

**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 12:21 p.m.  
Case No. Elizabeth A. Brown  
Clerk of Supreme Court

**Volume IV**

**RECORD OF DISCIPLINARY PROCEEDINGS,**  
**PLEADINGS**  
**AND TRANSCRIPT OF HEARINGS**

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Attorney for State Bar of Nevada

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Respondent

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# Exhibit 25

# Exhibit 25



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  
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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.

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 11<sup>th</sup> 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 11<sup>th</sup> 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 26

# Exhibit 26





FILED

MAR 25 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.

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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> *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.”

<sup>2</sup> 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.<sup>3</sup> 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*

<sup>3</sup> 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 27**

# **Exhibit 27**



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.<sup>1</sup>

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

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24  
25 <sup>1</sup> 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 15<sup>th</sup> 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  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**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](mailto:brian.padgett@icloud.com); rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 15<sup>th</sup> day of April 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada



# Exhibit 28

# Exhibit 28

**From:** [Gerard Gosioco](#)  
**To:** [rich@nvlawyers.com](mailto:rich@nvlawyers.com)  
**Cc:** [Brian Padgett](#); [Brian Padgett](#); [Laura Peters](#)  
**Subject:** State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)  
**Date:** Tuesday, April 20, 2021 8:45:42 AM  
**Attachments:** [Outlook-cejqppca.png](#)

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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](http://www.nvbar.org)



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**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](mailto:gerardg@nvbar.org). Thank you for your patience and cooperation during this difficult time.**

# Exhibit 29

# Exhibit 29

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



FILED

APR 06 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.

Case No. OBC19-1111

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

Respondent,

**OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF  
WITNESSES AND DOCUMENTS**

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

**WITNESSES**

1.  
Amy L. Sugden

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

2.  
Tyler Trewet  
Nationwide Legal Nevada, LLC

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

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

3.  
Judith Mae All  
Nationwide Legal Nevada, LLC

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

4.  
Sean Keseday  
Nationwide Legal Nevada, LLC

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

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

**OBJECTION TO DOCUMENTS**

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

DATED this 5<sup>th</sup> day of April, 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 5<sup>th</sup> day of April, 2021, I served the foregoing:

**OBJECTION TO COMPLAINANT'S INITIAL DISCLOSURES OF  
WITNESSES AND DOCUMENTS**

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

*/s/Brian C. Padgett*

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Employee of the Law Offices of BRIAN C. PADGETT

# Exhibit 30

# Exhibit 30





FILED

APR 19 2021

STATE BAR OF NEVADA

OFFICE OF BAR COUNSEL

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

*Attorneys for the State Bar of Nevada*

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

-vs-

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

Respondent.

CASE NO: OBC19-1111

**STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S OBJECTION TO  
COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS**

COMES NOW, the State Bar of Nevada (hereinafter "State Bar"), by DANIEL M. HOOGE, Bar Counsel, through GERARD GOSIOCO, Assistant Bar Counsel ("ABC"), and hereby submits the attached Points and Authorities in support of State Bar of Nevada's Opposition to Respondent's Objection to Complainant's Initial Disclosures of Witnesses and Documents.

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

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **RELEVANT PROCEDURAL HISTORY**

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

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

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

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

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

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

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

*Id.*

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

### **ARGUMENT**

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

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

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

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**CONCLUSION**

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

DATED this 19th day of April, 2021.

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

*/s/ Gerard Gosioco*

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

### **CERTIFICATE OF SERVICE**

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

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

DATED this 19th day of April, 2021.

*Laura Peters*

---

Laura Peters, an employee  
of the State Bar of Nevada

# Exhibit 31

# Exhibit 31

**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](mailto:laurap@nvbar.org)



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**From:** Microsoft Outlook <[MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@nvbar.onmicrosoft.com](mailto: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.



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](mailto:brian@briancpadgett.com), [brian.padgett@icloud.com](mailto: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](#)

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#### 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	<a href="mailto:LauraP@nvbar.org">LauraP@nvbar.org</a>
Recipient Address	<a href="mailto:brian@briancpadgett.com">brian@briancpadgett.com</a> , <a href="mailto:brian.padgett@icloud.com">brian.padgett@icloud.com</a>
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@briancpadgett.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;  
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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;  
bh=JkXqr+kT81P06+xFxLIC7J3XF6F7dUaL+btgy0MndP8=;  
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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=;  
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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 ([fe80::6593:9e26:a868:47b]) by BY5PR17MB3873.namprd17.prod.outlook.com ([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@briancpadgett.com" <brian@briancpadgett.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  
Date: Wed, 28 Apr 2021 23:29:58 +0000  
Message-ID: <BY5PR17MB38732A8221E37C39F5DD121CDC409@BY5PR17MB3873.namprd17.prod.outlook.com>  
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In-Reply-To: <BY5PR17MB38736EC30F169D4EAD726E28DC409@BY5PR17MB3873.namprd17.prod.outlook.com>  
Accept-Language: en-US  
Content-Language: en-US  
X-MS-Has-Attach: yes  
X-MS-TNEF-Correlator:  
authentication-results: briancpadgett.com; dkim=none (message not signed) header.d=none;briancpadgett.com; dmarc=none action=none header.from=nvbar.org;  
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# Exhibit 32

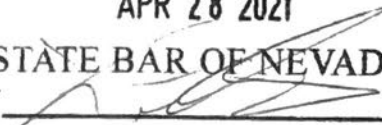
# Exhibit 32

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FILED

APR 28 2021

STATE BAR OF NEVADA  
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OFFICE OF BAR COUNSEL

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STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

Respondent,

Case No. OBC19-1111

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

**ORDER GRANTING STATE'S MOTION TO COMPEL**

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

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF RELEVANT FACTS**

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

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

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

**II. LEGAL ARGUMENT**

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

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

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

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

6 *See* NRCP 60(b)(1).

7 "Once a proper showing of mistake, inadvertence, surprise or excusable neglect has  
8 been made by the movant . . . Rule 60(b) is to be liberally interpreted in favor of setting  
9 aside judgments." *Id.*, citing *Smith v. Widman Trucking & Excavating, Inc.*, 627 F.2d 792, 795  
10 (7th Cir.1980).

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

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

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

21 Respondent had no intention of failing to respond to the Motion to Compel - he believed  
22 he had until April 19, 2021 to do so. This is a case of mistake or excusable neglect and  
23 Respondent should not be limited in his disclosures as a result thereof. Therefore, the  
24 Respondent respectfully requests that the Panel Chair set aside the Order Granting State's  
25  
26

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

3  
4 **2. Complainant Is Not Prejudiced by a Delay Caused by Setting Aside the Order**

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

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

13  
14 **3. Analysis of Yocham Factors**

15 The threshold inquiry for this Court to determine whether relief under NRCP 60(b)(1) is  
16 appropriate is to analyze the *Yocham* Factors: “(1) a prompt application to remove the judgment;  
17 (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural  
18 requirements; and (4) good faith.” *Id.* at 657, 428 P.3d at 257, *quoting Yocham v. Davis*, 98 Nev.  
19 484, 486-487, 653P.2d 1215, 1216-1217 (1982), overruled for other reasons; *Epstein v. Epstein*,  
20 113 Nev. 1401, 1405, 950 P.2d 771, 772 (1997) (tender of a meritorious defense to claim for relief  
21 was no longer required to support a NRCP 60(b)(1) motion). “[W]hen evaluating an NRCP  
22 60(b)(1) motion, the district court must consider the state’s underlying basic policy of deciding  
23 cases on the merits whenever possible.” *Id.*, *quoting Stoecklein v. Johnson Elec., Inc.*, 109 Nev.  
24 268, 271, 849 P.2d 305, 307 (1993).  
25  
26

1           a. Prompt application to remove Order.

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

7  
8           b. The absence of an intent to delay the proceedings

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

11           c. Lack of knowledge of procedural requirements.

12           As stated above, Respondent believed that ABC Gosioco’s Motion to Compel – dealing  
13 with disclosure issues – was a motion governed by the timeline previously established by the  
14 parties. Respondent believed that gave him until April 19, 2021 to file an opposition. As the  
15 Panel Chair entered an Order Granting State’s Motion to Compel on April 15, 2021 Respondent  
16 did not fail to respond because he was dilatory, a failure to timely respond came about due to a  
17 lack of knowledge of procedural requirements as it appears that ABC Gosioco’s Motion was not  
18 a Motion contemplated under the pre-set timeline schedule for filing documents. Respondent  
19 had no way of knowing how to distinguish the Motion to Compel from a Motion to be filed  
20 under the pre-set schedule.  
21

22           Respondent believed he had until April 19, 2021 to file an Opposition to the Motion to  
23 Compel and that is also why he did not respond to ABC Gosioco’s email requests – because he  
24  
25  
26



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

3 **d. Good Faith**

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

6 **III. CONCLUSION**

7  
8 Based upon the facts and law set forth herein, Respondent respectfully requests that the  
9 Panel Chair set aside the Order Granting State's Motion to Compel and allow Respondent to  
10 participate fully in this case so he may be heard on the merits.

11 DATED this 28<sup>th</sup> day of April, 2021

12  
13 LAW OFFICES OF BRIAN C. PADGETT

14 /s/ Brian C. Padgett

15 \_\_\_\_\_  
16 BRIAN C. PADGETT  
17 Nevada Bar No. 7474  
18 611 S. 6<sup>TH</sup> Street  
19 Las Vegas, NV 89101  
20 Phone: (702) 304-0123  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

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

**DEFENDANT’S RULE 60(b) MOTION TO SET ASIDE**

**ORDER GRANTING STATE’S MOTION TO COMPEL**

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

/s/ Brian C. Padgett

\_\_\_\_\_  
An employee the Law Offices of BRIAN C. PADGETT

# Exhibit 33

# Exhibit 33



FILED

APR 29 2021

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

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GERARD GOSIOCO  
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(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 RULE 60(b) MOTION  
TO SET ASIDE ORDER GRANTING STATE'S MOTION TO COMPEL**

COMES NOW, the State Bar of Nevada (hereinafter "State Bar"), by DANIEL M. HOOGE, Bar Counsel, through GERARD GOSIOCO, Assistant Bar Counsel ("ABC"), and hereby submits the attached Points and Authorities in support of State Bar of Nevada's Opposition to Respondent's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel.

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

///

///

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **RELEVANT PROCEDURAL HISTORY**

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

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

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

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

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

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

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

*See* Exhibit 8 (emphasis added).

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

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

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

## **ARGUMENT**

### **I. RESPONDENT’S MOTION TO SET ASIDE SHOULD BE DENIED**

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

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

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

After receiving an extension to file his Initial Disclosure, Respondent filed the same on March 11, 2021, but failed to produce the identities of his witnesses – other than himself – and any documents to the State Bar. *See* Exhibits 5-6. ABC Gosioco attempted on numerous occasions to confer with Respondent regarding those failures. *See* Exhibit 7. Respondent, however, did not amend or supplement those failures after ABC Gosioco’s attempts to confer. As such, the State Bar filed its Motion to Compel on March 25, 2021. *Id.*

Respondent’s argument that he had until April 19, 2021, to file an opposition is perplexing. He argues that he “had no way of knowing how to distinguish the Motion to Compel from a Motion to be filed under the pre-set schedule [aka the Amended Scheduling Order].” Motion, p. 5. The Amended Scheduling Order clearly states that “the parties shall file *any* Motions *on or before* April 5, 2021.” *See* Exhibit 4 (emphasis added). Since a motion to compel production is a type of motion, there was no need to distinguish whether or not the State Bar’s Motion to Compel filed on March 25, 2021, was “filed under the pre-set schedule.” If Respondent intended to file an opposition to the State Bar’s Motion to Compel, he should have done so in a timely manner.

The Amended Scheduling Order also clearly states that “[o]ppositions to the Motions should be filed *on or before* April 19, 2021.” *Id.* Disciplinary Rule of Procedure (“DRP”) 16(b) states that “[a]ll responses to motions filed pursuant to this Rule *must be filed ten (10) judicial days after the motion is filed.*” (emphasis added). Therefore, because the State Bar filed its Motion to Compel on March 25, 2021, Respondent’s opposition was due on or before April 8, 2021. Even if we are to assume that Respondent used either the Washoe District Court Rules (“WDCR”)<sup>1</sup> or the Eighth Judicial District Court Rules (“EDCR”)<sup>2</sup> to calculate his deadline to file, Respondent’s deadline to file an opposition still would

<sup>1</sup> WDCR 12(2) states that “[t]he responding party shall file and serve upon all parties, within 14 days after service of a motion, answering points and authorities and counter-affidavits.”

<sup>2</sup> EDCR 2.20(e) states that “[w]ithin 14 days after the service of the motion . . . the opposing party must serve and file written notice of nonopposition or opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion and/or joinder should be denied.”



have been on or before April 8, 2021. Therefore, Respondent's argument that his failure to file an opposition "is a case of mistake or excusable neglect" fails.

**B. The State Bar would suffer prejudice if the Order is set aside.**

Respondent argues that the State Bar "will not be prejudiced by a delay caused by setting aside the Order Granting State's Motion to Compel," and that he "will quickly address any outstanding issues and supplement his disclosures and final disclosures accordingly." Motion, p. 4. However, the State Bar would suffer even more prejudice than it already has if the Order is set aside. As such, Respondent's argument is misguided.

Respondent's Initial Disclosure was due on March 9, 2021, by 5:00 p.m. *See* Exhibit 4. At 4:59 p.m. on March 9, 2021, Respondent requested for an extension to file the same. *See* Exhibit 5. Panel Chair gave Respondent until 5:00 p.m. on March 11, 2021, to file his Initial Disclosure. *Id.* Respondent filed his Initial Disclosure on March 11, 2021, but failed to disclose the identities of his witnesses – other than himself – and any documents he intended on using. DRP 17(a) requires that "Respondent shall disclose all witnesses and documents no later than fifteen (15) calendar days after the initial case conference." After numerous unsuccessful attempts to have Respondent comply with DRP 17(a), the State Bar filed its Motion to Compel.

On April 15, 2021, Panel Chair issued an Order granting the State Bar's Motion to Compel which stated the following:

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

and the State Bar unless those documents are expressly produced to the State Bar with bates-numbering ***by 5:00 p.m. on Monday, April 19[, 2021]***. Except as expressly set forth above, Respondent may not introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.

*Id.* (emphasis added). Even after being given yet another opportunity to produce certain documents, Respondent failed to do so. *See* Exhibit 9.

Considering the fact that the rescheduled Formal Hearing is set for May 20, 2021, it is unreasonable to expect the State Bar to prepare for the hearing without having had the opportunity to review any documents or know the identity of any witnesses other than Respondent. Since the filing of Respondent's faulty Initial Disclosure on March 11, 2021, the State Bar has yet to receive any documents or any names of witnesses other than Respondent. *See* Exhibit 6. Lastly, Respondent failed to comply with the Amended Scheduling Order once again regarding Final Disclosures. *See* Exhibit 4. The Amended Scheduling Order states that "[a]t or before April 28, 2021 by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing." *Id.* The State Bar timely sent its Final Disclosure to Respondent via email, regular mail, and certified mail. *See* Exhibit 10. Although Respondent alleges that he "will quickly address any outstanding issues and supplement his disclosures and final disclosures accordingly," nothing was filed. Motion, p. 4. This matter has already been substantially continued because of Respondent's failure to participate in the disciplinary process. Further delays will prejudice the State Bar and the integrity of the disciplinary process, which is meant to protect the public from lawyers that fail to follow the Rules of Professional Conduct.

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### **CONCLUSION**

Respondent has had multiple opportunities to cure his failure to adequately disclose documents and witnesses in this matter and he has neglected those opportunities. There is no reasonable assurance that any further opportunities will advance the evidence in this matter. Further, the State Bar will suffer prejudice if the Order is set aside because the already-once-continued hearing date is imminent.

Based upon the foregoing, the State Bar of Nevada respectfully requests that Respondent's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel be DENIED.

DATED this 29th day of April 2021.

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

*/s/ Gerard Gosioco*

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

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S RULE 60(b) MOTION TO SET ASIDE ORDER GRANTING STATE'S MOTION TO COMPEL** was served via email to:

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

DATED this 29th day of April, 2021.

*Laura Peters*

---

Laura Peters, an employee  
of the State Bar of Nevada

# Exhibit 34

# Exhibit 34

LAW OFFICES OF BRIAN C. PADGETT

Brian C. Padgett, ESQ.

Nevada State Bar No. 7474

1672 Liege Drive

Henderson, Nevada 89012

Telephone: (702) 497-3204

Facsimile: (702) 368-0123

*Appellant in Proper Person*

Electronically Filed  
Jan 12 2021 01:08 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

IN RE:

DISCIPLINE OF

BRIAN C. PADGETT, ESQ.

NEVADA BAR NO. 7474

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)

Case No. 81918

**APPELLANT'S OPENING BRIEF**

**I. NRAP 26.1 DISCLOSURE**

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

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

NONE.

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

NONE.

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#### **IV. JURISDICTIONAL STATEMENT**

##### **A. Basis of Jurisdiction**

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

##### **B. Timeliness of Appeal**

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

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

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

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

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

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

### **C. Appeal from Final Order of Judgment**

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

## **V. ROUTING STATEMENT**

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

## **VI. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

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

## **VII. STATEMENT OF THE CASE**

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

## **VIII. STATEMENT OF FACTS**

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

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

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

*Exhibit A.*<sup>1</sup>

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

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

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

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

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

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

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

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

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

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



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

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

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

#### **IX. SUMMARY OF THE ARGUMENT:**

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

#### **X. LEGAL ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>3</sup> Appellant successfully defended himself against the NDOT Bar Complaint filed regarding a Reno, Nevada public works project.



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

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

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

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

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

Hearing Panel and result in a greater penalty than might otherwise accrue, if any.

That is the case here.

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

## **XI. CONCLUSION**

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

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

DATED this 12<sup>th</sup> Day of January 2021.

LAW OFFICES OF BRIAN C. PADGETT



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

### **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font and Time New Roman.
2. I further certify that this brief complies with the page – or type - volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface of 14 points or more and contains 4169 words.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

DATED this 12<sup>th</sup> day of January, 2021.

LAW OFFICES OF BRIAN C. PADGETT

A handwritten signature in black ink, appearing to read 'B. Padgett', is written over a horizontal line.

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

**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

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

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

  
An employee of  
The Law Offices of Brian C. Padgett

# Exhibit 35

# Exhibit 35



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<i>Nev. Indus. Dev., Inc. v. Benedetti</i> 103 Nev. 360, 364, 741 P.2d 802 (1987).....	7
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<i>Rodriguez v. Fiesta Palms, LLC</i> 134 Nev. 654, 656, 428 P.3d 255, 257 (2018).....	7
<i>Smith v. Widman Trucking &amp; Excavating, Inc.</i> 627 F.2d 792, 795 (7th Cir.1980).....	8
<i>Stoecklein v. Johnson Elec., Inc.</i> 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).....	9
<i>Yocham v. Davis</i> 98 Nev. 484, 486-487, 653 P.2d 1215, 1216-1217 (1982).....	8

### Other Authorities

NRCP 60(b).....	7-9
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### **III. RESPONSE TO RESPONDENT'S FACTUAL ASSERTIONS**

#### **A. Lack of Due Process Substantially Prejudiced Appellant**

For the first time in any legal pleadings, in Respondent's Opening Brief, the Respondent stated that on April 24, April 26 and April 29, 2020 Nationwide process servers were hired to serve a package of filed documents to Appellant at his residence at 1672 Liege Drive, Henderson, Nevada 89012.

Appellant never addressed this issue of service in his Opening Brief because he never received service from Nationwide nor had Respondent claimed they had personally served him by Nationwide at any previous time in this case.

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 not cited in the Notice of Formal Hearing on May 21, 2020.

Appellant's 1672 Liege Drive address was also not cited in State Bar Case No. OBC19-1111 as late as July, 10, 2020 when Respondent filed a Declaration of Service According to SCR 109(1). This case is also prosecuted by ABC Gosioco.

Mr. Gosioco's original argument in Case No. OBC 19-1111 regarding the same due process issue was that he never received Appellant'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 Appellant at the 1672 Liege Drive address was on September 25, 2020.

On page 6 of the General Allegations of his Amended Complaint in that case (listed in chronological order) 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.

*See Exhibit G.*

Considering these facts, Mr. Gosioco did not serve Appellant in April 2020 as stated for the very first time in his Respondent's Answering Brief.

However, in order to further confirm the fallacy of his new April 2020 service argument, Appellant asked for the guest records to be pulled from the security headquarters in his MacDonald Highlands neighborhood. The security officers log all incoming visitors for each house – including process servers – on a perpetual basis. A search of the visitor log by the lead security officer shows that

neither Nationwide process servers or Tyler Trewit entered MacDonald Highlands on April 24, April 26 or April 29, 2020. *Exhibit H.*

Despite Appellant giving proper notice of his Change of Address, no documents in this case were ever sent to 1672 Liege Drive and Appellant had no notice of this case proceeding forward after Appellant requested a stay of proceedings and therefore - no due process. Therefore, the Respondent's Entry of Decision is void and must be set aside.

**B. Timely Challenge to Panel Member Ossowski**

Appellant's challenge to Panel Member Ossowski was not untimely because Appellant was never given notice of Mr. Ossowski's appointment and so did not have an opportunity to object. Further, neither Mr. Ossowski nor Respondent disclosed Mr. Ossowski's occupation or employer during the course of the case and its proceedings. Considering that the Panel knew Appellant is one of the few practicing eminent domain attorneys in Nevada, the failure to disclose Mr. Ossowski's background with NDOT is tantamount to concealment. Therefore, Appellant has not waived his challenge according to SCR 105(2)(a) and the Respondent's Entry of Decision is void and must be set aside.

**C. Appellant Was Irreparably Harmed As A Result of Respondent Improperly Prosecuting Two Separate Cases In One Disciplinary Proceeding**

A review of SCR 102.5(d) shows that “multiple offenses” may be considered in one disciplinary hearing. However, the Rule does not contemplate hearing “multiple cases” in the same disciplinary hearing because the prejudice that would inure to a defendant is incalculable and irreparable. Therefore, the Respondent’s Entry of Decision is void and must be set aside because they heard separate cases OBC19-0604 and OBC19-0798 jointly in the same disciplinary hearing.

**IV. LEGAL ARGUMENT**

**A. The Court Should Set Aside the Respondent’s Entry of Decision Pursuant to NRCP 60(b)(1)**

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

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

See NRCP 60(b)(1).

"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).

Considering the failure of Respondent's Answering Brief to evidence proper service of the disciplinary proceedings on Appellant it is clear that the Appellant was unable to respond and participate in these matters through no fault of his own. Therefore, the Court should set aside the Respondent's Entry of Decision pursuant to NRCP 60(b)(1) and allow the Appellant to fully participate and defend himself in two separate disciplinary matter involving the two separate cases.

### **B. Analysis of Yocham Factors**

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).

### **1. Prompt application to remove judgment.**

Appellant moved quickly moved to gain relief from the Hearing Panel's Entry of Decision and 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.**

Appellant is not trying to delay the proceedings and only wishes to have a fair opportunity to be heard on the merits.

### **3. Lack of knowledge of procedural requirements.**

This requirement is not applicable under the specific circumstances under which the Plaintiffs brought this Motion.

### **4. Good Faith.**

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

## **V. CONCLUSION**

The Respondent's Notice of Entry of Decision is void and must be set aside as Appellant was given no notice of the Respondent's disciplinary proceedings moving forward and was given no opportunity to defend himself in violation of his Due Process rights.

The Respondent also failed to disclose a fatal conflict of interest between a Hearing Panel member and Appellant which substantially prejudiced the Appellant.

Finally, Respondent also held only one disciplinary hearing for two separate Complaints filed against the Appellant which had different facts and different Complainants in violation of Appellant's Equal Protection rights and SCR 102.5(d). Therefore, based upon the foregoing, the Respondent's Entry of Decision must be set aside and the Appellant must be allowed new hearings for



each case number so that he may defend himself from those Complaints filed against him.

DATED this 15<sup>th</sup> Day of March 2021.

LAW OFFICES OF BRIAN C. PADGETT

A handwritten signature in black ink, appearing to read 'B. Padgett', written over a horizontal line.

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

### **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font and Time New Roman.
2. I further certify that this brief complies with the page – or type - volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface of 14 points or more and contains 2030 words.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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

DATED this 15<sup>th</sup> day of March, 2021.

LAW OFFICES OF BRIAN C. PADGETT

A handwritten signature in black ink, appearing to read 'B. Padgett', is written over a horizontal line.

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

**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

I hereby certify that I am an employee of the LAW OFFICES OF BRIAN C. PADGETT, and that on the 15<sup>th</sup> day of March, 2021, I did serve by way of electronic filing, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** on the following:

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

  
\_\_\_\_\_  
An employee of  
The Law Offices of Brian C. Padgett



FILED

MAY 14 2021

STATE BAR OF NEVADA  
BY [Signature]  
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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 DRP 24 TRIAL BRIEF**

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 support of the State Bar of Nevada's DRP 24 Trial Brief.

This Brief is based upon all papers and pleadings on file herein, the attached Points and Authorities in support hereof.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **STATEMENT OF FACTS**

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. Grievants have owned commercial property (hereinafter “Subject Property”) along the Truckee River since approximately 1990. 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. The TRFMP was paired with an Early Land Acquisition Plan (“ELAP”) to acquire properties in the affected project areas.

On or about April 24, 2005, the Subject Property was added to the list of properties to be acquired under the ELAP. On or about February 9, 2006, Grievants received a letter from the TRFMP stating its intent to acquire the Subject Property for the project. On, about, or between May 12, 2006, and October 29, 2007, the TRFMP acquired nearly every property adjacent to the Subject Property. 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.

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

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. Ms. Sugden consistently

ignored or stalled on completing these tasks. Despite Grievants' requests, a trial date was ultimately never set.

The Five-Year Rule, as set forth in Rule 41 of the Nevada Rules of Civil Procedure ("NRCP"), for Grievants' Complaint was set to expire on July 9, 2017. Ms. Sugden stated that she had a "gentleman's agreement with opposing counsel" to extend the Five-Year Rule. There is no documentation or stipulation extending or tolling the expiration of the Five-Year Rule. 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.

On or about April 20, 2018, Grievants instructed Ms. Sugden to take depositions and to file a Motion in Limine. Although Grievants provided LOBCP with approximately \$7,500 for travel expenses and depositions, no depositions were scheduled and/or taken.

Louise Watson (hereinafter "Ms. Watson"), an investigator with the State Bar, inquired about the \$7,500 payment. Respondent stated that Grievants had an unpaid balance with LOBCP, and that any funds received would have been applied to the outstanding balance. Respondent also stated that he would supplement his response with the Grievants' actual balance owed but failed to do so.

On or about June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Motion in Limine to Exclude Evidence After August 2012. Although an "Index of Exhibits" was included in the Motion in Limine, no exhibits were attached.

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

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

Around December 2018, Respondent took over Ms. Sugden's duties as Grievants' primary contact. Respondent claims that on or about December 4, 2018, he spoke with Grievants about potential settlement ranges. 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. Respondent stated that after months of not hearing from Grievants, he was contacted by Grievants' new counsel.

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

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## **PROCEDURAL HISTORY**

On 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).<sup>1</sup> The State Bar sent a copy of the Complaint via first class and certified mail to Respondent’s Nevada Supreme Court Rule (“SCR”) 79 address at 611 South 6th Street, Las Vegas, NV 89101.<sup>2</sup> On June 21, 2020, both of those mailings were returned to the State Bar’s Reno office.<sup>3</sup>

Pursuant to SCR 105(2) and Disciplinary Rule of Procedure (“DRP”) 14, 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.<sup>4</sup> The Notice directed Respondent to file a responsive pleading to the State Bar’s Complaint by June 29, 2020.<sup>5</sup> 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.<sup>6</sup>

On June 21, 2020, both of those mailings were returned to the State Bar’s Reno office.<sup>7</sup> 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.”<sup>8</sup>

<sup>1</sup> See Exhibit 1.

<sup>2</sup> See Exhibit 2.

<sup>3</sup> See Exhibit 3.

<sup>4</sup> See Exhibit 4.

<sup>5</sup> *Id.*

<sup>6</sup> See Exhibit 5.

<sup>7</sup> See Exhibit 3.

<sup>8</sup> See Exhibit 6.

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.<sup>9</sup> A copy of the Declaration was also emailed to Respondent's email address of brian@briancpadgett.com.<sup>10</sup>

On July 13, 2020, the Panel Chair entered default.<sup>11</sup>

Pursuant to DRP 17, an initial conference took place on July 21, 2020, at 10:00 a.m. Pacific Standard Time ("PST").<sup>12</sup> The Hearing Chair and ABC Gosioco were present on the call.<sup>13</sup> Respondent, though formally noticed, was not present on the call.<sup>14</sup> Similarly, Respondent was not present for the DRP 23 pre-hearing conference held on October 12, 2020, at 10:00 a.m. PST.<sup>15</sup>

In addition to the attempts to serve Respondent discussed *supra*, the State Bar, through Nationwide Legal, attempted to personally serve Respondent with pleadings filed in the instant matter at 1672 Liege Drive, Henderson, NV 89102 on the following dates: (1) September 29, 2020<sup>16</sup>; (2) October 1, 2020; and (3) October 3, 2020.<sup>17</sup>

The Formal Hearing for the instant matter was set to commence on October 15, 2020, at 9:00 a.m. PST.<sup>18</sup> At approximately 8:11 a.m. PST on October 15, 2020, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC Gosioco") requesting that the Formal Hearing be continued.<sup>19</sup> Respondent's email was the first correspondence he had with the State Bar and/or ABC Gosioco since

<sup>9</sup> See Exhibit 5.

<sup>10</sup> See Exhibit 7.

<sup>11</sup> See Exhibit 8.

<sup>12</sup> See Exhibit 9.

<sup>13</sup> *Id.*

<sup>14</sup> See Exhibit 10.

<sup>15</sup> See Exhibit 11.

<sup>16</sup> 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.

<sup>17</sup> See Exhibit 12.

<sup>18</sup> See Exhibit 9.

<sup>19</sup> See Exhibit 13.

on or about February 24, 2020, which pertained to Respondent's other disciplinary cases, OBC19-0604 and OBC19-0798. Ultimately, the Panel Chair granted Respondent's request for a continuance.<sup>20</sup>

On October 22, 2020, the State Bar filed a Motion for Leave to File Amended Complaint.<sup>21</sup> On October 27, 2020, the Panel Chair granted the State Bar's motion.<sup>22</sup> Accordingly, the State Bar filed an Amended Complaint that same day, which 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).<sup>23</sup> Pursuant to SCR 105(2) and DRP 14, 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").<sup>24</sup> On November 18, 2020, Respondent filed a Supplement to his Motion to Vacate.<sup>25</sup> On December 2, 2020, the State Bar filed an opposition to Respondent's Motion to Vacate.<sup>26</sup> On December 9, 2020, at approximately 8:10 p.m., Respondent filed a Reply to the State Bar's opposition.<sup>27</sup>

On December 10, 2020, at approximately 5:34 p.m., Respondent filed a Motion for Extension of Time to File Answer and Verified Response.<sup>28</sup>

<sup>20</sup> See Exhibit 14.

<sup>21</sup> See Exhibit 15.

<sup>22</sup> See Exhibit 16.

<sup>23</sup> See Exhibit 17.

<sup>24</sup> See Exhibit 18 (although titled "Motion to Dismiss Amended Complaint," the motion lacked any substantive argument supporting the request for dismissal).

<sup>25</sup> See Exhibit 19.

<sup>26</sup> See Exhibit 20.

<sup>27</sup> 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 21.

<sup>28</sup> See Exhibit 22.

On December 14, 2020, the Disciplinary Board Chair entered an Order denying Respondent's Motion to Vacate.<sup>29</sup>

On January 5, 2021, the Panel Chair entered default.<sup>30</sup>

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[.]"<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> On January 28, 2021, the State Bar filed a Comprehensive Response.<sup>34</sup> On February 5, 2021, at approximately 11:13 p.m., Respondent filed a Reply to the State Bar's Comprehensive Response.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

On February 16, 2021, Respondent filed a Verified Response to Amended Complaint.<sup>38</sup>

<sup>29</sup>See Exhibit 21 (the Disciplinary Board Chair did not address Respondent's Motion for Extension).

<sup>30</sup> See Exhibit 23 (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 also* Exhibit 24.

<sup>31</sup> See Exhibit 25.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See Exhibit 26.

<sup>35</sup> See Exhibit 27.

<sup>36</sup> See Exhibit 28.

<sup>37</sup> *Id.*

<sup>38</sup> See Exhibit 29.

Pursuant to DRP 17, the Panel Chair met telephonically with ABC Gosioco and Respondent on February 22, 2021.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> The State Bar objected to that request.<sup>43</sup> 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."<sup>44</sup>

On March 11, 2021, at approximately 4:38 p.m., Respondent served his Initial Disclosure to the State Bar.<sup>45</sup> Unfortunately, the only named witness was the Respondent himself.<sup>46</sup> In addition, Respondent's initial disclosure 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."<sup>47</sup> Respondent failed to produce the identities of any of his witnesses, other than himself.<sup>48</sup> Respondent's

<sup>39</sup> See Exhibit 30.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Exhibit 31.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Exhibit 32.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

initial disclosures also vaguely referenced several categories of documents but failed to produce any actual documents.<sup>49</sup>

On March 11, 2021, at approximately 4:41 p.m., ABC Gosioco emailed Respondent asking him to produce the names of his witnesses.<sup>50</sup> Respondent did not respond to ABC Gosioco's March 11, 2021, email. On March 12, 2021, ABC Gosioco called Respondent and left a voicemail for a return call.<sup>51</sup> Respondent did not return ABC Gosioco's March 12, 2021, phone call.<sup>52</sup> On March 16, 2021, ABC Gosioco requested that Respondent provide witness names and documents by March 17, 2021, at 5:00 p.m.<sup>53</sup>

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 on March 25, 2021.<sup>54</sup> Respondent did not file a response to the Motion to Compel within ten (10) judicial days after the motion was filed and served.<sup>55</sup> 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

<sup>49</sup> *Id.*

<sup>50</sup> *See* Exhibit 33.

<sup>51</sup> *See* Exhibit 34.

<sup>52</sup> *See id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See* Exhibit 35.

<sup>55</sup> DRP 15(b).

introduce at the hearing any documents or witnesses that were not expressly and fully identified in his initial disclosure statement.<sup>56</sup>

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.<sup>57</sup> In response, Respondent stated that he “counted the deadline as [April 20, 2021] to file” and that he “intend[s] to do so.”<sup>58</sup> 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.<sup>59</sup> On April 19, 2021, the State Bar filed an opposition to Respondent’s Objections.<sup>60</sup>

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.”<sup>61</sup> Accordingly, the State Bar served Respondent its Final Disclosure via email, regular mail, and certified mail on April 28, 2021.<sup>62</sup> 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.<sup>63</sup> On April 29, 2021, the State Bar filed its opposition to Respondent’s Motion to Set Aside.<sup>64</sup>

<sup>56</sup> See Exhibit 36 (emphasis added).

<sup>57</sup> See Exhibit 37.

<sup>58</sup> *Id.*

<sup>59</sup> See Exhibit 38.

<sup>60</sup> See Exhibit 39.

<sup>61</sup> See Exhibit 30.

<sup>62</sup> See Exhibit 40.

<sup>63</sup> See Exhibit 41.

<sup>64</sup> See Exhibit 42.

On April 29, 2021, at approximately 6:44 p.m., Respondent filed a Motion to Remove Associate Bar Counsel Gosioco From Case No. OBC19-1111.<sup>65</sup> On May 5, 2021, the State Bar filed an opposition to Respondent's Motion to Remove.<sup>66</sup>

Pursuant to DRP 24, "[e]ach party may submit trial briefs ***no later than ten (10) judicial days prior to the hearing.***"<sup>67</sup> The Formal Hearing for the instant matter is set for May 28, 2021.<sup>68</sup> As such, the deadline to file trial briefs is May 14, 2021.

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<sup>65</sup> See Exhibit 43.

<sup>66</sup> See Exhibit 44.

<sup>67</sup> (emphasis added).

<sup>68</sup> See Exhibit 30.



## **ARGUMENT**

### **I. RESPONDENT'S DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED**

Respondent has continuously alleged that his due process rights were violated by not being provided sufficient notice from the State Bar of the instant disciplinary proceedings. However, Respondent's allegations are without merit as any allegation of due process violations have been remedied.

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.<sup>69</sup> Respondent was provided with the opportunity to prepare a defense after his request to continue the October 15, 2020, formal hearing was granted. Moreover, Respondent has had the opportunity to fully participate in the disciplinary process. As to unfair surprise, the State Bar provided Respondent sufficient notice of the instant matter prior to his request.

The State Bar attempted to ensure that Respondent was apprised of the nature of these proceedings through various means. 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.<sup>70</sup> That copy was returned to the State Bar's office.<sup>71</sup> 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.<sup>72</sup> Similarly, both of those copies were sent back to the State Bar's office.<sup>73</sup> Copies of the

<sup>69</sup> See *Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008).

<sup>70</sup> See Exhibit 2.

<sup>71</sup> *Id.*

<sup>72</sup> See Exhibit 5.

<sup>73</sup> *Id.*

Amended Complaint were sent to the 6th Street, the Gammila Drive, and the Liege Drive addresses.<sup>74</sup> All three copies – including the copy sent to the Liege Drive address – were returned to the State Bar’s office.<sup>75</sup> The State Bar, through Nationwide Legal, also attempted to personally serve Respondent with pleadings filed in the instant matter at the Liege Drive address prior to the October 15, 2020, formal hearing.<sup>76</sup> Therefore, Respondent’s allegations of due process violations fail.

## **II. RESPONDENT VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT**

### **A. Respondent violated RPC 1.15 (Safekeeping Property) - Count One.**

Respondent violated RPC 1.15 (Safekeeping Property) because he failed to keep accounting documents pertaining to Grievants after November 2016. RPC 1.15 states, in pertinent part:

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.

The State Bar anticipates the Grievants will testify that they provided LOBCP with approximately \$7,500 for travel expenses and depositions. In response to the State Bar’s Letter of Investigation<sup>77</sup> regarding the \$7,500 payment, Respondent provided “an itemized ledger through November 2016”<sup>78</sup> despite being asked to provide his entire file on the DiFrancesco matter. With regard to a ledger for December 2016 through approximately March 2019,<sup>79</sup> Respondent stated that his firm “went to a new

<sup>74</sup> See Exhibit 45.

<sup>75</sup> *Id.*

<sup>76</sup> See Exhibit 12.

<sup>77</sup> See Exhibit 46.

<sup>78</sup> See Exhibit 47.

<sup>79</sup> Grievants retained new counsel on March 12, 2019.

accounting program and [he] ha[s] tasked the accountant with reconstructing a ledger from 2016 forward that combines the old and new programs, but ha[s] not received it as of the date of this letter.”<sup>80</sup> To date, Respondent has failed to provide the State Bar with accounting documents from December 2016 onward.

**B. Respondent violated RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers) - Count Two.**

Respondent violated RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers) based on his supervision of Ms. Sugden during her representation of Grievants. RPC 5.1 states, in pertinent part, that 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.” In the underlying matter, Ms. Sugden failed to abide by Grievants’ decision to schedule depositions and set the matter for trial prior to the expiration of the Five-Year Rule, failed to promptly file responsive and/or complete pleadings, and failed to keep Grievants reasonably informed about the status of their matter. Respondent, having direct supervisory authority over Ms. Sugden, failed to make reasonable efforts to ensure that Ms. Sugden’s representation of Grievants conformed to the Rules of Professional Conduct.

The State Bar anticipates that Respondent will argue that he did not have direct supervisory authority over Ms. Sugden. In his response to the State Bar’s Letter of Investigation, Respondent stated that “Amy Sugden was an independent contractor of the firm, and thus not subject to supervision, although I stepped in to assist twice before when there appeared to be a brake [*sic*] down in her handling of the client.”<sup>81</sup> The State Bar anticipates that Ms. Sugden’s testimony will contradict Respondent’s assertions that he did not have direct supervisory authority over her. Ms. Sugden, through her testimony, will provide specific examples demonstrating that Respondent was, in fact, her supervisor during the time she worked at LOBCP.

<sup>80</sup> See Exhibit 48.

<sup>81</sup> *Id.*

**C. Respondent violated RPC 8.1 (Bar Admission and Disciplinary Matters).**

Respondent violated RPC 8.1 (Bar Admission and Disciplinary Matters) because he failed to respond to a lawful demand for information from the State Bar and/or made a false statement of material fact to the State Bar. 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.

1. Count Three

Respondent failed to respond to a lawful demand for information from Ms. Watson by failing to provide a supplement to his previously submitted incomplete response. The State Bar anticipates Ms. Watson to testify that she asked Respondent about the \$7,500 payment from Grievants. It is also anticipated that Ms. Watson will testify that Respondent stated that Grievants had an unpaid balance with LOBCP, that any funds received would have been applied to said outstanding balance, and that Respondent stated he would supplement his response to provide the actual balance owed but failed to do so.

2. Count Four

Respondent made a false statement of fact by stating that Ms. Sugden was not subject to his supervision. As discussed *supra*, Respondent stated that “Amy Sugden was an independent contractor of the firm, and thus not subject to supervision, although I stepped in to assist twice before when there appeared to be a brake [*sic*] down in her handling of the client.”<sup>82</sup> The State Bar anticipates that Ms.

<sup>82</sup> *Id.*

Sugden's testimony will contradict Respondent's assertions that he did not have direct supervisory authority over her. Ms. Sugden, through her testimony, will provide specific examples demonstrating that Respondent was, in fact, her supervisor during the time she worked at LOBCP.

**D. Respondent violated RPC 8.4 (Misconduct).**

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.

1. Count Five

Respondent violated RPC 8.4 (Misconduct) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Specifically, Respondent engaged in such conduct by claiming to have informed the State Bar of his address change in or around February 2020.

On multiple occasions, Respondent has claimed that his secretary, Connie Little (hereinafter "Ms. Little") sent the State Bar a "Notice of Change of Address" on February 28, 2020.<sup>83</sup> Ms. Little stated in an affidavit that the new address given to the State Bar was 1672 Liege Drive, Henderson, NV 89012.<sup>84</sup>

<sup>83</sup> See Exhibit 49.

<sup>84</sup> *Id.*

However, the State Bar has no record of such a notice.<sup>85</sup> On the contrary, the State Bar's records indicate that Respondent's contact information was not changed to the Liege address until January 5, 2021.<sup>86</sup>

## 2. Count Six

Respondent violated RPC 8.4 (Misconduct) by violating or attempting to violate the Rules of Professional Conduct through the acts of another and/or assisting or inducing Ms. Little to violate or attempt to violate the Rules of Professional Conduct by submitting her affidavit which contained false information.

### **III. THE STATE BAR RECOMMENDS THAT RESPONDENT BE DISBARRED**

ABA Standard 6.11 states that disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.<sup>87</sup> Standard 6.11 are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation.<sup>88</sup> Disbarment is also considered the appropriate sanction when the dishonest act occurs in the context of disciplinary proceedings.<sup>89</sup>

Respondent made false statements and/or submitted false documents with the intent to deceive the hearing panel. Respondent's request to continue the October 15, 2020, formal hearing, in large part, was based on his assertion that despite allegedly mailing the State Bar a notice of his address change, he did not have proper notice of the instant proceedings. However, the evidence will show that Respondent

<sup>85</sup> See Exhibit 50.

<sup>86</sup> *Id.*

<sup>87</sup> American Bar Association, Annotated Standards for Imposing Lawyer Sanctions 310 (Ellyn S. Rosen, 2nd ed. 2019).

<sup>88</sup> *Id.*

<sup>89</sup> See *People v. Goodman*, 334 P.3d 241 (Colo. 2014) (applied Standard 6.11 and disbarred attorney who submitted false evidence during the course of his disciplinary trial); *In re Rawls*, 936 N.E.2d 812 (Ind. 2010) (citing Standard 6.11 in disbaring lawyer for misconduct that included making a series of intentional misrepresentations to the disciplinary commission during its investigations and intentionally forging a fraudulent receipt and submitting it to the commission); *Weiss v. Comm'n for Lawyer Discipline*, 981 S.W.2d 8 (Tex. App. 1998) (disbarment appropriate for lawyer who made misrepresentations to grievance committee).

did not change his address with the State Bar until January 5, 2021. Even assuming that Respondent did notify the State Bar of his address change, the State Bar attempted to personally serve Respondent at the Liege address on September 29, 2020; (2) October 1, 2020; and (3) October 3, 2020.<sup>90</sup> Respondent's misrepresentations caused a significant adverse effect on the instant disciplinary proceeding.

### **CONCLUSION**

Based upon the foregoing, the State Bar respectfully requests that the hearing panel accept our recommendation that Respondent, BRIAN C. PADGETT, be disbarred from the practice of law in the State of Nevada.

DATED this 14th 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

<sup>90</sup> See Exhibit 12.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S DRP 24 TRIAL BRIEF** was served via email to:

1. Rich Williamson, Esq. (Panel Chair): [rich@nvlawyers.com](mailto:rich@nvlawyers.com)
2. Nathan J. Aman, Esq. (Panel Member): [naman@renonvlaw.com](mailto:naman@renonvlaw.com)
3. Steve Boucher (Panel Member): [steveboucher@sbcglobal.net](mailto:steveboucher@sbcglobal.net)
4. Brian C. Padgett, Esq. (Respondent): [brian.padgett@icloud.com](mailto:brian.padgett@icloud.com); [brian@briancpadgett.com](mailto:brian@briancpadgett.com)
5. Gerard Gosioco, Esq. (Assistant Bar Counsel): [gerardg@nvbar.org](mailto:gerardg@nvbar.org)

DATED this 14th day of May 2021.

*Laura Peters*

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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.

(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.

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

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

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

### Count Two

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

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

47. 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.

48. 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.

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

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

### **Count Three**

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

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

52. 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.



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

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# Exhibit 3

# Exhibit 3

Padgett ROA - 851

## SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

☒ X☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

## C. Date of Delivery

address different from item 1? ☐ Yes  
or delivery address below: ☐ No

Brian C. Padgett, Esq.  
The Law Offices of Brian C. Padgett  
611 S. 6th St.  
Las Vegas, Nevada 89101



9590 9402 1329 5285 4527 56

## 2. Article Number (Transfer from service label)

7015 3010 0001 2446 2288

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

## 3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                               | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input checked="" type="checkbox"/> Certified Mail Restricted Delivery | <input checked="" type="checkbox"/> Return Receipt for Merchandise  |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       |   |
| <input type="checkbox"/> Restricted Delivery                           |   |

RECEIVED  
JUN 21 2020



EVADA BAR CENTER

.. Ste. B, Reno, NV 89521-5977

FIRST-CL



US POSTAGE  
\$ 001.40<sup>0</sup>  
02 1P  
0001200880 MAY 13 2020  
MAILED FROM ZIP CODE 89102

RECEIVED

JUN 21 2020

Brian C. Padgett, Esq.  
The Law Offices of Brian C. Padgett  
611 S. 6th St.  
Las Vegas, Nevada 89101

-R-T-S- 891012075-1N 06/19/20

RETURN TO SENDER  
UNABLE TO FORWARD  
UNABLE TO FORWARD  
RETURN TO SENDER



Padgett ROA - 853

# Exhibit 4

# Exhibit 4





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  
14  
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Signature: /s/ Gerard Gosioco  
/s/ Gerard Gosioco (Jun 8, 2020 16:23 PDT)  
Email: [gerardg@nvbar.org](mailto: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

**CERTIFICATE OF SERVICE BY MAIL**

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

Dated this 9<sup>th</sup> day of June, 2020.

  
\_\_\_\_\_  
Laura Peters, an employee of  
the State Bar of Nevada

Certified receipts - 7015-3010-0001-2456 & -2332

# Exhibit 5

# Exhibit 5



FILED

JUL 10 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., )  
 7474 )  
 Respondent. )

DECLARATION OF SERVICE  
ACCORDING TO SCR 109(1)  
IN SUPPORT OF ENTRY OF DEFAULT

LAURA PETERS, under penalty of perjury, being first duly sworn, deposes and says as follows:

That Declarant is employed as a Paralegal for the State Bar of Nevada Office of Bar Counsel ("OBC") and in such capacity is a custodian of records for the OBC; Declarant certifies that the attached documents are true and accurate copies of records generated by and maintained by the OBC in the ordinary course of business.

That Declarant certifies the following is a summary of the OBC efforts to locate and serve attorney Brian C. Padgett, Esq. ("Respondent"):

1. Respondent is member of the State Bar of Nevada (Bar No. 7474), having been licensed in the State of Nevada since December 28, 2000.

2. Nevada Supreme Court Rule ("SCR") 79(1) requires every member of the State Bar of Nevada to provide the State Bar with a permanent mailing address, permanent



**From:** [Gerard Gosioco](#)  
**To:** [Laura Peters](#)  
**Subject:** FW: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)  
**Date:** Friday, May 14, 2021 3:31:41 PM

---

---

**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](mailto: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](http://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](mailto:gerardg@nvbar.org). Thank you for your patience and cooperation during this difficult time.**

telephone number, and a current email address for purposes of State Bar communication with the attorney.

**A. Service of the Complaint**

3. On May 13, 2020, the State Bar filed a Complaint against Respondent in the above-captioned matter.

4. On May 13, 2020, Respondent had a SCR 79 address of record with the State Bar as 611 South 6<sup>th</sup> Street, Las Vegas, NV 89101.

5. Pursuant to SCR 109(1) service of the Complaint was made by mailing a copy to Respondent's SCR 79 address (611 South 6<sup>th</sup> Street, Las Vegas, NV 89101) via first class & certified U.S. mail on that May 13, 2020. See Exhibit 1.

6. Both the certified and regular mailings of the Complaint were returned to the Reno office of the State Bar on or about June 21, 2020. See Exhibit 2.

7. No response to the Complaint has been received from Respondent. Response was due on or before June 5, 2020.

**B. Service of the Notice of Intent to Enter Default**

8. On June 9, 2020, the State Bar filed a Notice of Intent to Enter Default ("NIED") against Respondent for his failure to respond to the Complaint.

9. On June 9, 2020, pursuant to SCR 109(1) service of the NIED was made by mailing a copy, along with another copy of the Complaint, to both Respondent's SCR 79 address and his alternate address (11274 Gammila Drive Las Vegas, NV 89141) via first class & certified mail. See Exhibit 3.

10. Both the certified and regular mailings of the NIED sent to Respondent's SCR 79 address were returned to the Reno office of the State Bar on or about June 23, 2020, marked "Return to Sender". See Exhibit 4.

11. The certified and regular mailings to Respondent's alternate address were returned to the Reno office of the State Bar on or about July 6, 2020, marked "Return to Sender, Unable to Forward". See Exhibit 5.

12. No response to the NIED has been received from Respondent. Response was due on or before June 29, 2020.

DATED this 10<sup>th</sup> day of July, 2020.

*Laura Peters*

---

Laura Peters, Paralegal  
State Bar of Nevada, Office of Bar Counsel

# Exhibit 6

# Exhibit 6

STATE B



BC: 89141043674 DU2104N169120-00273

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UNABLE TO FORWARD/FOR REVIEW  
\*\*R026\*\*



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NORTHERN NEVADA BAR CENTER

9456 Double R Blvd., Ste. B, Reno, NV 89521-5977

[www.nvbar.org](http://www.nvbar.org)

-R-T-S- 891412069-1N

06/29/20

RETURN TO SENDER  
UNABLE TO FORWARD  
UNABLE TO FORWARD  
RETURN TO SENDER



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

RECEIVED  
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Padgett ROA - 867

PRINTED AT THE POST OFFICE  
RIGHT SIDE OF THE ENVELOPE

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Brian C. Padgett, Esq.  
11274 Gammilla Drive  
Las Vegas, NV 89141



9590 9402 1329 5285 4530 43

2. Article Number (Transfer from service label)

70J5 30J0 0001 244b 235b

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input checked="" type="checkbox"/> Return Receipt for Merchandise  |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                            |   |
| <input type="checkbox"/> Restricted Delivery                     |   |

Domestic Return Receipt

STATE B



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BC: 89141043674 DU2104N169110-00277

NORTHERN NEVADA BAR CENTER

9456 Double R Blvd., Ste. B, Reno, NV 89521-5977

[www.nnbar.org](http://www.nnbar.org)

06/29/20  
-R-T-S- 891412069-1N  
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JUL 06 2020

*UKH*

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

FIRST CLASS



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MAILED FROM ZIP  
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US

Padgett ROA - 869

# Exhibit 7

# Exhibit 7



**From:** [Laura Peters](#)  
**To:** [rich@nvlawyers.com](mailto:rich@nvlawyers.com); [brian@briancpadgett.com](mailto:brian@briancpadgett.com)  
**Cc:** [Gerard Gosioco](#)  
**Subject:** State Bar v. Brian Padgett, Esq.  
**Date:** Friday, July 10, 2020 10:24:00 AM  
**Attachments:** [Due diligence declaration.pdf](#)  
[Padgett Brian C. EOD.pdf](#)

---

Hard copies to follow (Padgett only)

Thank you,

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

# Exhibit 8

# Exhibit 8



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

**ENTRY OF DEFAULT**

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  
23  
24  
25






# 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](mailto:rich@nvlawyers.com) and Brian C. Padgett, Esq. -  
brian@briancpadgett.com.

Dated this 13<sup>th</sup> 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. 6<sup>th</sup> Street  
Las Vegas, NV 89101

Dated this 14<sup>th</sup> day of July, 2020.

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



# Exhibit 9

# Exhibit 9

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.

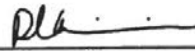
20          7.     The hearing for this matter shall be set for 1 day, to wit October 15, 2020,  
21 starting at 9:00 a.m. and shall take place via Zoom. The State Bar will provide a meeting  
22 identification number prior to the hearing.

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 19<sup>th</sup> 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:	CBJCHBCAABAAFi7DVUTDF6BIDQQNOnIGLuaQs_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
-  Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature  
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
-  Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature  
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)  
Signature Date: 2020-08-19 - 9:20:13 PM GMT - Time Source: server- IP address: 97.92.108.234
-  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 19<sup>th</sup> day of August 2020.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada

# **Exhibit 10**

# **Exhibit 10**



FILED

JUL 15 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 TELEPHONIC  
INITIAL CASE CONFERENCE**

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 the telephonic Initial Case Conference in the above-entitled matter will take place on **Tuesday July 21, 2020, beginning at 10:00 a.m.** The dial-in number is **(877) 594-8353**; when prompted enter **10250990** then # for Chairman Williamson or **46855068** then # for all other participants.

DATED this \_\_\_\_ day of July, 2020.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, Bar Counsel

/s/ Gerard Gosioco

By:

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



# Padgett. Notice ICC\_071520

Final Audit Report

2020-07-15

Created:	2020-07-15
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_ony3n6u3LkAvdTz5CJ7IE84EPtyXx6-

## "Padgett. Notice ICC\_071520" History

-  Document created by Laura Peters (laurap@nvbar.org)  
2020-07-15 - 10:08:01 PM GMT- IP address: 71.94.199.108
-  Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature  
2020-07-15 - 10:08:19 PM GMT
-  Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)  
2020-07-15 - 10:10:53 PM GMT- IP address: 68.104.81.227
-  Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)  
Signature Date: 2020-07-15 - 10:11:08 PM GMT - Time Source: server- IP address: 68.104.81.227
-  Signed document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) and Laura Peters (laurap@nvbar.org)  
2020-07-15 - 10:11:08 PM GMT



Adobe Sign

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that true and correct copies of the foregoing **Notice of Telephonic Initial Case Conference** 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. 6<sup>th</sup> Street  
Las Vegas, NV 89101

Dated this 16<sup>th</sup> day of July, 2020.

---

Vicki Heatherington, an employee of  
the State Bar of Nevada

# **Exhibit 11**

# **Exhibit 11**



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.<sup>1</sup>

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

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24  
25 <sup>1</sup> 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 15<sup>th</sup> 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  
15  
16  
17  
18  
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20  
21  
22  
23  
24  
25

**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](mailto:brian.padgett@icloud.com); rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 15<sup>th</sup> day of April 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada

# **Exhibit 12**

# **Exhibit 12**



FILED

APR 26 2021

## AFFIDAVIT OF DUE DILIGENCE

STATE BAR OF NEVADA  
BY: B. Felix  
OFFICE OF BAR COUNSELSTATE BAR OF NEVADA SOUTHERN NEVADA DISCIPLINARY BOARD  
CLARK COUNTY, STATE OF NEVADA

STATE BAR OF NEVADA,

Complainant

v.

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

Respondent

Case No.: OBC19-111

Gerard Gosioco, Esq., Bar No. 14371

OFFICE OF BAR COUNSEL

3100 W. Charleston 100

Las Vegas, NV 89102

(702) 382-2200

Attorneys for the Plaintiff

Client File# BRIAN C. PADGETT, ESQ

I, Sean Keseday, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Complaint; Hearing Exhibit 1 & 2, from OFFICE OF BAR COUNSEL

That attempts were made to serve Brian C. Padgett, Esq. with Complaint; Hearing Exhibit 1 & 2, at:

Attempted at 1672 Liege Drive, Henderson, NV 89012 On 9/29/2020 at 6:46 PM

Results: No answer but could see movement inside. One car in driveway.

Attempted at 1672 Liege Drive, Henderson, NV 89012 On 10/1/2020 at 6:11 PM

Results: No answer. No cars. Guard escorted to property.

Attempted at 1672 Liege Drive, Henderson, NV 89012 On 10/3/2020 at 1:56 PM

Results: Security escorted to property. No answer, no activity.

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 10/13/20

Sean Keseday  
Registered Work Card# R-065975  
State of Nevada

(No Notary Per NRS 53.045)

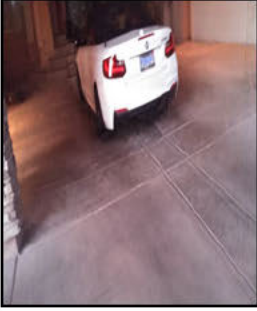
Service Provided for:  
Nationwide Legal Nevada, LLC  
626 S. 7th Street  
Las Vegas, NV 89101  
(702) 385-5444  
Nevada Lic # 1656



Control #: NV232113

Reference: BRIAN C. PADGETT, ESQ

Padgett ROA - 898

<b>Gerard Gosioco, Esq.,</b> <b>OFFICE OF BAR COUNSEL</b> 3100 W. Charleston 100 Las Vegas, NV 89102		<b>BRIAN C. PADGETT, ESQ</b>	
	<b>CASE #: OBC19-111</b>  STAT BAR OF NEVADA VS. BRIAN C. PADGETT, ESQ		<b>SUMMARY OF SERVICE</b> <b>JOB COMPLETE</b> <b>NV232113</b> <b>030 - STANDARD PROCESS (48 to 72 HRS)</b>
	<b>** NOT SERVED **</b>		<b>COMPLETED BY</b> <b>Sean Keseday</b> <b>10/3/2020 1:55 PM</b>
<b>PROOF OF DELIVERY</b>		Reference No.: <b>BRIAN C. PADGETT, ESQ</b>	

I received the within process on September 25, 2020 and that after due and diligent effort I have been unable to serve Brian C Padgett, Esq. The following itemization of the dates and times of attempts details the efforts required to effect service.

DOCUMENTS: Complaint;

9/29/2020 | 6:46 PM      Business1672 Liege Drive, Henderson, NV 89012  
 no answer, could see movement inside, 1 car in driveway

10/1/2020 | 6:11 PM      Business1672 Liege Drive, Henderson, NV 89012  
 no answer, no cars, guard escorted to property

10/3/2020 | 1:56 PM      Business1672 Liege Drive, Henderson, NV 89012  
 security escorted to property, no answer, no activity

**COURT FILINGS | SERVICE OF PROCESS | REPROGRAPHICS**  
**PDF/FAX FILINGS | MESSENGER SERVICES**

**NOT A PROOF OF SERVICE | SUMMARY OF SERVICE | NOT A PROOF OF SERVICE**

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 Visit our secure website at <https://express.nationwideasap.com>

**PROOF OF DELIVERY**

# **Exhibit 13**

# **Exhibit 13**

**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 14

# Exhibit 14

1 STATE BAR OF NEVADA  
2 NORTHERN DISCIPLINARY BOARD  
3 -o0o-  
4  
5 STATE BAR OF NEVADA,  
6 Complainant, Case No. OBC19-1111  
7 vs.  
8 BRIAN C. PADGETT, BAR 7474,  
9 Respondent.  
10 \_\_\_\_\_/  
11 Pages 1 to 15, inclusive.  
12  
13  
14 HEARING  
15 \_\_\_\_\_  
16 Thursday, October 15, 2020  
17 Reno, Nevada  
18  
19  
20  
21 JOB NO.: 671803  
22 REPORTED via Zoom BY: CHRISTINA AMUNDSON  
23 CCR #641 (Nevada)  
24 CSR #11883 (California)

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>(Via Zoom)</p> <p>RICH WILLIAMSON, ESQ.</p> <p>NATHAN AMAN, ESQ.</p> <p>GERARD GOSIOCO</p> <p>STEVE BOUCHER</p> <p>VICKI HETHERINGTON</p> <p>LAURA PETERS</p> <p>DAN HOOGE</p> <p style="text-align: center;">-o0o-</p>	<p style="text-align: right;">Page 3</p> <p>BE IT REMEMBERED that Thursday, September 18, 2020, commencing at 9:19 a.m. of said day, before me, CHRISTINA M. AMUNDSON, a Certified Shorthand Reporter, the following proceedings were had:</p> <p style="text-align: center;">-----</p> <p>MR. WILLIAMSON: This is Richard Williamson, Panel Chair for State Bar v. Padgett. His bar number is 7474.</p> <p>MR. AMAN: This is Nathan Aman, another attorney representative of the panel.</p> <p>MR. BOUCHER: Steve Boucher, layman.</p> <p>MR. GOSIOCO: Gerard Gosioco, Assistant Bar Counsel.</p> <p>MR. HOOGE: Dan HooGE, Bar Counsel. I'm just observing.</p> <p>MR. WILLIAMSON: Okay. It looks like we have Laura as well. Yes.</p> <p>MS. PETERS: Laura Peters for the State Bar.</p> <p>MR. WILLIAMSON: Let's go on the record in the matter of State Bar v. Padgett. We -- bar counsel received a request from Mr. Padgett to move today's hearing and at this point I'd like to turn it over to you, Mr. Gosioco, to explain what efforts</p>
<p style="text-align: right;">Page 4</p> <p>the bar has made at least to provide service and through what means, what addresses, what email addresses so the panel has all the facts before it and we can decide where to go from here.</p> <p>MR. GOSIOCO: Thank you, sir. So, as far as service is concerned, we did make several attempts to notice Mr. Padgett of these hearings, of these proceedings. Specifically, the complaint that was filed in this case was sent to Mr. Padgett's SCR 79 address via first-class and certified mail, but those mailings were returned to the State Bar's office on or about June 21, 2020.</p> <p>On or about June 9th, 2020, a notice of intent to proceed on a default basis was filed and sent to Mr. Padgett's SCR 79 address as well as an alternate address we had on file, which is 11274 Gammila, which is G-a-m-m-i-l-a, Drive, Las Vegas, Nevada, 89149. Those were sent via first-class and certified mail as well.</p> <p>As far as the mailing of the notice is concerned, that mailing was sent back to the State Bar's office on or about June 21, 2020, and as far as his alternate address, the mail that was sent to that address was also returned to the State Bar's</p>	<p style="text-align: right;">Page 5</p> <p>office marked "Return to Sender, Unable to Forward," on or about July 6th, 2020.</p> <p>Now, a default was entered into this case on or about July 13th, 2020, so after default was entered, we attempted to personally serve Mr. Padgett at 1672 Liege, L-i-e-g-e, Drive, Henderson, Nevada, 89012 on or about September 29th, 2020, October 1, 2020, and October 3rd, 2020.</p> <p>In addition, our office contacted attorney Garrett Ogata, who was Mr. Padgett's attorney on one of his criminal cases, to see if Mr. Ogata would be willing to accept service on Mr. Padgett's behalf. Mr. Ogata seemed hesitant to do so, however, he did advise that he would contact Mr. Padgett. Mr. Ogata subsequently informed us that he did text Mr. Padgett with our contact information and told him to contact us.</p> <p>As Mr. Williamson stated earlier, up until about 8:11 this morning, the day of the formal hearing, we did not hear back from Mr. Padgett until he sent that email to Laura Peters and myself requesting that this matter be continued, but those are the attempts that we made to personally serve Mr. Padgett.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. WILLIAMSON: Okay. Thank you for that  2 summary. While you were finishing up, I was briefly  3 going to look at SCR 109.  4 MR. BOUCHER: How did he eventually find  5 out about today's meeting, then?  6 MR. GOSIOCO: It's unclear at this point.  7 I would assume that, once Mr. Ogata did text Mr.  8 Padgett with our information, that he might have  9 found out about the hearing, but at this point it's  10 unclear to me.  11 MR. WILLIAMSON: And I just want to make  12 sure I understand what the service address is. So,  13 I know personal service was attempted at the Liege  14 Drive address, which is the address he mentions in  15 his letter. You also mentioned the default was sent  16 to Gammila Drive address and then both the complaint  17 and default were sent to the SCR address. And so I  18 assume this is the address before -- well, I guess  19 let me back up.  20 Mr. Padgett states in his letter that he  21 believes he changed his SCR address at some point to  22 the Liege address that you tried to personally  23 serve. Is that correct, or does the bar have a  24 record of that attempt to change the SCR address?</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. GOSIOCO: That is correct. As far as  2 whether or not we have a record, unfortunately,  3 because we learned about this at 8:11 this morning,  4 I didn't have time to discuss with the other staff  5 whether or not this record was actually made.  6 But if you give me one second, I'm going to  7 his contact information file to see whether or not  8 it was -- a request was actually made. I know that  9 we are very diligent about updating this information  10 once received, so if you would spare me one second,  11 I can look.  12 MR. WILLIAMSON: Sure.  13 MR. GOSIOCO: No, sir. It looks like the  14 only address we still have on file for Mr. Padgett  15 is an SCR address, which is 611 South Sixth Street,  16 Las Vegas, Nevada 89101 and the Gammila address.  17 So, if a request was made, I do know that  18 our staff is very diligent about updating that as  19 soon as possible.  20 MR. WILLIAMSON: Okay. Again, you may not  21 know this. I realize this just got dumped on you  22 this morning. But do you know how you came to be  23 aware of this Liege Drive address?  24 MR. GOSIOCO: It looks like Laura stated</p>
<p style="text-align: right;">Page 8</p> <p>1 that she had found the Henderson address on the  2 Eighth Judicial District Court website. A Sixth  3 Street address was his old office and nothing has  4 been received there.  5 MR. WILLIAMSON: Okay. Got it. So, I  6 guess I want to make a record and make a few  7 statements and then I think we, the entire panel,  8 needs to decide how to proceed.  9 No. 1, I do think if he never formally  10 changed his address, under SCR 109.1, you know, the  11 proper service can be registered or certified mail  12 at the current address shown in the State Bar's  13 records or other last known address and so it seems  14 to me that would be the 611 South Sixth Street.  15 So, I do think service of the complaint and  16 service of the default appear to be proper and I  17 certainly think the bar has done everything that  18 could be expected of it to try to give Mr. Padgett  19 both formal and actual notice. At the same time,  20 obviously, this is a serious matter and I'm  21 reluctant to, when someone has professed that they  22 have not received service, I'm a little hesitant to  23 just charge ahead with a hearing, if truly he did  24 not know.</p>	<p style="text-align: right;">Page 9</p> <p>1 And I'd hate to -- while I certainly don't  2 want to inconvenience the panel's time this morning  3 and I want to be respectful of our volunteer's time,  4 I also -- it would be more disruptive if this went  5 up to the supreme court and then they said, Hey, you  6 should have made sure every effort was made to  7 continue this upon Mr. Padgett's request and then it  8 came back and we had to do the whole thing over  9 again.  10 So, I'm sort of frustrated but tentatively  11 inclined to grant Mr. Padgett's semi-informal  12 request to continue this hearing, but I'd like to  13 hear from the other panel members before deciding.  14 MR. AMAN: This is Nathan Aman. Obviously,  15 I think Steve and I are fairly new to all of this  16 background with the attempted service and everything  17 that's gone on with this.  18 But I tend to agree, especially in light of  19 the fact that it's 2020 and everything that's gone  20 on in the world, that we need to take extra caution  21 to almost believe people's stories because we don't  22 really know. This is not a normal world, it seems  23 like, in terms of where people are practicing from  24 and their offices. So, I agree with Richard on</p>



<p style="text-align: right;">Page 10</p> <p>1 giving him an opportunity to, in a month or whatever</p> <p>2 it is that works for everybody, to actually address</p> <p>3 some of these issues.</p> <p>4 MR. BOUCHER: I'm fine with that too. I</p> <p>5 just wondered when we talked to his partner and left</p> <p>6 him the message, did we leave the detail that he was</p> <p>7 having a hearing on this day or did he get the</p> <p>8 information from somewhere else? Like, we finally</p> <p>9 found his emails that we were sending him or that he</p> <p>10 was served?</p> <p>11 MR. GOSIOCO: Give us one second. I know</p> <p>12 Laura's computer has had some feedback whenever she</p> <p>13 is un-muted. She's the one who actually contacted</p> <p>14 Mr. Ogata, so I believe she's typing right now.</p> <p>15 MR. BOUCHER: We've had Mr. Padgett in the</p> <p>16 past, correct?</p> <p>17 MR. GOSIOCO: That is correct. As far as</p> <p>18 what was told when Ms. Peters spoke to Mr. Ogata,</p> <p>19 Mr. Padgett's criminal attorney, Mr. Ogata told her</p> <p>20 that he would give him the hearing information for</p> <p>21 today, so I assume that's how.</p> <p>22 But as far as your second question is</p> <p>23 concerned, we did have another hearing for Mr.</p> <p>24 Padgett on or about June 8th. The panel there</p>	<p style="text-align: right;">Page 11</p> <p>1 unanimously recommended that Mr. Padgett be</p> <p>2 suspended for five years and be required to retake</p> <p>3 the bar exam for violations of RPC 1.2, 1.4, 1.8,</p> <p>4 1.15, 3.3, 8.1 and 8.4 and that matter is currently</p> <p>5 pending approval at the supreme court.</p> <p>6 And in that case as well that was actually</p> <p>7 the last time up until this morning I personally</p> <p>8 spoke to Mr. Padgett. That was on or about</p> <p>9 February 26th of this year. That was the last</p> <p>10 contact I had with him and subsequently that matter</p> <p>11 also defaulted.</p> <p>12 MR. BOUCHER: I'm all right extending it,</p> <p>13 if that's what the panel decides.</p> <p>14 MR. WILLIAMSON: Okay. Well, then, I guess</p> <p>15 let's -- it sounds like everybody's in agreement</p> <p>16 that we're going to reluctantly extend this.</p> <p>17 Do we want to select a date now or do that</p> <p>18 off-line when everybody has a chance to consult</p> <p>19 their calendars? Again. I want to be mindful of</p> <p>20 everyone's time. Why don't we -- let's do this, so</p> <p>21 we can give our court reporter a break.</p> <p>22 We are going to extend this. I guess while</p> <p>23 we're still on the record, I would recommend that</p> <p>24 the State Bar send the entire hearing packet with</p>
<p style="text-align: right;">Page 12</p> <p>1 all the exhibits to the Liege Drive address that Mr.</p> <p>2 Padgett has stated should be the one to be used both</p> <p>3 by -- maybe one packet by registered or certified</p> <p>4 mail and one packet by regular mail, realizing you</p> <p>5 wouldn't have a confirmation that the regular mail</p> <p>6 comes back, but at least you're using the address</p> <p>7 he's recommended.</p> <p>8 Hopefully, he just signs the little green</p> <p>9 card on the packet and then there's no question.</p> <p>10 But so that we don't have another statement where</p> <p>11 there's a suggestion of a different means of</p> <p>12 service, I know basically SCR 109.2 at this point</p> <p>13 you can do, essentially, Rule 5, an NRCP 5-type</p> <p>14 service and just do regular mail. And so I think if</p> <p>15 you do regular mail to the Liege address, it will be</p> <p>16 sufficient given that's the address he's now told us</p> <p>17 to use.</p> <p>18 But, again, just to be overly cautious, why</p> <p>19 don't you also do the certified or registered to</p> <p>20 that same address. That way that's covered and</p> <p>21 whenever we reconvene, whoever's here I think we'll</p> <p>22 have an unassailable record of service at that point</p> <p>23 and, with that, I guess, let's go off the record and</p> <p>24 we can discuss.</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. GOSIOCO: Actually, sir, prior to going</p> <p>2 off the record, sir, would you be able to -- I would</p> <p>3 like to establish a deadline for him to respond to</p> <p>4 our complaint at this point.</p> <p>5 MR. WILLIAMSON: Sure.</p> <p>6 MR. GOSIOCO: I don't know what you had in</p> <p>7 mind.</p> <p>8 MR. WILLIAMSON: That's a good point. So,</p> <p>9 if you're gonna provide him with the whole packet</p> <p>10 including the complaint, we may -- rescheduling this</p> <p>11 may change depending on whether he files an answer.</p> <p>12 And so why don't we just give him 20 days</p> <p>13 or -- 21 days from the date of mailing, not the date</p> <p>14 at which the green card's signed or anything else,</p> <p>15 but 21 days from the date of mailing. Again, I'd</p> <p>16 recommend you mail that both by regular mail and by</p> <p>17 certified or registered.</p> <p>18 And then 21 days after that, if he still</p> <p>19 has not responded, I think then we can proceed in a</p> <p>20 default fashion. If he does respond, we may need a</p> <p>21 new scheduling order and everything else.</p> <p>22 MR. GOSIOCO: Did you want to stick with 21</p> <p>23 days as opposed to 20, because I do know according</p> <p>24 to the Disciplinary Rules of Procedure under Rule 12</p>


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1 typically respondents are given 20 days to respond,  
2 or would you rather have 21?  
3 MR. WILLIAMSON: Fair point. 20. I  
4 default to NRCP in my brain every time, so if the  
5 SCR is 20, let's stick with 20. Thank you.  
6 MR. GOSIOCO: That's pursuant to Rule 12 of  
7 the Disciplinary Rules of Procedure.  
8 MR. WILLIAMSON: Perfect, thank you.  
9 Anything else while we're on the record, I  
10 think we can go off the record.  
11 MR. AMAN: My only point while we're still  
12 on the record would be to additionally email it to  
13 him, since it appears that he sent this via email  
14 USPS, and just do a received request, or whatever  
15 it's called, just so we can cover every possible  
16 avenue.  
17 MR. WILLIAMSON: I think that's a good  
18 suggestion. Okay.  
19 MR. GOSIOCO: Thank you. We will do that.  
20 But as far as any other representations from the  
21 State Bar, we have nothing further.  
22 MR. WILLIAMSON: All right. If there's  
23 nothing further from the panel, then let's go off  
24 the record. (End of proceedings at 9:36 a.m.)

Page 16

1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE  
2 Litigation Services is committed to compliance with applicable federal  
3 and state laws and regulations ("Privacy Laws") governing the  
4 protection and security of patient health information. Notice is  
5 hereby given to all parties that transcripts of depositions and legal  
6 proceedings, and transcript exhibits, may contain patient health  
7 information that is protected from unauthorized access, use and  
8 disclosure by Privacy Laws. Litigation Services requires that access,  
9 maintenance, use, and disclosure (including but not limited to  
10 electronic database maintenance and access, storage, distribution/  
11 dissemination and communication) of transcripts/exhibits containing  
12 patient information be performed in compliance with Privacy Laws.  
13 No transcript or exhibit containing protected patient health  
14 information may be further disclosed except as permitted by Privacy  
15 Laws. Litigation Services expects that all parties, parties'  
16 attorneys, and their HIPAA Business Associates and Subcontractors will  
17 make every reasonable effort to protect and secure patient health  
18 information, and to comply with applicable Privacy Law mandates,  
19 including but not limited to restrictions on access, storage, use, and  
20 disclosure (sharing) of transcripts and transcript exhibits, and  
21 applying "minimum necessary" standards where appropriate. It is  
22 recommended that your office review its policies regarding sharing of  
23 transcripts and exhibits - including access, storage, use, and  
24 disclosure - for compliance with Privacy Laws.  
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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )  
4  
5 I, CHRISTINA MARIE AMUNDSON, a Certified Court  
6 Reporter in and for the states of Nevada and  
7 California, do hereby certify:  
8 That I was present via Zoom for the purpose of  
9 acting as Certified Court Reporter in the matter  
10 entitled herein;  
11 That said transcript which appears hereinbefore  
12 was taken in verbatim stenotype notes by me and  
13 thereafter transcribed into typewriting as herein  
14 appears to the best of my knowledge, skill, and  
15 ability and is a true record thereof.  
16  
17 DATED: At Reno, Nevada, this 17th day of October  
18 2020.  
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20  
21 Christina Marie Amundson, CCR #641  
22 -o0o-  
23  
24

# Exhibit 15

# Exhibit 15



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 16**

# **Exhibit 16**



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

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

IT IS SO ORDERED.

Dated this 27<sup>th</sup> day of October, 2020.



---

Richard D. Williamson, Esq.  
Hearing Panel Chair

**CERTIFICATE OF SERVICE BY MAIL**

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

[brian.padgett@icloud.com](mailto:brian.padgett@icloud.com);

[rich@nvlawyers.com](mailto:rich@nvlawyers.com); and

[gerardg@nvbar.org](mailto:gerardg@nvbar.org).

Dated this 27<sup>th</sup> day of October 2020.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada

# **Exhibit 17**

# **Exhibit 17**



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 (“NRCP”), for Grievants’ Complaint was set to expire on July 9, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. On or about June 21, 2020, copies of the Notice sent to Respondent's SCR 79 address were returned to the State Bar's Reno office marked "Return to Sender".

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

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

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

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

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

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

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

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

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

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

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

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

56. Ultimately, the Formal Hearing was continued.

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

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

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

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

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

### **Count One**

#### **Rule 1.15 (Safekeeping Property)**

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

63. RPC 1.15 states:

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

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

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

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

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

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

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

### **Count Two**

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

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

68. RPC 5.1 states:

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

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

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

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

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

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

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

### **Count Three**

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

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

73. RPC 8.1 states:

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

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



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

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

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

#### **Count Four**

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

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

78. RPC 8.1 states:

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

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

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

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

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

#### **Count Five**

##### **Rule 8.4 (Misconduct)**

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

83. RPC 8.4 states:

It is professional misconduct for a lawyer to:

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

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

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

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

### **Count Six**

#### **Rule 8.4 (Misconduct)**

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

88. RPC 8.4 states:

It is professional misconduct for a lawyer to:

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

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

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

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

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

**WHEREFORE**, Complainant prays as follows:

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

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

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

DATED this 27th day of October, 2020.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

**Gerard Gosioco, Assistant Bar Counsel**

Nevada Bar No. 14371

3100 West Charleston Boulevard, Suite 100

Las Vegas, Nevada 89102

(702) 382-2200

# Exhibit 18

# Exhibit 18



FILED

NOV 17 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.

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.<sup>1</sup> Without proper notice of deadlines and  
22

23  
24 <sup>1</sup> 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

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

3 **2. THE ABSENCE OF AN INTENT TO DELAY THE**  
4 **PROCEEDINGS**

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

10 **3. LACK OF KNOWLEDGE OF PROCEDURAL**  
11 **REQUIREMENTS**

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

14 **4. GOOD FAITH**

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

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

19 Persuasive Federal law interpreting FRCP 60(b)(6) strongly suggests that it is appropriate  
20 for the Disciplinary Chair to vacate the Amended Complaint and all decisions or rulings  
21 coming after the filing of the Complaint pursuant to NRCP 60(b)(6). The threshold  
22 requirements for the Court to consider the Respondents' relief requested is discussed above.  
23 As such, courts have concluded "[t]he amendments to NRCP 60(b) incorporate FRCP  
24 60(b)(6), which enables courts to provide relief when it is justified and NRCP(b)(1 - 5) do not  
25 apply. 27-JUN NVLAW 8. Therefore, notwithstanding NRCP 60(b)(1), this is a case where  
26  
27  
28

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 16<sup>th</sup> 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 16<sup>th</sup> 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 19

# Exhibit 19





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.

Case No. OBC19-1111

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

Respondent,

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 18<sup>th</sup> 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 20

# Exhibit 20



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,



2020<sup>1</sup>; (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.

<sup>1</sup> 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](mailto:rich@nvlawyers.com)
2. Brian C. Padgett, Esq. (Respondent): [brian.padgett@icloud.com](mailto:brian.padgett@icloud.com)
3. Gerard Gosioco, Esq. (Assistant Bar Counsel): [gerardg@nvbar.org](mailto:gerardg@nvbar.org)

Dated this 2nd day of December, 2020.

*Laura Peters*

\_\_\_\_\_  
Laura Peters, an employee  
of the State Bar of Nevada