021 4:56:00 PM

Good Evening Gentlemen:

The State Bar is attempting to send its final disclosures, also being served by both regular and certified mail to Mr. Padgett's Henderson address. Several of my attempts have been rejected (see below) because the server suspects that my messages are spam. All discovery has been sent by email, at least attempted, and will arrive by mail at 1672 Liege Drive, Henderson, NV in the next few days. Mr. Padgett, please check your mailbox for all disclosures as I can't assure that they will all arrive via email.

Thank you,

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



Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

From: Microsoft Outlook <MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@nvbar.onmicrosoft.com>
Sent: Wednesday, April 28, 2021 4:31 PM
To: Laura Peters
Subject: Undeliverable: FW: State Bar v. Brian C. Padgett, Esq.

[Redacted]

Your message couldn't be delivered to the recipients shown below.

The recipients' domains suspect your message is spam and have rejected it.

LauraP	Office 365	Multiple domains
Sender		Action Required
		Messages suspected as spam

Couldn't deliver the message to the following recipients
brian@briancpadgett.com, brian.padgett@icloud.com

How to Fix It

Try to modify your message, or change how you're sending the message, using the guidance in this article: [Bulk E-mailing Best Practices for Senders Using Forefront Online Protection for Exchange](#). Then resend your message.

If you continue to experience the problem, contact the recipient by some other means (by phone, for example) and ask them to ask their email admin to add your email address, or your domain name, to their allowed senders list.

Was this helpful? [Send feedback to Microsoft](#)

More Info for Email Admins

Status code 550 5.7.350

When Office 365 tried to send the message to the recipient (outside Office 365), the recipient's email server (or email filtering service) suspected the sender's message is spam.

If the sender can't fix the problem by modifying their message, contact the recipient's email admin and ask them to add your domain name, or the sender's email address, to their list of allowed senders.

Although the sender may be able to alter the message contents to fix this issue, it's likely that only the recipient's email admin can fix this problem. Unfortunately, Office 365 Support is unlikely to be able to help fix these kinds of externally reported errors.

Original Message Details

Created Date	4/28/2021 11:29:58 PM
Sender Address	LauraP@nvbar.org
Recipient Address	brian@briancpadgett.com , brian.padgett@icloud.com
Subject	FW: State Bar v. Brian C. Padgett, Esq.

Error Details
Reported error 550 5.7.350 Remote server returned message detected as spam -> 550 permanent failure for one or more recipients (brian.padgett@icloud.com 552 5.3.4 Error message file too big,brian@brianpcpadgett.com 250 2.6.0 <BY5PR17MB38732A8221...>
DSN generated by BYAPR17MB2517.namprd17.prod.outlook.com
Remote server mx-outbound13-122.us-east-2a.ess.aws.cdaops.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH	RELAY TIME
1	4/28/2021 11:29:58 PM	BY5PR17MB3873.namprd17.prod.outlook.com	BY5PR17MB3873.namprd17.prod.outlook.com	mapi	*
2	4/28/2021 11:29:59 PM	BY5PR17MB3873.namprd17.prod.outlook.com	BYAPR17MB2517.namprd17.prod.outlook.com	Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384)	1 sec

ARC-Seal: i=1; a=rsa-sha256; s=arcselector9901; d=microsoft.com; cv=none;
b=nJHKYHwG9khhOIUhK+ajjBOIOAIzXI3wbM/ohLd//jBd6Mzm8E4YWTWEOJ8vte3f2rw3UXSpLg19iqm4V4YgyUW95kq4zjzt9xUblWLMUKMI2bwkpN3yumb1kC89kc5S3w+rK
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ARC-Message-Signature: i=1; a=rsa-sha256; c=relaxed/relaxed; d=microsoft.com;
s=arcselector9901;
h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck;
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bUGQMete5i6oMwsVzMT0xmDHYhuZrPQH2dxd0HPWOMPTFT7605wkqThdJgSxtvpezUk1rM5cobA==
ARC-Authentication-Results: i=1; mx.microsoft.com 1; spf=pass
smtp.mailfrom=nvbar.org; dmarc=pass action=none header.from=nvbar.org;
dkim=pass header.d=nvbar.org; arc=none
DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=nvbar.org;
s=selector1;
h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck;
bh=JkXqr+kT81P06+xFxLIC7J3XF6F7dUaL+btgy0MndP8=;
b=HR3IYSmzGicYcOVSLHGdQARdk303fAnTvk2w1TLsJfCjTf4IGtysV2h/oOoslT9k26h64Z1PzY60AE70sayfr5W7D047cdJ4VmhW6XriWvbmR3BonMLBLK7JnIoRwd7R8MPN
YT6PiZ0P41rTrC73w081WY4+doe+ZfIJmRqY=
Received: from BY5PR17MB3873.namprd17.prod.outlook.com (2603:10b6:a03:21e::23)
by BYAPR17MB2517.namprd17.prod.outlook.com (2603:10b6:a03:88::12) with
Microsoft SMTP Server (version=TLS1_2,
cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id 15.20.4065.20; Wed, 28 Apr
2021 23:29:59 +0000
Received: from BY5PR17MB3873.namprd17.prod.outlook.com
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([fe80::6593:9e26:a868:47b%3]) with mapi id 15.20.4065.027; Wed, 28 Apr 2021
23:29:58 +0000
From: Laura Peters <LauraP@nvbar.org>
To: "brian@brianpcpadgett.com" <brian@brianpcpadgett.com>,
"brian.padgett@icloud.com" <brian.padgett@icloud.com>
Subject: FW: State Bar v. Brian C. Padgett, Esq.
Thread-Topic: State Bar v. Brian C. Padgett, Esq.
Thread-Index: Adc8gVCuv3Oi65mtQqateVhSnhWMTQABPi/g
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Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:
authentication-results: brianpcpadgett.com; dkim=none (message not signed)
header.d=none;brianpcpadgett.com; dmarc=none action=none
header.from=nvbar.org;
x-originating-ip: [71.94.199.108]
x-ms-publictraffictype: Email
x-ms-office365-filtering-correlation-id: d58cd3d8-bc9e-4a3c-2288-08d90a9d89f4
x-ms-traffictypediagnostic: BYAPR17MB2517:
x-microsoft-antispam-prvs: <BYAPR17MB2517B39E0F39A8E70FF46B7FDC409@BYAPR17MB2517.namprd17.prod.outlook.com>
x-ms-oob-tlc-oobclassifiers: OLM:449;
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boundary="._007_BY5PR17MB38732A8221E37C39F5DD121CDC409BY5PR17MB3873nampr_"
MIME-Version: 1.0
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(UTC)
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FILED

APR 30 2021

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

LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT, ESQ.
Nevada Bar No. 7474
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STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,
vs.

Case No. OBC19-1111

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


Respondent.

RESPONDENT'S MOTION TO REMOVE
ASSOCIATE BAR COUNSEL GOSIOCO
FROM CASE NO. OBC19-1111

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits RESPONDENT'S
MOTION TO REMOVE ASSOCIATE BAR COUNSEL GOSIOCO FROM CASE NO.

OBC19-1111 based upon the following Memorandum of Points and Authorities.

Dated: April 29th, 2021.



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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent has found that Associate Bar Counsel Gerrard Gosioco has intentionally manufactured an untruthful record of events in State Bar case nos. OBC19-0604 and OBC19-0798 involving Respondent and on appeal before the Nevada Supreme Court in an attempt to support Findings of Fact and Conclusions of Law adverse to Respondent. *See* Supreme Court Case No. 81918.

These actions of ABC Gosioco, among others discussed herein, show he is willing to create a new factual record of events or other as is necessary to the detriment of Respondent. He is now trying to use this same fabricated record in this case and it is clear that Respondent will not be able to fairly defend himself and get a fair hearing while ABC Gosioco remains on this case.

In consideration of the facts and argument set forth below, in order to preserve Respondent's Due Process and Equal Protection rights, ABC Gosioco should be removed from the case and a stay of proceedings should be had until new Bar Counsel can be assigned to this case.

II. STATEMENT OF FACTS

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

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.*

Thereafter, Appellant hired Elliott Investigative Services, Inc. and its President John M. Elliott to investigate the breach. Mr. Elliott is a retired Special Agent with 25 years in service to the FBI. He is also a Certified Fraud Investigator. 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

1 because it was believed there was a nexus between the authors of the initial complaints to the State
2 Bar and the activities Mr. Elliott was investigating.¹

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

7
8 As the Law Office made the move to Henderson from downtown Las Vegas,
9 Respondent's secretary, Connie P. Little mailed the State Bar a notice of change of address,
10 temporarily changing the Law Firm address to Respondent's home office at 1672 Liege Drive,
11 Henderson, Nevada 89012. *Exhibit D.* For the rest of 2020, the Law Firm's mail was received at
12 Appellant's home office. This address was also available on the Clark County District Court
13 Portal. *Exhibit E.*

14
15 Shortly thereafter, in early March 2020, Appellant's office email server stopped delivering
16 email to Law Firm staff. Appellant tried to restore the law office email quickly but found, with
17 COVID-19, it became extremely difficult to schedule tech support because tech firms were flooded
18 with demands from many companies to help their employees work from home. *Exhibit F.*

19 Subsequently, and before the Firm could receive repair service, the computer technician
20 who was scheduled to provide service was quarantined for COVID-19, Appellant lost an uncle and
21 then got sick himself. However, during this time and while waiting for service, Appellant got a
22 second email account as an interim stopgap and used that for filings on the District Court Portal.
23

24
25
26 ¹ After Appellant's law office email was restored in September, 2020, Appellant found no
27 correspondence indicating Associate Bar Counsel ever responded to Appellant's request to stay
28 proceedings.

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

4 Despite the notice of change of Law Firm address to 1672 Liege Drive, Henderson, Nevada
5 89012 which was mailed to the State Bar at the end of February 2020 and despite this address and
6 new email address being available on the District Court Portal, the State Bar continued to send
7 important pleadings to Appellant's 611 S. 6th Street downtown law office address and to a home
8 he had not owned in more than a year at 11274 Gammila Drive, Las Vegas, Nevada 89141. Even
9 though these mailings were returned to sender, the State Bar continued to send mailings to the
10 same addresses. These mailings included the selection of Hearing Panel members, Notice of Intent
11 to Take Default, Entry of Default, the Notice of Disciplinary Hearing and Disciplinary Findings,
12 among others.

13
14 While the State Bar continued to send Respondent filings to every address other than his
15 1672 Liege Drive address, Appellant spent the year in the Covid-19 pandemic, lost a close family
16 member and battled his own personal health challenges. Appellant had no reason to believe his
17 request to stay proceedings had not been granted by the State Bar and believed that was why he
18 received no further correspondence on these cases. However, the disciplinary process continued
19 without his knowledge, without observing his due process rights and he was given no opportunity
20 to participate in the selection of the Hearing Panel nor to defend himself against the charges levied
21 at him.

22
23 The Disciplinary Hearing was ultimately held without Respondent for case nos. OBC19-
24 0604 and OBC19-0798 and it was noted by the State Bar for the record that they sent all of their
25 mailings to Respondent's downtown law office and his old house at 11274 Gammila Drive –
26 despite the Notice of Change of Address sent by Respondent.
27
28

1 After the hearing was concluded for those two cases, ABC Gosioco noted in case no.
2 OBC19-1111 that in the summer of 2020, for the first time, he went onto the Clark County
3 District Court Portal and found Respondent's contact information for his home at 1672 Liege
4 Drive. *See Exhibit G.*

5 As the two cases went before the Supreme Court on appeal, the main issue became whether
6 or not the Findings of Fact and Conclusions of Law from the hearing could be enforced if
7 Respondent gave the State Bar his change of address but received no mail at that address and so
8 was not aware of ongoing proceedings against him.

9
10 When it came time to file his Answering Brief before the Supreme Court, for the first time
11 ever, ABC Gosioco stated that he attempted to serve Respondent with process at his 1672 Liege
12 Drive address on three separate occasions in April 2020 without success. Therefore, any lack of
13 notice was not the fault of the State Bar.

14 Respondent was shocked by this claim and went to work investigating this new claim by
15 ABC Gosioco. Respondent lives in a guard gated community and all entrants' license plates and
16 driver's licenses are recorded each day by guards on duty and stored for in excess of one year.
17 Respondent asked the lead guard in charge for a search to be done to confirm whether the process
18 servers mentioned by ABC Gosioco had, in fact, been through the guard gate in an attempt to serve
19 Respondent. After an exhaustive search, it was conclusively determined that no individuals were
20 recorded as entering MacDonald Highlands for any of the dates in issue. *Exhibit H.*

21
22 Mr. Gosioco had not been truthful to the Supreme Court and he showed, among other items
23 discussed below, that he was willing to make false claims in order to win his case against
24 Respondent.
25
26
27
28

III. LEGAL ARGUMENT

A. Abuse of Process: Untruthful Representation to Nevada Supreme Court About Service of Essential Documents to Respondent

For the first time in any legal pleadings, ABC Gosioco's Answering Brief stated that on April 24, April 26 and April 29, 2020, Nationwide process servers were hired to serve a package of filed documents to Respondent at his residence at 1672 Liege Drive, Henderson, Nevada 89012 without success.

However, the 1672 Liege Drive service address was not cited in the Respondent's Final Disclosures filed on May 12, 2020. The 1672 Liege Drive service address was also not cited in the Notice of Formal Hearing on May 21, 2020. Respondent's 1672 Liege Drive address was also not cited in State Bar Case No. OBC19-1111 as late as July 10, 2020 when the State Bar filed a Declaration of Service According to SCR 109(1).

Mr. Gosioco's original argument in Case No. OBC 19-1111 regarding the same due process issue was that he never received Respondent's mailed Notice of Change of Address at the end of February 2020. Mr. Gosioco also noted in his October 27, 2020 Amended Complaint that the first time he attempted to deliver any documents to Respondent at the 1672 Liege Drive address was on September 25, 2020. See Exhibit G.

On page 6 of the General Allegations of his Amended Complaint in case no. OBC19-1111 Mr. Gosioco notes:

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.

1 *See Exhibit G.*

2 Considering these facts, it is clear that ABC Gosioco did not serve Respondent with
3 documents in April 2020 as stated for the very first time in his Supreme Court Answering Brief.

4 However, in order to further confirm the fallacy of his new April 2020 service argument,
5 Respondent asked for the guest records to be pulled from the security headquarters in his
6 MacDonald Highlands neighborhood. The security officers log all incoming visitors for each
7 house – including process servers – on a perpetual basis. A search of the visitor log by the lead
8 security officer shows that neither Nationwide process servers or Tyler Trewit on behalf of
9 Nationwide entered MacDonald Highlands on April 24, April 26 or April 29, 2020 as newly
10 claimed by ABC Gosioco. *Exhibit H.*

12 This action taken by ABC Gosioco to alter the record was a clear Abuse of Process: A
13 willful act in the use of the legal process which was not proper in the regular conduct of the
14 proceeding. Further, looking at ABC Gosioco's list of initial disclosures in this case, it is clear
15 he intends to use his false argument against Respondent in the hearing of this instant case. It is
16 also clear from his actions that he will go to any lengths to "win" his case against Respondent.

18 Therefore, in order to preserve Respondent's Due Process and Equal Protection rights, it
19 is requested that ABC Gosioco be removed from the case immediately and a stay of proceedings
20 should be had until new Bar Counsel can be assigned to this case.

21 **B. Abuse of Process: Improperly Prosecuting Two Separate Cases In One**
22 **Disciplinary Proceeding**

23 A review of SCR 102.5(d) shows that while "multiple offenses" may be considered in
24 one disciplinary hearing, the Rule does not contemplate hearing "multiple cases" being tried in
25 the same disciplinary hearing because the prejudice that would inure to a defendant is
26 incalculable and irreparable. However, that is exactly what ABC Gosioco did with cases
27
28

1 OBC19-0604 and OBC19-0798 – he joined them into one complaint and then had them heard
2 jointly in the same disciplinary hearing.

3 This action goes outside of the Supreme Court Rules and shows that, when considered in
4 concert with the actions described above, ABC Gosioco is hostile to Respondent and that
5 hostility is not limited only to the case on appeal. This was another abuse of process by ABC
6 Gosioco: A willful act in the use of the legal process which is not proper in the regular conduct
7 of the proceeding.
8

9 Therefore, in order to preserve Respondent's Due Process and Equal Protection rights, it
10 is requested that ABC Gosioco be removed immediately from case no. OBC19-1111 and a stay
11 of proceedings should be had until new Bar Counsel can be assigned to this case.

12 **C. ABC Gosioco's Demands for Proof Respondent's Uncle Passed Away; Demands**
13 **for Proof Respondent Contracted Covid-19**

14 Last fall, when Respondent got notice of the pending hearing in this case, he filed a
15 written pleading to explain why he had only recently received notice of the hearing against him
16 and detailed, among others, the loss of an uncle and his own illness.
17

18 The hearing was held in abeyance and thereafter, ABC Gosioco tendered a letter to
19 Respondent demanding proof that Respondent's uncle had actually passed away and proof that
20 Plaintiff had contracted Covid-19, among others.

21 Before Respondent could answer and provide proof as requested, ABC Gosioco filed a
22 motion for leave to amend his Complaint and attached a draft Complaint to his motion. This
23 draft amended complaint suggested Respondent was lying (without waiting to see proof provided
24 by Respondent) and sought new punitive measures against Respondent.
25

26 It would seem that the "vigor" with which ABC Gosioco is prosecuting cases against
27 Respondent runs far outside the norm. This "pursuit at all costs" has infringed upon
28

Respondent's Due Process and Equal Protection rights and tainted this case as well as the other two currently lodged with the Supreme Court.

While ABC Gosioco's actions would seem ripe for the filing of a Bar Complaint against him, I believe that his removal from this case is the best course of action at this time. Therefore, in order to preserve Respondent's Due Process and Equal Protection rights, ABC Gosioco should be removed from the case and a stay of proceedings should be had until new Bar Counsel can be assigned to this case.


D. Stay of Proceedings Requested Until New Counsel Appointed

In consideration of the facts and argument set forth above, in order to preserve Respondent's Due Process and Equal Protection rights, ABC Gosioco should be removed from the case and a stay of proceedings should be had until new Bar Counsel can be assigned to this case.

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 Equal Protection under the laws.

Dated this 29th day of April, 2021.


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 29th day of April, 2021, I served the foregoing

RESPONDENT'S MOTION TO REMOVE

ASSOCIATE BAR COUNSEL GOSIOCO

FROM CASE NO. OBC19-1111

electronically to all parties of record in this matter.



Employee of the Law Offices of BRIAN C. PADGETT

EXHIBIT A

Subject: Extension Request to Monday 10/14 at 12:00pm: DiFrancesco Case
Date: Friday, October 11, 2019 at 11:30:59 PM Pacific Daylight Time
From: Brian Padgett
To: louisew@nvbar.org
CC: Cathy Ramsey
Attachments: A9E75E53-2BEE-408C-80D5-65A27871BFA3.png, 02FB6BDA-A5D4-4C9A-B4A1-9592526E8853.png, 0BA33676-1819-4E23-BEA0-F652CA6B8A41.png, 09B7C04A-978C-4C8F-9458-1BFC61B27F33.png, AE5C1DE7-3604-4651-8834-33CC0A92B4E6.png

Dear Ms. Watson,

When attorney Amy Sugden and her ACE Legal, LLC was terminated as an independent contractor affiliated with my firm in March 2019 she deleted more than 9 years of her emails from our server and we could not access nor recover these emails. This made answering the State Bar's request for information extremely difficult as her emails contained a significant amount of important correspondence related to the DiFrancesco case.

In order to address the lost emails, we hired a technology services firm – ANAX Technology – to see if we could recover the data.

Today at 7:06am, after much care on their part, ANAX sent me a message that they spoke again with Microsoft Office 365 Support and despite all of the avenues they traveled to try and recover the data Microsoft advised that they could not recover deleted email over 14 days old.

I believe we have some specific email correspondence right on point from the clients – Mr. DiFrancesco and Mr. Feron – that will shed more light on the true and correct reason why they filed suit against my office and Ms. Sugden.

ANAX is coming back to my office tomorrow at 2:30pm to try another avenue outside of Microsoft Office 365 Support.

Therefore, I am requesting an extension of time to file our responsive brief until 10/14 at 12:00pm.

Thank you for your consideration of this request. I understand you are out of the office until Monday so, unless I hear otherwise from you, we will continue forward with ANAX and be prepared to tender our Response to the State Bar on 10/14 at 12:00pm.

Best regards,

Brian C. Padgett
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123
www.briancpadgett.com





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EXHIBIT B

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DECLARATION OF JOHN M. ELLIOTT

STATE OF CALIFORNIA)
) ss:
COUNTY OF VENTURA

I, JOHN M. ELLIOTT, being first duly sworn, do hereby swear under penalty of perjury
to the following:

1. I am a resident of the State of California.
2. I am the President and CEO of Elliott Investigative Services, Inc.
3. I am a retired FBI Special Agent with more than 25 years of service.
4. I am also a Certified Fraud Examiner.
5. My firm was hired by Mr. Padgett in February 2020 to investigate an alleged fraudulent corporate takeover of Mr. Padgett's marijuana company, CWNevada, LLC.
6. Thereafter, I flew to Las Vegas, Nevada and I met with Mr. Padgett at his home office to begin my investigation.
7. I found that Mr. Padgett was working primarily out of his home office and from flash drives rather than access his server as it had been breached and many of his corporate documents and emails had been erased from the server.
8. During my stay in Las Vegas, Nevada, I worked out of Mr. Padgett's home office due to my concerns that the integrity of his downtown law office security was compromised.
9. Based on interviews and evidence I uncovered, I became concerned about the safety of Mr. Padgett and his staff and I suggested that they continue to work out of his home office - and avoid his downtown law office - until the case was concluded.

1
2 10. Based upon evidence I uncovered, I have reason to believe that some of the same
3 individuals involved in the fraudulent takeover of Mr. Padgett's marijuana company
4 are also involved in promulgating Bar Complaints against him – including attorney
5 Amy Sugden and Complainant Ian Ritchie.

6 11. As the investigation remained ongoing I advised Mr. Padgett to ask for a stay of
7 answering the Bar Complaints against him rather than divulge any material information
8 found during my investigation.

9 12. I have reason to believe that charges against Mr. Padgett, who had no past Complaints
10 filed against him by the State Bar - nor civil charges – were manufactured against him
11 in an effort to take his marijuana licenses from him as majority owner of CWNevada,
12 LLC.
13

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing statements are true and correct to the best of my knowledge.
16

17 Executed this 18th day of November, 2020.

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19 
20 JOHN M. ELLIOTT
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EXHIBIT C



February 24, 2020

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

Re: Grievance File No. OBC19-0604/Bruce Familian
Grievance File No. OBC19-0798/Ian Ritchie

Dear Mr. Gosioco:

I am the majority owner of a privileged license cannabis firm CWNevada, LLC. I am also the owner of the Law Offices of Brian C. Padgett and have been defending Nevada Landowners in eminent domain proceedings for eighteen years.

During that time I have had only one Bar complaint filed against me – early in my career - and after I responded to questions from Bar Counsel the case was closed in my favor. Therefore, I was surprised this summer when I learned there had been three (3) Bar complaints filed against me at roughly the same time period. I don't believe in coincidences.

At that same time these complaints were filed, my cannabis company was in the midst of a hostile, fraudulent corporate take-over as orchestrated by investors, disgruntled partners, and possible overt and covert assistance from members of certain State agencies. That battle remains ongoing.

The conspiratorial behavior of the parties to this scheme was designed to take over the company, seriously diminish the value of CWNevada, LLC and then offer the weakened and degraded company for sale with the initial offer being substantially below market value so they can acquire the company for themselves.

This has necessitated hiring a retired FBI Special Agent with more than 20 years of federal law enforcement service to launch an investigation and then coordinate with local and state law enforcement agencies. This individual is also a Certified Fraud Examiner, certified by the Association of Certified Fraud Examiners.

As this investigation has been ongoing, there is now concern that the complainants and/or other actors may be involved in these Grievances. For example, all cases in issue herein were handled by attorney Amy Sugden who had been an employee of my law office for nine (9) years before termination and is believed to have engaged in corporate espionage to assist in the takeover of CWNevada which includes damaging my standing in the practice of law.

As a further example, one of the complainants, Ian Ritchie, was the Director of Security for CWNevada who was also terminated for conduct detrimental to the company. Amy Sugden represented Mr. Ritchie on a pro-bono basis until such time as it became clear that Mr. Ritchie was in the employ of the certain company investors that were trying to take over the company. Thereafter, I demanded she withdraw herself and my office as counsel in the case. I believe she silently prepared and filed the Bar complaint on behalf of Mr. Ritchie.

Both of these individuals were named as co-conspirators to illegal conduct in the CWNevada case for the first time this morning. I have attached the filed pleading for your review.

I have been directed by the retired FBI Special Agent to refrain from filing an Answer in this matter until such time as the investigation is concluded as he has significant concern regarding these Grievances and the underlying motivations for prosecution.

Mr. Gosioco, if you have any further questions let's schedule time for a call so we can discuss next steps.

Very truly yours,



Brian C. Padgett

SUBSCRIBED AND SWORN BEFORE ME
this ____ day of February, 2020.

NOTARY PUBLIC

EXHIBIT D

1
2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, CONNIE PATRICE LITTLE, being first duly sworn, do hereby swear under penalty of
6 perjury to the following:

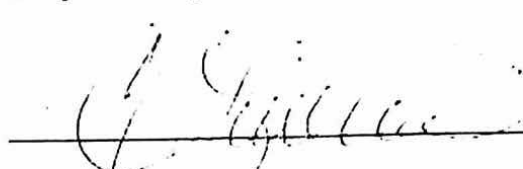
- 7
8 1. I am a resident of the State of Nevada.
9
10 2. I was employed by the Law Offices of Brian C. Padgett from July 2019 - June 2020.
11
12 3. In the Fall of 2019 it was discovered that the Law Firm's server had been breached
13 and approximately half of the Firm's archived emails were deleted from the corporate
14 server without our knowledge.
15
16 4. Because of the breach and the irregular email service we encountered in Fall of 2019
17 it was recommended by a security expert that the Firm should work out of Mr.
18 Padgett's home office at 1672 Liege Drive, Henderson, Nevada 89012 until the the
19 server could be better protected and Mr. Padgett's personal case, A-17-755479-B,
20 was concluded.
21
22 5. The Firm server was breached again in February 2020 and the decision was then
23 made to move the office to Mr. Padgett's 1672 Liege Drive home office.
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25 6. On February 28, 2020, I mailed a notice of change of the Law Firm's address to the
26 Nevada State Bar at Mr. Padgett's request.
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7. That new address I gave to the State Bar was 1672 Liege Drive, Henderson, NV
89012.

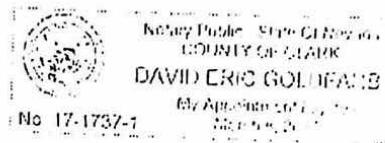
I declare under penalty of perjury under the laws of the State of Nevada that the
foregoing statements are true and correct to the best of my knowledge.

Executed this 14 day of October, 2020.


CONNIE P. LITTLE

SUBSCRIBED AND SWORN BEFORE ME
this 14 day of October, 2020.


NOTARY PUBLIC



this is a look
confirmation for
my Affidavit Date
10/1/20

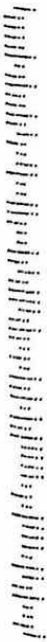
EXHIBIT E

**Brownstein Hyatt
Farber Schreck**

100 North City Parkway, Suite 1000
Las Vegas, Nevada 89106

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

6501 287246 ROOS



PRINTED TOTAL
\$ 000.500
JULY 08 2020
←

LIE, HERNANDEZ, LANDRUM
& CARLSON APC
7575 Vegas Dr. Ste. 150
Las Vegas, NV 89128

408-2466-005
408-2466-005
251-1664-720
F04 312

Brian C. Padgett
1672 Liege Dr.
Henderson, NV 89012

89012-724572



EXHIBIT F

1
2 STATE OF NEVADA)

) ss:

3 COUNTY OF CLARK)

4
5 I, LAUREL DE LA CRUZ, being first duly sworn, do hereby swear under penalty of
6 perjury to the following:

- 7
8 1. I am a resident of the State of Nevada.
9
10 2. I am an independent contractor and have worked on projects for the Law Offices of
11 Brian C. Padgett beginning in 2018.
12
13 3. In the Fall of 2019 it was discovered that the Law Firm's server had been breached
14 and approximately half of the Firm's archived emails were deleted from the server
15 without the Firm's knowledge.
16
17 4. By the time the breach was discovered, the emails were unable to be recovered.
18
19 5. Because of the breach and irregular email service subsequent to the breach it was
20 recommended by a security expert that the Law Firm work out of Mr. Padgett's home
21 office at 1672 Liege Drive in Henderson, Nevada until the server could be secured
22 and certain cases involving Mr. Padgett were concluded.
23
24 6. The Firm's server was breached again in February 2020 and the decision was then
25 made for Mr. Padgett to work primarily at of his home office.
26
27 7. Shortly thereafter, in March 2020, the Firm's office email stopped delivering mail to
28 the Law Firm address.
29
30 8. After Mr. Padgett began working primarily from his home office, I was in touch with
31 an IT firm to review and resolve the Firm's server and email issues.
32
33 9. As a result of COVID-19, it became extremely difficult to book tech support service
34 which had to be done at both Mr. Padgett's home and the law office.

10. I was told by the IT companies I spoke with that it could take an "undetermined" amount of time to receive service as many companies were attempting to establish "work from home" capabilities for their employees.
11. When demand for IT service began to settle down, the technician that was scheduled to perform service came into contact with someone that was diagnosed with COVID-19.
12. A decision was then made by Mr. Padgett to wait for the technician to recover before scheduling him to come to the office for assistance.
13. Mr. Padgett got sick after that.
14. It wasn't until September 2020 before the Firm could safely get IT service and email restored.
15. I am aware that the Firm sent a notice of change of address to the State Bar of Nevada on or about February 28, 2020.
16. Between March - September 2020, I am aware that Mr. Padgett has received mail from clients and accepted service of process at his home office address.
17. Between March - September, 2020, no postal mail was received by the Firm from the State Bar of Nevada.
18. Between March - September 2020, no electronic mail was received by the Firm from the State Bar of Nevada until the Firm's email was restored.
19. Between March - September 2020 no personal service was had upon any member of the Firm by the State Bar of Nevada.

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20. As such, I was not aware the State Bar had proceeded forward with disciplinary proceedings against Mr. Padgett until I was notified by a third party very recently

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 14th day of October, 2020.

Laurel Amy Delacruz

Notary Public, State of Nevada, Commission # 15-3033-1, Expires September 11, 2023

LAUREL DE LA CRUZ

SUBSCRIBED AND SWORN BEFORE ME
this 14th day of October, 2020.

MCT

NOTARY PUBLIC

M CARMEN TREVINO
NOTARY PUBLIC
STATE OF NEVADA
Commission # 15-3033-1
My Appt. Expires September 11, 2023

Notary Stamp 2020/10/14 22:23:30 PST



Affidavit - Laurel Amy De La Cruz

DocVerify ID: E2A4CC0C-2874-441A-9852-459C245488DF
Created: October 14, 2020 22:06:43 -8:00
Pages: 3
Electronic Notary: Yes / State: NV - Notarial act performed by means of audio-communication

E-Signature Summary

E-Signature 1: Laurel Amy Delacruz (LDC)
October 14, 2020 22:23:30 -8:00 [26D6352FDDF2] [70.189.215.170]
laurel.delacruz3@gmail.com (Principal)

E-Signature Notary: M Carmen Trevino (MCT)
October 14, 2020 22:23:30 -8:00 [D0E6B0263716] [70.189.215.170]
info@ReliableMobileNotaryLV.com
I, M Carmen Trevino, did witness the participants named above
electronically sign this document.

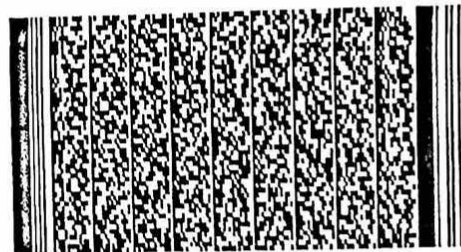


EXHIBIT G



FILED

OCT 27 2020

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

Case No: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

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.

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

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

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

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

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

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

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

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

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

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

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

24 56. Ultimately, the Formal Hearing was continued.
25

EXHIBIT H



FILED

MAY 05 2021

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

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

Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

-vs-

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

Respondent.

CASE NO: OBC19-1111

**STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S MOTION TO REMOVE
ASSOCIATE BAR COUNSEL GOSIOCO FROM CASE NO. OBC19-1111**

COMES NOW, the State Bar of Nevada (hereinafter "State Bar"), by DANIEL M. HOOGE, Bar Counsel, through GERARD GOSIOCO, Assistant Bar Counsel, and hereby moves the Panel Chair to deny Respondent's Motion to Remove Associate Bar Counsel Gosioco From Case No. OBC19-1111.

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.

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MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT PROCEDURAL HISTORY

On May 13, 2020, the State Bar filed a Complaint against Respondent. *See* Exhibit 1. Pursuant to Nevada Supreme Court Rule (“SCR”) 105(2), Respondent’s Verified Response or Answer was due on or before June 2, 2020. Respondent failed to file a Verified Response or Answer. On June 9, 2020, a Notice of Intent to Proceed on a Default Basis was filed. *See* Exhibit 2. On July 13, 2020, Default was entered. *See* Exhibit 3.

The Formal Hearing for the instant matter was set to commence on October 15, 2020, at 9:00 a.m. Pacific Standard Time (“PST”). *See* Exhibit 4. At approximately 8:11am PST on October 15, 2020, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter “ABC Gosioco”) requesting that the Formal Hearing be continued. *See* Exhibit 5. Ultimately, the Panel Chair granted Respondent’s request for a continuance.

On October 22, 2020, the State Bar filed a Motion for Leave to File Amended Complaint. *See* Exhibit 6. On October 27, 2020, the Panel Chair granted the State Bar’s motion. *See* Exhibit 7. Accordingly, the State Bar filed an Amended Complaint that same day. *See* Exhibit 8. Pursuant to SCR 105(2), Respondent’s Verified Response or Answer was due on or before November 16, 2020.

On November 16, 2020, at approximately, 10:24 p.m., Respondent filed a Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint (hereinafter “Motion to Vacate”).¹ *See* Exhibit 9. On November 18, 2020, Respondent filed a Supplement to his Motion to Vacate. *See* Exhibit 10. On December 2, 2020, the State Bar filed an opposition to Respondent’s Motion to Vacate. *See* Exhibit 11. On December 9, 2020, at approximately

¹ Although titled “Motion to Dismiss Amended Complaint,” the motion lacked any substantive argument supporting the request for dismissal.

8:10 p.m., Respondent filed a Reply to the State Bar's opposition.² *See* Exhibit 12. On December 10, 2020, at approximately 5:34 p.m., Respondent filed a Motion for Extension of Time to File Answer and Verified Response. *See* Exhibit 13.

On December 14, 2020, the Disciplinary Board Chair entered an Order denying Respondent's Motion to Vacate.³ *See* Exhibit 14.

On January 5, 2021, the Panel Chair entered default.⁴ *See* Exhibit 16.

On January 13, 2021, Respondent sent an email to the Panel Chair and the other panel members asking if there is "a provision allowed under the Bar Rules to request a stay of this proceeding[.]" *See* Exhibit 17. Respondent argued that the Opening Brief he filed in the Nevada Supreme Court pertaining to his other disciplinary matters, OBC19-0604 and OBC19-0798, may have an impact on the instant matter. *Id.* As a result, the Panel Chair requested that the State Bar provide a comprehensive response by January 28, 2021, to address Respondent's Motion for Extension and informal request to stay the proceedings. *See* Exhibit 18. On January 28, 2021, the State Bar filed a Comprehensive Response. *See* Exhibit 19. On February 5, 2021, at approximately 11:13 p.m., Respondent filed a Reply to the State Bar's Comprehensive Response. *See* Exhibit 20.

On February 9, 2021, the Panel Chair entered an Order Regarding Respondent's Motion for Extension of Time to File Answer, Verified Response, and Informal Request to Stay Proceedings. *See* Exhibit 21. In the Order, the Panel Chair set aside the default entered, denied Respondent's informal request to stay proceedings, and granted Respondent seven calendar days from the date of the order to file a Verified Response or Answer to the State Bar's Amended Complaint. *Id.*

² It is worth noting that DRP 15(c) provides that no replies may be filed to motions to dismiss absent good cause shown. The Disciplinary Board Chair noted that "[w]hile Respondent failed to provide a showing of good cause as to why his reply should be considered, it has been read and considered." *See* Exhibit 14.

³ The Disciplinary Board Chair did not address Respondent's Motion for Extension.

⁴ This default is based on a second Notice of Intent to Enter Default filed on November 17, 2020, because the State Bar did not consider the Motion to Vacate a responsive pleading. *See* Exhibit 15.

On February 16, 2021, Respondent filed a Verified Response to Amended Complaint. *See* Exhibit 22.

Pursuant to Rule 17 of the Disciplinary Rules of Procedure (“DRP”), the Panel Chair met telephonically with ABC Gosioco and Respondent on February 22, 2021. *See* Exhibit 23. During that scheduling conference, the parties 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 24. 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 served his Initial Disclosure to the State Bar. *See* Exhibit 25. 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 26. Respondent did not file a response to the Motion to Compel within ten (10)

judicial days after the motion was filed and served. *See* DRP 15(b). 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 27 (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 the Panel Chair and Respondent updating them of the same. *See* Exhibit 28. 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.

Despite not supplementing his own disclosures, on April 5, 2021, at approximately 7:26 p.m., Respondent filed an Objection to the State Bar’s Initial Disclosure. *See* Exhibit 29. On April 19, 2021, the State Bar filed an opposition to Respondent’s Objections. *See* Exhibit 30.

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 23. Accordingly, the State Bar served Respondent

its Final Disclosure via email, regular mail, and certified mail on April 28, 2021. *See* Exhibit 31. Respondent failed to serve a Final Disclosure to the State Bar. Instead, Respondent filed a Rule 60(b) Motion to Set Aside Order Granting State’s Motion to Compel on April 28, 2021. *See* Exhibit 32. On April 29, 2021, the State Bar filed its opposition to Respondent’s Motion to Set Aside. *See* Exhibit 33.

On April 29, 2021, at approximately 6:44 p.m., Respondent filed the instant Motion to Remove Associate Bar Counsel Gosioco From Case No. OBC19-1111 (hereinafter “Motion to Remove”). The State Bar responds as follows.

ARGUMENT

I. RESPONDENT’S MOTION SHOULD BE DENIED

A. Respondent’s motion is untimely.

Respondent filed the instant motion on April 29, 2021. The Amended Scheduling Order clearly states that “the parties shall file *any* Motions *on or before* April 5, 2021.” *See* Exhibit 23. Therefore, Respondent’s motion is untimely and should be denied. Even assuming Respondent’s motion was timely, his arguments are without merit.

B. Respondent’s motion is without merit.

There is no legal basis asserted for Respondent’s request that ABC Gosioco be removed from representing the State Bar in the instant matter. Therefore, Respondent’s Motion to Remove should be denied.

Citing to *Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200 (2000), the Nevada Supreme Court opined that “this court has recognized that an appearance of impropriety may form a basis for attorney disqualification only in the limited circumstance of a public lawyer, and only if the appearance of impropriety is so extreme as to undermine public trust and confidence in the judicial system.” *Liapis v. Second Judicial Dist. Court*, 128 Nev. Adv. Rep. 39, 282 P.3d. 733, 737 (2012). In *Brown*, the Court held that “[t]o prevail on a motion to disqualify opposing counsel, the moving party must first establish

“at least a reasonable possibility that some specifically identifiable impropriety did in fact occur,” and then must also establish that “the likelihood of public suspicion or obloquy outweighs the social interests which will be served by a lawyer's continued participation in a particular case.” *Brown*, 116 Nev. at 1205.

The Court has also held that a party “should not be permitted to cause the disqualification of a judge by virtue of his or her own intentional actions.” *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1256 (2006) (party was alleged to have tried to cause recusal of judge by selection of private counsel) (citations omitted). This same principle should apply to public lawyers.

Respondent fails to cite to any legal authority that supports the removal of the undersigned in the instant matter. Respondent failed to provide anything sufficiently “extreme as to undermine public trust and confidence in the judicial system.” In fact, Respondent cites no specifically identifiable impropriety.

On the contrary, Respondent’s own conduct has caused the delay and self-harm in this matter. Respondent has not been diligent in responding to the State Bar. He has not been diligent in answering or defending the complaint.

C. Respondent’s motion was not made in good faith, but rather, for purposes of delay.

Respondent has requested extensions for his deadlines and stays of the instant proceedings on multiple occasions. The instant motion is merely another attempt to stay the instant proceedings. The crux of Respondent’s arguments revolves around his other disciplinary matters, OBC19-0604 and OBC19-0798, which are currently being reviewed by the Nevada Supreme Court (Docket No. 81918). Respondent concludes his motion by arguing that “ABC Gosioco should be removed from the case and a stay of proceedings should be had until new Bar Counsel can be assigned to this case.” Motion, p. 10.

Respondent’s motion restates the arguments he made in his Opening Brief and Reply Brief which were filed on January 13, 2021, and March 15, 2021, respectively. *See* Exhibits 34-35. In fact, most of

Respondent's motion repeated his Supreme Court briefs. *Id.* Respondent should, and could, have filed the instant motion prior to the motion deadline enumerated in the Amended Scheduling Order.

The instant motion is an attempt to not only stay the proceedings, but an attempt to introduce evidence the Panel Chair previously excluded. Therefore, Respondent's Motion to Remove should be denied as it was not made in good faith, but rather, for purposes of further delay.

CONCLUSION

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Motion to Remove Associate Bar Counsel Gosioco From Case No. OBC19-1111 be DENIED.

DATED this 5th day of May 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 MOTION TO REMOVE ASSOCIATE BAR COUNSEL GOSIOCO FROM CASE NO. OBC19-1111** was served via email to:

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

DATED this 5th day of May 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 1

Exhibit 1



FILED

MAY 13 2020

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

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

COMPLAINT

TO: BRIAN C. PADGETT, Esq.
The Law Offices of Brian C. Padgett
611 S. 6th St.
Las Vegas, NV 89101

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 15. Respondent consistently ignored or stalled on completing these tasks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 33. The court's docket reveal that nothing was filed by either party in August
22 2018.

23 34. On or about September 5, 2018, Ms. Sugden, acting on behalf of Grievants,
24 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.

Count One

Rule 1.15 (Safekeeping Property)

41. Complainant repeats and realleges the allegations contained in Paragraphs 1 through 40 as if fully incorporated herein.

42. 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.

1 (b) A lawyer may deposit the lawyer's own funds in a client trust
2 account for the sole purpose of paying bank service charges on
that account, but only in an amount necessary for that purpose.

3 (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.

4 (d) Upon receiving funds or other property in which a client or
5 third person has an interest, a lawyer shall promptly notify the
client or third person. Except as stated in this Rule or otherwise
6 permitted by law or by agreement with the client, a lawyer shall
promptly deliver to the client or third person any funds or other
7 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.

8 (e) When in the course of representation a lawyer is in
possession of funds or other property in which two or more
9 persons (one of whom may be the lawyer) claim interests, the
property shall be kept separate by the lawyer until the dispute
10 is resolved. The lawyer shall promptly distribute all portions of
the funds or other property as to which the interests are not in
11 dispute.

12 43. Respondent negligently failed to keep accounting documents pertaining to
13 Grievants after November 2016.

14 44. Respondent's misconduct resulted in injury and/or potential injury to his
15 clients.

16 45. In light of the foregoing, including without limitation paragraphs 2 through
17 55, Respondent has violated RPC 1.15 (Safekeeping Property).

18 Count Two

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

20 46. Complainant repeats and realleges the allegations contained in Paragraphs 1
21 through 45 as if fully incorporated herein.

22 47. RPC 5.1 states:

23 (a) A partner in a law firm, and a lawyer who individually or
together with other lawyers possesses comparable managerial
24 authority in a law firm, shall make reasonable efforts to ensure
that the firm has in effect measures giving reasonable
25 assurance that all lawyers in the firm conform to the Rules of
Professional Conduct.

1 (b) A lawyer having direct supervisory authority over another
2 lawyer shall make reasonable efforts to ensure that the other
lawyer conforms to the Rules of Professional Conduct.

3 (c) A lawyer shall be responsible for another lawyer's violation
of the Rules of Professional Conduct if:

4 (1) The lawyer orders or, with knowledge of the specific
conduct, ratifies the conduct involved; or

5 (2) The lawyer is a partner or has comparable managerial
6 authority in the law firm in which the other lawyer
practices, or has direct supervisory authority over the other
7 lawyer, and knows of the conduct at a time when its
consequences can be avoided or mitigated but fails to take
reasonable remedial action.

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

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

13 50. In light of the foregoing, including without limitation paragraphs 2 through
14 55, Respondent has violated RPC 5.1 (Responsibilities of Partners, Managers, and
15 Supervisory Lawyers).

16 **Count Three**

17 **Rule 8.1 (Bar Admission and Disciplinary Matters)**

18 51. Complainant repeats and realleges the allegations contained in Paragraphs 1
19 through 50 as if fully incorporated herein.

20 52. RPC 8.1 states:

21 An applicant for admission to the bar, or a lawyer in connection
22 with a bar admission application or in connection with a
disciplinary matter, shall not:

23 (a) Knowingly make a false statement of material fact; or

24 (b) Fail to disclose a fact necessary to correct a
misapprehension known by the person to have arisen in the
25 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.

1 53. Respondent knowingly failed to respond to a lawful demand for information
2 from Ms. Watson by failing to provide a supplement to his previously submitted incomplete
3 response.

4 54. Respondent's misconduct resulted in injury to the profession.

5 55. In light of the foregoing, including without limitation paragraphs 2 through
6 55, Respondent has violated RPC 8.1 (Bar Admission and Disciplinary Matters).

7 **WHEREFORE**, Complainant prays as follows:

8 56. That a hearing be held pursuant to SCR 105;

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

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

14 DATED this 7th day of May 2020.

15
16 **STATE BAR OF NEVADA**
17 **DANIEL M. HOOGE, BAR COUNSEL**

18 */s/ Gerard Gosioco*

19 **Gerard Gosioco, Assistant Bar Counsel**
20 Nevada Bar No. 14371
21 3100 West Charleston Boulevard, Suite 100
22 Las Vegas, Nevada 89102
23 (702) 382-2200

Exhibit 2

Exhibit 2



FILED

JUN 09 2020

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

**NOTICE OF INTENT
TO ENTER DEFAULT**

TO: BRIAN C. PADGETT, Esq.
The Law Offices of Brian C. Padgett
611 S. 6th St.
Las Vegas, NV 89101

BRIAN C. PADGETT, Esq.
11274 Gammila Drive
Las Vegas, NV 89141

PLEASE TAKE NOTICE THAT unless the State Bar receives a responsive pleading in the above-captioned matter by **June 29, 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

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

3 Additional copies of the Complaint previously served upon you, and the First
4 Designation of Hearing Panel Members, accompanies this Notice.

5 DATED this ____ day of June, 2020.

6 STATE BAR OF NEVADA
7 DANIEL M. HOOGE, Bar Counsel

8 By: _____
9 Gerard Gosioco, Assistant Bar Counsel
10 Nevada Bar No. 14371
11 3100 W. Charleston Blvd., Ste. 100
12 Las Vegas, NV 89102
13 (702) 382-2200
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Signature: /s/ Gerard Gosioco
/s/ Gerard Gosioco (Jun 8, 2020 16:23 PDT)
Email: gerardg@nvbar.org







Padgett. NIED_060220

Final Audit Report

2020-06-08

Created:	2020-06-08
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYzQ9gBg8uWbi86SZ45Tj7mYXFRyn5sqo

"Padgett. NIED_060220" History

-  Document created by Laura Peters (laurap@nvbar.org)
2020-06-08 - 11:10:21 PM GMT- IP address: 71.94.199.108
-  Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2020-06-08 - 11:10:41 PM GMT
-  Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2020-06-08 - 11:23:25 PM GMT- IP address: 70.173.56.155
-  Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
 Signature Date: 2020-06-08 - 11:23:45 PM GMT - Time Source: server- IP address: 70.173.56.155
-  Signed document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) and Laura Peters (laurap@nvbar.org)
2020-06-08 - 11:23:45 PM GMT




Adobe Sign

1 **CERTIFICATE OF SERVICE BY MAIL**

2 The undersigned hereby certifies that a true and correct copy of the foregoing
3 **Notice of Intent to Enter Default** along with a copy of the Complaint filed May 13,
4 2020, was placed in the US Mail, postage prepaid via first class certified and regular mail,
5 and addressed to Brian C. Padgett, Esq., 611 S. 6th St., Las Vegas, NV 89101 and
6 11274 Gammila Drive, Las Vegas, NV 89141.

7 Dated this 9th day of June, 2020.

8 
9 _____
10 Laura Peters, an employee of
11 the State Bar of Nevada

12 Certified receipts - 7015-3010-0001-2456 & -2332
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Exhibit 3

Exhibit 3



FILED

JUL 13 2020

STATE BAR OF NEVADA
BY [Signature]

STATE BAR OF NEVADA
OFFICE OF BAR COUNSEL

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

)

)

Complainant,

)

vs.

)

)

ENTRY OF DEFAULT

BRIAN C. PADGETT, ESQ.,

)

Nevada Bar No. 7474,

)

)

Respondent.

)

)

TO: BRIAN C. PADGETT, Esq.
611 S. 6th St.
Las Vegas, NV 89101

PROCEDURAL HISTORY

The State Bar of Nevada filed its Complaint, in accordance with Supreme Court Rule 109, upon BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), on or about May 13, 2020. The Complaint was sent to Respondent's SCR 79 address via first class and certified mail. On or about June 21, both mailings of the Complaint were returned to the State Bar of Nevada's Reno office. Respondent failed to file a responsive pleading.

On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis (hereinafter "Notice") was filed. The Notice was sent to Respondent's SCR 79 address, as

1 well as his alternate address (11274 Gammila Dr., Las Vegas, NV 89141) via first class and
2 certified mail.

3
4 In the Notice, Respondent was directed to file a responsive pleading to the State
5 Bar's Complaint by June 29, 2020. On or about June 21, 2020, copies of the Notice sent to
6 Respondent's SCR 79 address via certified and first-class mail were returned to the State
7 Bar of Nevada's Reno office marked "Return to Sender". On or about July 6, 2020, copies
8 of the Notice sent via certified and first-class mail were also returned to the State Bar of
9 Nevada's Reno office marked "Return to Sender, Unable to Forward". Again, Respondent
10 failed to file a responsive pleading.
11

12 The last time Assistant Bar Counsel, Gerard Gosioco, had any contact with
13 Respondent was on or about February 26, 2020, which pertained to grievance file numbers
14 OBC19-0604 and OBC19-0798. Similar to the instant matter, Respondent's lack of
15 communication in those cases resulted in a Default Hearing that was held on or about June
16 8, 2020.
17

18 **ORDER**

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

22 ///
23
24
25

1 The allegations set forth in the Complaint filed on or about May 13, 2020, are
2 deemed admitted.

3 **IT IS SO ORDERED.**

4
5 Dated this 13th of July, 2020.

6
7 
8 Richard D. Williamson (Jul 13, 2020 13:04 PDT)

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

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

14 
15

16 GERARD GOSIOCO
17 Assistant Bar Counsel
18 Nevada Bar No. 14371
19 3100 W. Charleston Blvd., Ste. 100
20 Las Vegas, NV 89102

21 *Attorneys for the State Bar of Nevada*
22
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Rich,

Final Audit Report

2020-07-13

Created:	2020-07-13
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAoPQ1gm3lq5d8_E1l1EKcn3k6rQnHcwf1

"Rich," History

-  Document created by Laura Peters (laurap@nvbar.org)
2020-07-13 - 7:37:58 PM GMT- IP address: 71.94.199.108
-  Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature
2020-07-13 - 7:38:21 PM GMT
-  Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2020-07-13 - 8:02:39 PM GMT- IP address: 72.213.76.46
-  Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
Signature Date: 2020-07-13 - 8:04:13 PM GMT - Time Source: server- IP address: 72.213.76.46
-  Signed document emailed to Richard D. Williamson (rich@nvlawyers.com) and Laura Peters (laurap@nvbar.org)
2020-07-13 - 8:04:13 PM GMT



Adobe Sign

CERTIFICATE OF SERVICE BY E-MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **Entry**
of Default, was emailed to Rich Williamson, Esq. -
rich@nvlawyers.com and Brian C. Padgett, Esq. -
brian@briancpadgett.com.

Dated this 13th day of July, 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Entry of Default** were placed in the U.S. Mail, postage prepaid, by certified and regular first-class mail, addressed to:

Brian C. Padgett, Esq.
11274 Gammila Dr.
Las Vegas, NV 89141

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

Dated this 14th day of July, 2020.

/s/Vicki Heatherington, an employee of
the State Bar of Nevada

Exhibit 4

Exhibit 4

Case No: OBC19-1111



FILED

AUG 19 2020

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

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 July 21, 2020 at 10 a.m. to conduct the initial conference in this matter. Respondent, though properly noticed, was not present on the call. Initial disclosures, discovery issues, the potential for resolution of this matter prior to the hearing, a status conference, and the hearing date were discussed during the Initial Conference.

During the Initial Conference, it was agreed that:

1. All documents may be served electronically, unless otherwise required by the Nevada Supreme Court Rules.

1 2. The State Bar of Nevada's initial disclosures were produced to Respondent
2 on May 26, 2020.

3 3. Respondent will provide initial disclosures which shall be served on or before
4 August 4, 2020.

5 4. The parties shall file any Motions on or before August 7, 2020. Oppositions
6 to the Motions should be filed on or before August 17, 2020, and any Replies in Support of
7 the Motions should be filed on or before August 24, 2020.

8 5. At or before September 1, 2020 by 5:00 p.m., the parties shall exchange a list
9 of final hearing exhibits, identified numerically by the State Bar and alphabetically by
10 Respondent, and a list of all witnesses the party intends to call to testify at the Formal
11 Hearing.

12 6. The parties shall participate in a telephonic Pre-Hearing Conference with
13 Chair Williamson on October 12, 2020 at 10:00 a.m. Pursuant to Rule 23 of the
14 Disciplinary Rules of Procedure, at the Pre-hearing conference (i) the parties shall discuss
15 all matters needing attention prior to the hearing date, (ii) the Chair may rule on any
16 motions or disputes including motions to exclude evidence, witnesses, or other pretrial
17 evidentiary matter, and (iii) the parties shall discuss and determine stipulated exhibits
18 proffered by either bar counsel or respondent as well as stipulated statement of facts, if
19 any.

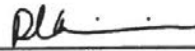
20 7. The hearing for this matter shall be set for 1 day, to wit October 15, 2020,
21 starting at 9:00 a.m. and shall take place via Zoom. The State Bar will provide a meeting
22 identification number prior to the hearing.

23 8. The Findings of Fact, Conclusion of Law, and Recommendation or Order in
24 this matter shall be due November 15, 2020.
25

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

3 Dated 19th this day of August, 2020.

4 NORTHERN NEVADA DISCIPLINARY BOARD

5
6 
7 Richard D. Williamson (Aug 19, 2020 14:20 PDT)
8 Rich Williamson, Esq.
9 FORMAL HEARING CHAIR

10 Submitted By:

11 STATE BAR OF NEVADA
12 DANIEL M. HOOGE, BAR COUNSEL

13 /s/ Gerard Gosioco
14 By: /s/ Gerard Gosioco (Aug 19, 2020 10:27 PDT)
15 Gerard Gosioco, Assistant Bar Counsel
16 3100 W. Charleston Blvd, Suite 100
17 Las Vegas, Nevada 89102
18 702-382-2200
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draft scheduling order_071720

Final Audit Report

2020-08-19

Created:	2020-08-19
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAFi7DVUTDF6BIDQQNOnIGLuaQs_82tiNw

"draft scheduling order_071720" History

-  Document created by Laura Peters (laurap@nvbar.org)
2020-08-19 - 5:26:02 PM GMT- IP address: 71.94.199.108
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2020-08-19 - 5:26:29 PM GMT
-  Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2020-08-19 - 5:26:48 PM GMT- IP address: 68.104.81.227
-  Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2020-08-19 - 5:27:05 PM GMT - Time Source: server- IP address: 68.104.81.227
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2020-08-19 - 5:27:06 PM GMT
-  Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2020-08-19 - 6:50:20 PM GMT- IP address: 174.222.0.148
-  Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
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-  Signed document emailed to Richard D. Williamson (rich@nvlawyers.com), Laura Peters (laurap@nvbar.org) and /s/ Gerard Gosioco (gerardg@nvbar.org)
2020-08-19 - 9:20:13 PM GMT

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing
Scheduling Order were served electronically upon:
brian@briancpadgett.com;
rich@nvlawyers.com; and
gerardg@nvbar.org.

Dated this 19th day of August 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 5

Exhibit 5

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

Ms. Peters and Mr. Gosioco:

Please see the attached response to recent disciplinary hearing activity.

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

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

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



October 14, 2020

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

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

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

Dear Ms. Peters:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RELIEF REQUESTED:

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

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

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

Thank you for your attention to this correspondence.

Very Truly Yours,

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

Brian C. Padgett

Exhibit 6

Exhibit 6



FILED

OCT 22 2020

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

Case No: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

**MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT**

Complainant, State Bar of Nevada (hereinafter "State Bar") hereby moves to amend its Complaint against BRIAN C. PADGETT, Esq., (hereinafter "Respondent") in the interests of justice and protecting the public. 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 or about May 13, 2020 the State Bar filed its Complaint against Respondent.
2. The Complaint contained allegations of violations of Nevada Rules of Professional Conduct ("RPC") (1) 1.15 (Safekeeping Property); (2) 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); and (3) 8.1 (Bar Admission and Disciplinary Matters).
3. On or about June 9, 2020, a Notice of Intent to Proceed on a Default Basis was filed.
4. On or about July 13, 2020, an Entry of Default was filed.

1 5. The State Bar made numerous attempts to personally serve Respondent throughout the
2 disciplinary process of the instant matter.

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

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

8 8. Ultimately, the Formal Hearing was continued.

9 9. Respondent's email was the first correspondence he had with the State Bar and/or ABC
10 Gosioco since on or about February 26, 2020, which pertained to Respondent's other cases, OBC19-
11 0604 and OBC19-0798.

12 10. The new allegations in the Amended Complaint are direct continuations of, or directly
13 pertain to, the allegations of the Complaint and/or the disciplinary process in the instant matter.

14 11. The new allegations are supported by what the State Bar considers clear and convincing
15 evidence that Respondent violated the Rules of Professional Conduct to an extreme degree, including,
16 but not limited to, conduct involving dishonesty, fraud, deceit, and/or misrepresentation. Each of
17 which supports a baseline sanction of disbarment.

18 **II. DISCUSSION**

19 **A. LEAVE TO AMEND SHOULD BE GRANTED UNDER NRCP 15**

20 Both Supreme Court Rule ("SCR") 105 and the Disciplinary Rules of Procedure are silent on
21 the matter of Amended Complaints. However, Nevada Rule of Civil Procedure ("NRCP") 15 states,
22 in relevant part:

23 Otherwise a party may amend the party's pleadings only by leave of
24 court or by written consent of the adverse party; and leave shall be freely
25 given when justice so requires.

1 NRCP 15 is made applicable to this proceeding pursuant to Supreme Court Rule ("SCR")
2 119(3) which states, [e]xcept as otherwise provided in these rules, the Nevada Rules of Civil Procedure
3 and the Nevada Rules of Appellate Procedure apply in disciplinary cases." Similarly, Disciplinary
4 Rule of Procedure ("DRP") 1(c) states, in pertinent part, "[e]xcept as otherwise provided in the
5 Supreme Court Rules (SCR), the Nevada Rules of Civil Procedure (NRCP) and Nevada Rules of
6 Appellate Procedure (NRAP) shall apply in disciplinary cases."

7 Here, the State Bar seeks permission to amend the Complaint to add allegations that are direct
8 continuations of, or directly pertain to, the allegations of the Complaint and/or the disciplinary process
9 in the instant matter. Justice requires said amendment as it will serve to accomplish the mission of the
10 State Bar and the Northern Nevada Disciplinary Board which is to protect the public, the courts, and
11 the legal profession. *See State Bar of Nevada v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-
12 528 (noting purpose of attorney discipline). If, as alleged, Respondent has conduct involving
13 dishonesty, fraud, deceit, and/or misrepresentation, violated or attempted to violate the Rules of
14 Professional Conduct through the acts of another, and/or knowingly assisted or induced another to
15 violate or attempt to violate the Rules of Professional Conduct. That behavior must be addressed as
16 promptly as possible to protect the public.

17 The State Bar has prepared an Amended Complaint, which is attached as Exhibit 1 hereto. The
18 Amended Complaint includes three (3) additional charges against Respondent.

19 III. CONCLUSION

20 For the reasons set forth above, the State Bar respectfully requests permission to file an
21 Amended Complaint in this matter in the interest of justice and protection of the public. The State Bar
22 requests any other relief which the panel chair finds necessary and appropriate in this matter.

23 DATED this 22nd 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **MOTION FOR
LEAVE TO FILE AMENDED COMPLAINT** 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 22nd day of October, 2020.

By: 

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

Exhibit 7

Exhibit 7



FILED

OCT 27 2020

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

NORTHERN NEVADA DISCIPLINARY BOARD

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

ORDER GRANTING
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

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

Procedural History

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

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

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

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

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

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

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

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

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

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

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

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

5 IT IS SO ORDERED.

6 Dated this 27th day of October, 2020.

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

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

brian.padgett@icloud.com;

rich@nvlawyers.com; and

gerardg@nvbar.org.

Dated this 27th day of October 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 8

Exhibit 8



FILED

OCT 27 2020

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

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 (“NRCPP”), 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 9

Exhibit 9



FILED

NOV 17 2020

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

LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT, ESQ.
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Henderson, Nevada 89012
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STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,
vs.

Case No. OBC19-1111

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


Respondent,

**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

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

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

6 **Exhibit 4.** For the rest of 2020, Law Firm mail was received at Appellant's home office.

7 **Exhibit 5.**

8
9 Shortly thereafter, in March 2020, Respondent's office email stopped delivering mail to
10 Law Firm staff. Respondent tried to restore the law office email quickly but found, with COVID-
11 19, it became extremely difficult to schedule tech support because they were flooded with demands
12 from many companies to help their employees work from home. **Exhibit 6.**

13 Subsequently, and before the Firm could receive repair service, Respondent lost an uncle,
14 the computer technician quarantined for COVID and Appellant got sick himself. **Exhibit 7.** It
15 wasn't until September 2020, before the Firm could safely get tech repair service and the email
16 became operable and began to repopulate itself. **Exhibit 8.** It is still not known what, if any, emails
17 are missing and failed to repopulate.
18

19 Respondent was not served with a copy of the Complaint in OBC19-1111 or any
20 subsequent documents in this matter until October 2020 – despite providing Complainant with
21 Respondent's new office address in February 2020.¹ Without proper notice of deadlines and
22

23
24 ¹ In October 2020, Counsel for Complainant says that for the first time he went online to the
25 Eighth Judicial District Court's website and found Respondent's home office address from
Respondent's filed pleadings.

26 However, he also says saw that Respondent filed a Complaint this summer and the pleading
27 paper had the downtown law office address on it. It should be noted that working from
28 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

1 filings, Respondent has been substantially prejudiced and unable to defend himself because he had
2 no knowledge of this case. When Respondent was made aware of the proceedings, he got in touch
3 with Assistant Bar Counsel via correspondence and explained the facts as set forth herein. While
4 the disciplinary hearing was held in abeyance, Associate Bar Counsel requested proof of
5 Respondent's uncle's passing, Respondent's own medical condition in violation of HIPAA laws
6 and more. All this despite Respondent being a member of the Bar in good standing for
7 approximately 20 years.
8

9 Then, well before the time given to prove up these contentions, Associate Bar Counsel
10 sought leave to file an Amended Complaint which was granted even though the rules do not allow
11 for same. This Amended Complaint added charges without giving Respondent the opportunity to
12 prove up his contentions. Further, this Amended Complaint did not come with a list of members
13 ("Designation of Hearing Panel Members) of the Disciplinary Board pursuant to Rule 13 of the
14 Disciplinary Rules of Procedure. This left Respondent unable to participate in the makeup of the
15 hearing panel and automatically violates his due process rights in this case going forward.
16

17 LEGAL ARGUMENT

18 **1. NEVADA COURTS HAVE A LONG HISTORY OF PROTECTING THE DUE** 19 **PROCESS RIGHTS OF PARTICIPANTS IN CIVIL ACTIONS**

20 Nevada courts have a history of protecting the due process rights of participants in civil
21 actions. Decisions made in absence of one party are not favored by the law. As stated by the
22 Nevada Supreme Court in *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 561, 598 P.2d 1147 (1979):
23

24 [It is] the basic policy of each case decided upon its merits. In
25 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

26 COVID-19 pandemic and still keeping the 3100 W. Charleston Blvd. address on their email and
27 letterhead even though they note they might not receive mail at that address. **Exhibit 9.**
28

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

2 95 Nev. at 563 (Emphasis in original). *See also McNair v. Rivera*, 110 Nev. 463, 471, 874 P.2d
3 1240 (1994).

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

8 There is long standing precedent in our country that requires a judgment taken without
9 any notice be set aside. The Supreme Court of the United States has held that a meritorious
10 defense need not be shown where a default or default judgment is entered without any notice to
11 the defendant. *See Peralta v. Heights Center, Inc.*, 485 U.S. 80, 108 S. Ct. 896, 99 L.Ed. 2d. 75
12 (1988). Nevada has long held to this precept as an essential due process right for all parties and
13 it is applicable here to protect the due process rights of the Respondent.
14

15
16 **2. THE HEARING PANEL'S DECISIONS SINCE FILING THE FIRST**
17 **COMPLAINT – INCLUDING THE AMENDED COMPLAINT - SHOULD BE**
18 **VACATED PURSUANT TO NRCP 60(B)(1)**

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

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

27 *See* NRCP 60(b)(1).
28

"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)(1) 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)(1) motion). "[W]hen evaluating an NRCP 60(b)(1) 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

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

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

6 The Rules of Disciplinary Procedure do not provide for the filing an Amended
7 Complaint. Therefore, the Amended Complaint should be set aside in its entirety for
8 insufficient process pursuant to NRCP 12(b)(3).
9

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

11 The Complainant failed to serve the original Complaint upon Respondent at the outset of
12 this case (despite the Respondent's notice of address change). The Complainant then took a
13 default judgment against Respondent without his knowledge and proceeded forward with the
14 case against him – right to the doorstep of a disciplinary hearing. All decisions and rulings made
15 since the start of this case have occurred without the participation of the Respondent and must be
16 set aside pursuant to NRCP 60(b)(1) and (6) and 12(b)(3).
17


18 The filing of an Amended Complaint (with additional charges added) by Complainant
19 and allowing Respondent to answer the amended pleading does not cure the prejudice to
20 Respondent as set forth above. Therefore, all pleadings in this case must be set aside pursuant to
21 NRCP 60(b)(1), (6) and NRCP 12(b)(3) in order to ensure that Respondent is not prejudiced and
22 the case is heard on the merits.
23
24
25
26
27
28

///

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

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

Exhibit 10

Exhibit 10



FILED

NOV 18 2020

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

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

1
2 John M. Elliott of Elliott Investigative Services, Inc. and it is attached hereto as
3 "Exhibit A".
4

5 Dated: November 18, 2020.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2020, I served the foregoing

SUPPLEMENT 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 Associate Bar Counsel and Louise Watson, CP for the Disciplinary Chairman.



Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 11

Exhibit 11



FILED

DEC 02 2020

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

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

Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

-VS-

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

Respondent.

CASE NO: OBC19-1111

**STATE BAR OF NEVADA'S 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,

2020¹; (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 12

Exhibit 12



FILED

DEC 10 2020

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

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,
vs.

Case No. OBC19-1111

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

Respondent,

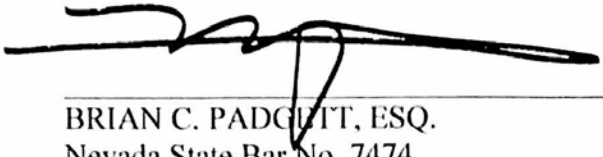
RESPONDENT'S REPLY TO

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

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

the following Memorandum of Points and Authorities.

Dated: December 9, 2020.



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

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

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

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

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

1
2 **2) Filing a Motion to Vacate and Dismiss Rather Than Answer an Amended**
3 **Complaint is Not A Stall Tactic as Suggested**

4 The reason for filing the Motion to Vacate and Dismiss was not for purposes of delay. It
5 is important that *all* due process rights of the Respondent be preserved. Answering the Amended
6 Complaint would have waived the opportunity to participate in the selection of the Hearing Panel
7 and Respondent would have been saddled with decisions of that Hearing panel that he was not able
8 to participate in.
9

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

12 Respondent was not dilatory in not answering the initial Complaint and participating in the
13 disciplinary process – he had no knowledge of the proceedings as set forth in the Motion to Vacate
14 and Dismiss. Therefore, all of his due process rights in this matter should remain intact and those
15 include being able to participate in and defend himself through the entire disciplinary process.
16

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

20 Aside from the notice of address change which was properly sent to the State Bar by
21 Respondent's office in February 2020, when mail correspondence was sent to Respondent's
22 downtown law office and returned to the State Bar Mr. Gosioco could have quickly found my
23 address through the District Court portal and reviewed my active cases which are public record in
24 order to get my current office address. The same logic applies when mail correspondence was sent
25 to my former home address at 11274 Gammila Drive and returned (because I have not owned the
26 house in approximately one year).
27
28

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

7
8 However, it is not viable for ABC Gosioco to say that Respondent therefore had prior
9 knowledge of the hearing and could have defended himself and so the Motion to Vacate and
10 Dismiss should be denied. At that time, a Notice of Default had already been entered, Respondent
11 did not have all of the filed pleadings in this case and he had no evidence or exhibits filed to defend
12 himself with. That is why the hearing was continued – due process requirements must be afforded
13 to a respondent in every bar proceeding. *See In re Schaeffer*, 25 P.3d 191, 204, *mod.* 31 P.2d 365
14 (Nev. 2000)(citing *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988). That
15 said, due process requires more than just a pause before the disciplinary hearing. Due Process
16 requires that Respondent be able to participate fully and fairly in every step of the disciplinary
17 process.
18

19 / / /

22 / / /

24 / / /

CONCLUSION

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

Dated this 9th day of December, 2020.



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

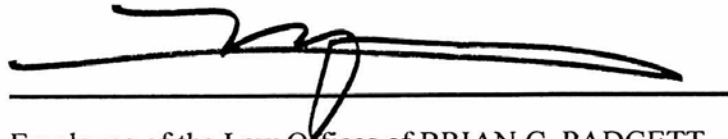
CERTIFICATE OF SERVICE

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

RESPONDENT'S REPLY TO

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

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



Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 13

Exhibit 13



FILED

DEC 11 2020

STATE BAR OF NEVADA

BY X
OFFICE OF BAR COUNSEL

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

Case No. OBC19-1111

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

Respondent,

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

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

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

Dated: December 10, 2020.



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

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

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

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

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

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

/ / /

/ / /

2) Verified Response to First Amended Complaint


STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

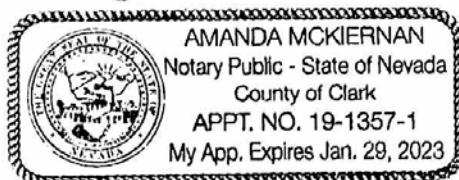
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge.

Executed this 18TH day of December, 2020.


BRIAN C. PADGETT

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


NOTARY PUBLIC



CONCLUSION

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

Dated this 10th day of December, 2020.



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

CERTIFICATE OF SERVICE

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

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

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



Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 14

Exhibit 14



FILED

DEC 14 2020

STATE BAR OF NEVADA

BY [Signature]
OFFICE OF BAR COUNSEL

Case No.: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

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

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

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

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

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

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

8 **IT IS SO ORDERED.**

9 Dated this 14th day of December 2020.

10 NORTHERN NEVADA
11 DISCIPLINARY BOARD

12
13 By: 

14 ERIC A. STOVALL, Esq.
15 Disciplinary Board Chair
16
17
18
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20
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Order denying MTD_121620

Final Audit Report

2020-12-14

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

"Order denying MTD_121620" History

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

CERTIFICATE OF SERVICE BY MAIL

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

brian.padgett@icloud.com;

eric@ericstovalllaw.com; and

gerardg@nvbar.org.

Dated this 14th day of December 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 15

Exhibit 15