

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 12:22 p.m.
Case No. Elizabeth A. Brown
Clerk of Supreme Court

Volume V

RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS
AND TRANSCRIPT OF HEARINGS

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

Attorney for State Bar of Nevada

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

Respondent

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Exhibit 21

Exhibit 21



FILED

DEC 14 2020

STATE BAR OF NEVADA

BY [Signature]
OFFICE OF BAR COUNSEL

Case No.: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

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

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

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

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

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

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

8 **IT IS SO ORDERED.**

9 Dated this 14th day of December 2020.

10 NORTHERN NEVADA
11 DISCIPLINARY BOARD

12
13 By: 

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

Final Audit Report

2020-12-14

Created:	2020-12-14
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUpEahkM4fAqy9bOjRPFxvC4Voq4ZpmYK

"Order denying MTD_121620" History

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

CERTIFICATE OF SERVICE BY MAIL

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

brian.padgett@icloud.com;

eric@ericstovalllaw.com; and

gerardg@nvbar.org.

Dated this 14th day of December 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 22

Exhibit 22



FILED

DEC 11 2020

STATE BAR OF NEVADA

BY X
OFFICE OF BAR COUNSEL

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

Case No. OBC19-1111

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

Respondent,

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

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

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

Dated: December 10, 2020.



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

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

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

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

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

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

/ / /

/ / /

2) Verified Response to First Amended Complaint


STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

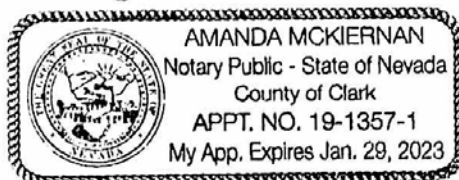
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge.

Executed this 18TH day of December, 2020.


BRIAN C. PADGETT

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


NOTARY PUBLIC



CONCLUSION

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

Dated this 10th day of December, 2020.



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

CERTIFICATE OF SERVICE

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

RESPONDENT'S

MOTION FOR EXTENSION OF TIME TO FILE ANSWER

And VERIFIED RESPONSE

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

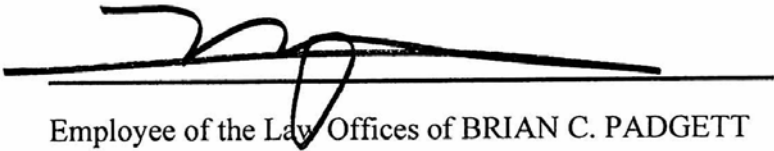

Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 23

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JAN 05 2021

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

Case No.: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

ENTRY OF DEFAULT

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

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 /s/ Gerard Gosioco

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

20 *Attorneys for the State Bar of Nevada*






2nd Entry of Default

Final Audit Report

2021-01-05

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

"2nd Entry of Default" History

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

CERTIFICATE OF SERVICE BY MAIL

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

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

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

Dated this 5th day of January 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 24

Exhibit 24

Case No: OBC19-1111



FILED

NOV 17 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.

**NOTICE OF INTENT
TO ENTER DEFAULT**

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

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

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

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

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

5 DATED this 17th day of November, 2020.

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

8 /s/ Gerard Gosioco
9 By: /s/ Gerard Gosioco (Nov 17, 2020 10:28 PST)
10 Gerard Gosioco, Assistant Bar Counsel
11 Nevada Bar No. 14371
12 3100 W. Charleston Blvd., Ste. 100
13 Las Vegas, NV 89102
14 (702) 382-2200
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Padgett. NIED_111720

Final Audit Report

2020-11-17

Created:	2020-11-17
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAdmmxHZcrb7Yz4gUVVdMPxV5A0Mg_zayZ

"Padgett. NIED_111720" History



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2020-11-17 - 6:25:14 PM GMT- IP address: 71.94.199.108



Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature

2020-11-17 - 6:25:29 PM GMT



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2020-11-17 - 6:28:00 PM GMT- IP address: 68.104.81.227



Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)

Signature Date: 2020-11-17 - 6:28:21 PM GMT - Time Source: server- IP address: 68.104.81.227



Agreement completed.

2020-11-17 - 6:28:21 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that true and correct copies of the foregoing **Notice of Intent to Enter Default** along with a copy of the First Amended Complaint filed October 27, 2020, was placed in the US mail in Reno, Nevada, postage pre-paid for certified and regular mail, addressed to:

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

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

gerardg@nvbar.org.

Dated this 17th day of November 2020.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 25

Exhibit 25

From: [Rich Williamson](#)
To: [Brian Padgett](#); [Gerard Gosioco](#)
Cc: [Laura Peters](#); [Nathan Aman](#); [Steve Boucher \(steveboucher@sbcglobal.net\)](#)
Subject: RE: State Bar of Nevada v. Brian C. Padgett, Esq.
Date: Thursday, January 14, 2021 11:13:38 AM

Mr. Padgett and Mr. Gosioco,

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

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

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

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

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

Best regards,

Rich Williamson

Richard D. Williamson, Esq.
Robertson, Johnson, Miller & Williamson
50 West Liberty Street, Suite 600
Reno, Nevada 89501
Telephone: (775) 329-5600
Facsimile: (775) 348-8300
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From: Brian Padgett [mailto:brian.padgett@icloud.com]
Sent: Wednesday, January 13, 2021 5:30 PM
To: Laura Peters; Rich Williamson; Nathan Aman; Steve Boucher (steveboucher@sbcglobal.net)
Cc: Gerard Gosioco
Subject: Re: State Bar of Nevada v. Brian C. Padgett, Esq.

All,

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

The reason I ask is that I would like to give the Supreme Court time to weigh in on my recently filed Appellant's Opening Brief regarding lack of notice/lack of Due Process. I think that may have a direct impact on how this case is handled because, as it stands right now, I understand that I have no opportunity to participate in any substantive processes in this case other than the right to attend the hearing and be heard orally in limited fashion.

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

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

Thank you for your consideration.

Brian Padgett

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

Looks pretty open; if we can avoid Thursday's that would be good – we have a standing meeting every Thursday afternoon.

Let me suggest:

March 2, 2021; March 9, 2021 and/or March 16, 2021. Gentlemen?

Thanks for your consideration,
Laura

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Wednesday, January 13, 2021 3:36 PM
To: Laura Peters <LauraP@nvbar.org>
Cc: Rich Williamson <rich@nvlawyers.com>; Nathan Aman <naman@renonvlaw.com>; Steve Boucher (steveboucher@sbcglobal.net) <steveboucher@sbcglobal.net>; Gerard Gosioco <gerardg@nvbar.org>
Subject: Re: State Bar of Nevada v. Brian C. Padgett, Esq.

Ms. Peters,

I am not available in February 2021. What is available in March 2021?

Thank you,

Brian Padgett

On January 7, 2021 at 10:23 AM, Laura Peters <LauraP@nvbar.org> wrote:

Good Morning Gentlemen:

Happy New Year! I've been asked to contact you with potential hearing dates for the continued hearing in above-referenced matter. Please consider the following or, in the alternative, provide dates that would accommodate your schedules:

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

Thank you,

Laura Peters
Paralegal/Investigator
Office of Bar Counsel
Ph: 775-824-1382

Email: laurap@nvbar.org



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Exhibit 26

Exhibit 26



FILED

JAN 28 2021

STATE BAR OF NEVADA
BY 
OFFICE OF BAR COUNSEL

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

Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,
Complainant,

-vs-

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

Respondent.

CASE NO: OBC19-1111

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

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

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

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

///

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

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

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

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

See Exhibit 14.

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

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

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

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

CONCLUSION

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

DATED this 28th day of January, 2021.

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

/s/ Gerard Gosioco

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

CERTIFICATE OF SERVICE

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

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

DATED this 28th day of January, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 27

Exhibit 27



FILED

FEB 08 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,

REPLY TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR

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

Dated: February 5, 2020.

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

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

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

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

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

ARGUMENT

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

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

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

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

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

2. REQUEST TO STAY PROCEEDINGS UNTIL SUPREME COURT RULING

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

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

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

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

/ / /

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CONCLUSION

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

Dated this 5th day of February, 2021.

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

CERTIFICATE OF SERVICE

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

REPLY TO PROCEDURAL ISSUES RAISED BY PANEL CHAIR

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

Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 28

Exhibit 28



FILED

FEB 09 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRIAN C. PADGETT, ESQ.,

Nevada Bar No. 7474

Respondent.

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

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

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

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

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

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

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

21 IT IS SO ORDERED.

22 Dated this 9th day of February, 2021.

23 

24 Richard D. Williamson, Esq.
25 Hearing Panel Chair

CERTIFICATE OF SERVICE BY MAIL

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

brian.padgett@icloud.com;

rich@nvlawyers.com; and

gerardg@nvbar.org.

Dated this 9th day of February, 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 29

Exhibit 29



FILED

FEB 17 2021

STATE BAR OF NEVADA
BY 
OFFICE OF BAR COUNSEL

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

Respondent,

Case No. OBC19-1111

RESPONDENT'S VERIFIED RESPONSE TO AMENDED COMPLAINT

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


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

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

- 6 1. I am a resident of the State of Nevada.
7
8 2. I hereby respond to the General Allegations and Counts One through Six found in the
9 Amended Complaint as follows:
10 3. I generally deny all averments alleged herein including Counts One through Six and
11 those General Allegations related thereto.

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

14 Executed this 16TH day of February, 2021.

15 
16 BRIAN C. PADGETT

17
18 SUBSCRIBED AND SWORN BEFORE ME
19 this ____ day of February, 2021.

20
21 _____
22 NOTARY PUBLIC
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

RESPONDENT'S VERIFIED RESPONSE TO AMENDED COMPLAINT

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



Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 30

Exhibit 30



FILED

FEB 19 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

AMENDED SCHEDULING
ORDER

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

During the Scheduling Conference, it was agreed that:

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

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

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

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

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

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

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

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

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

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

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

Dated this 19th day of February 2021.

NORTHERN NEVADA DISCIPLINARY BOARD

plb.

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

Rich Williamson, Esq.
FORMAL HEARING CHAIR

Submitted By:

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

Is/ Gerard Gosioco

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

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









Amended Scheduling Order_022221

Final Audit Report

2021-02-22

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

"Amended Scheduling Order_022221" History

-  Document created by Laura Peters (laurap@nvbar.org)
2021-02-22 - 9:47:48 PM GMT- IP address: 71.94.199.108
-  Document emailed to /s/ Gerard Gosioco (gerardg@nvbar.org) for signature
2021-02-22 - 9:48:26 PM GMT
-  Email viewed by /s/ Gerard Gosioco (gerardg@nvbar.org)
2021-02-22 - 9:48:59 PM GMT- IP address: 24.253.18.70
-  Document e-signed by /s/ Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2021-02-22 - 9:49:16 PM GMT - Time Source: server- IP address: 24.253.18.70
-  Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature
2021-02-22 - 9:49:17 PM GMT
-  Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2021-02-22 - 10:16:40 PM GMT- IP address: 97.92.108.234
-  Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
Signature Date: 2021-02-22 - 10:19:19 PM GMT - Time Source: server- IP address: 97.92.108.234
-  Agreement completed.
2021-02-22 - 10:19:19 PM GMT

CERTIFICATE OF SERVICE BY MAIL

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

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

Dated this 22nd day of February 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 31

Exhibit 31

From: [Gerard Gosioco](#)
To: [Laura Peters](#)
Subject: FW: Initial Disclosures
Date: Wednesday, May 5, 2021 4:12:24 PM

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Tuesday, March 9, 2021 10:36 PM
To: Rich Williamson <rich@nvlawyers.com>
Cc: Gerard Gosioco <gerardg@nvbar.org>; Laura Peters <LauraP@nvbar.org>
Subject: Re: Initial Disclosures

Mr. Williamson:

Thank you for your consideration.

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

Best regards,

Brian Padgett

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

Counsel,

As these are initial disclosures, they could have been produced concurrently and Mr. Padgett's disclosures are not necessarily dependent upon what the State Bar produced. I am also concerned that Mr. Padgett's request came a mere one minute before the deadline. Most importantly, however, I am not even sure that I have discretion to change the initial disclosure deadlines.

According to DRP 17(a):

"Bar counsel shall disclose its witnesses and documents no later than five (5) judicial days after the initial case conference. Respondent shall disclose all witnesses and documents no later than fifteen (15) calendar days after the initial case conference."

Therefore, according to the rule, the deadline was required to be today regardless of the scheduling order.

Nonetheless, I think that we also need to keep in mind the purposes of the rules as set forth in DRP 1(b): "The purpose of these rules is to expedite disciplinary hearings through procedures designed to streamline presentation of evidence, facilitate coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper administration of attorney regulation." Accordingly, to the extent that I am even empowered to do so, I grant Mr. Padgett until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing.

Respectfully,

Rich Williamson

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

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

Mr. Williamson:

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

He produced hundreds of documents in this disclosure.

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

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

Best regards,

Brian Padgett

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

Mr. Williamson,

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

Gerard Gosioco

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

Mr. Williamson:

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

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

Best regards,

Brian Padgett

On iPhone

Exhibit 32

Exhibit 32



FILED

MAR 11 2021

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

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

Respondent,

Case No. OBC19-1111

RESPONDENT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

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

WITNESSES

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

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

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

- 3 2. Employee A, Law Offices of Brian C. Padgett
4 c/o Law Offices of Brian C. Padgett
5 1672 Liege Drive,
6 Las Vegas, Nevada 89012

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

- 11 3. Employee B, Law Offices of Brian C. Padgett
12 c/o Law Offices of Brian C. Padgett
13 1672 Liege Drive,
14 Las Vegas, Nevada 89101

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

- 19 4. Certified Fraud Investigator
20 c/o Law Offices of Brian C. Padgett
21 Law Offices of Brian C. Padgett

22 Expected to testify regarding all of the facts and circumstances surrounding the Law
23 Office of Brian C. Padgett and Brian Padgett, Esq. as it pertains to this case – including but not
24 limited to the conduct of independent contractor A.C.E. Legal, LLC hired by the Law Offices of
25 Brian C. Padgett. Will also testify to investigative findings related to A.C.E. Legal, LLC.
26
27
28

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

7. All impeachment witnesses.

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

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

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

DOCUMENTS

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

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

2. Any and all attestations from witnesses listed herein.

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

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

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

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

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

DATED this 11th day of March, 2021.

LAW OFFICES OF BRIAN C. PADGETT

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

CERTIFICATE OF SERVICE

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

RESPONDENT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS

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

/s/Brian C. Padgett

Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 33

Exhibit 33

From: [Gerard Gosioco](#)
To: [Brian Padgett](#); [Laura Peters](#)
Subject: Re: Initial Disclosures
Date: Thursday, March 11, 2021 4:41:48 PM

Mr. Padgett,

What are the names of your witnesses?

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Thursday, March 11, 2021 4:38 PM
To: Laura Peters <LauraP@nvbar.org>
Cc: Gerard Gosioco <gerardg@nvbar.org>
Subject: Initial Disclosures

Ms. Peters:

Please see attached.

Best regards,

Brian Padgett

Exhibit 34

Exhibit 34

From: [Gerard Gosioco](#)
To: [Brian Padgett](#)
Cc: [Laura Peters](#)
Subject: RE: State Bar of Nevada v. Brian C. Padgett
Date: Tuesday, March 16, 2021 3:37:34 PM

Mr. Padgett,

Witness names and documents need to be provided at the time Disclosures are due. Please submit those by **tomorrow** at **5:00pm**.

Gerard Gosioco

From: Brian Padgett <brian.padgett@icloud.com>
Sent: Tuesday, March 16, 2021 3:36 PM
To: Gerard Gosioco <gerardg@nvbar.org>
Cc: Laura Peters <LauraP@nvbar.org>
Subject: Re: State Bar of Nevada v. Brian C. Padgett

Mr. Gosioco,

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

BCP

On iPhone

On Mar 16, 2021, at 8:28 AM, Gerard Gosioco <gerardg@nvbar.org> wrote:

Mr. Padgett,

I sent you an email on Thursday and left you a voicemail on Friday but have not heard back from you. Please disclose the identities of your witnesses and send over the documents you intend to use during your formal hearing. Thank you.

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

<image001.png>

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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. Thank you for your patience and cooperation during this difficult time.

Exhibit 35

Exhibit 35



FILED

MAR 25 2021

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

MOTION TO COMPEL PRODUCTION

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

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

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

Id.

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

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

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

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

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

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

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

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

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

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

13. Respondent’s “Witnesses” include, in pertinent part:

1. Brian C. Padgett

[. . .]

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

2. **Employee A**, Law Offices of Brian C. Padgett

[. . .]

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

3. ***Employee B***, Law Offices of Brian C. Padgett

[. . .]

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

4. ***Certified Fraud Investigator***

[. . .]

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

6. [sic] All witnesses listed by the Complainant in this action.

7. [sic] ***All impeachment witnesses.***

8. [sic] ***All witnesses necessary to authenticate documents or other evidence.***

Id. (emphasis added).

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

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

2. ***Any and all attestations from witnesses listed herein.***

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

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

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

Id. (emphasis added).

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

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

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

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

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

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

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

II. DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

///

III. CONCLUSION

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

DATED this 25th day of March, 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

Gerard Gosioco, Assistant Bar Counsel

Nevada Bar No. 14371

3100 West Charleston Boulevard, Suite 100

Las Vegas, Nevada 89102

(702) 382-2200

Attorneys for the Complainant

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

CERTIFICATE OF SERVICE

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

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

DATED this 25th day of March, 2021.

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

Exhibit 36

Exhibit 36



FILED

APR 15 2021

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

Case No: OBC19-1111

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

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

Respondent.

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

On March 25, 2021, Complainant, State Bar of Nevada (hereinafter, "State Bar") filed a Motion to Compel Production ("Motion") against Respondent Brian C. Padgett, Esq., (hereinafter, "Respondent"). Having reviewed the Motion and the applicable law, Hearing Panel Chair Richard D. Williamson, Esq. (hereinafter, "Hearing Chair") hereby finds as follows:

Procedural History

The State Bar filed its original Complaint against Respondent on or about May 13, 2020. Pursuant to Supreme Court Rule ("SCR") 79, the State Bar served a copy of the Complaint on Respondent. On or about June 9, 2020, the State Bar filed a Notice of Intent to Proceed on a Default Basis. On July 10, 2020, the State Bar filed a Declaration of Service According to SCR 109(1) in Support of Entry of Default, which set forth the State Bar's efforts to serve Respondent. Accordingly, on or about July 13, 2020, the Hearing Chair signed, and the State Bar filed, an Entry of Default against Respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Merits of the Motion**

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

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

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

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

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

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

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

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

5 Likewise,

6 If a party fails to provide information or identify a witness as required by Rule
7 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use
8 that information or witness to supply evidence on a motion, at a hearing, or at a
trial, unless the failure was substantially justified or is harmless. In addition to or
instead of this sanction, the court, on motion and after giving an opportunity to be
heard:

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

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

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

12 NRCP 37(c)(1).

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

18 **Conclusion**

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

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

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

10 IT IS SO ORDERED.

11 Dated this 15th day of April, 2021.

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

12
13 Richard D. Williamson, Esq.
14 Hearing Panel Chair
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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; rich@nvlawyers.com; and gerardg@nvbar.org.

Dated this 15th day of April 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Exhibit 37

Exhibit 37

From: [Rich Williamson](#)
To: [Brian Padgett](#)
Cc: [Gerard Gosioco](#); [Brian Padgett](#); [Laura Peters](#)
Subject: RE: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)
Date: Tuesday, April 20, 2021 5:31:31 PM

Mr. Padgett,

Thank you for the update.

Best regards,

Rich Williamson

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

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From: Brian Padgett [<mailto:brian@briancpadgett.com>]
Sent: Tuesday, April 20, 2021 2:47 PM
To: Rich Williamson

Cc: Gerard Gosioco; Brian Padgett; Laura Peters
Subject: Re: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)

Gentlemen,

I want to advise you that I will be filing a Motion to Set Aside the recent decision related to Mr. Gosioco's Motion to Compel.

As a result thereof, I will not be filing documents today related to that Order until the Motion to Set Aside is decided.

Thank you,

Brian Padgett

Sent from my iPhone

On Apr 20, 2021, at 9:18 AM, Rich Williamson <rich@nvlawyers.com> wrote:

Mr. Gosioco,

Thank you for the update.

Best regards,

Rich Williamson

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

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or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and completely delete the original message (which includes your deleted items folder). Personal messages express only the view of the sender and are not attributable to Robertson, Johnson, Miller & Williamson. We advise you that any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein. TRANSMISSION OF THIS INFORMATION IS NOT INTENDED TO CREATE, AND RECEIPT DOES NOT CONSTITUTE, AN ATTORNEY-CLIENT RELATIONSHIP.

From: Gerard Gosioco [mailto:gerardg@nvbar.org]
Sent: Tuesday, April 20, 2021 8:46 AM
To: Rich Williamson
Cc: Brian Padgett; Brian Padgett; Laura Peters
Subject: State Bar of Nevada v. Brian C. Padgett Update (OBC19-1111)

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

<image001.png>

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

The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate

future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to gerardg@nvbar.org. Thank you for your patience and cooperation during this difficult time.

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> wrote:

Good Morning Mr. Williamson,

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

Respectfully,

Gerard Gosioco

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

<Outlook-cejqppca.png>

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

Padgett ROA - 1057

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

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

Exhibit 38

Exhibit 38



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.
2.
3. Amy L. Sugden

4 Respondent objects to Ms. Sugden being called as a witness as she was legal counsel for
5 Respondent Brian C. Padgett and the Law Offices of Brian C. Padgett and the scope of her
6 testimony as listed by Complainant would result in a breach of attorney-client privilege.
7

8 2. Tyler Trewet
9 Nationwide Legal Nevada, LLC

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

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

15 3. Judith Mae All
16 Nationwide Legal Nevada, LLC

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

19 4. Sean Keseday
20 Nationwide Legal Nevada, LLC

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

23
24 5. The Respondent reserves the right to object to any and all witnesses listed by
25 Complainant prior to the final May 2021 hearing in this matter.
26
27
28

OBJECTION TO DOCUMENTS

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

DATED this 5th day of April, 2021.

LAW OFFICES OF BRIAN C. PADGETT

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

CERTIFICATE OF SERVICE

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

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

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

/s/Brian C. Padgett

Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 39

Exhibit 39



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.

///

///

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

DATED this 19th day of April, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 40

Exhibit 40

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

Good Evening Gentlemen:

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

Thank you,

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



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

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

[Redacted]

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

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

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

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

How to Fix It

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

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

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

More Info for Email Admins

Status code 550 5.7.350

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

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

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

Original Message Details

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

Error Details

Reported error 550 5.7.350 Remote server returned message detected as spam -> 550 permanent failure for one or more recipients (brian.padgett@icloud.com 552 5.3.4 Error message file too big,brian@briancpadgett.com 250 2.6.0 <BY5PR17MB38732A8221...> BYAPR17MB2517.namprd17.prod.outlook.com

DSN generated by 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=;
b=SRZPVK4LYe6/kOXwiQhaFqZwwiMp3hNruWK43D2CBXbrm5kb6gMVuKoBwPoG+FAFZZOE5PIDgbZh/NyWp79kqmjt6VuW+yGqGeh6V1hoh3MrvfPmd/4j9vyGnjszV1iIXFfi
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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;
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YT6PiZ0P41rTrC73w081WY4+doe+ZfIJmRqY=
Received: from BY5PR17MB3873.namprd17.prod.outlook.com (2603:10b6:a03:21e::23)
by BYAPR17MB2517.namprd17.prod.outlook.com (2603:10b6:a03:88::12) with
Microsoft SMTP Server (version=TLS1_2,
cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id 15.20.4065.20; Wed, 28 Apr
2021 23:29:59 +0000
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([fe80::6593:9e26:a868:47b%3]) with mapi id 15.20.4065.027; Wed, 28 Apr 2021
23:29:58 +0000
From: Laura Peters <LauraP@nvbar.org>
To: "brian@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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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;
x-originating-ip: [71.94.199.108]
x-ms-publictraffictype: Email
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x-ms-oob-tlc-oobclassifiers: OLM:449;
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boundary="_007_BY5PR17MB38732A8221E37C39F5DD121CDC409BY5PR17MB3873nampr_"
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X-MS-Exchange-CrossTenant-AuthAs: Internal
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(UTC)
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X-MS-Exchange-CrossTenant-userprincipalname: KDZk0qjnTSfLvxr8OhJQgOyRhkiZABrEH0vEcFsuKYkJUNAgI8wN78D/fPSN1MWsaRyLhkojt1qvtl8mwPg7Q==
X-MS-Exchange-Transport-CrossTenantHeadersStamped: BYAPR17MB2517

Exhibit 41


Exhibit 41

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



FILED

APR 28 2021

STATE BAR OF NEVADA
BY 
OFFICE OF BAR COUNSEL

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

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

Respondent,

Case No. OBC19-1111

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
following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

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

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

10
11 **1. Defendant Meets the Criteria of NRCP 60 (b)(1) to Set Aside the Order**
Granting State's Motion to Compel

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

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

20
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

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).
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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 28th 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. 6TH 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 28th day of April, 2021, a true and correct copy of

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

ORDER GRANTING STATE’S MOTION TO COMPEL

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

/s/ Brian C. Padgett

An employee the Law Offices of BRIAN C. PADGETT

Exhibit 42

Exhibit 42



FILED

APR 29 2021

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

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

Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

-vs-

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

Respondent.

CASE NO: OBC19-1111

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

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

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

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT PROCEDURAL HISTORY

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

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

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

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

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

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

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

See Exhibit 8 (emphasis added).

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 29th day of April, 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 43

Exhibit 43



FILED

APR 30 2021

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

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

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,
vs.

Case No. OBC19-1111

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


Respondent.

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

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

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

Dated: April 29th, 2021.


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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

II. STATEMENT OF FACTS

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

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

Thereafter, Appellant hired Elliott Investigative Services, Inc. and its President John M. Elliott to investigate the breach. Mr. Elliott is a retired Special Agent with 25 years in service to the FBI. He is also a Certified Fraud Investigator. After reviewing the server breach, Mr. Elliott recommended that the Law Firm should work out of Appellant's home office at 1672 Liege Drive in Henderson, Nevada until the server could be secured and cases involving Appellant's marijuana licenses were concluded. *Exhibit B.*

On February 24, 2020, Appellant mailed a response to the State Bar Complaint for case nos. OBC19-0604 and OBC19-0798. *Exhibit C.* The response detailed the basis for Mr. Elliott's investigations and asked for a stay of proceedings until the investigation could be completed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LEGAL ARGUMENT

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

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

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

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

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

46. On or about July 13, 2020, an Entry of Default was filed.
47. A search of Respondent's public pleadings revealed a third address for Respondent (1672 Liege Drive, Henderson, NV 89012)(hereinafter "Liege address").
48. On or about September 25, 2020, the State Bar requested that Nationwide Legal attempt to personally serve Respondent at the Liege address.

1 *See Exhibit G.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


D. Stay of Proceedings Requested Until New Counsel Appointed

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

CONCLUSION

Based upon the facts and argument set forth herein it is respectfully requested that the Respondent be given the relief requested so that he may be accorded full Due Process and Equal Protection under the laws.

Dated this 29th day of April, 2021.


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

CERTIFICATE OF SERVICE


I hereby certify that on this 29th day of April, 2021, I served the foregoing

RESPONDENT'S MOTION TO REMOVE

ASSOCIATE BAR COUNSEL GOSIOCO

FROM CASE NO. OBC19-1111

electronically to all parties of record in this matter.



Employee of the Law Offices of BRIAN C. PADGETT

Exhibit 44

Exhibit 44



FILED

MAY 05 2021

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

DANIEL M. HOOGE
Bar Counsel
Nevada Bar No. 10620
GERARD GOSIOCO
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Attorneys for the State Bar of Nevada

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

-vs-

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

Respondent.

CASE NO: OBC19-1111

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

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

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

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MEMORANDUM OF POINTS AND AUTHORITIES

RELEVANT PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to Rule 17 of the Disciplinary Rules of Procedure (“DRP”), the Panel Chair met telephonically with ABC Gosioco and Respondent on February 22, 2021. *See* Exhibit 23. During that scheduling conference, the parties agreed that Respondent would provide his initial disclosures on or before March 9, 2021, by 5:00 p.m. *Id.* This deadline was also set forth in the Amended Scheduling Order, which the Panel Chair signed on February 22, 2021, and which was served on all parties that same day. *Id.* The deadlines for initial disclosures were also consistent with DRP 17(a).

On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting an extension of his initial disclosure deadline until March 12, 2021. *See* Exhibit 24. The State Bar objected to that request. *Id.* Ultimately, the Panel Chair primarily granted Respondent’s request for an extension and gave Respondent “until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing.” *Id.*

On March 11, 2021, at approximately 4:38 p.m., Respondent served his Initial Disclosure to the State Bar. *See* Exhibit 25. Unfortunately, the only named witness was the Respondent himself. *Id.* In addition, Respondent’s initial disclosures stated that he expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted “c/o Law Offices of Brian C. Padgett.” *Id.* Respondent failed to produce the identities of any of his witnesses, other than himself. *Id.* Respondent’s initial disclosures also vaguely referenced several categories of documents but failed to produce any actual documents. *Id.*

Respondent did not provide any further specificity of the witnesses or documents he intends to use. Accordingly, the State Bar filed a Motion to Compel Production (“Motion to Compel”) on March 25, 2021. *See* Exhibit 26. Respondent did not file a response to the Motion to Compel within ten (10)

judicial days after the motion was filed and served. *See* DRP 15(b). On April 15, 2021, the Panel Chair granted the State Bar’s Motion to Compel which stated the following:

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

See Exhibit 27 (emphasis added).

Respondent failed to produce any documents to the State Bar by 5:00 p.m. on Monday, April 19, 2021. Accordingly, on April 20, 2021, ABC Gosioco sent an email to the Panel Chair and Respondent updating them of the same. *See* Exhibit 28. In response, Respondent stated that he “counted the deadline as [April 20, 2021] to file” and that he “intend[s] to do so.” *Id.* Respondent did not file anything on April 20, 2021.

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

Pursuant to the Amended Scheduling Order, “[a]t or before April 28, 2021 by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to call to testify at the Formal Hearing.” *See* Exhibit 23. Accordingly, the State Bar served Respondent

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

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

ARGUMENT

I. RESPONDENT’S MOTION SHOULD BE DENIED

A. Respondent’s motion is untimely.

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

B. Respondent’s motion is without merit.

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

DATED this 5th day of May 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S OPPOSITION TO RESPONDENT'S MOTION TO REMOVE ASSOCIATE BAR COUNSEL GOSIOCO FROM CASE NO. OBC19-1111** was served via email to:

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

DATED this 5th day of May 2021.

Laura Peters

Laura Peters, an employee
of the State Bar of Nevada

Exhibit 45

Exhibit 45

RECEIVED

NOV 09 2020

OK/H

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 Gammila Drive
Las Vegas NV 89141



9590 9402 5871 0038 4388 09

2. Article Number (Transfer from service label)

7019 2970 0001 3885 9549

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

- | | |
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| <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 |
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| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

STATE BAR

CERTIFIED MAIL



7029 2970 0001 3885 9649

NORTHERN NEVADA BAR CENTER
9456 Double R Blvd., Ste. B, Reno, NV 89521-5977
nnbar.org

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

FIRST-CLASS



Padgett ROA - 1117

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

EC: 59521591993 210442299139-99343

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NORTHERN NEVADA BAR CENTER
99456 Double R Blvd., Ste. B, Reno, NV 89521-5977
www.nsbart.org

BC: 352160139M
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Brian C. Padgett, Esq.
611 S. 6th Street
Las Vegas, NV 89101

08/18/20

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[illegible]

STATE

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NORTHERN NEVADA BAR CENTER

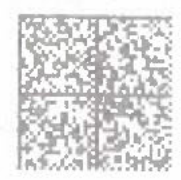
9456 Double R Blvd., Ste. B, Reno, NV 89521-5977

www.nvbar.org

MAIL



FIRST-CLASS



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US \$

RECEIVED

NOV 16 2010

Handwritten signature/initials

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

Padgett ROA - 1119

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



9590 9402 5871 0038 4388 30

2. Article Number (Transfer from service label)

7029 2970 0003 3885 9518

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent

B. Received by (Printed Name)

☐ Addressee

C. Date of Delivery

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

3. Service Type

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| <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 type="checkbox"/> Certified Mail Restricted Delivery | <input 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"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

Exhibit 46

Exhibit 46

STATE BAR OF NEVADA

September 11, 2019



Sent Via Regular and Certified U.S. Mail: #7017 2400 0000 3192 7450

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

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

RE: Grievance File No. OBC19-1111/John Di Francesco et al.

Dear Mr. Padgett:

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

The Office of Bar Counsel has received the enclosed correspondence from John Di Francesco which alleges professional misconduct on your part. As such, a grievance file has been opened. I have been assigned as the investigator on the file.

Please respond in writing to this grievance. Your response should address all allegations contained within Mr. Di Francesco's grievance and include supporting documentation when available.

In addition, please provide this office with a copy of Mr. Di Francesco's **entire** file, including but not limited to the retainer agreement, all correspondence, pleadings, invoices, costs, timesheets, case notes, telephone logs, memoranda, facsimiles, and electronic mail.

Please give this matter your immediate attention. This is a lawful demand for information from the Office of Bar Counsel in conjunction with an investigation. If no response is received from you, Bar Counsel will ask the screening panel of the Southern Nevada Disciplinary Board to consider your failure to respond as a failure to cooperate with the State Bar in its efforts to enforce Rules of Professional Conduct, which will be considered as a separate disciplinary violation pursuant to RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Please provide your response **no later than September 25, 2019**.

Sincerely,

Louise Watson, CP
Sr. Certified Paralegal/Investigator
Office of Bar Counsel
Phone: 702-317-1453
Email: louisew@nvbar.org

Enclosure

Exhibit 47

Exhibit 47

DIFRANCESCO FAMILY TRUST

BCP INVOICE NUMBER	Name	BCP INVOICE DATE	AMOUNT BILLED	Copies Fees	Expert Fees	Deposition Charges/ Court Reporter Cost	Court Filing Fees & Process Service	Travel Costs	Pay Directly to Vendor	TOTAL INVOICE AMOUNT	AMOUNT PAID BY CLIENT	Amount billed at Conclusion of Case	BALANCE DUE	CHECK NUMBER	DATE
	DiFrancesco-Feron Air Center, LLC (Retainer Fee)										\$5,000.00				04/30/12
100	Law Offices of Brian C. Padgett	5/4/12 for March, 2012	\$2,450.00									\$875.00			05/04/12
100	Law Offices of Brian C. Padgett	5/4/12 for April, 2012	\$2,450.00									\$2,450.00	\$2,450.00		05/04/12
101	Law Offices of Brian C. Padgett	6/6/12 for May, 2012	\$6,287.50									\$3,837.50	\$2,450.00		06/06/12
102	Law Offices of Brian C. Padgett	7/6/12 for June, 2012	\$5,062.50									\$2,612.50	\$2,450.00		07/06/12
103	Law Offices of Brian C. Padgett	8/1/12 for July, 2012	\$3,312.50				\$1,310.00					\$862.50			08/01/12
	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2443	08/31/12
104	Law Offices of Brian C. Padgett	8/31/12 for August, 2012	\$1,942.50				\$1,310.00					\$0.00		2454	08/31/12
	DiFrancesco-Feron Air Center, LLC										\$3,252.50			2454	09/27/12
105	Law Offices of Brian C. Padgett	10/1/12 for September, 2012	\$8,635.00									\$6,185.00			10/01/12
	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2466	10/30/12
106	Law Offices of Brian C. Padgett	11/1/12 for October, 2012	\$4,215.00						\$82.75			\$1,765.00	\$1,765.00		11/01/12
	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2476	11/27/12
107	Law Offices of Brian C. Padgett	12/1/12 for November, 2012	\$720.00	\$8.25								\$0.00			12/01/12
	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2483	12/14/12
108	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2504	01/25/13
109	Law Offices of Brian C. Padgett	1/31/13 for January, 2013	\$3,027.50	\$130.75								\$577.50			01/31/13
	TABLE 34				\$139.32										02/01/13
	BACHI BURGER				\$21.08										02/01/13
	SECOND JUDICIAL DISTRICT COURT				\$320.00										02/08/13
	MASTRIONIS				\$270.64										02/09/13
	EAT LLC				\$33.49										02/17/13
	MOB BAR				\$17.80										02/20/13
	TABLE 34				\$270.00										02/22/13
	STARBUCKS				\$23.52										02/25/13
109	DiFrancesco-Feron Air Center, LLC										\$2,580.75			2513	02/27/13
110	Law Offices of Brian C. Padgett	2/28/13 for February, 2013	\$5,780.00	\$421.50			\$325.00					\$3,330.00			02/28/13
	TABLE 34				\$133.00										02/28/13
	BRIO TUSCAN GRILLE				\$148.94										03/03/13
	SINATRA				\$261.00										03/06/13

DIFRANCESCO FAMILY TRUST

110	DiFrancesco-Feron Air Center, LLC										\$3,197.00			2517	03/07/13
	MASTRIONIS				\$261.00										03/07/13
111	Law Offices of Brian C. Padgett	3/29/13 for March, 2013	\$5,195.00	\$462.25	\$2,854.26		\$5.20					\$2,745.00			03/29/13
	ELEMENTS KITCHEN AND MARTINI BAR				\$136.21										04/04/13
111	DiFrancesco-Feron Air Center, LLC										\$3,909.01			2536	04/12/13
112	Law Offices of Brian C. Padgett	4/30/13 for April, 2013	\$960.00	\$91.50								\$0.00			04/30/13
	DiFrancesco-Feron Air Center, LLC										\$1,051.50			2553	05/24/13
113	Law Offices of Brian C. Padgett	5/31/13 for May, 2013	\$4,620.00	\$46.75								\$2,170.00			05/31/13
	GAETANO'S RISTORANTE				\$149.00										06/08/13
	LA COMIDA				\$92.00										06/09/13
114	Law Offices of Brian C. Padgett	6/30/13 for June, 2013	\$1,402.50	\$85.25	\$2,554.57							\$0.00			06/30/13
113	DiFrancesco-Feron Air Center, LLC										\$2,496.75			2583	07/08/13
	SETTEBELLO PIZZERIA				\$52.43										07/21/13
114	DiFrancesco-Feron Air Center, LLC										\$4,042.32			2597	07/31/13
115	Law Offices of Brian C. Padgett	8/1/13 for July, 2013	\$7,887.50	\$53.50	\$52.43							\$5,437.50			08/01/13
	SPAGO				\$57.50										08/07/13
	TABLE 34				\$138.91										08/14/13
	PIZZA HUT				\$17.73										08/16/13
	K-KEL INC.				\$13.20										08/22/13
	PEPPERMILL CASINO HOTEL				\$12.93										08/27/13
	PEPPERMILL CASINO HOTEL				\$230.50										08/27/13
	SOUTHWEST AIRLINES				\$305.80										08/27/13
	PRICE LINE CAR RENTAL				\$124.87										08/27/13
	SUBWAY				\$11.57										08/29/13
	SSP AMERICA				\$24.46										08/29/13
	MCCARRAN INTL. AIRPORT				\$39.00										08/29/13
116	Law Offices of Brian C. Padgett	9/3/13 for August, 2013	\$15,277.50	\$15.00	\$238.91		\$612.69				\$0.00	\$12,390.00			09/03/13
115	DiFrancesco-Feron Air Center, LLC										\$2,555.93			2612	09/19/13
	TRIPLE GEORGE GRILL				\$40.00										09/27/13
117	Law Offices of Brian C. Padgett	10/4/13 for September, 2013	\$11,022.50	\$518.75	\$40.00						\$0.00	\$7,472.50	\$3,854.40		10/04/13
	SETTEBELLO PIZZERIA				\$35.97										10/04/13
116	DiFrancesco-Feron Air Center, LLC										\$3,854.10			2627	10/07/13

DIFRANCESCO FAMILY TRUST

	TRIPLE GEORGE GRILL				\$72.00										10/09/13
117	DiFrancesco-Feron Rental Account									\$4,108.75			2632		10/10/13
118	Law Offices of Brian C. Padgett	11/1/13 for October, 2013	\$6,215.00	\$27.00	\$107.97						\$3,065.00				11/01/13
	BLUE MARTINI LAS VEGAS				\$21.08										
	DiFrancesco-Feron Air Center, LLC									\$3,284.97			2652		11/23/13 11/25/13
119	Law Offices of Brian C. Padgett	11/30/13 November, 2013	\$1,302.50	\$12.50	\$78.92						\$0.00				11/30/13
	TABLE 34				\$93.50										12/07/13
	MC DONALD'S				\$4.31										12/16/13
108	Law Offices of Brian C. Padgett	12/28/12 for December, 2012	\$1,985.00	\$3.75							\$0.00				12/28/13
	KFC				\$7.45										12/29/13
	MC DONALD'S				\$5.06										12/30/13
	DEL FRISCOS				\$230.46										12/31/13
120	Law Offices of Brian C. Padgett	1/6/14 for December, 2013	\$907.50		\$110.32						\$0.00				01/06/14
	DiFrancesco-Feron Air Center, LLC									\$1,393.92			2687		01/17/14
	DiFrancesco-Feron Air Center, LLC									\$1,017.82			2705		02/01/14
	THE CHEESECAKE FACTORY				\$82.32										02/03/14
121	Law Offices of Brian C. Padgett	2/4/14 for January, 2014	\$5,260.00	\$17.00	\$230.46						\$2,810.00				02/04/14
	THE CRAKED EGG				\$40.00										02/10/14
	DiFrancesco-Feron Air Center, LLC									\$3,057.46			2710		02/22/14
	TRIPLE GEORGE GRILL				\$32.31										02/26/14
	SMITH'S				\$8.68										03/01/14
	CAPRIOTTI'S SANDWICH SHOP				\$7.78										03/02/14
	TOWN SQUARE				\$14.25										03/02/14
122	Law Offices of Brian C. Padgett	3/4/14 for February, 2014	\$5,777.50	\$108.75	\$132.92						\$3,102.50				03/04/14
	TACO BELL				\$4.95										03/04/14
	STARBUCKS				\$23.73										03/06/14
	PIZZA ROCK LAS VEGAS				\$32.43										03/07/14
	MC DONALD'S				\$3.44										03/12/14
	PIZZA HUT				\$13.41										03/14/14
	MC DONALD'S				\$4.64										03/19/14
	PANDA EXPRESS				\$7.12										03/21/14
	THE COUNTRY CLUB				\$31.94										03/26/14

DIFRANCESCO FAMILY TRUST

	LOBBY PARASOL UP				\$69.83										03/26/14
122	DiFrancesco-Feron Air Center, LLC										\$2,916.67			2730	04/02/14
123	Law Offices of Brian C. Padgett	4/8/14 for March, 2014	\$10,515.00	\$182.50	\$120.43							\$8,065.00			04/08/14
124	Law Offices of Brian C. Padgett	5/5/14 for April, 2014	\$8,482.50	\$67.75	\$134.08						\$3,051.83	\$5,632.50			05/05/14
	DiFrancesco-Feron Air Center, LLC										\$3,051.83			2759	05/23/14
	CORPORATE INTELLIGENCE INTERNATIONAL				\$139.50										05/23/14
	SETTEBELLO PIZZERIA				\$48.54										05/24/14
	SAMMYS				\$93.00										05/24/14
	DiFrancesco-Feron Air Center, LLC										\$3,540.43			2764	06/03/14
125	Law Offices of Brian C. Padgett	6/5/14 for May, 2014	\$22,327.50	\$194.75	\$141.54		\$139.50					\$19,140.00			06/05/14
126	Law Offices of Brian C. Padgett	7/7/14 for June, 2014	\$575.00									\$0.00			07/07/14
125	DiFrancesco-Feron Air Center, LLC										\$3,663.29			2786	07/16/14
	ELDORADO HOTEL & CASINO				\$302.31										08/05/14
	BUDGET				\$75.76										08/05/14
	SOUTHWEST AIRLINES				\$684.40										08/05/14
127	Law Offices of Brian C. Padgett	8/6/14 for July, 2014	\$2,722.50	\$2.50								\$197.00			08/06/14
	MCCARRAN INTL. AIRPORT				\$54.00										08/06/14
	MCCARRAN INTL. AIRPORT				\$27.00										08/06/14
	MCCARRAN INTL. AIRPORT				\$27.00										08/06/14
	SSP AMERICA				\$24.09										08/06/14
	RENO LA BREA				\$24.09										08/08/14
	PEPPERMILL CASINO HOTEL				\$131.82										08/08/14
	PEPPERMILL CASINO HOTEL				\$191.15										08/08/14
127	DiFrancesco-Feron Air Center, LLC										\$2,527.50			2802	08/15/14
	QUIVX				\$135.13										08/15/14
128	Law Offices of Brian C. Padgett	9/4/14 for August, 2014	\$11,087.50	\$137.88			\$1,409.53					\$8,600.00			09/04/14
	SHARP REPORTING SERVICES				\$95.00										09/16/14
129	Law Offices of Brian C. Padgett	10/3/14 for September, 2014	\$4,705.00	\$50.00		\$95.00	\$73.90					\$2,217.50			10/03/14
	DiFrancesco-Feron Air Center, LLC										\$2,706.40			2837	10/17/14
130	Law Offices of Brian C. Padgett	11/5/14 for October, 2014	\$2,910.00	\$13.00								\$160.00			11/05/14
128	DiFrancesco-Feron Air Center, LLC										\$4,034.91			2850	11/10/14
131	Law Offices of Brian C. Padgett	12/4/14 for November, 2014	\$1,447.50	\$13.00								\$0.00			12/04/14

DIFRANCESCO FAMILY TRUST

129	DiFrancesco-Feron Air Center, LLC										\$2,706.40			2873	12/17/14
129 & 131	DiFrancesco-Feron Air Center, LLC										\$1,460.00			2882	12/26/14
130	DiFrancesco-Feron Rental Account										\$2,463.00			4054	12/26/14
											\$37,591.46				
132	Law Offices of Brian C. Padgett	1/5/15 for December, 2014	\$3,365.00									\$915.00			01/05/15
133	Law Offices of Brian C. Padgett	2/4/15 for January, 2015	\$2,297.50	\$8.00								\$0.00	\$2,305.50		02/04/15
132	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2912	02/23/15
134	Law Offices of Brian C. Padgett	3/9/15 for February, 2015	\$5,372.50									\$2,922.50	\$2,450.00		03/09/15
135	Law Offices of Brian C. Padgett	4/10/15 for March, 2015	\$302.50	\$6.00									\$308.50		04/10/15
136	Law Offices of Brian C. Padgett	5/6/15 April, 2015	\$3,657.50	\$5.25								\$1,207.50	\$2,457.75		05/06/15
133	DiFrancesco-Feron Air Center, LLC										\$2,305.50			2948	05/21/15
134	DiFrancesco-Feron Rental Account										\$2,450.00			4160	05/21/15
137	Law Offices of Brian C. Padgett	6/12/15 for May, 2015	\$13,030.00	\$7.75								\$10,580.00	\$7.75		06/12/15
134 & 135	DiFrancesco-Feron Air Center, LLC										\$2,763.75			2957	06/19/15
	Litigation Services							\$767.40							06/22/15
137	DiFrancesco-Feron Air Center, LLC										\$2,450.00			2983	07/16/15
137	DiFrancesco-Feron Rental Account										\$1,000.00			4200	07/16/15
138	Law Offices of Brian C. Padgett	7/31/15 for June/July 2015	\$110.00	\$1.25									\$55.50		07/31/15
139	Law Offices of Brian C. Padgett	9/22/15 for August, 2015	\$4,332.50										\$55.50		09/22/15
	DiFrancesco-Feron Rental Account										\$5,000.00			4334	01/11/16
	Integrn Realty Resources			\$4,500.00											09/27/16
141	Law Offices of Brian C. Padgett	3/8/16 for November													
	Litigation Services														
			\$208,935.00	\$2,692.13	\$17,542.16	\$95.00	\$3,089.70	\$2,096.12	\$850.15	\$235,300.26	\$145,185.75	\$58,485.00	\$12,969.40		

Exhibit 48

Exhibit 48



RECEIVED
OCT 15 2019
OFFICE OF BAR COUNSEL

October 14, 2019

Louise Watson, CP
Sr. Certified Paralegal/Investigator
State Bar of Nevada
3100 W. Charleston Blvd. Suite 100
Las Vegas, Nevada 89102

Re: Brian C. Padgett, Esq.
DiFrancesco Grievance

Dear Ms. Watson:

Mr. DiFrancesco and Mr. Feron's (hereinafter DeFrancesco) complaint is very concerning, as this Firm has done nothing to jeopardize his claims, but only protected his rights and enhanced his property value. At the time the firm was retained, Washoe County was systematically obtaining properties and eliminating buildings in the area surrounding the DiFrancesco's property located at 35 N. Edison Way and 65 N. Edison Way (hereinafter the "Edison Properties").

The Edison properties were slated for a flood control plan as early as 2003, as shown on the attached exhibit. SEE EXHIBIT 1. The DiFrancescos were contacted about the taking of their land in 2006. SEE EXHIBIT 2. At this time, the real estate market had reached a downward spiral due to the housing bubble burst caused when plummeting interest rates and abandonment of strict lending requirements permitted real estate purchases by those not otherwise qualified. When the adjustable rate mortgages began resetting, it triggered a massive sell off making real estate values plummet by more than 40% in some regions. SEE EXHIBIT 3. The 2006 valuation was certainly not what DiFrancesco had wanted for the land he obtained in 1997, and he met Washoe County with stall tactics of his own. SEE EXHIBIT 4. Washoe abandoned the taking more than once, as shown by their own notice to the tenants about relocation of their business. It was years of an on-again/off-again transaction, and quite frustrating to be in limbo. When it was clear that the Flood Control program was proceeding and the property was going to be taken, DiFrancisco wanted to control the appraisal date. In 2012, the real estate market was just bouncing back from the huge decline that resulted from the dotcom technology and financial crisis. The Edison Property owners, Mr. DiFrancisco and Mr.

Feron, are both real estate brokers, and very well versed on property values. SEE EXHIBIT 5. They make their investments on this speculation similar to a gambling type addiction, and the Edison Properties were no different. A complaint would lock in 2012 as a date for valuation as it appeared Washoe County had funding and finally able take the property¹. At this time, DiFrancesco was having a difficult time attracting tenants, as no one wanted to sign a lease on a property that was in limbo or going to be taken just to move again and ruin customer loyalty base. Yet, all the while, Washoe County was evasive and not providing a specific plan for the project taking date. The complaint forced Washoe County's hand with either to shit or get off the pot.

The Edison Properties are located on the Truckee River and near the airport. The property is zoned for Industrial Flex, which is becoming rare given the zoning changes and new stringent standards being preferred in various comprehensive long term plans. DiFrancesco was upset that Washoe County was devaluing the property around him by using it for such things as police training exercises, etc. SEE EXHIBIT 6. What really happened was a positive for DiFrancesco. See, while Washoe County was flattening the buildings of those properties around the Edison Properties, they actually eliminated any competing realty industrial rental property, thereby making the only existing buildings owned by DiFrancesco prime rental real estate. SEE EXHIBIT 7, photograph before, as a thriving industrial center with multiple buildings and vehicles throughout complex, and SEE after photograph, seen with only the Edison property buildings and a smidgen w/vehicles that remained.

The DiFrancescos saw quite an increase in value of their property over the life of the case. This was noted during the lawsuit as rents were actually going up. Although we were to disclose rent rolls, DiFrancesco did everything to stall moving forward on the case and having to provide those rent receipts.

DiFrancescos also claim that we did not moving the case forward with pursuing the case and setting a trial date. This is false, as the case went through the normal procedure, a complaint, answer, 16.1, discovery and a trial date was set for December 5, 2016 with a pre-trial conference set for June 3, 2016. Shortly before the pre-trial conference, Truckee River Flood Management Authority and Washoe County was permitted to amend their Answer to Complaint in Inverse Condemnation. Defendants then tried to obtain Summary Judgment, which was fought by the firm and ultimately denied on May 4, 2017. The parties agreed to a stay, in to wait for the Ad America Decision to come out. In fact, it was groundbreaking in the area of eminent domain and featured in the Nevada Lawyer magazine. SEE EXHIBIT 8.

¹ According to the U.S. Bureau of Labor Statistics, prices for housing were 6.27% higher in 2012 versus 2007. According to the U.S. Bureau of Labor Statistics, prices for housing were 18.90% higher in 2019 versus 2012. By filing the Complaint and forcing Washoe County to either (1) take and compensate or (2) abandon and let the landowners retain, the land has increased significantly in value and they are secured in knowing Washoe County was not going forward with the project.

The fact that the complaint centers around a 5 year trial rule is not grounds for malpractice for several reasons. The 5 year rule does not apply in eminent domain as shown by the reasoning and case law below.

EMINENT DOMAIN IS A CONSTITUTIONAL RIGHT

Eminent Domain is a Constitutional right pursuant to the US Constitution (Fifth Amendment) and Nevada Constitution (Article I, Section 22). Both the Nevada and United States Constitutions allow for the taking of private property for a public purpose, provided that the government pays just compensation. *Valley Electric Ass'n v. Overfield*, 106 P.3d 1198, 121 Nev. 7 (Nev., 2005) citing *Las Vegas Downtown Redev. Agency v. Pappas*, 119 Nev. 429, 441, 76 P.3d 1, 5 (2003); U.S. Const. amends. V, XIV; Nev. Const. art. 1, § 8, cl. 6.

Under Nevada law, a public agency may take private property for a public use by instituting an eminent domain action and paying just compensation to the property's owner. *Gold Ridge Partners v. Sierra Pac. Power Co.*, 285 P.3d 1059, 128 Nev. Adv. Op. 47 (Nev., 2012). *Gold Ridge* states:

The Nevada Constitution protects against the taking of private property for public use without just compensation. Nev. Const. art. 1, § 8(6). To that end, NRS Chapter 37 governs the power of a public agency to take property through eminent domain proceedings. See NRS 37.0095(1). When a public agency seeks to obtain private property through this process, it must first show that the condemnation of the property is necessary and will be used for a "public use." NRS 37.040(1) and (2). Once the agency has made such a showing, the value of the property and any damages to the defendant property owner are assessed by the court, a jury, commissioners, or a master. NRS 37.110; NRS 37.120.

The same applies for actions of inverse condemnation, an action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant. The Court in *Clark County v. Alper*, 685 P.2d 943, 100 Nev. 382 (Nev., 1984) cited the following: Inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings. See *Pierpont Inn, Inc. v. State*, 70 Cal.2d 282, 74 Cal.Rptr. 521, 449 P.2d 737 (1969).

As further proof of its constitutional nature, eminent domain cases get priority settings because they are grounded in constitutional rights.

NRS 37.055 Eminent domain proceedings take precedence over certain other proceedings and must be quickly heard and determined. All proceedings in all courts brought under this chapter to exercise the right of eminent domain take precedence

over all other causes and actions not involving the public interest, to the end that all such proceedings must be quickly heard and determined.

1. NRCP 41(e)(2)(b) 5 YEAR TRIAL RULE DOES NOT APPLY TO EMINENT DOMAIN CASES

A. THE 5 YEAR TRIAL RULE CONTRADICTS THE PENALTY PROVIDED IN NRS FOR NOT BRINGING A CASE TO TRIAL WITHIN 2 YEARS

The 5 year trial rule of NRCP contradicts the sole penalty outlined in the statutes for not bringing the matter to trial within 2 years. If there is a conflicting rule and statute, the statute prevails.

NRS 37.120 Assessment of compensation and damages: Date of valuation; exception; just compensation.

1. To assess compensation and damages as provided in [NRS 37.110](#), the date of the first service of the summons is the date of valuation, except that, if the action is not tried within 2 years after the date of the first service of the summons, and the court makes a written finding that the delay is caused primarily by the plaintiff or is caused by congestion or backlog in the calendar of the court, the date of valuation is the date of the actual commencement of the trial. If a new trial is ordered by a court, the date of valuation used in the new trial must be the date of valuation used in the original trial.

In eminent domain cases, the statutes provide the only penalty for not bringing the case to trial within 2 years is the date of valuation changes to the date of the trial rather than the date of the complaint. Thus, the landowner gets the increased valuation for a case that exceeds 2 years to get to trial or otherwise settle.

If there is a conflict between the rules and a statute, the statute applies. In eminent domain cases, NRS 37.200 incorporates the rules into the chapter.

NRS 37.200 Rules of practice. Except as otherwise provided in this chapter, the provisions of NRS, Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to civil actions, new trials and appeals shall be applicable to and constitute the rules of practice in the proceedings in this chapter.

The very first caveat says “EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER”, meaning if there is a conflict, NRS 37 prevails over the rules, as NRS 37 provides the sole remedy for not bringing the matter to trial within 2 years.

B. THE 5 YEAR TRIAL RULE CONTRADICTS A LANDOWNER'S CONSTITUTIONAL RIGHT TO BE COMPENSATED AND THE GOVERNMENTS RIGHT TO TAKE PROPERTY FOR PUBLIC USE

Actions for eminent domain are founded on constitutional rights. These constitutional rights to be compensated when your land is taken supersedes any rule that contradicts those rights.

Not only can the 5 year trial rule be inapplicable for contradicting a statute as shown above, it is inapplicable as it contradicts and conflicts with a constitutional right of the government to take property and a person to be compensated for that taking. The Court in *Padilla* confirmed that constitutional requirements trump everything else. They said, in part:

“because constitutional requirements trump everything else to the contrary - statutes, administrative regulations, court rules, and common-law judicial doctrines...”

Padilla Constr. Co. of Nev., Corp. v. Burley (Nev. App., 2016).

It is well known that statutes trump over rules of procedure, and constitutional rights trump over statute. The court also went on to say “A mere rule of procedure can never trump a constitutional command.” *Padilla, Id.*

Along with its constitutional roots, the statutes also provide for compensation.

NRS 37.120 provides “In all actions in eminent domain, the court shall award just compensation to the owner of the property that is being taken.” Thus, whether the action is dismissed or not, the government must still pay for the land it takes regardless of a 5 year rule. To interpret any other way would be like the government coming in, stalling the case, having the case dismissed after 5 years but then taking the land without the landowner having an avenue to get compensation. This is opposite to the very constitutional grounds WE THE PEOPLE set up in the United States Constitution, Nevadans confirmed in its State Constitution, and the people through their legislatures enacted in the Statutes, NRS 37.120, all confirming that the landowner has a constitutional right to be compensated for their land when it is taken by the government.

In fact, the comment to the Nevada Property Owner's Bill of Rights #11 acknowledges that “It is not uncommon for major projects which require obtaining multiple parcels of land, such as major road building projects to take longer than 5 years to acquire, design, go through environmental hearings before construction ever starts” SEE EXHIBIT 9.

C. CONSTITUTIONAL RIGHTS TRUMP PROHIBITION OF STATUTES, THUS IT FOLLOWS CONSTITUTIONAL RIGHTS TRUMP PROHIBITION OF RULES.

The 5 year trial rule acts as a rule that prohibits certain rights of a party, in this case the landowner. If the rights that are being limited are constitutional, the constitutional rights prevail

over statutes or rules. This was seen in *State v. Dist. Ct. (Epperson)*. In *Epperson*, the issue raised was if denying defense counsel copies of child pornography [prohibited material under NRS] hindered defendant's right to effective assistance of counsel. The *Epperson* Court found that "defendants' constitutional rights trump any prohibition of NRS 200.710 to 200.735."² *State v. Dist. Ct. (Epperson)*, 120 Nev. 254, 89 P.3d 663 (Nev., 2004).

Thus, if NRCP 5 is read as a proactive rule to dismiss cases after not bringing the case to trial after 5 years or prohibiting one's rights to bring a trial later than 5 years, it is not applicable when constitutional rights are involved.

D. THE 5 YEAR TRIAL RULE WOULD HAVE REQUIRED A HEARING AND JUDICIAL DETERMINATION ABOUT DELAY.

Assuming arguendo, that the 5 year rule does happen to apply in eminent domain cases, the court would have had to set a hearing on the matter about the lack of prosecution. Pursuant to the rule, the procedure is set for the in NRCP 41(e)(1).

Rule 41. Dismissal of Actions

(e) Dismissal for Want of Prosecution.

(1) Procedure. When the time periods in this rule have expired:

(A) any party may move to dismiss an action for lack of prosecution; or
(B) the court may, on its own, issue an order to show cause why an action should not be dismissed for lack of prosecution. After briefing, the court may hold a hearing or take the matter under submission, as provided by local rules on motion practice.

(2) Dismissing an Action Before Trial.

(A) The court may dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 2 years after the action was filed.

(B) The court must dismiss an action for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action was filed.

At this hearing or briefing to be taken under submission, the parties would have argued the 5 year rule does not apply, and also they would have shown they agreed to a stay (tolling or waiving the 5 year rule) as they were waiting for a landmark case "Ad-America" to be decided by the courts. The parties would also have shown that Washoe County was waiting for funding or approval of certain projects before they proceeded, thus the Court would not have dismissed under these circumstances, and if they did would have been appealed to set precedence on the application of the 5 year rule to eminent domain cases. The courts have carved out other

² Defense counsel for *Epperson* was permitted to have a copy of the videotape, with certain specific restrictions about viewing, transporting and reproduction.

exceptions to the 5 year rule, such as medical malpractice, bankruptcy, and this would be no different.

In order for Difrancesco to be successful in a claim of malpractice for violating the 5 year rule, there rule has to apply and they has to have been a violation. Here, the rule does not apply because of the constitutional rights of eminent domain, and there is no violation as the parties agreed not to take the case to trial pending the landmark cases of Ad-America and 5th and Centennial. Even the court when dismissing the case did not reference a 5 year rule violation in the dismissal. Thus, Difrancesco will be unable to show his case was dismissed because of the 5 year rule as the court never issued an order to show cause, set a hearing or gave the parties an opportunity to brief or be heard as to the alleged violation or even its application to eminent domain cases. Thus, Difrancesco's claim of violating a five year rule has no merit.

**E. DIFRANCESCO WOULD NOT HAVE BEEN PREJUDICED IF THE
MATTER WAS DISMISSED FOR A MISGUIDED 5 YEAR TRIAL RULE
INTERPRETATION AS THERE IS A 15 YEAR STATUTE OF LIMITATION
ON EMINENT DOMAIN CASES**

Our courts are run on the basis of judicial economy. Eminent Domain cases have a 15 year statute of limitation. Therefore, even if a case is subject to dismissal under a 5 year trial rule, the aggrieved party would and could simply re-file the complaint as the statute of limitations had not run. Because the Courts are aware of statute of limitations and cognizant of the concept of judicial economy, dismissing the action under a 5 year trial rule would causing more work for the parties and the court, thus frustrating the purpose of the judicial economy concept. This is why no eminent domain case has EVER been dismissed under the 5 year trial rule, and the reason why the 5 year trial rule has never been challenged. It simply cannot occur. Thus, again, Difrancesco's claim of violating a five year rule has no merit.

Attached as EXHIBIT 13 is a screen shot of an email comment to me sent by Steve Silva, opposing counsel, which also indicates the parties opted to proceed with settlement discussions rather than trial. With both parties agreeing to enter into settlement talks rather than take the matter to trial, it would be argued that the parties action sin the matter constituted consent or waiver of the 5 year rule [assuming arguendo, that it applied]. Counsel for Washoe County also confirms the 15 year statute and the fact we could simply refile if that were to become an issue.

Therefore, the 5 year rule is inapplicable in this case and if it was, would not apply as the statute of limitations was not violated. In fact, the Difrancescos can simply file now. The Difrancescos choose not to as their ulterior motive to keep the property with a high rate of return on investment supercedes the minimal amount of fees they expended over the last few years to keep the property [and likely written off]. Those fees would have been offset with the rental income they received since 2012 and also likely written off the Difrancesco's taxes for the Edison Property income as an expense should the matter proceed to formal complaint and their

profit and loss, tax records and bank accounts all become public regarding the issue. The only real issue is their attorney failing to secure the recovery of fees they were entitled to recover under statute by filing the dismissal the way it was done.

F. DEFRANCESCOS HAVE BEEN LESS THAN HONEST WHEN IT CAME TO MOTIVE REGARDING THE PROPERTY.

The Difrancescos told me point blank to locate property with that rate of return on investment. They also did not want to provide recent rent rolls when asked because they did not have a loss in rental income for the property. It also became clear after the fact they had an ulterior motive to somehow work out keeping the property [for income]. The Difrancescos managed to stall, hinder or delay getting back to us as their attorney on accepting Washoe's offer to purchase or make a counter offer of 5.6 to 6 million. Remember, initially, the Difrancescos were only asking for increase to 4.9 million of the County's initial 4.2 million before they realized their rent potential upon destruction of the competitor property. Within 3 weeks of stalling and making up a reason not to communicate truthfully with us as to what was going on, they obtained other counsel and immediately struck a deal that allowed them to keep the property. At a profit. The Difrancescos knew this could be an option when funding the projects became an issue and there were alternative plans being proposed. SEE EXHIBIT 14³. There were many articles of the on-again off-again funding dilemmas facing Washoe County, that with alternative projects, it would be easy to steer Washoe in one direction if the Difrancescos abandoned their mandatory claim for fees they were entitled to collect under the eminent domain statutes. Further evidence supports this theory, as the Difrancescos improved the property quite significantly. They obtained multiple permits to enhance the long term rental of the Edison Property [other than the insurance repair for flooding that occurred in January, SEE EXHIBIT 15]. These include re-roofing the premises⁴, commercial remodeling the building to install garage door and make building additions. SEE EXHIBIT 16. That is unusual behavior from a landowner who is losing their property, or having it taken by a public agency. Generally, a landowner will minimize loss during this time, not maximize rental potential and make tenant improvements such as they did.

G. LIMITED RESPONSE AS TO CLIENT COMMUNICATION

The re-roofing shows about when they had intent to keep the property and stop communicating with the firm on a limited basis to slow the proceedings themselves until they worked out the details with another attorney on how to keep the property as a cash cow for their

³ The Difrancescos were upset when Washoe County took their 4.2 million dollar offer to zero and then articles came out about additional funding sources and monies being allocated for the project. At this point we were able to get Washoe Back to the table and an increased offer to Difrancesco, that he ultimately permitted to slate and essentially rejected.

⁴ Which Difrancesco contradicts himself in a prior letter about not re-roofing the property.

worked out the details with another attorney on how to keep the property as a cash cow for their trust. This explains the lack of communication from them to Ms. Sugden during the latter stage of their case and especially when they avoided communication with the firm regarding accepting the offer or making a counteroffer.

Amy Sugden was the attorney who handled their case and is responding as to the client communication issue that is identified in the Difrancesco grievance. I can supplement as to the issue of client communication if needed following a read of her response to this same complaint as she was their attorney of contact. Please note 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 down in her handling of the client. A copy of proof of Ms. Sugden being responsible for the client and not a subordinate attorney subject to supervision is the payroll records to ACE Legal over the years. SEE EXHIBIT 17⁵. ACE Legal (“A” standing for Amy, “C” for husband Chris, and “E” for their 2 children’s names) is also in a lawsuit for an equipment loan made to a separate business. That lawsuit is currently stayed (SEE EXHIBIT 18). Ms. Sugden and I are working together to resolve this grievance and also settle issues raised in the lawsuits and not diminish the legal profession with attorneys suing each other.

In an effort to shed light of Ms. Sugden’s delay in communication with the Difrancescos is that she simply put her foot in her mouth by sending an email to the client that had derogatory information on it about them. This is unprofessional and I am still not sure if it was done deliberate to sabotage the firm name or client relationship as it was that same time Ms. Sugden was planning to leave the firm⁶. Ms. Sugden was licensed for some time and should have known about the 5 year rule and the above inapplicability. For her to fall prey shows incompetence as it was a non-issue. However, it was not meant to go to the client as a letter. I believe she was asking for my advice on the applicability of the 5 year rule and did not account for the 15 year statute of limitation, waiver, tolling or other associated issues. She was requesting the email be sent from my email address as it would look better coming from me, however, her information about the 5 year rule was inaccurate. When she sent it to me to review, she included the Difrancescos. This is an ethical issue on her part, as she was too quick to hit “reply to all” or “send” without taking to time to review what she was doing. Therefore, the email Difrancesco received about the 5 year rule was not accurate but was merely her draft to me about the rule [clearly shown by the red printed portion]. A copy of the email is attached as EXHIBIT 20. I

⁵ The firm is now looking into the pay periods, as they do not correlate to paydays and occasionally there appears to be duplicate payments in the form of checks both of which were cashed, and/or additional monies or checks being issued from the computerized account.

⁶ Ms. Sugden also represented CWNevada and myself in the CIMA lawsuit and failed to oppose at least 7 or 8 motions to which were submitted with non-oppositions and caused significant amount of judgments against the company. It was later learned she is an owner in a competing marijuana business, Welleaf. SEE EXHIBIT 19.

believe she was so embarrassed about this she stopped communicating with them (ethical violation). I tried to smooth over her error and salvage the relationship by explaining the situation (EXHIBIT 21).

Ms. Sugden left the firm in March, 2019. She ultimately took all the cases she was working on with her, with the exception of my business related CWNevada cases. At this point, I received a substitution request and never in the history of the firm had I lost a client. The emails sent contemporaneously also indicate this information was now turning to an ethical one to which I requested information. SEE EXHIBIT 18. At this point, the firm had already lost the client as they were using this few month lack of communication to negotiate their own deal to keep the property (mentioned above).

2. PROPERTY WAS ABANDONED

A governmental agency or political subdivision has an absolute right to take property for public use. Applying the 5 year trial rule to eminent domain would be an attempt to extinguish a constitutional right the government has on taking lands for public use and the landowner's constitutional right in being compensated. Once the action is started, either by the government in an eminent domain proceeding or the landowner in an inverse condemnation proceeding, one thing is certain: the land is being transferred and the value is determined. The only way the land does not transfer after the filing of the complaint is if the taking is no longer needed, wanted or funded.

A. ABANDONMENT

The eminent domain statutes provide for abandonment. In fact, the statutes and case law goes as far as allowing the governmental agency 30 days after the condemnation award to abandon the project or forego taking the land.

NRS 37.180 Abandonment of condemnation proceedings; defendant's damages for plaintiff's occupancy.

1. The plaintiff may abandon the proceedings at any time after filing the complaint and before the expiration of 30 days after final judgment by serving on defendants and filing in court a written notice of abandonment. Upon that abandonment, on motion of any party, a judgment must be entered dismissing the proceedings and awarding the defendants their costs and disbursements, which must include all necessary expenses incurred in preparing for trial and reasonable attorney fees. Those costs and disbursements may be claimed in and by a cost bill, to be prepared, served, filed and taxed as in civil actions, except that, upon a judgment of dismissal on motion of the plaintiff, any defendant may file a cost bill within 30 days after notice of entry of that judgment.

Thus, the only reason the landowner keeps the land after an action is started is if the agency no longer wants or needs it. The government simply does not agree to “dismiss” and “give up” all hopes of acquiring the land for public use unless they no longer need it, want it, or can afford it. They do not simply “give up” and allow the landowner to keep the property simply because 5 years have lapsed. They have a constitutional right to take the land, and are not limited by time in doing so.

B. RECOVERY OF FEES AND COSTS WHEN PROPERTY IS ABANDONED

Abandonment can be harsh on the landowner, as they have racked up attorney fees and costs, and suffered precondemnation damages such as lost revenues. The statute also provides if the project is abandoned, the landowner can file for their fees and costs.

NRS 37.180 Abandonment of condemnation proceedings; defendant’s damages for plaintiff’s occupancy.

1. The plaintiff may abandon the proceedings at any time after filing the complaint and before the expiration of 30 days after final judgment by serving on defendants and filing in court a written notice of abandonment. Upon that abandonment, on motion of any party, a judgment must be entered dismissing the proceedings and awarding the defendants their costs and disbursements, which must include all necessary expenses incurred in preparing for trial and reasonable attorney fees. Those costs and disbursements may be claimed in and by a cost bill, to be prepared, served, filed and taxed as in civil actions, except that, upon a judgment of dismissal on motion of the plaintiff, any defendant may file a cost bill within 30 days after notice of entry of that judgment.

In this case, the property wasn’t taken, but the statutes also provide for that. In fact, even after a judgment, the taking can be abandoned 30 days after the condemnation award. Thus, whenever there is an action filed, the outcome is either (1) the property is finally taken with compensation or (2) the taking is abandoned. In this case, the landowners kept the property. If Washoe County needed the property or had the money to pay for it, the landowner has no choice. The property would have been taken as eminent domain supersedes a property owner’s right to keep the property. My firm makes sure the landowner is justly compensated and the taker has acted in good faith, provided accurate appraisals, and has not acted or taken action that adversely affected the precondemnation value of the property or surrounding property prior to the taking.

The Difrancescos kept the Edison property as a result of the mutual dismissal. This means that Washoe County no longer needed it, wanted it, or could afford it. If Washoe abandoned the taking, the Difrancescos would not have been out any money for attorney fees and costs as it was 100% recoverable under the statutes.

3. DIFRANCESCO HAS AN OUTSTANDING BALANCE

A. ATTORNEY FEES AND COSTS

I have been practicing in eminent domain over 20 years. My client agreements generally are a percentage of recovery over the initial offer. In this case, my recovery would have been \$630,000⁷ plus costs. The Difrancescos were real estate savvy and knew what the property value could be and opted for a flat fee rate with my firm. See client agreement EXHIBIT 10. This meant, that no matter what work was being done, they paid a minimum per month to keep the firm on retainer with any overage in attorney fees against the flat fee to be paid at the end of the case. Like it or not, they were aware of this arrangement as they did not want to commit to a percentage of the overall value. I honored their request and entered into the agreement. From the figures being billed and what is paid, they owe a substantial amount of monies to the firm. I had stopped billing them when we entered into the stay with the county out of courtesy, so certain months are not included in the total.

To see their grievance involving the amount of attorney fees they spent over the years is misleading. They spent the monies to secure counsel to obtain the highest and best use of the property if there was a taking. Washoe county's original offer was 4.2 million. Then, funding issues occurred and the offer was ZERO. Counsel got them back to the table and obtained an offer of 5.5 to 6 million dollars. This was a significant offer that the Difrancescos did not counter or want to accept. In fact, Difrancesco told me "Where will I find another property that will bring in the revenue at that rate of return on my investment". It was from that point on that Difrancesco wanted to keep the property and would not make a counteroffer. After months of not hearing from them about accepting the offer, the firm was contacted by their new counsel. Meanwhile, Washoe County's offer had gone stale, they sought alternative flood measures without needing the Edison property.

The Difrancescos wanted to keep the property but knew I obtained a good figure for them. They retained a new attorney (new as to the number of years in practice, i.e., with a high bar number) who is not versed in eminent domain to obtain a mutual dismissal so they can keep the property. They did not see the forest for the trees. A new attorney would be intimidated by the mention of the 5 year trial rule by the Difrancescos. The other side had not raised it as there was an agreement to stay the case. The Judge had not raised it as there was no Order to Show Cause set. I was not concerned as it does not apply and I would have taken that all the way to the Supreme Court for a ruling free of charge had that been an issue.

As shown, the above measures nullify that particular rule when it comes to eminent domain. The assertion that the 5 year trial rule somehow applies to eminent domain, is what a lay person

⁷ 35% of the 1,800,000: [i.e., final settlement offer of 6 million less the initial offer of 4.2 million]

would believe when reading rules or statutes on their face, or advice that would come from an attorney who is not seasoned in the area of eminent domain, waiver or tolling of the rule and/or the overriding 15 year statute of limitations. Keep in mind, this attorney agreed to a dismissal less than 3 weeks after becoming involved in the case. This is indicative of a back door deal already in the works between the attorney and the Difrancescos who changed their mind in now wanting to retain the property and rental income, and this was their way of believing they did not have to pay me the fees they owed.

I received a letter⁸ from the new counsel alleging a 5 year rule violation as a reason he settled the matter, and then attempting to extort \$7500 for not filing a bar complaint. SEE EXHIBIT 22. I cannot control another attorneys thought process behind settling, but if that is the reason, then (1) he is guilty of malpractice by giving inaccurate or bad advice to his clients and (2) by the way it was settled, via Stip and Order, then his clients now also lost the right to recover fees and costs.

B. CLAIM OF \$7500 IN TRAVEL COSTS

The travel costs the Difrancescos alleged to have been charged for depositions that did not occur do not appear anywhere on the itemized invoices. I attach invoices 1 through 141 at this time, along with an itemized ledger through November, 2016. SEE EXHIBIT 11. As far as payment of \$7500 goes, any payments made were applied to the invoice first, and then went toward the outstanding balance, as shown in the ledger. SEE EXHIBIT 12.

C. CURRENT BALANCE OWED BY THE DIFRANCESCOS

The Law Firm went to a new accounting program and I have tasked the accountant with reconstructing a ledger from 2016 forward that combines both the old and new programs, but have not received it as of the date of this letter. I will be supplementing it along with the total fees and costs still owed by the Difrancescos.

I hope this answers the issues surrounding the grievance for the 5 year rule violation. If there is another issue that needs addressing, please let me know.

Sincerely,

/s/ Brian C. Padgett

⁸ Please note my mail was stopped at the law firm sometime after Mr. Sugden left and I believe she encouraged my sole staff member, Ruth, to leave also to disrupt and hinder my business it was not restarted until I staffed the office in Mid May. By the time I received this letter the 10 days allowed had already run course. I did not get into a legal debate with counsel as to the applicability of the 5 year rule, as the court did not dismiss pursuant to that rule.

Exhibit 49

Exhibit 49

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

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

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

22
23 / / /

24
25 / / /

26
27 / / /
28

1
2 7. That new address I gave to the State Bar was 1672 Liege Drive, Henderson, NV
3 89012.
4

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

7 Executed this 14 day of October, 2020.

8 
9
10 CONNIE P. LITTLE

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

13 
14

15 NOTARY PUBLIC



This is a look
Certificate for
an Affidavit Date
10-14-20

Exhibit 50

Exhibit 50

AFFIDAVIT OF MARY JORGENSEN
CUSTODIAN OF RECORDS

STATE OF NEVADA)

COUNTY OF CLARK)

MARY JORGENSEN, under penalty of perjury, being first duly sworn, deposes and says as follows:

1. I am employed as the Member Services Director of the State Bar of Nevada ("State Bar"). In such capacity, I am the custodian of the membership records for the State Bar. In the regular course of my duties, I am responsible for the maintenance and updating of those records to accurately reflect those individuals who are licensed to practice law in Nevada.

2. State Bar records do not indicate receipt of a 'Notice of Change of Address', any written change of address, or electronic notification of address change in 2020.

3. I hereby attest to the following address information on file at the State Bar for attorney Brian C. Padgett, Nevada Bar No. 7474:

a. On January 5, 2021 Padgett's contact information was updated via the member online account to:

Law Offices of Brian C. Padgett

1672 Liege Drive

Henderson, NV 89012

b. On August 19, 2020 the USPS stamped the Nevada Lawyer magazine as 'Unable to Forward' and returned it to the State Bar from:

11274 Gammila Drive

Las Vegas, NV 89141

c. On July 15, 2020 the USPS stamped a letter to attorney Padgett as 'Unable to Forward; Return to Sender' and returned it to the State Bar from:

11274 Gammila Drive

Henderson, NV 89141

d. On July 1, 2020 the State Bar received returned mail from USPS as 'Return to Sender; Vacant' from:

611 S. 6th Street

Las Vegas, NV 89101

e. On April 13, 2020, March 23, 2020, and March 18, 2020 the USPS stamped the Nevada Lawyer magazine as 'Unable to Forward' and returned it to the State Bar from:

The Law Offices of Brian C. Padgett

611 S. 6th Street

Las Vegas, NV 89101

4. State Bar records indicate the following addresses for attorney Padgett prior to October 10, 2014:

a. 200 S. Third Street

Las Vegas, NV 89101

b. Law Office of Brian C. Padgett

610 S. 7th Street

Las Vegas, NV 89101

c. Law Offices of Kermitt L. Waters

704 S. 9th Street

Las Vegas, NV 89101

d. 11000 S. Eastern Avenue, #1528

Henderson, NV 89012

e. 2792 Eldora Circle, Apt. D

Las Vegas, NV 89146

1 Dated this 8th day of February 2021.

2 Mary Jorgensen

3 Mary Jorgensen

4 STATE OF Nevada)

5) ss
6 COUNTY OF Clark)

7 Subscribed and sworn to before me

8 this 8th day of February, 2021

9 Cathi J. Fritz
10
11 Notary Public





FILED

MAY 17 2021

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

Case Nos.: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,
Complainant,
vs.
BRIAN PADGETT, ESQ.
NV BAR No. 7474
Respondent.

AD HOC ORDER

IT IS HEREBY ORDERED that the following member of the Northern Nevada Disciplinary Board, STEPHEN BOUCHER has been released as panel member, and will be replaced by panel member BROOKE WESTLAKE. The hearing will be convened on the 28th day of May, 2021 at 9:00 a.m. via Zoom video conferencing.

DATED this 17 day of May, 2021.

STATE BAR OF NEVADA

By:

[Signature]

Eric A. Stovall, Esq.
Nevada Bar No. 3167
Chair, Northern Nevada Disciplinary Board



Ad Hoc Order_Padgett

Final Audit Report

2021-05-17

Created:	2021-05-17
By:	Cathi Britz (cathib@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAH5vdrd5HguM2D3lgRw7BGzGc2XGGw7mQ

"Ad Hoc Order_Padgett" History

-  Document created by Cathi Britz (cathib@nvbar.org)
2021-05-17 - 9:51:20 PM GMT- IP address: 98.188.184.107
-  Document emailed to Eric A. Stovall (eric@ericstovalllaw.com) for signature
2021-05-17 - 9:52:13 PM GMT
-  Email viewed by Eric A. Stovall (eric@ericstovalllaw.com)
2021-05-17 - 10:06:22 PM GMT- IP address: 76.209.6.196
-  Document e-signed by Eric A. Stovall (eric@ericstovalllaw.com)
Signature Date: 2021-05-17 - 10:07:27 PM GMT - Time Source: server- IP address: 76.209.6.196
-  Agreement completed.
2021-05-17 - 10:07:27 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **Ad**

Hoc Order was served electronically upon:

brian.padgett@icloud.com; brian@briancpadgett.com; naman@renonvlaw.com;
rich@nvlawyers.com; steveboucher@sbcglobal.net; photographybmw@yahoo.com and
gerardg@nvbar.org.

Dated this 17th day of May 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada

Case No: OBC19-1111

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

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

Respondent.

ORDER REGARDING
DEFENDANT'S RULE 60(b) MOTION
TO SET ASIDE ORDER GRANTING
STATE'S MOTION TO COMPEL

On April 28, 2021, Respondent Brian C. Padgett, Esq., (hereinafter, "Respondent") filed Defendant's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel ("Motion to Set Aside"). The next day, on April 29, 2021, Complainant, State Bar of Nevada (hereinafter, "State Bar") filed State Bar of Nevada's Opposition to Respondent's Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel ("Opposition to Set Aside"). Respondent did not file a reply in support of his Motion to Set Aside. On May 19, 2021, the parties participated in a pre-hearing conference and presented additional argument on the Motion to Set Aside.

Having reviewed the Motion to Set Aside, the Opposition to Set Aside, the applicable law, and the arguments at the pre-hearing conference, Hearing Panel Chair Richard D. Williamson (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

1 Default Basis. On July 10, 2020, the State Bar filed a Declaration of Service According to
2 SCR 109(1) in Support of Entry of Default, which set forth the State Bar's efforts to serve
3 Respondent. Accordingly, on or about July 13, 2020, the Hearing Chair signed, and the State Bar
4 filed, an Entry of Default against Respondent.

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

9 This case was scheduled for a formal hearing to occur on October 15, 2020. That morning,
10 Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing.
11 Ultimately, the Hearing Chair granted Respondent's request for a continuance. On October 27,
12 2020, the Hearing Chair granted the State Bar leave to file an amended complaint.

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

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

24 On March 9, 2021, at approximately 4:59 p.m., Respondent sent an email requesting an
25 extension of his initial disclosure deadline until March 12, 2021. (Opposition to Set Aside at

1 Ex. 5, p. 3.) The State Bar objected to that request. (Id.) Ultimately, the Hearing Chair primarily
2 granted Respondent's request for an extension and gave him "until Thursday, March 11, 2021, at
3 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any
4 information not timely disclosed may be subject to exclusion from the hearing." (Opposition to
5 Set Aside at Ex. 5, p. 1.)

6 On March 11, 2021, at 4:38 p.m., Respondent produced his initial disclosures to the State
7 Bar. (Opposition to Set Aside at Ex. 6.) Unfortunately, the only named witness was the
8 Respondent himself. (Id., at p. 2) In addition, Respondent's initial disclosures stated that he
9 expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom
10 should be contacted "c/o Law Offices of Brian C. Padgett." (Id.) Respondent failed to produce
11 the identities of any of his witnesses, other than himself. (Id.) Respondent's initial disclosures
12 also vaguely referenced several categories of documents:

- 13 1. All expert reports, including blow-ups, if applicable, shall be forthcoming.
- 14 2. Any and all attestations from witnesses listed herein.
- 15 2.[sic] All documents obtained, generated or produced by Respondent in the
DiFrancesco case, shall be forthcoming.
- 16 4. Case history of the Law Offices of Brian C. Padgett.
- 17 5. Correspondence between Respondent and the State Bar of Nevada.
- 18 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.

19 (Opposition to Set Aside at Ex. 6, p. 3.)

20 Respondent did not provide any further specificity of the witnesses or documents he
21 intended to use. Accordingly, within minutes of receiving Respondent's initial disclosures, ABC
22 Gosioco responded and asked for the names of Respondent's witnesses. (Motion to Compel
23 Production, filed March 25, 2021 ("Motion to Compel") at Ex. 7.) Respondent did not respond to
24 this request. Therefore, on March 16, 2021, ABC Gosioco again wrote to Respondent in an
25 attempt to resolve this matter. (Motion to Compel at Ex. 8.) In response, Respondent stated:

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

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

7 Nine days after this exchange, Respondent still had not complied. So, on March 25, 2021,
8 the State Bar filed its Motion to Compel against Respondent. Respondent did not timely oppose
9 the Motion and, more importantly, never rectified his failure to provide complete disclosures, as
10 required by the procedural rules and the Amended Scheduling Order. Therefore, on April 15,
11 2021, the Hearing Chair entered an Order Granting State Bar’s Motion to Compel (“Order to
12 Compel”). In that order, despite Respondent’s failure to comply with the initial disclosure
13 deadline set forth in DRP 17 and the Amended Scheduling Order, the Hearing Chair still allowed
14 Respondent to introduce (i) documents obtained, generated or produced by Respondent in the
15 underlying DiFrancesco case, (ii) any case history of the Law Offices of Brian C. Padgett, and
16 (iii) any correspondence between Respondent and the State Bar, *provided that* those documents
17 were expressly produced to the State Bar with bates-numbering by 5:00 p.m. on Monday,
18 April 19, 2021. (Order to Compel at 6:1-7.)

19 Despite this allowance, Respondent still did not produce any such documents by the
20 express deadline of 5:00 p.m. on Monday, April 19, 2021. When the State Bar pointed this out on
21 April 20, 2021, Respondent responded as follows: “I counted the deadline as today to file. I
22 intend to do so.” (Opposition to Set Aside at Ex. 9.) This is a strange claim because the Order to
23 Compel did not provide a calculation of when the disclosures were due. Rather, it expressly stated
24 that they must be produced “with bates-numbering by 5:00 p.m. on Monday, April 19.” (Order to
25 Compel at 6:4, 6:6-7.) Thus, it is unclear how the Respondent genuinely “counted the deadline”

1 as being on April 20. Regardless, a few hours later, Respondent changed his position and
2 declared: “I will be filing a Motion to Set Aside the recent decision related to Mr. Gosioco’s
3 Motion to Compel. As a result thereof, I will not be filing documents today related to that Order
4 until the Motion to Set Aside is decided.” Eight days later, on April 28, 2021, Respondent filed
5 the Motion to Set Aside.

6 **Merits of the Motion**

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

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

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

21 Here, Respondent failed to timely provide complete initial disclosures and then willfully
22 failed to amend or supplement his incomplete disclosures when the State Bar attempted to confer
23 with him regarding those failures. Instead, Respondent argumentatively (and confusingly) retorted
24 that “I may add or subtract witnesses as necessary. Just like process servers.” (Motion to Compel
25

1 at Ex. 8.) So, the record is clear that Respondent has repeatedly, consistently, and willfully failed
2 to comply with DRP 17, NRCPC 16.1, and the Amended Scheduling Order. The Motion to Set
3 Aside does not contest these findings.

4 Rather, the Motion to Set Aside merely focuses on Respondent's failure to oppose the
5 Motion to Compel. According to Respondent, he was confused by the briefing schedule set forth
6 in the Amended Scheduling Order and assumed that he had until April 19, 2021 to file an
7 opposition to any motion, regardless of when it was filed and regardless of the briefing schedule
8 set forth in DRP 16. According to Respondent, this constitutes a case of mistake or excusable
9 neglect justifying relief under NRCPC 60(b).

10 According to that rule, following a motion and based on "just terms, the court may relieve
11 a party or its legal representative from a final judgment, order, or proceeding for . . . mistake,
12 inadvertence, surprise, or excusable neglect . . ." NRCPC 60(b)(1).

13 When evaluating a motion under NRCPC 60(b)(1), a tribunal must determine whether the
14 following four factors exist: "(1) a prompt application to remove the judgment; (2) the absence of
15 an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and
16 (4) good faith." Yochum v. Davis, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982). In addition, a
17 tribunal must also "give due consideration to the state's underlying basic policy of resolving cases
18 on their merits wherever possible." Id., 98 Nev. at 487, 653 P.2d at 1217.

19 ***1. Prompt application to remove the order***

20 The Hearing Chair entered the Order to Compel on April 15, 2021. Respondent filed his
21 Motion to Set Aside on April 28, 2021. Therefore, Respondent has satisfied the first factor.

22 ***2. Absence of an intent to delay the proceedings***

23 Unfortunately, throughout this case, Respondent has demonstrated a consistent intent to
24 delay the proceedings. As noted above, Respondent initially failed to respond to the State Bar's
25

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

1 Complaint. Default was entered against Respondent on or about July 13, 2020. Respondent did
2 not attend the pre-hearing conference held on October 12, 2020. Respondent did not appear for
3 the original hearing scheduled to occur on October 15, 2020. Instead, that morning, Respondent
4 requested a continuance of the hearing.

5 On December 10, 2020, Respondent filed his Motion for Extension and did not answer the
6 State Bar's amended complaint for several months.

7 Respondent did not file his initial disclosures within the time expressly required under
8 DRP 17 and the Amended Scheduling Order. After the Hearing Chair granted him additional
9 time, Respondent provided initial disclosures that did not comply with either DRP 17 or with
10 NRCP 16.1.

11 The State Bar attempted to resolve the issues with Respondent's incomplete disclosures,
12 but the evidence shows that Respondent refused to work in good faith to mitigate his failures. On
13 April 5, 2021, Respondent filed objections to the State Bar's initial disclosures, but still had not
14 provided proper initial disclosures himself. After receiving the Order to Compel, Respondent still
15 failed to supplement his incomplete disclosures.

16 Pursuant to DRP 17 and the Amended Scheduling Order, the parties were required to
17 exchange final disclosures on April 28, 2021. To date, Respondent still has not provided his final
18 disclosures of witnesses and exhibits.

19 Instead, on April 29, 2021, Respondent filed Respondent's Motion to Remove Associate
20 [sic] Bar Counsel Gosioco from Case No. OBC19-1111. That motion also sought a stay of the
21 proceedings until new bar counsel is assigned.

22 The Hearing Chair also feels compelled to note that Respondent was even late to today's
23 pre-hearing conference in which his Motion to Set Aside was heard.

24 The above list is not exhaustive of the events that have transpired in this case, but these
25 facts alone tend to demonstrate an intent to delay the proceeding and avoid a hearing on the merits.

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

2 The third Yochum factor is a little more difficult in this case. Respondent asserts that he
3 was confused by the interplay of the briefing schedule described in the Amended Scheduling
4 Order and the briefing schedule set forth in DRP 16.

5 The Amended Scheduling Order states in pertinent part: “The parties shall file any
6 Motions on or before April 5, 2021. Oppositions to the Motions should be filed on or before April
7 19, 2021, and any Replies in Support of the Motions should be filed on or before April 26, 2021.
8 Fully briefed Motions will be addressed at the Pre-Hearing Conference.”

9 DRP 16 states:

10 (a) All motions filed pursuant to this Rule, absent good cause shown, must
11 be filed and served no later than forty-five (45) calendar days before the prehearing
conference.

12 (b) All responses to motions filed pursuant to this Rule must be filed ten
(10) judicial days after the motion is filed.

13 (c) All replies in support of motions filed pursuant to this Rule must be filed
five (5) judicial days after the response is filed.

14 (d) If any document, referenced in this Rule, is served via U.S. Mail only,
then the responding party shall have three (3) additional calendar days to respond to
the document.

15 (e) After the time for briefing has expired, the hearing administrator shall
electronically submit all related briefs to the Hearing Panel Chair.

16 (f) Absent good cause shown, all motions and stipulations shall be
17 considered and ruled upon within fifteen (15) calendar days of submission of the
documents to the Hearing Panel Chair.

18 The intent of the Amended Scheduling Order was to ensure that all motions are filed no
19 later than April 5, 2021. If any motions are filed at that time, then those motions would be briefed
20 and heard by the prehearing conference, but any motions filed “before” April 5, 2021, would be
21 addressed on the normal briefing schedule set forth in DRP 16. Certainly, it would produce
22 absurd results if a party was allowed to wait until April 19 to oppose a motion filed in January.
23 Admittedly, however, the Hearing Chair should have made the Amended Scheduling Order more
24 clear on that point. Therefore, the Hearing Chair will accept Mr. Padgett’s assertion that he did
25 not know that his opposition to the Motion to Compel was due prior to April 19, 2021.

1 Thus, it is possible that Mr. Padgett had a lack of knowledge about the procedural
2 requirements associated with opposing the Motion to Compel.

3 Of course, Mr. Padgett has made no showing that he had a lack of knowledge about the
4 procedural requirements surrounding his initial disclosures. There is no ambiguity regarding what
5 was required for timely and proper disclosures. Yet, to receive Rule 60(b) relief, the moving party
6 is no longer required to demonstrate a meritorious claim or defense. Rodriguez v. Fiesta Palms,
7 LLC, 134 Nev. 654, 657, 428 P.3d 255, 257 n.2 (2018) (citing Epstein v. Epstein, 113 Nev. 1401,
8 1405, 950 P.2d 771, 773 (1997)). Therefore, this factor sufficiently weighs in Respondent's favor.

9 ***4. Good faith***

10 The fourth Yochum factor is also difficult to assess. As noted above, Respondent's actions
11 appear to demonstrate a consistent intent to delay the proceedings. The record reveals no
12 justification for Respondent's failure to comply with DRP 17, NRCP 16.1, and the Amended
13 Scheduling Order. Moreover, Respondent's argumentative responses and procedural maneuvering
14 could be viewed as attempting to engage in gamesmanship rather than meeting the case on the
15 merits. Nonetheless, it is consistent with the spirit of Rule 60 to give Respondent the benefit of
16 the doubt and assume that he is proceeding in good faith.

17 ***5. State policy in favor of resolving cases on their merits***

18 Finally, but critically, the Nevada Supreme Court has consistently emphasized the state's
19 basic policy of resolving cases on the merits wherever possible. Respondent should certainly have
20 done more to mitigate his procedural failures and work with the State Bar to address the case on
21 the merits. Nonetheless, he should be permitted to explain the reasons for his failures to comply
22 with DRP 17, NRCP 16.1, and the Amended Scheduling Order. Therefore, the Hearing Chair
23 hereby grants Respondent's Motion to Set Aside.

24 DRP 1(b) explains that the purpose of the disciplinary rules "is to expedite disciplinary
25 hearings through procedures designed to streamline presentation of evidence, facilitate

1 coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper
2 administration of attorney regulation.” The formal hearing of this matter is in less than ten (10)
3 days and Respondent has still not provided initial disclosures, let alone final disclosures.
4 Therefore, the Motion to Compel must still be addressed quickly.

5 **Conclusion**

6 As announced during the pre-hearing conference, Respondent now has until 12:00 p.m.
7 Pacific Time on Thursday, May 20, 2021, in which to oppose the Motion to Compel. The State
8 Bar has until 12:00 p.m. Pacific Time on Friday, May 21, 2021, in which to file any reply. Both
9 the opposition and the reply may also address Respondent’s failure to serve final disclosures. The
10 Hearing Chair will then promptly rule on the Motion to Compel so that the parties may prepare for
11 the formal hearing.

12 IT IS SO ORDERED.

13 Dated this 19th day of May, 2021.

14 

15 Richard D. Williamson, Esq.
16 Hearing Panel Chair
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **Order Regarding Defendant's Rule 60(b) Motion to Set Aside; Order Granting State's Motion to Compel** was served electronically upon:

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

Dated this 19th day of May 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

MAY 24 2021

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

NORTHERN NEVADA DISCIPLINARY BOARD

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

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 to Compel") against Respondent Brian C. Padgett, Esq., (hereinafter, "Respondent"). Having reviewed the Motion to Compel, the parties' arguments at the pre-hearing conference, 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.

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

5 This case was scheduled for a formal hearing to occur on October 15, 2020. That morning,
6 Respondent emailed ABC Gosioco and informally requested a continuance of the Formal Hearing.
7 Ultimately, the Hearing Chair granted Respondent’s request for a continuance. On October 27,
8 2020, the Hearing Chair granted the State Bar leave to file an amended complaint.

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

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

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

1 On March 11, 2021, at 4:38 p.m., Respondent produced his initial disclosures to the State
2 Bar. (Motion to Compel at Ex. 6.) Unfortunately, the only named witness was the Respondent
3 himself. (Id.) In addition, Respondent's initial disclosures stated that he expected to call two
4 unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted
5 "c/o Law Offices of Brian C. Padgett." Respondent failed to produce the identities of any of his
6 witnesses, other than himself. Respondent's initial disclosures also vaguely referenced several
7 categories of documents:

- 8 1. All expert reports, including blow-ups, if applicable, shall be forthcoming.
- 9 2. Any and all attestations from witnesses listed herein.
- 10 2.[sic] All documents obtained, generated or produced by Respondent in the
DiFrancesco case, shall be forthcoming.
- 11 4. Case history of the Law Offices of Brian C. Padgett.
- 12 5. Correspondence between Respondent and the State Bar of Nevada.
- 13 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.

14 (Motion to Compel at Ex. 6, p. 3.)

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

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

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

1 Nine (9) days after this exchange, Respondent still had not complied. Therefore, the State
2 Bar filed the instant Motion to Compel on March 25, 2021. Respondent never opposed the
3 Motion to Compel and never provided complete initial disclosures, as required by the procedural
4 rules and the Amended Scheduling Order. Therefore, on April 15, 2021, the Hearing Chair
5 entered an Order Granting State Bar's Motion to Compel ("Order to Compel"). In that order,
6 despite Respondent's failure to comply with the initial disclosure deadline set forth in DRP 17 and
7 the Amended Scheduling Order, the Hearing Chair still allowed Respondent to introduce (i)
8 documents obtained, generated or produced by Respondent in the underlying DiFrancesco case,
9 (ii) any case history of the Law Offices of Brian C. Padgett, and (iii) any correspondence between
10 Respondent and the State Bar, *provided that* those documents were expressly produced to the State
11 Bar with bates-numbering by 5:00 p.m. on Monday, April 19, 2021. (Order to Compel at 6:1-7.)

12 On April 28, 2021, however, Respondent filed Defendant's Rule 60(b) Motion to Set
13 Aside Order Granting State's Motion to Compel ("Motion to Set Aside"). The next day, on April
14 29, 2021, the State Bar filed State Bar of Nevada's Opposition to Respondent's Rule 60(b) Motion
15 to Set Aside Order Granting State's Motion to Compel ("Opposition to Set Aside"). Respondent
16 did not file a reply in support of his Motion to Set Aside. On May 19, 2021, the parties
17 participated in a pre-hearing conference and presented additional argument on the Motion to Set
18 Aside. In that pre-hearing conference, the parties also confirmed that Respondent had not
19 provided final witness and document lists as required by DRP 17.

20 Ultimately, however, during the pre-hearing conference, the Hearing Chair granted the
21 Motion to Set Aside and gave Respondent until 12:00 p.m. on Thursday, May 20, 2021, in which
22 to oppose the Motion to Compel and the State Bar would then have until 12:00 p.m. on Friday,
23 May 21, 2021, in which to file any reply. That order also directed the parties to address
24 Respondent's failure to serve final disclosures. Neither party objected to that briefing schedule
25 during the pre-hearing conference or immediately following the written entry of that order.

Instead, at 11:39 a.m. on Thursday, May 20, 2021, Respondent sent an email requesting an extension of time. In response, the Hearing Chair stated: “Unfortunately, due to the lack of time and the need for both parties to be able to prepare for the formal hearing, I cannot allow any more extensions of time.” Respondent was then advised to file any briefs immediately.

As of 6:00 p.m. on Friday, May 21, 2021, Respondent still had not filed an opposition to the Motion to Compel, provided complete initial disclosures, or provided any final disclosures. The formal hearing in this matter is set to commence on Friday, May 28, 2021.

Merits of the Motion

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

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

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

Here, Respondent failed to timely provide complete initial disclosures and then willfully failed to amend or supplement his incomplete disclosures when the State Bar attempted to confer with him regarding those failures. Instead, Respondent argumentatively (and confusingly) retorted

1 that “I may add or subtract witnesses as necessary. Just like process servers.” (Motion to Compel
2 at Ex. 8.)

3 Similarly, DRP 17(a) requires that the parties “will disclose and exchange final witness
4 and document lists thirty (30) calendar days prior to the hearing.” The Amended Scheduling
5 Order also provided as follows: “At or before April 28, 2021 by 5:00 p.m., the parties shall
6 exchange their Final Disclosures including a list of final hearing exhibits, identified numerically
7 by the State Bar and alphabetically by Respondent, and a list of all witnesses the party intends to
8 call to testify at the Formal Hearing.”

9 Respondent has not complied with these basic discovery obligations. With less than one
10 week before the formal hearing, Respondent has not provided the State Bar with any substantive
11 indication of the witnesses he intends to call, other than Respondent himself. Likewise,
12 Respondent has not provided the State Bar with any identification of specific documents that he
13 intends to use at the hearing.

14 Notably, while the Motion to Set Aside provided an explanation as to why Respondent did
15 not file a timely opposition to the Motion to Compel, it offered no explanation for Respondent’s
16 failure to provide the underlying initial disclosures or his failure to cooperate with the State Bar’s
17 attempts to meet and confer. Likewise, at the pre-hearing conference, Respondent offered no
18 explanation for his failure to provide appropriate initial and final disclosures.

19 DRP 1(b) explains that the purpose of the disciplinary rules “is to expedite disciplinary
20 hearings through procedures designed to streamline presentation of evidence, facilitate
21 coordination of discovery and scheduling of Hearing Panels, while ensuring the just and proper
22 administration of attorney regulation.” “Litigation is not a game. It is the time-honored method of
23 seeking the truth, finding the truth, and doing justice.” *Haeger v. Goodyear Tire & Rubber Co.*,
24 906 F. Supp. 2d 938, 941 (D. Ariz. 2012).

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

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

3 Likewise,

4 If a party fails to provide information or identify a witness as required by Rule
5 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use
6 that information or witness to supply evidence on a motion, at a hearing, or at a
7 trial, unless the failure was substantially justified or is harmless. In addition to or
8 instead of this sanction, the court, on motion and after giving an opportunity to be
9 heard:

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

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

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

15 NRCP 37(c)(1).

16 More than two months have passed since Respondent’s initial disclosures were due, and
17 more than three weeks have passed since the parties’ final disclosures were due. The formal
18 hearing is only days away and the Respondent has refused to cooperate with the State Bar’s
19 attempts to meet and confer regarding Respondent’s procedural failures. In fact, Respondent has
20 repeatedly failed to comply with the extensions and second chances he has received in this case.
21 Given these facts, Respondent’s failure to comply with his obligations has prejudiced the State Bar
22 and is certainly not harmless. Moreover, given the Respondent’s response to ABC Gosioco’s
23 attempts to confer, it is clear that Respondent’s failure to provide adequate disclosures is willful.

24 Conclusion

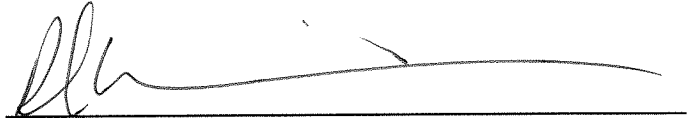
25 Respondent has failed to comply with DRP 17, NRCP 16.1, and the Amended Scheduling
Order. Respondent also failed to oppose the Motion to Compel. Indeed, the record reveals no
justification for Respondent’s actions. Overall, the Hearing Chair finds good cause to grant the
Motion to Compel. Therefore,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

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

1 102.5. Respondent also may not introduce any statements, affidavits, or attestations from any
2 witnesses in lieu of testimony. Respondent may not introduce any expert reports at the hearing.
3 Respondent may not introduce any documents or other exhibits, except for those documents
4 included in the State Bar's final disclosure of documents.

5 IT IS SO ORDERED.

6 Dated this 21st day of May, 2021.

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

The undersigned hereby certifies that a true and correct copy of the foregoing **Order**

Granting State Bar's Motion to Compel was served electronically upon:

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

Dated this 24th day of May 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

MAY 24 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.)

STATE BAR OF NEVADA'S
SUPPLEMENTAL FINAL
DISCLOSURES OF
DOCUMENTS AND WITNESSES

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

A. Documentary Evidence

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

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

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

Exhibit#	Document	Bates Stamped
2a.	Affidavit of Prior Discipline (updated)	will be produced prior to hearing
54.	Email Thread – May 20, 2021	SBN00750-SBN00751
55.	Return Mail – May 19, 2021	SBN00752

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

DATED this 24th day of May 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

/s/ Gerard Gosioco

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR'S SUPPLEMENTAL FINAL DISCLOSURE OF WITNESSES DOCUMENTS** was sent via email to:

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

DATED this 24th day of May 2021.

Laura Peters

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

Exhibit 2a

Exhibit 2a

DECLARATION OF LAURA PETERS
CUSTODIAN OF RECORDS

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

That Declarant is employed as a paralegal for the discipline department of the State Bar of Nevada and in such capacity is the custodian of records for the State Bar of Nevada;

That Declarant has reviewed the State Bar of Nevada membership records regarding Respondent Brian C. Padgett, Esq., Nevada Bar No. 7474, and has verified that he was admitted to practice law in the State of Nevada on December 28, 2000. Respondent received an Order of Suspension, issued May 21, 2021, attached hereto.

Dated this 24th day of May 2021.

Laura Peters

Laura Peters, Paralegal
Office of Bar Counsel

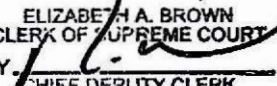
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
BRIAN C. PADGETT, BAR NO. 7474.

No. 81918

FILED

MAY 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Brian C. Padgett be suspended from the practice of law in Nevada for five years based on violations of RPC 1.2 (scope of representation and allocation of authority between client and lawyer); RPC 1.4 (communication); RPC 1.8 (conflict of interest: current clients); RPC 1.15 (safekeeping property); RPC 3.3 (candor toward the tribunal); RPC 8.1 (disciplinary matters); and RPC 8.4(d) (misconduct).

The State Bar has the burden of showing by clear and convincing evidence that Padgett committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, after Padgett failed to answer the complaint, the State Bar entered a default and the hearing proceeded on a default basis. SCR 105(2) (providing that when an attorney fails to answer the complaint, "bar counsel shall enter a default and the charges shall be deemed admitted" and allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is "attributable to mistake, inadvertence, surprise, or excusable neglect"). In his briefing in this court, Padgett argues that the panel's findings of fact, conclusions of law, and recommendation should be set aside because the disciplinary proceedings did not afford him due process. In particular, although Padgett does not dispute receiving the State Bar complaint, he asserts that after he notified Bar counsel of his

Padgett  1178

intention not to respond to the complaint based on issues he was having with his cannabis business, he assumed the Bar stayed the disciplinary proceedings but it instead moved forward with proceedings without properly notifying him.

Having reviewed the record and considered the arguments, we perceive no due process violation and conclude that the matter properly proceeded on a default basis. Copies of the complaint, first amended complaint, and notice of intent to proceed by default were served on Padgett via regular and certified mail at his SCR 79 mailing and email addresses.¹ Additionally, the State Bar sent copies of the order appointing hearing panel chair and notice of initial case conference by mail and email to Padgett's SCR 79 addresses. The State Bar also sent Padgett the default order by mail and email and sent to him by email the scheduling order, order appointing hearing panel, and notice of amended hearing date. It also unsuccessfully attempted six times to serve Padgett personally with all of the documents, twice at his SCR 79 address; once at his former home address; and three times at his current home address. On May 22, 2020, the State Bar sent by first class mail to Padgett's SCR 79 mailing address, and by email, the notice of formal hearing, which was held on June 8, 2020. These efforts to notify Padgett of the charges against him² and the hearing comply with SCR 109, which incorporates due process requirements.³ SCR

¹The State Bar received receipts for the certified mailings, confirming delivery to Padgett's SCR 79 address.

²As noted above, Padgett does not dispute receiving the complaint.

³In his reply brief, Padgett asks this court to set aside the panel's findings of fact, conclusions of law, and recommendation under NRCP 60(b), on the basis that the State Bar failed to provide proper notice of the disciplinary proceedings and he lacked an opportunity to defend against the

109 (providing that service of a disciplinary complaint must be made by personal service “in the manner prescribed by Nevada Rule of Civil Procedure 4(c), or by registered or certified mail at the current address shown in the state bar’s records or other last known address,” and that other papers and notices must be served in accordance with NRCP 5); *see Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008) (observing that administrative bodies must follow their established guidelines for notifying a defending party, and due process requirements are satisfied where the party has been served with notice of the charges so the party may rebut issues on which a decision will turn); *Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (rejecting a party’s claimed lack of knowledge of a scheduled hearing when notice of the hearing was mailed to the party’s address of record because, under NRCP 5(b), service is complete upon mailing).

With the default properly entered under SCR 105(2), the record therefore establishes that Padgett violated the above-referenced rules by (1) having his client’s judgment (plus interest) of \$151,599.83, which had been

charges. This court is not the appropriate forum in which to raise this claim, as NRCP 60(b) provides parties with a mechanism to seek relief from a decision in the court, or in this case, disciplinary board panel, that issued the decision based upon a reason justifying relief. NRCP 60(b) (stating that on a motion and just cause, the court may relieve a party from the court’s order or proceedings); *see* SCR 105(2) (allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is “attributable to mistake, inadvertence, surprise, or excusable neglect”); SCR 119(3) (stating that the Nevada Rules of Civil Procedure generally apply in disciplinary cases); *see also Yochum v. Davis*, 98 Nev. 484, 653 P.2d 1215 (1982) (observing that the decision to grant or deny NRCP 60(b) relief is fact-based), *overruled on other grounds by Willard v. Berry-Hinkley Indus.*, 136 Nev., Adv. Op 53, 469 P.3d 176 (2020); *Zugel v. Miller*, 99 Nev. 100, 659 P.2d 296 (1983) (recognizing that appellate courts are not suited to address disputes that raise factual issues).

deposited with the district court pending appeal, released to Padgett's firm by filing an ex parte motion without the client and appellate counsel's knowledge or authorization and attempting to have an additional \$13,845.45 of the client's funds on deposit with the court released to his firm by submitting a proposed order directly to the court without notifying the client or any other parties; (2) agreeing to represent a client in a suit in which the plaintiff claimed that the client violated a no-compete agreement, even though the client allegedly breached the agreement by forming a new security company and accepting employment with Padgett's cannabis business, advising the client to agree to joint and several liability for breaching the agreement, offering to pay any judgment against the client, and filing an appeal after judgment was entered but then withdrawing his representation leading to the appeal's dismissal and an unpaid \$130,000 judgment against the client; and (3) failing to meaningfully respond to the State Bar's inquiries about the two grievances and misrepresenting a material fact to the State Bar.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Padgett violated duties owed to his clients (safekeeping client funds, communication, allocation of authority, conflict of interest), the profession (candor, failure to respond to lawful requests for information by a disciplinary authority), and the public (misconduct). The record supports the panel's finding that Padgett's mental state was intentional as to the

RPC 1.2 violation and knowing as to the remaining violations. His misconduct harmed his clients and the legal profession.

The baseline sanction for Padgett's misconduct, before considering aggravating and mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) providing that suspension is appropriate when "a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client"; Standard 7.2 ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."). The panel found and the record supports seven aggravating circumstances (dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution), and one mitigating circumstance (absence of a prior disciplinary record).

Considering all the factors, including the balance of aggravating and mitigating circumstances and the scope of Padgett's misconduct, we agree with the panel's recommendation for a five-year suspension. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney). Accordingly, we hereby suspend attorney Brian Padgett from the practice of law in Nevada for five years commencing from the date of this order.

Further, Padgett shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order.⁴

It is so ORDERED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

Pickering, J.
Pickering

Herndon, J.
Herndon

cc: Chair, Southern Nevada Disciplinary Board
Law Offices of Brian C. Padgett
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court

⁴In reaching this disposition, we considered Padgett's other arguments, including that the State Bar failed to disclose a conflict of interest with a panel member, that it failed to update Padgett's mailing address, and that it violated Padgett's due process rights by holding one hearing for two separate grievances. We conclude that Padgett either waived these arguments by failing to raise them to the hearing panel in a post-decision motion or they otherwise are unsupported and lack merit.

Exhibit 54

Exhibit 54

From: Rich Williamson <rich@nvlawyers.com>
Sent: Thursday, May 20, 2021 12:52 PM
To: Gerard Gosioco <gerardg@nvbar.org>
Cc: Brian Padgett <brian.padgett@icloud.com>; Laura Peters <LauraP@nvbar.org>
Subject: Re: More time needed for filing

Mr. Padgett and Mr. Gosioco,

Unfortunately, due to the lack of time and the need for both parties to be able to prepare for the formal hearing, I cannot allow any more extensions of time. Mr. Padgett, please file your motions immediately.

Best regards,

Rich Williamson

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

IMPORTANT NOTICE:

PERSONAL AND CONFIDENTIAL. This message, and any file(s) or attachment(s) transmitted with it, is intended only for the named recipient, may be confidential, and may contain information that is a trade secret, proprietary, protected by the attorney work-product doctrine, subject to the attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. All information contained in or attached to this message is transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and completely delete the original message (which includes your deleted items folder). Personal messages express only the view of the sender and are not attributable to Robertson, Johnson, Miller & Williamson. We advise you that any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein. TRANSMISSION OF THIS INFORMATION IS NOT INTENDED TO CREATE, AND RECEIPT DOES NOT CONSTITUTE, AN ATTORNEY-CLIENT RELATIONSHIP.

On May 20, 2021, at 12:06 PM, Gerard Gosioco <gerardg@nvbar.org> wrote:

Mr. Edwards,

The State Bar objects to Mr. Padgett's request for an extension. It was clearly stated during yesterday's PHC that any challenges to Panel members and/or opposition to the State Bar's motion to compel must be submitted by 12:00pm today. Moreover, the Order regarding Mr. Padgett's motion to set aside also clearly stated that "Respondent now has until 12:00 p.m. Pacific Time on Thursday, May 20, 2021, in which to oppose the Motion to Compel." Mr. Padgett has failed to abide by this Order. For those reasons, the State Bar respectfully requests that Mr. Padgett's request for an extension be DENIED.

Gerard Gosioco

-----Original Message-----

From: Brian Padgett <brian.padgett@icloud.com>

Sent: Thursday, May 20, 2021 11:39 AM

To: Richard Williamson <rich@nvlawyers.com>; Gerard Gosioco <gerardg@nvbar.org>; Laura Peters <LauraP@nvbar.org>

Subject: More time needed for filing

Mr. Williamson,

The scope of the Motions to file will not allow me to get them to you by noon today.

I request that I be allowed to file the Motions by 7:00pm this evening.

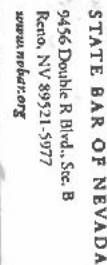
Please advise.

Best regards,

Brian Padgett

Exhibit 55

Exhibit 55



CERTIFIED MAIL

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UNABLE TO FORWARD
RETURN TO SENDER

05/19/97

Hendersu, .

* R E S *

PRIORITY MAIL



02 1P
0001200880
MAILED FROM ZIP CODE 89102

Padgett ROA - 1188
SBN00752

SENDER: COMPLETE THIS SECTION <input type="checkbox"/> Complete Items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return this card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		Brian Padgett, Esq. 1672 Liege Drive Henderson, NV 89012	
ADDRESSEE: COMPLETE THIS SECTION ON DELIVERY A. Signature <input checked="" type="checkbox"/> X B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from Item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No		PS Form 3811, July 2002 PSN 7530-02-000-9053 Domestic Return Receipt	



FILED

MAY 28 2021

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

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

STATE BAR OF NEVADA,
Complainant,

-VS-

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

Respondent.

CASE NO: OBC19-1111

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

On April 30, 2021, Respondent, Brian C. Padgett, Esq., (hereinafter "Respondent") filed a Motion to Remove Associate Bar Counsel Gosioco from Case No. OBC19-1111 ("Motion to Remove"). On May 5, 2021, Complainant, State Bar of Nevada (hereinafter "State Bar") filed an opposition to Respondent's Motion to Remove. Having reviewed Respondent's Motion to Remove, the State Bar's opposition, the parties' arguments at the pre-hearing conference, 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 Disciplinary Rule of Procedure ("DRP") 17, an initial conference took place on July 21, 2020. The Hearing Chair and Assistant Bar Counsel Gerard Gosioco ("ABC Gosioco") participated

1 in the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the pre-
2 hearing conference 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 Chair granted Respondent's request for a continuance. On October 27, 2020, the
6 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 and
8 Verified Response ("Motion for Extension"). On February 9, 2021, the Hearing Chair granted in part
9 and denied in part the Motion for Extension by giving Respondent an extension of an additional seven
10 (7) calendar days following the date of that order.

11 Pursuant to DRP 17, the Hearing Chair met telephonically with ABC Gosioco and Respondent
12 on February 22, 2021. During that scheduling conference, the parties and the Hearing Chair agreed that
13 the parties "shall file any Motions on or before April 5, 2021." See Amended Scheduling Order, 2.

14 On April 30, 2021, Respondent filed the instant Motion to Remove Associate Bar Counsel
15 Gosioco from Case No. OBC19-1111. On May 5, 2021, the State Bar filed an opposition to Respondent's
16 Motion to Remove.

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1 **Merits of the Motion**

2 The Amended Scheduling Order provided that the parties "shall file any Motions on or before
3 April 5, 2021." See Amended Scheduling Order, 2. Respondent did not file the instant Motion to remove
4 until April 30, 2021. Therefore, Respondent's motion is untimely.


5 Assuming *arguendo* that Respondent's motion was timely, Respondent fails to provide a good
6 faith basis to remove ABC Gosioco from the instant disciplinary proceedings or continue the formal
7 hearing set to commence on Friday, May 28, 2021. Moreover, Respondent's argument that he was not
8 properly served and/or noticed of these proceedings have been resolved at this point as Respondent has
9 appeared and participated.

10 **Conclusion**

11 Based upon the foregoing, the Hearing Chair finds no good cause to grant Respondent's Motion
12 to Remove. Therefore, the Hearing Chair hereby denies the Motion to Remove.

13 IT IS SO ORDERED.

14 DATED this 28th day of May, 2021.

15 
16 Richard Williamson (May 27, 2021 20:21 MDT)
17 Richard D. Williamson, Esq.
18 Hearing Panel Chair
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5-27-21.Order re Mtn to Remove

Final Audit Report

2021-05-28

Created:	2021-05-28
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5-LI5-x0ExV4A1seW_IsapAant3nCUW0

"5-27-21.Order re Mtn to Remove" History

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2021-05-28 - 0:25:44 AM GMT- IP address: 71.94.199.108
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2021-05-28 - 2:21:10 AM GMT- IP address: 174.204.3.8
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-  Agreement completed.
2021-05-28 - 2:21:56 AM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **Order Denying Respondent's Motion to Remove Associate Bar Counsel Gosioco from Case No. OBC19-1111** was served electronically upon:

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

Dated this 28th day of May 2021.

Laura Peters


Laura Peters, an employee of
the State Bar of Nevada



FILED

MAY 28 2021

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA
BY 
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,
Complainant,

-VS-

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

Respondent.

CASE NO: OBC19-1111

**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT'S OBJECTION
TO COMPLAINANT'S INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS**

On April 6, 2021, Respondent, Brian C. Padgett, Esq., (hereinafter "Respondent") filed an Objection to Complainant's Initial Disclosures of Witnesses and Documents ("Objection"). On April 19, 2021, Complainant, State Bar of Nevada (hereinafter "State Bar") filed an opposition to Respondent's Objection. Having reviewed Respondent's Objection, the State Bar's opposition, the parties' arguments at the pre-hearing conference, 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 Disciplinary Rule of Procedure ("DRP") 17, an initial conference took place on July 21, 2020. The Hearing Chair and Assistant Bar Counsel Gerard Gosioco ("ABC Gosioco") participated

1 in the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the pre-
2 hearing conference 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 Chair granted Respondent's request for a continuance. On October 27, 2020, the
6 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 and
8 Verified Response ("Motion for Extension"). On February 9, 2021, the Hearing Chair granted in part
9 and denied in part the Motion for Extension by giving Respondent an extension of an additional seven
10 (7) calendar days following the date of that order.

11 Pursuant to DRP 17, the Hearing Chair met telephonically with ABC Gosioco and Respondent
12 on February 22, 2021. During that scheduling conference, the parties and the Hearing Chair agreed that
13 the State Bar would provide its initial disclosures on or before March 1, 2021 by 5:00 p.m., and that
14 Respondent would provide his initial disclosures on or before March 9, 2021 by 5:00 p.m. These
15 deadlines were also set forth in the Amended Scheduling Order, which the Hearing Chair signed on
16 February 22, 2021, and which was served on all parties that same day. The deadlines for the initial
17 disclosures were also consistent with DRP 17(a).

18 On March 1, 2021, the State Bar provided its initial disclosures to Respondent. On April 6, 2021,
19 Respondent filed the instant Objection to Complainant's Initial Disclosures of Witnesses and Documents.
20 On April 19, 2021, the State Bar filed an opposition to Respondent's Objection.

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1 **Merits of the Motion**

2 A. Witness Objections

3 In his Objection to the State Bar's initial disclosure, Respondent objected to Amy L. Sugden,
4 Tyler Trewet, Judith Mae All, and Sean Keseday being called as witnesses. Objection, 2. In addition,
5 Respondent "reserve[d] the right to object to any and all witnesses listed by Complainant prior to the
6 final May 2021 hearing in this matter." *Id.*

7 Respondent objected to Amy L. Sugden being called as a witness "as she was legal counsel for
8 Respondent Brian C. Padgett and the Law Offices of Brian C. Padgett and the scope of her testimony as
9 listed by Complainant would result in a breach of attorney-client privilege." *Id.* Tyler Trewet, Judith
10 Mae All, and Sean Keseday are process servers employed by Nationwide Legal Nevada, LLC.
11 Respondent "reserve[d] the right to object to the testimony of [these witnesses] should MacDonald
12 Highlands Security confirm [they] gave false testimony in this case." *Id.* With regard to Tyler Trewet,
13 Respondent also "object[ed] to this process server giving witness testimony as Mr. Trewet was identified
14 as giving false testimony against Respondent in Supreme Court Case No. 81918." *Id.*

15 The Hearing Chair finds that Amy L. Sugden should not testify to any attorney-client privilege in
16 any case(s) where she represented either Brian C. Padgett and/or the Law Offices of Brian C. Padgett at
17 the formal hearing set to commence on Friday, May 28, 2021. To this extent, the Hearing Chair sustains
18 Respondent's objection.

19 As to the process servers, the Hearing Chair finds that Tyler Trewet, Judith Mae All, and Sean
20 Keseday are not excluded from providing witness testimony. However, Respondent is welcome to cross-
21 examine them at the formal hearing set to commence on Friday, May 28, 2021. Therefore, Respondent's
22 objection as to the process servers is overruled.

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During the pre-hearing conference held on Thursday, May 20, 2021, ABC Gosioco made an oral motion to admit all the State Bar's Final Disclosure exhibits into evidence. As there was no objection from Respondent, the Hearing Panel Chair granted ABC Gosioco's motion. The Hearing Chair's ruling was done in accordance with DRP 22, 23, 28, and 29. Therefore, all of the State Bar's Final Disclosure exhibits are admitted into evidence.

Based upon the foregoing, the Hearing Chair grants in part and denies in part Respondent's Objection to Complainant's Initial Disclosures of Witnesses and Documents.

DATED this 28 day of May, 2021.

Padgett ROA - 1197






5-27-21.Order re Objection to SBN Initial Disclosure Order

Final Audit Report

2021-05-28

Created:	2021-05-28
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6jqYew-b538R8QH_H0Jc6N6cpCAHRd

"5-27-21.Order re Objection to SBN Initial Disclosure Order" History

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2021-05-28 - 2:22:08 AM GMT- IP address: 174.204.3.8
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Signature Date: 2021-05-28 - 2:25:56 AM GMT - Time Source: server- IP address: 174.204.3.8
-  Agreement completed.
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **Order Granting in Part and Denying in Part Respondent's Objection to Complainant's Initial Disclosures of Witnesses and Documents** was served electronically upon:

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

Dated this 28th day of May 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada



FILED

JUN 04 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.

STATE BAR OF NEVADA'S
NOTICE OF CONTINUATION OF
HEARING

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

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for ***Wednesday, June 16, 2021, beginning at the hour of 9:00 a.m.*** The hearing will be conducted by audio/visual transmission (Zoom – the meeting number is 951 4299 3184)

///

///

///

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

3 DATED this 4th day of June, 2021

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

6 

7 _____
8 **Gerard Gosioco, Assistant Bar Counsel**

9 Nevada Bar No. 14371

10 3100 West Charleston Boulevard, Suite 100

11 Las Vegas, Nevada 89102

12 (702) 382-2200

Notice of Continuation of Hearing

Final Audit Report

2021-06-04

Created:	2021-06-04
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6afq9f1jLnCF8u8gnBkJnQMnWtfzZ20F

"Notice of Continuation of Hearing" History

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2021-06-04 - 9:10:28 PM GMT
-  Email viewed by Gerard Gosioco (gerardg@nvbar.org)
2021-06-04 - 9:15:40 PM GMT- IP address: 174.72.164.15
-  Document e-signed by Gerard Gosioco (gerardg@nvbar.org)
Signature Date: 2021-06-04 - 9:15:56 PM GMT - Time Source: server- IP address: 174.72.164.15
-  Agreement completed.
2021-06-04 - 9:15:56 PM GMT

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **State Bar of Nevada's Notice of Continuation of Hearing** was served electronically upon:

brian.padgett@icloud.com; brian@briancpadgett.com; rich@nvlawyers.com;
naman@renonvlaw.com; photographybmw@yahoo.com and gerardg@nvbar.org.

Dated this 4th day of June 2021.

Laura Peters

Laura Peters, an employee of
the State Bar of Nevada