

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 VI

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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FILED

JUN 16 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,

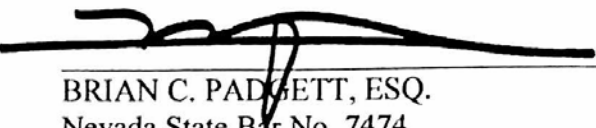
Case No. OBC19-1111

MOTION TO SET ASIDE ORDERS AND DISMISS CASE

RESPONDENT BRIAN C. PADGETT, ESQ. hereby submits this MOTION TO SET
ASIDE ORDERS AND DECISIONS. This Motion is made pursuant to NRCP 60(b)(1) and
(6) and NRCP 12(b)(3) and it is based upon

the following Memorandum of Points and Authorities.

Dated: June 15, 2021.


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

MEMORANDUM OF POINTS AND AUTHORITIES

LEGAL ARGUMENT

Respondent moves to set aside Orders of the Panel Chair as set forth herein and also moves to have the instant case dismissed as set forth below:

**1. APPOINTMENT OF HEARING PANEL CHAIR WITHOUT GIVING
RESPONDENT THE DESIGNATION OF HEARING PANEL MEMBERS LIST
AND OPPORTUNITY TO USE PERMEPTORY CHALLENGES TO EXCLUDE**

Pursuant to DRP 13, Respondent was to be given a Complaint accompanied with a list of members of the appropriate Disciplinary Board. According to DRP 13(a) Respondent was also to be given five (5) peremptory challenges to be used to eliminate people listed on the Designation of Hearing Panel Members list. These challenges can be used for any reason or no reason at all.

At no time was Respondent given a Designation of Hearing Panel Members list and allowed to use five (5) peremptory challenges – with the Complaint or otherwise.

At the prehearing conference this matter was brought up to the Panel Chair who said Respondent could challenge any panel member for cause but must do so within 24 hours. A challenge for cause is not the same as with peremptory challenges which would have allowed Respondent to exclude the Panel Chair for any reason or no reason at all.

1 The failure to even offer the peremptory challenges from the outset is incurably prejudicial
2 and a violation of Respondent's Equal Protection Rights. Respondent would have brought this
3 sooner had he been familiar enough with the rules to know to look for an item (Designation of
4 Hearing Panel Members list) he was never given.

5 For this reason Respondent asks that the Panel Chair be removed and the case be dismissed
6 for a failure to extend essential Equal Protection rights to Respondent.

7 **2. NO LIVE HEARING SO RESPONDENT CANNOT CONFRONT HIS**
8 **ACCUSERS AND EFFECTIVELY CROSS-EXAMINE**

9 On April 28, 2021, the Panel Chair ruled that the disciplinary hearing would take place via
10 zoom conference and that Respondent would not be able to face his accusers and cross-examine
11 them because of the Covid-19 pandemic. At the pre-hearing conference, on May 19, 2021, despite
12 the notice from Governor Sisolak that schools had been reconvened and masks were only
13 mandatory for casinos and for those not vaccinated, the Panel Chair again denied a renewed request
14 from Respondent – despite having stated in his February 19, 2021 Amended Scheduling Order that
15 the hearing would take place “either via Zoom or in person, pursuant to public health
16 recommendations.”

17 The first day of the hearing was held on May 28, 2021 and no witnesses examination was
18 completed. Thereafter, it was agreed that June 16, 2021 would be Day 2 of the hearing. As of June
19 1, 2021, Governor Sisolak made masks mandatory only for those who had not been vaccinated.
20 Furthermore, on June 11, 2021 Las Vegas Justice Court rescinded its mandate for Blue Jeans or
21 telephonic appearance for all counsel, parties and witnesses.

22 As a result of the changed circumstances, the zoom conference should be voided and this
23 disciplinary hearing should be in-person only - where Respondent maintains his principal place of
24 business – Las Vegas, Nevada – pursuant to DRP 27. This is also an Equal Protection violation
25 as similarly situated lawyers in disciplinary hearings have been allowed to face their accusers and
26 examine and cross-examine witnesses directly – with no zoom barrier.

3. THE FIRST DAY OF THE HEARING STARTED WITHOUT RESPONDENT WHO HAD ONLY TELEPHONIC ACCESS TO THE HEARING

For the first hour of the hearing Respondent could not access the zoom conference and had been in touch with the Bar that first hour making them aware that he could not access zoom and working with them to try to gain access – even though Respondent had signed in for the zoom conference the day before.

While Respondent was trying to access the hearing, the Panel Chair convened the hearing shortly after 9:00am and the first hour was conducted without Respondent. Shortly after learning the hearing started without him, Respondent called in via telephone and was relegated to examining two witnesses before time expired for each via telephone. Respondent could not see the faces of the individuals, he could not handle exhibits as he wanted and he was at a significant disadvantage to Associate Bar Counsel Gosioco (hereinafter “ABC Gosioco”).

Because of the substantial prejudice that attached to Respondent on that first day it is respectfully requested that this hearing be stricken and a new, in-person hearing be scheduled so Respondent has the same rights to defend himself as similarly situated individuals. Additionally, while attempting to access zoom, Respondent learned that his laptop camera had burned out and he will once again be relegated to telephonic access if the hearing is allowed to continue via zoom.

4. RESPONDENT WAS UNREASONABLY DENIED THE OPPORTUNITY TO CALL HIS OWN WITNESSES AND USE HIS OWN EXHIBITS

Respondent provided initial disclosures to ABC Gosioco on March 9, 2021.

Thereafter, the Amended Scheduling Order stated that parties should file Motions on April 5, 2021, Oppositions by April 19, 2021 and Replies by April 26, 2021. Final Disclosures were scheduled for April 28, 2021.

ABC Gosioco filed a Motion to Compel regarding Respondent’s initial disclosures prior to April 5, 2021. Before Respondent could begin to prepare an Opposition, the Panel Chair found in favor of ABC Gosioco and stripped Respondent of his right to produce witnesses and documents

1 on April 15, 2021 – four full days before the April 19, 2021 date scheduled for Respondent to
2 prepare an Opposition.

3 As a result of this punitive ruling, Respondent could not prepare Final Disclosures or a
4 Trial Brief as he was left with only the use of documents disclosed by ABC Gosioco.

5 Respondent filed an NRCP 60 Motion to Set Aside the ruling which was not heard until
6 May 19, 2021 at the Pre-Hearing Conference. At that time, the Panel Chair ruled that the Motion
7 to Set Aside would be granted. However, rather than grant Respondent the **four days** he had left
8 to prepare and file an Opposition under the Amended Scheduling Order, the Panel Chair ordered
9 Respondent would only have 24 hours to oppose ABC Gosioco's Motion to Compel.

10 Within that 24 hours Respondent had clients who relied on him to prepare Justice Court
11 appeals for District Court to keep them in their homes pursuant to the CDC Moratorium.
12 Respondent took care of the clients with deadlines first and then, at 11:39am on Thursday May 20,
13 2021 he asked for an extension of the filing deadline and was denied. As a result, Respondent was
14 not able to timely file an Opposition and was significantly prejudiced as a result thereof.

15 **5. FAILURE TO REMOVE ASSOCIATE BAR COUNSEL GOSIOCO**

16 Respondent sought the removal of ABC Gosioco for fabricating service of process on
17 Respondent via his home address at 1672 Liege Drive, Henderson, Nevada 89012 in April 2020.
18 The Bar's June 10, 2020 Declaration of Service According to SCR 109(1) in Support of Entry of
19 Default refuted this claim first made by ABC Gosioco in February 2021 as well as his own
20 Amended Complaint did which was filed in September 2020.

21 Subsequent attestation by a senior security guard at Respondent's MacDonald Highlands
22 home neighborhood refuted the recently produced (February 2021) statements of three process
23 servers who claimed to have tried to serve Respondent at his home.

24 When the matter was addressed during the Pre-Hearing Conference on May 19, 2021 the
25 Motion to Remove was denied by the Panel Chair who stated that the matter was moot because
26 "You are here so it doesn't matter."
27
28

1 The real issue of the veracity of Mr. Gosioco and his abuse of process is extremely
2 prejudicial to Respondent's Due Process rights and it has negatively colored this and the other two
3 disciplinary cases involving Respondent requiring dismissal of this case.

4 **6. THE CASE IN ISSUE WAS PRIMARILY HANDLED BY INDEPENDENT**
5 **CONTRACTOR, ACE LEGAL, LLC AND ITS MANAGER, ATTORNEY AMY**
6 **SUGDEN WHO HAS NOT BEEN THE SUBJECT OF DISCIPLINE – IN**
7 **VIOLATION OF RESPONDENT'S EQUAL PROTECTION RIGHTS**

8 Ms. Sugden was hired as an independent contractor for 9 years to work cases for
9 Respondent's firm until her termination on March 15, 2019. She had been a practicing attorney
10 for several years prior to working with Respondent. Respondent had every reason to trust Ms.
11 Sugden based on nearly a decade of competent work for Respondent.

12 Ms. Sugden handled all three cases for Respondents' office on a day to day basis that
13 Respondent has been cited for. However, she is not facing discipline and has been called as a
14 witness FOR the State Bar in this disciplinary case.

15 Respondent has not been able to retrieve documents to defend himself due to Ms. Sugden
16 compromising the Firm's server prior to her dismissal. The Firm's IT company as well as an
17 independent investigator hired by the Firm both concluded Ms. Sugden responsible for this breach
18 of the Firm's Server. Ms. Sugden intentionally deleted 9 years of company emails and case
19 documents. Respondent made the Bar aware of this via correspondence on October 11, 2019,
20 February 24, 2020 and October 14, 2020 and yet the Bar is seeking to severely discipline
21 Respondent for her actions on one hand while referring clients to Ms. Sugden on the other hand.

22 *Exhibit A.*

23 These selective disciplinary actions violate Respondent's Equal Protection rights and as
24 such this case should be dismissed.
25
26
27
28

CONCLUSION

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

Dated this 15th day of June, 2021.



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

CERTIFICATE OF SERVICE

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

MOTION TO SET ASIDE ORDERS AND DISMISS CASE

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.

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

Employee of the Law Offices of BRIAN C. PADGETT

EXHIBIT A

Subject: INQUIRY

Date: Monday, April 6, 2020 at 3:38:07 PM Pacific Daylight Time

From: David Hoffman

To: Amy Sugden

Dear Attorney,

I was referred to you by the State's Bar Referral Services. Do advise if your firm handles Litigation Cases.

David

Case No. OBC19-1111



FILED

JUL 20 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.,
STATE BAR NO. 7474

Respondent.

STATE BAR OF NEVADA'S
MEMORADUM OF COSTS

Description	Amount
Nationwide Invoice – personal delivery attempted on 9/25/20	\$ 60.00
Sunshine Litigation – transcript cost from 10/15/20 Formal Hearing	278.75
Sunshine Litigation – transcript cost from 5/28/21 Formal Hearing	1,269.50
Sunshine Litigation – transcript cost from 6/16/21 Formal Hearing	1,232.00
Certified Mailing Costs	115.45
SCR 120 Costs	2,500.00
TOTAL	\$ 5,455.70

1 The costs set forth above are true and correct to the best of my knowledge and
2 belief and were necessary and reasonably incurred and paid in connection with this
3 matter. True and correct copies of invoices supporting these costs are attached to this
4 Memorandum of Costs.

5 Dated this 20th day of July 2021

6 STATE BAR OF NEVADA
7 DAN M. HOOGE, BAR COUNSEL

8 

9 By: _____
10 Gerard Gosioco, Assistant Bar Counsel
11 Nevada Bar No. 14371
12 3100 W. Charleston Blvd., Ste. 100
13 Las Vegas, NV 89102
14 (775) 329-4100
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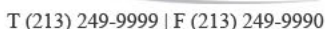
Final Audit Report

2021-07-20

Created:	2021-07-20
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtoFYWIXrCl6ecLmQ4mI4yus2gjmXODW5

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-  Email viewed by Gerard Gosioco (gerardg@nvbar.org)
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-  Agreement completed.
2021-07-20 - 4:22:22 PM GMT



Invoice No.	Customer No.
00000022160	21191
INVOICE DATE:	Total Due
10/15/2020	\$ 60.00

OFFICE OF BAR COUNSEL
3100 W. Charleston, # 100
Las Vegas, NV 89102
T (702) 382-2200

Nationwide Legal, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015
TAX ID # 20-8284527

Customer No.	Invoice No.	Period Ending	Amount Due	Page
21191	00000022160	10/15/2020	\$ 60.00	1

INVOICE PAYMENT DUE UPON RECEIPT Padgett ROA - 1218



151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

R. Kait Flocchini, Esq.
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

INVOICE

Invoice No.	Invoice Date	Job No.
1410049	10/19/2020	671803
Job Date	Case No.	
10/15/2020		
Case Name		
State Bar of Nevada vs. Padgett, Esq.		
Payment Terms		
Net 30		

Original & One Certified Copy - Deposition of:

Hearing

25.00 Pages @ 7.75 193.75

Attendance - Half Day

85.00 85.00

TOTAL DUE >>> \$278.75

Please note, disputes or refunds will not be honored or issued after 30 days

Laura Peters

Tax ID: 20-3835523

Phone: 775-329-4100 Fax: 775-329-0522

Please detach bottom portion and return with payment.

R. Kait Flocchini, Esq.
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

Job No. : 671803 BU ID : RN-CR
Case No. :
Case Name : State Bar of Nevada vs. Padgett, Esq.
Invoice No. : 1410049 Invoice Date : 10/19/2020
Total Due : \$278.75

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____

Card Number: _____

Exp. Date: _____ Phone#: _____

Billing Address: _____

Zip: _____ Card Security Code: _____

Amount to Charge: _____

Cardholder's Signature: **Padgett ROA - 1220**

Email: _____

INVOICE

1 of 1



151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

Laura Peters
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

Invoice No.	Invoice Date	Job No.
1474101	6/28/2021	759293
Job Date	Case No.	
5/28/2021	OBC19-1111	
Case Name		
State Bar of Nevada vs. Padgett, Esq.		
Payment Terms		
Net 30		

Transcript of Proceedings
Transcript of Proceedings

1,269.50

TOTAL DUE >>>

\$1,269.50

Location of Job : Via Zoom
Reno, NV

Case No. OBC19-1111

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Please detach bottom portion and return with payment.

Laura Peters
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

Invoice No. : 1474101
Invoice Date : 6/28/2021
Total Due : \$1,269.50

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 759293
BU ID : RN-CR
Case No. : OBC19-1111
Case Name : State Bar of Nevada vs. Padgett, Esq.
Padgett ROA - 1221

INVOICE

1 of 1



151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

Laura Peters
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

Invoice No.	Invoice Date	Job No.
1476521	7/9/2021	770596
Job Date	Case No.	
6/16/2021	OBC19-1111	
Case Name		
State Bar of Nevada vs. Padgett, Esq.		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Transcript of Proceedings, Hearing Day 2

1,232.00
TOTAL DUE >>> \$1,232.00

Location of Job : Via Zoom
Reno, NV

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Please detach bottom portion and return with payment.

Laura Peters
State Bar of Nevada
9456 Double R Blvd, Suite B
Reno, NV 89521

Invoice No. : 1476521
Invoice Date : 7/9/2021
Total Due : \$1,232.00

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 770596
BU ID : RN-CR
Case No. : OBC19-1111
Case Name : State Bar of Nevada vs. Padgett, Esq.
Padgett ROA - 1222

CERTIFIED MAILING CHARGES

COMPLAINT Mailed May 13, 2020	7015 3010 0001 2446 2288 – to 6 th Street Address \$7.80
Notice of Intent to Enter Default Mailed 6/9/20	7015 3010 0001 2446 2332 – to 6 th Street address \$8.00 7015 3010 0001 2446 2356 – to Gammila Drive address 8.00
Notice of ICC Mailed 7/15/20	7015 3010 0001 2446 2387 – to 6 th Street address \$6.80
Order Appointing Panel Chair Mailed 7/8/20	7015 3010 0001 2446 2400 – 6 th Street address \$6.90 7015 3010 2446 2394 – Gammila Drive address \$6.90
Notice of Hearing, Final Disclosures Mailed 9/15/20	7019 0140 0000 0205 4210 – 6 th Street address \$7.60
Amended Complaint Mailed 10/27/20	7019 2970 0001 3885 9632 – to 6 th Street address \$7.80 7019 2970 0001 3885 9618 – to Liege Drive address \$7.80
Notice of Intent to Enter Default Mailed 11/17/20	7019 2970 0001 3885 9625 – to Liege Drive address \$8.00
Entry of Default Mailed 1/5/21	7019 2970 0001 3885 9854 – to Liege Drive address \$7.80
Initial Disclosure of Documents & Witnesses Mailed 3/1/21	7019 2970 0001 3885 9977 – to Liege Drive address \$15.00
Notice of Hearing, Final Disclosures Mailed 4/28/21	7019 2970 0001 3885 5559 – to Liege Drive address 17.05
TOTAL	\$ 115.45



FILED

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

AUG 05 2021

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 DENYING RESPONDENT'S MOTION TO SET ASIDE ORDERS
AND DISMISS CASE**

On June 16, 2021, at approximately 8:28 a.m. Pacific Standard Time (PST), Respondent, Brian C. Padgett, Esq., (hereinafter "Respondent") filed a Motion to Set Aside Orders and Dismiss Case (hereinafter "Motion to Set Aside"). The formal hearing was set to commence at 9:00 a.m. PST on June 16, 2021. Accordingly, the State Bar orally opposed Respondent's Motion to Set Aside. Having reviewed Respondent's Motion to Set Aside, the parties' arguments at the formal hearing, 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 Disciplinary Rule of Procedure (“DRP”) 17, an initial conference took place on July
2 21, 2020. The Hearing Chair and Assistant Bar Counsel Gerard Gosioco (“ABC Gosioco”) participated
3 in the call. Respondent failed to appear for the call. Similarly, Respondent was not present for the pre-
4 hearing conference 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, 2020, the
8 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 and
10 Verified Response (“Motion for Extension”). On February 9, 2021, the Hearing Chair granted in part
11 and denied in part the Motion for Extension by giving Respondent an extension of an additional seven
12 (7) calendar days following the date of that order.

13 Pursuant to DRP 17, the Hearing Chair met telephonically with ABC Gosioco and Respondent
14 on February 22, 2021. During that scheduling conference, the parties and the Hearing Chair agreed that
15 the parties “shall file any Motions on or before April 5, 2021.” *See* Amended Scheduling Order, 2.

16 On June 16, 2021, at approximately 8:28 a.m. PST – thirty-two (32) minutes prior to the start of
17 the continued formal hearing – Respondent filed the instant Motion to Set Aside Orders and Dismiss
18 Case.

19 **Merits of the Motion**

20 The Amended Scheduling Order provided that the parties “shall file any Motions on or before
21 April 5, 2021.” *See* Amended Scheduling Order, 2. Respondent did not file the instant Motion to remove
22 until April 30, 2021. Therefore, Respondent’s motion is untimely.

23 Assuming *arguendo* that Respondent’s motion was timely, Respondent fails to provide a good
24 faith basis to remove ABC Gosioco from the instant disciplinary proceedings or continue the formal

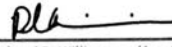
1 hearing set to commence on Friday, May 28, 2021. Moreover, Respondent's argument that he was not
2 properly served and/or noticed of these proceedings have been resolved at this point as Respondent has
3 appeared and participated.

4 **Conclusion**

5 Based upon the foregoing, the Hearing Chair finds no good cause to grant Respondent's motion.
6 Therefore, the Hearing Chair hereby denies the Motion to Set Aside Orders and Dismiss Case.

7 IT IS SO ORDERED.

8 DATED this 5th day of ^{August}~~June~~, 2021.

9
10 
Richard D. Williamson (Aug 5, 2021 10:01 PDT)
11 Richard D. Williamson, Esq.
Hearing Panel Chair
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Padgett Brian C. Mtn to Set Aside and DISM Order (OBC19-1111) (003)

Final Audit Report

2021-08-05

Created:	2021-07-29
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgCSbUclR1llc6lgEEyjhFZrzcw5ZgenN

"Padgett Brian C. Mtn to Set Aside and DISM Order (OBC19-1111) (003)" History

-  Document created by Laura Peters (laurap@nvbar.org)
2021-07-29 - 3:59:17 PM GMT- IP address: 71.94.199.108
-  Document emailed to Richard D. Williamson (rich@nvlawyers.com) for signature
2021-07-29 - 3:59:35 PM GMT
-  Email viewed by Richard D. Williamson (rich@nvlawyers.com)
2021-07-29 - 7:49:52 PM GMT- IP address: 174.247.117.225
-  Document e-signed by Richard D. Williamson (rich@nvlawyers.com)
Signature Date: 2021-08-05 - 5:01:02 PM GMT - Time Source: server- IP address: 68.190.180.187
-  Agreement completed.
2021-08-05 - 5:01:02 PM GMT



FILED

AUG 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.,)
State Bar No. 7474,)
)
Respondent.)
)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION
AFTER FORMAL HEARING**

This matter involving attorney BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), Bar No. 7474, came before a designated Formal Hearing Panel of the Northern Nevada Disciplinary Board (hereinafter "Panel") through the online video conferencing platform Zoom at 9:00 a.m. on Friday, May 28, 2021, and Wednesday, June 16, 2021.

The Panel consisted of Chairman Richard D. Williamson, Esq., Nathan J. Aman, Esq., and Brooke Westlake, Laymember. Transcript of Proceedings, May 28, 2021 (hereinafter "May 28 Transcript"), 4. ABC Gosioco represented the State Bar. *Id.* Respondent appeared for portions of the hearing telephonically and represented himself pro se. *See generally* May 28 Transcript.

1 During the pre-hearing conference held on Thursday, May 20, 2021, the State Bar
2 moved and admitted into evidence Exhibits 3 through 53. *See* Order Granting in Part and
3 Denying in Part Respondent's Objection to Complainant's Initial Disclosures of Witnesses
4 and Documents, *filed May 28, 2021*, 4. During the May 28 hearing, the State Bar moved
5 and admitted into evidence Exhibits 1, 2a, 54, and 55. May 28 Transcript 5, 7-9. Also
6 during the May 28 hearing, the State Bar called John DiFrancesco, Respondent, Louise
7 Watson, and Michael Sullivan as witnesses. *See generally* May 28 Transcript 16-116. The
8 parties were unable to examine all the State Bar's witnesses. Accordingly, the formal
9 hearing was continued. May 28 Transcript 140-144.

10 The formal hearing was continued to June 16, 2021. On that day, the Panel
11 consisted of Chairman Richard D. Williamson, Esq., Nathan J. Aman, Esq., and Brooke
12 Westlake, Laymember. Transcript of Proceedings, June 16, 2021 (hereinafter "June 16
13 Transcript"), 2. ABC Gosioco represented the State Bar. *Id.* Respondent appeared
14 telephonically for the beginning of the hearing but failed to return for the remainder of
15 the hearing. *See generally* June 16 Transcript 4-104. During the June 16 hearing, the
16 State Bar called Sean Keseday, Amy Sugden, John DiFrancesco, and Mary Jorgensen as
17 witnesses. *Id.* at 39-81.

18 Based upon the evidence presented, the Panel issues the following Findings of
19 Fact, Conclusions of Law, and Recommendation:

20 **FINDINGS OF FACT**

21 1. On or about September 3, 2019, the State Bar received a grievance from
22 John DiFrancesco, Robert Feron, and Jacalyn Feron (hereinafter "Grievants") alleging
23 that Respondent engaged in misconduct. May 28 Transcript 19-20; Exhibit 34.
24
25

1 2. On or about March 6, 2012, Grievants retained the Law Offices of Brian C.
2 Padgett ("LOBCP") to represent them in a lawsuit related to the Truckee River Flood
3 Management Project. *See* May 28 Transcript 16-18; Exhibit 3.

4 3. Respondent signed the engagement letter for LOBCP on March 6, 2012. *See*
5 Exhibit 3 at 2.

6 4. Per the engagement letter, Grievants were to pay the LOBCP approximately
7 \$2,500.00 each month, and if there were any fees beyond that amount, they would pay
8 them at a subsequent date. *See* May 28 Transcript 20; *see also* Exhibit 3.

9 5. John DiFrancesco (hereinafter "Mr. DiFrancesco") handled the payments to
10 the LOBCP on behalf of the Grievants. May 28 Transcript 20.

11 6. Although Mr. DiFrancesco provided LOBCP with approximately \$7,500.00
12 for travel expenses and depositions, but Respondent and his law firm (the LOBCP) never
13 took any depositions. *See* May 28 Transcript 22-25; *see also* Exhibit 5.

14 7. Louise Watson (hereinafter "Ms. Watson"), an investigator with the State
15 Bar, sent Respondent a Letter of Investigation and inquired about the \$7,500.00
16 payment. May 28 Transcript 104-105.

17 8. Respondent provided the State Bar with an itemized ledger through
18 November 2016. May 28 Transcript 64, 67-72, 105.

19 9. Respondent stated that Grievants had an unpaid balance with LOBCP, and
20 that any funds received would have been applied to the outstanding balance. May 28
21 Transcript 73-74, 106-107.

22 10. Respondent stated that he would supplement his response with the
23 Grievants' actual balance owed, but he failed to do so. May 28 Transcript 73-74, 105-106.

24 11. Mr. DiFrancesco was never made aware of any outstanding balance to the
25 LOBCP. May 28 Transcript 21.

1 12. Grievants stopped receiving monthly invoices from the LOBCP in
2 approximately 2016. June 16 Transcript 70.

3 13. Mr. DiFrancesco believes he paid the LOBCP approximately \$161,000.00 in
4 total fees. June 16 Transcript 72; *see also* Exhibits 5 & 37.

5 14. On or about July 9, 2012, the LOBCP, acting on behalf of Grievants, filed a
6 Complaint against Washoe County, the City of Reno, the City of Sparks, and the TRFMP
7 alleging inverse condemnation and pre-condemnation damages claims. *See generally*
8 June 16 Transcript 57.

9 15. Attorney Amy L. Sugden (hereinafter “Ms. Sugden”) worked for the LOBCP
10 for approximately eight (8) years. June 16 Transcript 46-47.

11 16. Although Ms. Sugden was initially hired as an independent contractor, but
12 as the years progressed, an employee-employer relationship formed between Ms. Sugden
13 and Respondent. June 16 Transcript 47-48, 50-52.

14 17. Ms. Sugden became Grievants’ primary legal contact throughout the seven
15 years of their representation. May 28 Transcript 25.

16 18. Mr. DiFrancesco believed that Ms. Sugden worked for Respondent. May 28
17 Transcript 26.

18 19. Ms. Sugden confirmed that she was being supervised by Respondent during
19 her representation of the Grievants. June 16 Transcript 52.

20 20. On many occasions during the pendency of the case, Grievants expressed to
21 Ms. Sugden their desire to move the lawsuit, discovery, and depositions toward a trial
22 date. May 28 Transcript 27.

23 21. Ms. Sugden consistently ignored or stalled on completing these tasks. May
24 28 Transcript 27.

1 22. Ms. Sugden and the Grievants also made Respondent aware that the
2 Grievants were unhappy with the status of their case. *See, e.g.*, Exhibit 32.

3 23. Ms. Sugden and the Respondent were not responsive to the Grievants. June
4 16 Transcript 63, 70.

5 24. Despite Grievants' requests, a trial date was ultimately never set. *See* June
6 16 Transcript 56.

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

9 26. Ms. Sugden states that she had a "gentleman's agreement with opposing
10 counsel" to extend the Five-Year Rule. June 16 Transcript 57-58.

11 27. There is no documentation or stipulation extending or tolling the expiration
12 of the Five-Year Rule. *See* June 16 Transcript 58.

13 28. Grievants were not aware of the Five-Year Rule, and its application to their
14 civil case, until Ms. Sugden sent them an email on or about September 16, 2017 – after
15 the Five-Year Rule had already expired. *See* June 16 Transcript 67-69.

16 29. On or about April 20, 2018, Grievants instructed Ms. Sugden to take
17 depositions and to file a Motion in Limine. May 28 Transcript 28.

18 30. On or about June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed
19 a Motion in Limine to Exclude Evidence After August 2012 ("Motion in Limine"). *See*
20 June 16 Transcript 63-65.

21 31. Although an "Index of Exhibits" was included in the Motion in Limine, no
22 exhibits were attached. *Id.*

23 32. On or about September 5, 2018, Ms. Sugden, acting on behalf of Grievants,
24 filed a Supplement to the Motion in Limine attaching the missing twenty-six (26)
25 exhibits. June 16 Transcript 65-66.

1 33. In or around December 2018, Respondent took over Ms. Sugden's duties as
2 Grievants' primary contact. *See* May 28 Transcript 26.

3 34. On or about March 12, 2019, Grievants hired attorney Michael Sullivan
4 (hereinafter "Mr. Sullivan") to substitute Respondent as attorney of record. *See* May 28
5 Transcript 117.

6 35. By the time Mr. Sullivan was retained, the Five-Year Rule had already
7 expired. May 28 Transcript 112-115.

8 36. On or about April 8, 2019, Mr. Sullivan, acting on behalf of Grievants, filed
9 a Stipulation and Order for Dismissal with Prejudice after discussing their options with
10 him. *See* May 28 Transcript 32, 111-115.

11 37. On or about October 15, 2020, a Formal Hearing for the instant matter was
12 set to commence at 9:00am Pacific Standard Time. *See generally* October 15 Transcript
13 3-14.

14 38. On or about October 15, 2020, at approximately 8:11am Pacific Standard
15 Time, Respondent emailed ABC Gosioco requesting that the Formal Hearing be
16 continued. October 15 Transcript 5.

17 39. Ultimately, the Formal Hearing was continued. October 15 Transcript 11-14.

18 40. In his email, Respondent included a letter where he alleged a lack of notice
19 of process. *See generally* October 15 Transcript 6-8.

20 41. Respondent stated that in or around February 2020, he made the decision
21 to work full time from his home office, 1672 Liege Drive, Henderson NV 89102.¹ May 28
22 Transcript 92-93.

24 ¹ Nationwide Legal attempted to personally serve Respondent at the Liege address on or about
25 (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020, but to no avail. *See* June 16
Transcript 42.

42. Respondent submitted an affidavit from his secretary, Connie Little, stating that she mailed a notice of change of his address on or about February 28, 2020. May 28 Transcript 91-97.

43. The State Bar has no record of such a request. June 16 Transcript 79.

44. The State Bar's records show that Respondent did not provide the Liege address until January 5, 2021. June 16 Transcript 80.

45. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Panel hereby issues the following Conclusions of Law:

1. The Northern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to Supreme Court Rule ("SCR") 99.

2. Venue via Zoom is proper. *See generally* June 16 Transcript 4-37.

3. Respondent called in from a "702" number and did not dispute that he was physically located in Las Vegas during the formal hearing. June 16 Transcript 36.

4. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*, 108 Nev. 629, 633-634, 837 P.2d 853, 856; *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d 386, 387 (1990).

5. The Panel unanimously found that the foregoing findings of fact prove by clear and convincing evidence that Respondent knowingly violated RPC 1.15 (Safekeeping Property), RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers), RPC 8.1 (Bar Admission and Disciplinary Matters), and RPC 8.4 (Misconduct). June 16 Transcript 98.

1 6. As to Count One – RPC 1.15 (Safekeeping Property) – the Panel
2 unanimously found that Respondent’s misconduct caused injury to his clients, the public,
3 and the profession. June 16 Transcript 100-101.

4 7. As to Count Two – RPC 5.1 (Responsibilities of Partners, Managers, and
5 Supervisory Lawyers) – the Panel unanimously found that Respondent’s misconduct
6 caused injury to his clients, the profession, and the legal system. June 16 Transcript 101.

7 8. As to Counts Three through Six – RPC 8.1 (Bar Admission and Disciplinary
8 Matters) and RPC 8.4 (Misconduct) – the Panel unanimously found that Respondent’s
9 misconduct caused injury to the profession. June 16 Transcript 101-102.

10 9. The appropriate level of discipline must be determined considering “all
11 relevant factors and mitigating circumstances on a case-by-case basis.” *State Bar of*
12 *Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate The
13 American Bar Association Standards for Imposing Lawyer Sanctions’ four factors to be
14 considered in determining the appropriate disciplinary sanction: “the duty violated, the
15 lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct,
16 and the existence of aggravating or mitigating factors.” *See In re Discipline of Lerner*,
17 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).

18 10. Pursuant to Standard 6.12 of the ABA Standard for Imposing Lawyer
19 Sanctions, the appropriate baseline sanction for Respondent’s violations of RPC 1.15
20 (Safekeeping Property), RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory
21 Lawyers), RPC 8.1 (Bar Admission and Disciplinary Matters), and RPC 8.4 (Misconduct)
22 is suspension. June 16 Transcript 102.

23 11. Pursuant to SCR 102.5(1), the Panel unanimously found the following
24 aggravating factors exist:

25 a. Prior disciplinary offenses;

- b. Dishonest or selfish motive;
- c. A pattern of misconduct;
- d. Multiple offenses;
- e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders;
- f. Refusal to acknowledge the wrongful nature of conduct;
- g. Substantial experience in the practice of law; and
- h. Indifference to making restitution.

June 16 Transcript 98.

12. The Panel unanimously found that there were no mitigating factors in Respondent's favor. June 16 Transcript 98.

13. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

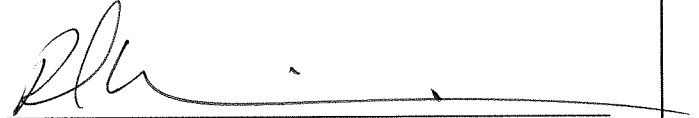
RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel hereby recommends that Respondent receive a five (5) year suspension from the practice of law to run consecutive to his five (5) year suspension in Docket No. 81918. June 16 Transcript 99. Respondent shall retake the Nevada bar exam as well as the MPRE prior to petitioning for reinstatement. *Id.*; June 16 Transcript 102. In addition, Respondent shall repay the fees his former clients, Mr. DiFrancesco and the Ferons, paid (approximately \$161,000.00) by June 16, 2026, with interest at the statutory rate. *Id.* at 99-100, 103.

Pursuant to SCR 120, Respondent shall pay a \$2,500 fee plus the actual costs of this proceeding, excluding Bar Counsel and staff salaries, no later than the 30th day after

1 the Supreme Court's Order in this matter or service of a Memorandum of Costs,
2 whichever is later.

3 DATED this 5th day of August, 2021.

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6 **Richard D. Williamson, Esq.,**
7 Hearing Panel Chair
8 Northern Nevada Disciplinary Panel
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1 STATE BAR OF NEVADA
2 NORTHERN DISCIPLINARY BOARD
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4
5 STATE BAR OF NEVADA,
6 Complainant, Case No. OBC19-1111
7 vs.
8 BRIAN C. PADGETT, BAR 7474,
9 Respondent.
10 _____/
11 Pages 1 to 15, inclusive.
12
13

14 HEARING
15 _____
16 Thursday, October 15, 2020
17 Reno, Nevada
18
19
20

21 JOB NO.: 671803
22 REPORTED via Zoom BY: CHRISTINA AMUNDSON
23 CCR #641 (Nevada)
24 CSR #11883 (California)

1 A P P E A R A N C E S

2 (Via Zoom)

3 RICH WILLIAMSON, ESQ.

4 NATHAN AMAN, ESQ.

5 GERARD GOSIOCO

6 STEVE BOUCHER

7 VICKI HETHERINGTON

8 LAURA PETERS

9 DAN HOOGE

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1 BE IT REMEMBERED that Thursday, September 18,
2 2020, commencing at 9:19 a.m. of said day, before
3 me, CHRISTINA M. AMUNDSON, a Certified Shorthand
4 Reporter, the following proceedings were had:

5 -----

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

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

11 MR. BOUCHER: Steve Boucher, layman.

12 MR. GOSIOCO: Gerard Gosioco, Assistant Bar
13 Counsel.

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

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

18 MS. PETERS: Laura Peters for the State
19 Bar.

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

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

5 MR. GOSIOCO: Thank you, sir. So, as far
6 as service is concerned, we did make several
7 attempts to notice Mr. Padgett of these hearings, of
8 these proceedings. Specifically, the complaint that
9 was filed in this case was sent to Mr. Padgett's SCR
10 79 address via first-class and certified mail, but
11 those mailings were returned to the State Bar's
12 office on or about June 21, 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. WILLIAMSON: Sure.

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

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

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

24 MR. GOSIOCO: It looks like Laura stated

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 unanimously recommended that Mr. Padgett be
2 suspended for five years and be required to retake
3 the bar exam for violations of RPC 1.2, 1.4, 1.8,
4 1.15, 3.3, 8.1 and 8.4 and that matter is currently
5 pending approval at the supreme court.

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

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

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

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

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

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

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

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

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

5 MR. WILLIAMSON: Sure.

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

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

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

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

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

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

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

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

8 MR. WILLIAMSON: Perfect, thank you.

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

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

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

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

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

1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4

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

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

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

16

17 DATED: At Reno, Nevada, this 17th day of October
18 2020.

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Christina Marie Amundson, CCR #641

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1 Case No. OBC19-1111

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STATE BAR OF NEVADA

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NORTHERN NEVADA DISCIPLINARY BOARD

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STATE BAR OF NEVADA

11

Complainant

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vs.

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

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Respondent.

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TRANSCRIPT OF PROCEEDINGS

18

HEARING

19

VIA ZOOM VIDEO CONFERENCE

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MAY 28, 2021

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RENO, NEVADA

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REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

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JOB NO. 759293

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A P P E A R A N C E S

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NATHAN AMAN, ESQ.

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IN PROPER PERSON, APPEARING TELEPHONICALLY

ALSO PRESENT:

LAURA PETERS, PARALEGAL
OFFICE OF THE STATE BAR

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19 E X H I B I T S

20	NUMBER	DESCRIPTION	ID	EVD
21	1	Hearing Packet	--	5
22	2-A	Update to Prior Affidavit of Discipline	9	9
23	54	Email correspondence, Chairman Williamson/Brian Padgett	9	9
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25

1 RENO, NEVADA, FRIDAY, MAY 28, 2021, 9:38 A.M.

2 -o0o-

3 CHAIRMAN WILLIAMSON: This is the date and 38 minutes
4 past the time set for State Bar of Nevada versus Brian Padgett,
5 Nevada Bar Number 7474. This is the case OBC19-1111.

6 My name is Richard Williamson. I'm the hearing panel
7 chair and I guess I would like each of our other panel members to
8 introduce themselves.

9 Why don't we start with Ms. Westlake.

10 MS. WESTLAKE: Hello, everybody. My name is Brooke
11 Westlake and I'm serving today as a Layman Member for the panel.

12 CHAIRMAN WILLIAMSON: Mr. Aman.

13 MR. AMAN: Nathan Aman of the law firm of Vilorio,
14 Oliphant, Oster & Aman.

15 CHAIRMAN WILLIAMSON: Thank you both for serving.

16 Mr. Gosioco, could you please -- well, I'll have all
17 counsel state your appearances for the record.

18 MR. GOSIOCO: Absolutely. And good morning. My name is
19 Gerard Gosioco, Assistant Bar Counsel for the State Bar of Nevada
20 assigned to handle this matter, OBC19-1111, and thank you,
21 everyone, for being here.

22 CHAIRMAN WILLIAMSON: And, Ms. Flocchini, will you be
23 speaking at all?

24 MS. FLOCCHINI: Good morning. No. I can make an
25 official appearance for the record, but Kate Flocchini, Assistant

1 Bar Counsel, State Bar of Nevada. I am here assisting today.

2 Thank you.

3 CHAIRMAN WILLIAMSON: Great. Okay. Well, again, as I
4 mentioned, there are a few preliminary matters we want to get on
5 the record.

6 First, hopefully the panel received both State Bar's
7 trial brief, which includes all of its exhibits, as well as the
8 hearing packet, which is Exhibit 1. The hearing packet is really
9 just the, you know, sort of the procedural history of the case.

10 Hopefully everyone has received that.

11 As we go forward today, Mr. Gosioco, I realize, though I
12 don't know if you plan on screen sharing, or if you just want the
13 panel to rely on the package you submitted. If it's the latter,
14 if you can let us know.

15 It was broken into several volumes, so if you can just,
16 obviously, give the panel and Mr. Padgett time to sort through
17 those. But to the greatest extent, if we could have stuff up on
18 the screen, obviously, that would be helpful. But I'm happy to
19 use the PDFs as well.

20 Other housekeeping matters, so Exhibit 1, we have not
21 had any objection, will be admitted.

22 (Exhibit 1 admitted into evidence.)

23 CHAIRMAN WILLIAMSON: And the State Bar's initial
24 disclosures were all admitted, and an order that was granted
25 orally last week in the prehearing conference, and I signed a

1 written order, I think that included that point as well, last
2 night.

3 So those exhibits are admitted, and in the record. So
4 we don't have to waste a bunch of time laying foundation for those
5 as we get started.

6 Again, I want to give Mr. Padgett a few more minutes.

7 But, Mr. Gosioco, had you planned on doing an opening
8 statement?

9 MR. GOSIOCO: Yes, sir. I do plan on giving an opening
10 statement.

11 CHAIRMAN WILLIAMSON: Okay. Great.

12 And I assume -- about how many witnesses do you
13 anticipate today?

14 MR. GOSIOCO: I'm anticipating about four or five, maybe
15 six witnesses total.

16 CHAIRMAN WILLIAMSON: Okay. All right. Sounds good.

17 And is there any, I guess, scheduling issues or
18 scheduling limitations on, you know, does anyone -- did any of us
19 need to leave and we need to get them on right away, or anything
20 like that?

21 MR. GOSIOCO: Yes, sir. One of the grievants, Mr. John
22 DiFrancesco, actually alerted me that he has a doctor's
23 appointment at 11:00 so he needs to leave by 10:30.

24 CHAIRMAN WILLIAMSON: All right. Well, then with that
25 in mind, again, it is 9:42. I would prefer that Mr. Padgett join

1 us so that he can participate actively in these proceedings, but
2 it is now 9:43, my clock tells me. And, again, we can't wait
3 indefinitely, so why don't we start with your opening statement,
4 if you can keep it short, again, given the witness's time frame
5 and, hopefully, Mr. Padgett will be here shortly.

6 MR. GOSIOCO: Yes, sir.

7 And just briefly, Mr. Chairman, as you've mentioned, you
8 did sign a few orders last night. And based on those new orders,
9 the State Bar would move to admit and publish to the rest of the
10 panel an amended formal hearing packet which includes the two new
11 orders that you had signed last night, as well as a supplement to
12 our final disclosures.

13 And secondly, I would also move to admit -- we did file
14 supplemental disclosures, so I would move to admit the exhibits
15 contained therein, which would be 2-A, which is an Update to the
16 Affidavit of Prior Discipline, and then 54 and 55 we would move to
17 admit and publish those to the panel as well.

18 CHAIRMAN WILLIAMSON: Okay. Let me go through.
19 Certainly, the two orders signed last night, no problem. Let's
20 tack that on to the hearing packet. I don't think there's any
21 issue there.

22 MS. PETERS: Excuse me. I just heard from Mr. Padgett.
23 He says, "Having problems with Zoom. Don't worry, I'll make it."
24 And, "Sorry for any inconvenience."

25 CHAIRMAN WILLIAMSON: All the more reason let's hold

1 off. Again, I want to give him every opportunity here.

2 So let's keep going with the -- and, Laura, thank you.
3 If he calls in or emails, obviously, please alert us, so that we
4 can make sure we're accommodating him.

5 And so, Mr. Gosioco, the two orders, absolutely.

6 The supplemental disclosures, can you direct me to those
7 specifically? Let me just pull them up here.

8 MR. GOSIOCO: I'm not sure, Mr. Chairman, if Laura had
9 sent them to you, but if not, would it be okay if Laura were to
10 send you a draft of our supplemental disclosures?

11 CHAIRMAN WILLIAMSON: I think, if it is -- there were
12 some supplemental disclosures served on Monday at 11:00. And is
13 it just those? You said it was 2-A, 54 and 55?

14 MR. GOSIOCO: Yes, sir. And 54, I believe, are -- is
15 the email thread about the orders. And then 55, I believe, is the
16 return mail from the five disclosures we attempted to mail to
17 Mr. Padgett. Or it might be vice versa, but those are the other
18 two exhibits in addition to the Updated Affidavit of Prior
19 Discipline.

20 CHAIRMAN WILLIAMSON: Okay. Yeah. And it was the --
21 yeah, the mailing.

22 Yes, so I guess let the record reflect that I received
23 those Monday at 11:00, both of Mr. Padgett's email addresses,
24 where he was also copied on that email.

25 And more importantly, the -- first off, 2-A is a public

1 record. It's a file-stamped Supreme Court order. And 2 -- excuse
2 me, 54 is an email correspondence from me to Mr. Padgett.
3 Certainly I'm aware of it, Mr. Padgett is aware of it, so it's
4 fair for the Board to be aware of it.

5 And then 55 is simply, it's Bates-stamped produced, and
6 it's simply just a picture of a mailing to Mr. Padgett.

7 So I see nothing objectionable. I have not received any
8 objections from Mr. Padgett since these were disclosed. They
9 primarily are -- well, one is a public record. The other two have
10 every indicia of being reliable and admissible, and so I will
11 admit those into evidence.

12 (Exhibits 2-A, 54 and 55 marked for identification
13 and admitted into evidence.)

14 MR. GOSIOCO: Thank you, Mr. Chairman.

15 Would you like me to proceed with my opening statement
16 and call my first witness, in the interest of time?

17 CHAIRMAN WILLIAMSON: You know, I appreciate the first
18 witness's schedule, certainly since it's the Grievant.

19 At the same time, when we receive information that
20 Mr. Padgett is actively trying to join, you know, I think he needs
21 to know what your opening statement is against him, if he's trying
22 to join.

23 So let's hold off another minute, or, you know -- let's
24 wait until 9:50. And if we have not heard from him by 9:50, then
25 you can proceed.

1 MR. GOSIOCO: Okay. And, Mr. Chairman, while we're
2 waiting for 9:50 or so, would you like me, since it's 9:48, would
3 you like to maybe swear Ms. Peters in, to at least put on the
4 record that -- her correspondence with Mr. Padgett thus far
5 between 9 o'clock and currently 9:48?

6 CHAIRMAN WILLIAMSON: No, I don't. I appreciate that.
7 If we -- certainly, if we're going forward and he's -- you know,
8 hasn't had a chance to appear, then we will deal with that so we
9 can make sure the record is clear that Mr. Padgett had every
10 opportunity to participate.

11 But, again, hopefully Mr. Padgett just joins us in
12 another minute or two and it's a moot point.

13 MR. GOSIOCO: Thank you, Mr. Chairman.

14 CHAIRMAN WILLIAMSON: Sure. Thank you.

15 MR. GOSIOCO: Just to clarify, Mr. Chairman, you did
16 grant our -- the State Bar's motion to publish the amended formal
17 hearing packet, as well as the supplemental disclosures to the
18 rest of the panel?

19 CHAIRMAN WILLIAMSON: Yeah. And just to clarify, I just
20 want to make sure I cover everything. The amended formal hearing
21 packet is just the two orders from last night, correct?

22 MR. GOSIOCO: As well as the supplemental disclosures
23 filed, yes, sir.

24 CHAIRMAN WILLIAMSON: Right. And then the supplemental
25 disclosures are just 2-A, 54 and 55?

1 MR. GOSIOCO: Yes, sir, correct.

2 CHAIRMAN WILLIAMSON: Granted.

3 Okay. I've got 9:50.

4 Ms. Peters, have we received any other correspondence or
5 indication from Mr. Padgett?

6 MS. PETERS: No, we haven't.

7 CHAIRMAN WILLIAMSON: Okay. Well, again, I think, you
8 know, the colloquy here has been on the record. I'll just
9 represent for the record, you know, this is, again, Richard
10 Williamson, Hearing Panel Chair.

11 Mr. Padgett was copied on all of the meeting invites for
12 the Zoom meeting. He was aware of the Zoom meeting. There has
13 been both correspondence and, in fact, motions or informal
14 requests regarding the format of the meeting.

15 And it sounds -- and he has been in communication with
16 Laura Peters from the State Bar throughout the morning regarding
17 the communication link for the Zoom meeting and the telephone
18 numbers.

19 And so I think at this point, it being 9:51 and we have
20 grievants that have politely waited, already been continued from a
21 formal hearing in October, that we should get going. Except for I
22 believe we have now lost a panel member. So let's hold on.

23 Laura, sorry to keep jumping on you. You're court
24 clerk, paralegal, judge, jury, executioner, IT. Do you know what
25 happened on Ms. Westlake?

1 MS. PETERS: I just emailed her and asked her to log
2 back in. I don't know why she got disconnected.

3 CHAIRMAN WILLIAMSON: No worries. Got you.

4 MS. PETERS: Okay. Oh, here she is.

5 CHAIRMAN WILLIAMSON: Perfect.

6 Okay. It's 9:53. Let's go ahead and, Mr. Gosioco,
7 please provide your opening statement.

8 MR. GOSIOCO: Thank you, Mr. Chairman. I'll try to make
9 this brief.

10 Good morning, again. My name is Gerard Gosioco,
11 Assistant Bar Counsel for the State Bar of Nevada assigned to Case
12 Number OBC19-1111, State Bar of Nevada versus Brian C Padgett.

13 Members of the Panel, this case is simple. We must
14 protect the public from people who are unfit to serve as
15 attorneys.

16 In State Bar versus Claiborne, the Supreme Court held
17 that the paramount objective of bar disciplinary proceedings is
18 not additional punishment of an attorney, but rather to protect
19 the public from persons unfit to serve as attorneys and to
20 maintain public confidence in the Bar as a whole.

21 Simply put, the Respondent, Brian C. Padgett, is unfit
22 to serve as an attorney. Throughout the course of this hearing
23 the evidence will show that Mr. Padgett has consistently engaged
24 in conduct that's prejudicial to the administrative -- to the
25 administration of justice.

1 There have been numerous attempts to delay these
2 proceedings. And according to Disciplinary Rule of Procedure 1,
3 Sub B, that rule states that the purpose of these rules is to
4 expedite disciplinary proceedings through procedures designed to
5 streamline presentation of evidence, facilitate coordination of
6 discovery and scheduling of hearing panels, while ensuring the
7 just and proper administration of attorney regulation.

8 Through the admitted exhibits, the evidence shows that,
9 in fact, there hasn't been a good faith basis to ensure the
10 purpose of DRP 1, Sub B. The State Bar has not received any file
11 disclosures from Mr. Padgett. He did provide initial disclosures.
12 However, but the only witness that he identified was himself.

13 He did list other witnesses, but were very vague about
14 that, listed them as Employee A, Employee B, certified fraud
15 investigator as well.

16 Pertaining to documents, he briefly mentioned documents.
17 However, he never at any point produced actual documents to the
18 State Bar for this matter.

19 The evidence will also show that Mr. Padgett failed to
20 supervise Attorney Amy Sugden, and that he actually lied about his
21 role as her supervisor.

22 The evidence will also show that Mr. Padgett was asked
23 to provide the State Bar with his complete file of the underlying
24 case, and that he failed to provide a complete file, including a
25 complete invoice.

1 The evidence will show that Mr. Padgett failed to not
2 only supplement the incomplete invoice he provided the State Bar,
3 but he also failed to keep accounting documents pertaining to the
4 grievant's case after November 2016.

5 Now, Members of the Panel, the evidence will also show
6 that Mr. Padgett engaged in conduct involving dishonesty, fraud,
7 deceit and misrepresentation, by submitting false evidence through
8 an affidavit of his secretary claiming to have informed the State
9 Bar of his address change in or around February of 2020.

10 Now Supreme Court Rule 79 states, in pertinent part,
11 that every member of the State Bar, including both active and
12 inactive members, regardless of residency in Nevada, as well as
13 attorneys certified to practice under SCR 49.1, shall provide to
14 the State Bar, for purposes of Bar communications, a permanent
15 mailing address, a permanent telephone number, and a current email
16 address.

17 There have been, throughout these, this disciplinary
18 process for the instant matter, there have been numerous
19 allegations he was not notified, he was not given proper notice,
20 and his due process rights were violated.

21 However, as I stated in my trial brief, any allegations
22 of any due process violations have been remedied and cured since
23 we did continue the formal hearing way back in October 15 of 2020
24 and gave Mr. Padgett the chance to fully participate in the
25 instant matter.

1 Additionally, the evidence will show that Mr. Padgett,
2 in fact, did not update his SCR 79 information to include his
3 current address, 1672 Liege Drive in Henderson, Nevada, until
4 January 5th of this year, 2021.

5 So based on the foregoing, Members of the Panel, the
6 State Bar would respectfully request that you find Mr. Padgett
7 guilty of violating RPC 1.15, 5.1, 8.1, for two separate counts,
8 as well as 8.4, for two separate counts as well.

9 Thank you.

10 CHAIRMAN WILLIAMSON: Thank you, Mr. Gosioco. The
11 record will reflect that Mr. Padgett has still not arrived. It is
12 9:58. Please go ahead and call your first witness.

13 MR. GOSIOCO: Thank you, Mr. Chairman. State Bar would
14 like to call Mr. John DiFrancesco to the stand.

15 Ms. Peters, you had just admitted Mr. Feron into the
16 room. I would like to speak to Mr. DiFrancesco first, especially
17 since he has his appointment.

18 MS. PETERS: Yeah, I understand. I just had to close
19 the whole room. Hang on.

20 MR. GOSIOCO: Thank you so much.

21 Good morning, Mr. DiFrancesco. How are you doing, sir?

22 CHAIRMAN WILLIAMSON: I hope we never go back to
23 in-person. These Zoom things are just great.

24 MR. GOSIOCO: Mr. DiFrancesco, can you hear me?

25 MR. DiFRANCESCO: Yes, I can.

1 MR. GOSIOCO: Perfect. Thank you so much.

2 DIRECT EXAMINATION

3 BY MR. GOSIOCO:

4 Q Will you please state your name and spell it for the
5 record?

6 A John DiFrancesco, and spelling is D-I-F-R-A-N-C-E-S-C-O.

7 Q Thank you Mr. DiFrancesco. And give me one moment while
8 we put Mr. Feron back into the waiting room.

9 Okay. Mr. DiFrancesco, are you still with me?

10 A Yes, I am.

11 Q Perfect.

12 How are you doing this morning, Mr. DiFrancesco?

13 A I'm fine. Thank you.

14 Q And I will try to make this brief because I understand
15 that you have a medical appointment at about 11 o'clock; is that
16 correct?

17 A Yes.

18 Q And you have to leave before 10:30, so I'll try to make
19 this as quick as possible.

20 Mr. DiFrancesco, do you know an individual by the name
21 of Brian Padgett?

22 A Yes, I do.

23 Q And how do you know Mr. Padgett?

24 A He was representing us on a case for eminent domain.

25 Q And, Mr. DiFrancesco, do you recall when exactly you

1 hired Mr. Padgett?

2 A I don't remember the exact date.

3 Q And that's not a problem, Mr. DiFrancesco. Do you
4 recall if you executed some type of retainer agreement or an
5 engagement letter?

6 A I do recall that, yes.

7 Q And, Mr. DiFrancesco, if I show you a copy of the
8 engagement letter, would that refresh your recollection?

9 A Yes, it would.

10 Q Perfect. Give me one moment. I'll share my screen.
11 Now, Mr. DiFrancesco, can you see my screen?

12 A Yes, I can, but I've got a dialogue box right in the
13 middle of my screen that's inviting Vicki Hetherington to invite
14 the direct -- join the Room One.

15 Q No, let's go ahead and cancel that or decline that
16 request.

17 A Okay.

18 Q Okay. Can you see my screen --

19 A Yes, I can.

20 Q -- Mr. DiFrancesco, showing you what's been previously
21 marked and admitted as Exhibit 3, can you see this letter,
22 Mr. DiFrancesco?

23 A Yes, I see that. Yeah.

24 Q And do you recognize what this document is,
25 Mr. DiFrancesco?

1 A Yes, it is. That's the engagement letter.

2 Q Perfect. And I'm scrolling down, and does this appear
3 to be your signature here, sir?

4 A That's correct. Uh-huh.

5 Q And looking at this signature, do you -- does this
6 refresh your recollection as far as when you executed this
7 document?

8 A Yes. Yes.

9 Q And when exactly was that, Mr. DiFrancesco?

10 A That was in March, 2012.

11 Q Perfect. Thank you, sir. I'll briefly stop sharing my
12 screen.

13 Now, Mr. DiFrancesco, let's see. You stated, you just
14 testified that you hired Mr. Padgett for an eminent domain case;
15 correct?

16 A That's right.

17 Q And so do you recall when that representation of -- his
18 representation ended?

19 A Oh, I guess it was when we hired Michael Sullivan to
20 represent us, to finalize -- try and finalize the case that we had
21 that was pending.

22 And I don't recall the date, that date either.

23 Q Not a problem. Do you recall approximately the year you
24 hired Mr. Sullivan?

25 A I believe that was 2020.

1 Q Okay. And showing you -- and, Mr. DiFrancesco, did you
2 in fact, submit a grievance pertaining to Mr. Padgett?

3 A Yes. Yeah.

4 Q I will -- thank you, sir.

5 I'll show you my screen, share my screen again. And
6 showing you what's been previously marked and admitted as
7 Exhibit 34.

8 Give me one moment while I locate that.

9 Mr. DiFrancesco, can you see my screen?

10 A Yes.

11 Q And I'm briefly scrolling through but do you recognize
12 what this document is?

13 A Yes. Yes.

14 Q And what is that document, Mr. DiFrancesco?

15 A This is a complaint that we filed against the law firm
16 of Brian Padgett.

17 Q Okay. And was Brian Padgett the only attorney you
18 complained about, Mr. DiFrancesco?

19 A No, we were complaining about Amy Sugden.

20 Q Okay. Thank you. And scrolling to the bottom, is this
21 your signature, Mr. DiFrancesco?

22 A That's my signature, correct.

23 Q Thank you, sir.

24 And you drafted this letter and sent it to the State
25 Bar, correct?

1 A Yes.

2 Q Perfect. Thank you so much.

3 And turning your attention, again, to what's been
4 previously marked and admitted as Exhibit -- actually, before I
5 show you that, Mr. DiFrancesco, do you recall what the arrangement
6 was for fees between you and the Law Offices of Brian C. Padgett?

7 A Well, we were going to pay them \$2500 a month, and then
8 they were going to, if there were any fees beyond the \$2500 a
9 month, they were going to accrue those fees and we were going to
10 pay them at a subsequent date.

11 Q Okay. And Mr. DiFrancesco, who handled the payments to
12 the law office of Brian Padgett?

13 A I prepared the checks and sent them to his office.

14 Q Okay. And so is it -- are you testifying that
15 throughout the representation -- it sounds like it might have been
16 seven or eight years with Mr. Padgett; does that sound correct?

17 A Correct. Uh-huh.

18 Q And throughout that time period, you handled all the
19 payments to Mr. Padgett's office?

20 A Yes, I did.

21 Q Okay. And you had testified that you had issued the
22 checks and sent them to his office.

23 A Correct.

24 Q And where was that office located?

25 A In Las Vegas, on 6th Street.

1 Q Okay. Thank you, sir.

2 At any point did you make payments to Mr. Padgett's law
3 firm electronically?

4 A No.

5 Q So it's your testimony that every single payment you
6 provided to Mr. Padgett's law firm was through a physical check
7 that you mailed to his office on 6th Street here in Las Vegas?

8 A Yes, that's correct.

9 Q Thank you, sir.

10 Now, Mr. DiFrancesco, throughout Mr. Padgett's and
11 Ms. Sugden's representation of you in your eminent domain case,
12 were you ever told that you owed their law office money?

13 A Well, in the beginning, early stages, they would send me
14 an invoice, a monthly invoice. And generally there was very
15 little accrual of any payment that was due, that most of the
16 payments was covered by the \$2500 a month, but -- so to answer
17 your question, no, they never told us that we owed more money to
18 them.

19 Q Okay. Mr. DiFrancesco, approximately how many times did
20 you issue monthly checks to Mr. Padgett's law firm?

21 A I would say approximately 20 to 25, somewhere in that
22 range.

23 Q Okay. And you had said -- you had testified that
24 Mr. Padgett's law firm would send you invoices; correct?

25 A Correct.

1 Q Did Mr. Padgett send you those invoices throughout their
2 entire representation?

3 A No. They stopped sending us invoices. There was a
4 period of time towards the end where they were not sending us any
5 invoices.

6 Q Okay. Thank you.

7 Now, briefly, Mr. DiFrancesco, in your grievance, do you
8 recall making a statement about a payment to the law firm
9 regarding travel expenses or depositions?

10 A Yes. And I mentioned \$7500 that I had sent in. And
11 then when you requested copies of those letters -- of those
12 checks, I realized that it was actually \$10,000, not \$7500. So I
13 believe there was three checks, two for \$2500 and one for \$5,000.

14 Those were -- I sent those in voluntarily and they were
15 specifically for initiating, trying to get Ms. Sugden to start
16 depositions, so I wanted to make sure that she had plenty of funds
17 available to cover her expenses, travel expenses up to Reno.

18 Q Okay. And I'll get into the, I guess, the merits of
19 your grievance in a little bit, but for the time being, I did want
20 to go back to the checks that you had written for travel expenses
21 and depositions.

22 Give me a moment while I share my screen. And I'm
23 showing you what's been previously marked and admitted as
24 Exhibit 5.

25 Now, Mr. DiFrancesco, do you recognize this document?

1 A Yes.

2 Q And what is this document of?

3 A Those are copies of cancelled checks that we sent to
4 Brian Padgett's office.

5 Q Okay. I'm going to scroll up top. Let's see the first
6 page and I will Zoom in, if I can. Give me one second.

7 Right here it looks like -- this is check number 5096.
8 And this appears to be a check for \$5,000 with a memo, deposition
9 expenses.

10 Did you write this check and issue it to the Law Offices
11 of Brian Padgett?

12 A Yes. Yes, I did.

13 Q Thank you, sir. Scrolling down a little bit more. Here
14 is another check, check number 3455. Do you recognize this,
15 Mr. DiFrancesco?

16 A Yes. Yes.

17 Q And this appears to be a check written --

18 CHAIRMAN WILLIAMSON: Mr. Gosioco, sorry to interrupt.

19 I'm just curious. So, Mr. DiFrancesco, good morning, by
20 the way. My name is Richard Williamson.

21 Is that your handwriting both at the memo line and your
22 signature over to the right? I just want to make sure -- you are
23 saying those are both you?

24 THE WITNESS: Yes. Yes.

25 CHAIRMAN WILLIAMSON: Thank you.

1 MR. GOSIOCO: May I proceed, Mr. Chairman?

2 CHAIRMAN WILLIAMSON: Please, sorry.

3 MR. GOSIOCO: Thank you, sir.

4 BY MR. GOSIOCO:

5 Q Now, Mr. DiFrancesco, is this a check for \$2500 that you
6 issued to the Law Office of Brian C. Padgett?

7 A Yes, it is.

8 Q Thank you, sir. Let me scroll down a little bit more.
9 This one also says deposition expenses. However, we had already
10 previously discussed check number 5096. That was the first one we
11 talked about. This is another copy of 3455. We had just
12 discussed that.

13 And this looks like --

14 A Now, just looking at the date, that date is April --
15 let's see, April 15th. And the previous one was -- what was the
16 previous one, the date on the previous one?

17 Q Check number 5096. 3455 was 4/13/18. And check number
18 5096 was May 3rd, 2018.

19 A Yeah.

20 Q So the check that we're currently looking at was also,
21 looks like also issued April 13th, 2018, same as check number
22 3455.

23 Now I notice that there is a -- there isn't a memo
24 written. Do you recall what this was for, off the top of your
25 head?

1 A Well, that was for the same purpose.

2 And if you look at the check, the name on the check, Bob
3 and I have different accounts. And I took one \$2500 -- probably
4 because of the availability of funds, we used the
5 DiFrancesco/Feron account, rental account.

6 And then we also have an LLC that we're the sole
7 partners in, and that's called Air Center, LLC. And that other
8 check was written for \$2500. It appears like it was written at
9 the same time, for \$2500.

10 Q Okay. Now, thank you so much, Mr. DiFrancesco.

11 I will stop sharing my screen. And, briefly, I want to
12 get into the merits of the grievance.

13 Now, you testified that you filed a grievance against
14 both Brian Padgett and Amy Sugden; is that right?

15 A That's correct.

16 Q Now, why did you file a grievance against both of those
17 attorneys?

18 A Well, because Amy was the main attorney that we were
19 dealing with for the last two or three years during this case.
20 And we felt that she was flagrantly ignoring our requests to
21 proceed with the -- with filing the case. And we had very little
22 communication with Brian.

23 If we tried to talk with Brian -- we had a couple of
24 conference calls -- he seemed preoccupied with other issues, and
25 he wouldn't stay on the line with us.

1 So both of them, you know, were, in our opinion,
2 negligent in proceeding with this case.

3 Q And, Mr. DiFrancesco, I believe what you're saying -- so
4 did both Mr. Padgett and Ms. Sugden work on your eminent domain
5 case?

6 A Yes, they did.

7 Q Okay. And was Amy Sugden working for Mr. Padgett?

8 A That was the understanding, that she was working for
9 Mr. Padgett.

10 Q And Mr. DiFrancesco, based on, in your opinion, I guess,
11 what was the professional relationship like between Mr. Padgett
12 and Ms. Sugden?

13 A I felt they were associates, you know.

14 Q Okay. Did at any point during this, you know, seven or
15 eight year representation, did you feel like one was the
16 supervisor of another?

17 A Yes. There was many times that Amy deferred to Brian,
18 his judgment or his opinion, on matters, on legal matters.

19 Q Okay. And so you had testified that Amy was the primary
20 contact for you and Mr. Feron; is that right?

21 A Correct.

22 Q And at any point during that seven or eight years, did
23 Mr. Padgett become the sole point of contact?

24 A At the very end, he kind of took back over the case when
25 communications broke down between us and Amy, Ms. Sugden.

1 Q Okay. Now going back to your grievance that you had
2 filed with the State Bar, Mr. DiFrancesco, what were your major
3 complaints with the -- with Mr. Padgett and Ms. Sugden's
4 representation?

5 A Well, they became nonresponsive. They wouldn't -- they
6 wouldn't answer our emails in a timely manner. They wouldn't
7 answer -- they wouldn't return our phone calls.

8 During several times we pressed her to move forward with
9 the depositions, and she kept delaying. And she wouldn't respond
10 to us, or she'd say that she was going to -- she sent us a list of
11 the people that she was going to depose, and she never -- she
12 never initiated those depositions.

13 There was just a whole series of issues.

14 Q And let me -- I apologize for cutting you off,
15 Mr. DiFrancesco. You had just mentioned depositions.

16 Were you requesting that depositions be taken?

17 A Yeah. Oh, yeah, definitely. Yeah. We were pressing
18 her for well over a year to proceed with depositions, with several
19 of the parties, you know, that we were involved in.

20 Q Okay. And ultimately, Mr. DiFrancesco, were those
21 depositions ever taken or scheduled?

22 A They were never taken.

23 Q Okay. So it's fair to say that some of your requests
24 were not complied with?

25 A Many of our requests were not complied with.

1 Q And I apologize for trying to speed through this thing,
2 because I know you do have to leave in eight minutes, but were
3 there any other requests that essentially fell on deaf ears, by
4 Mr. Padgett or Ms. Sugden?

5 A Well, yes, there were some matters -- we wanted to get
6 some additional discovery documents from the defendants, and she
7 was not pursuing those discovery documents. And the attorney
8 representing the defendants was able to deflect and postpone.

9 And, you know, it seemed like that she was -- she would
10 get back to us and tell us, well, they have lost those documents
11 or they don't have those documents on hand.

12 And I couldn't understand how we have a lawsuit, how
13 they could lose documents pertinent to the case, you know. So I
14 was just -- I was beside myself. And she wouldn't pursue.

15 And we kept saying why don't you file a motion and have
16 the judge demand that they produce the discovery documents, you
17 know?

18 And a lot of this just fell on deaf ears, you know.

19 MR. PADGETT: Hello. Brian Padgett here.

20 CHAIRMAN WILLIAMSON: Okay. Mr. Padgett --

21 MR. PADGETT: So I've not been able to launch Zoom and I
22 understand you guys have gone on without me. So --

23 CHAIRMAN WILLIAMSON: Yes.

24 MR. PADGETT: What have I missed?

25 CHAIRMAN WILLIAMSON: Well, Mr. DiFrancesco is

1 testifying, so we'll go ahead and let Mr. DiFrancesco continue --

2 we'll let Mr. Gosioco continue with Mr. DiFrancesco and then
3 you'll have an opportunity to cross-examine him.

4 MR. PADGETT: Okay. Here is my only question and
5 concern. I can't see you.

6 CHAIRMAN WILLIAMSON: I agree. That is a concern. As
7 you know, this was scheduled for a Zoom hearing.

8 MR. PADGETT: Yes, and I've tried, so --

9 CHAIRMAN WILLIAMSON: Please don't interrupt,
10 Mr. Padgett.

11 MR. PADGETT: -- my apologies.

12 CHAIRMAN WILLIAMSON: This was scheduled for a Zoom
13 hearing at 9:00 a.m. It is now 10:24 a.m.

14 You knew this was going to be a Zoom hearing. You know,
15 I'm sorry if your app is not working. It's always a wise idea to
16 try to test your equipment and log in a few minutes before a
17 hearing rather than after the hearing.

18 MR. PADGETT: So, Mr. Chair, first of all, I did log in
19 and do everything I needed to do yesterday. Okay? So I've got
20 that website up.

21 The problem is I cannot seem to launch Zoom. So I let
22 Ms. Peters know exactly where I was slightly after 9:00, on. Then
23 I called her direct. She has been trying to walk me through it.

24 I haven't done Zoom before but I figured, well, okay
25 it's like a lot of the different conference apps, we'll get that

1 done.

2 So it's not launching. I can't see anything. But, of
3 course, I wanted to call in and let you know. I wanted to hear
4 what is going on, but as of right this moment I can't see
5 anything.

6 CHAIRMAN WILLIAMSON: Yes, it sounds like you called in
7 on the phone, and so it's understandable that you can't --

8 MR. PADGETT: Well, no, no, no. I called in on the
9 phone only because I can't get Zoom to come up with a picture, so
10 I can't see you.

11 So rather than wait and try to figure out any longer how
12 to get the picture up, I've gone ahead and called you on the phone
13 so I can at least hear, but I wanted to make you aware that I
14 can't see anything.

15 CHAIRMAN WILLIAMSON: Understood. Noted. Noted for the
16 record.

17 So I'm going to go ahead and let Mr. Gosioco continue
18 with Mr. DiFrancesco, and I'll put myself on mute so there's
19 certainly no cross noise from me, and I encourage you to listen
20 very carefully to Mr. DiFrancesco's testimony.

21 MR. PADGETT: Well, wait a minute. What do we do about
22 my ability to see the witness and see any exhibits?

23 CHAIRMAN WILLIAMSON: Mr. Padgett, I'm sorry. I can't
24 help you. I'm not IT support.

25 What I am is a hearing chair. This was scheduled for a

1 Zoom hearing in October. This panel, we have one different
2 member, but this -- Mr. Aman and I were on the hearing in October,
3 on Zoom, and at that time you contacted Mr. Gosioco and asked for
4 a continuance. This --

5 MR. PADGETT: That's right.

6 CHAIRMAN WILLIAMSON: Please don't interrupt. I'm just
7 responding to your points.

8 This matter proceeded for months and months and months.
9 You knew it was going to be a Zoom hearing. And, in fact, you
10 asked, and I understand your position, you asked that you would
11 like to have had it be an in-person hearing, and I didn't, given
12 the health conditions at the time I denied that request.

13 So I do know you would have preferred an in-person
14 hearing, but you also know this was going to be a Zoom hearing.
15 It was scheduled for 9:00 a.m. this morning.

16 And so, I'm sorry, I would like you -- I was hoping to
17 see your bright shining face at 9:00 a.m. But I can't --

18 MR. PADGETT: Well, my bright shining face was trying to
19 log in, sir.

20 CHAIRMAN WILLIAMSON: Okay. And I appreciate that. So
21 why don't we let Mr. DiFrancesco finish because he's in the middle
22 of his testimony and has a medical appointment. And then let's --

23 MR. PADGETT: Okay.

24 CHAIRMAN WILLIAMSON: Then we can take a break and you
25 can -- you can try, and we can work on the -- whatever your

1 technical difficulties are.

2 MR. PADGETT: Yeah, let's get Mr. DiFrancesco. By the
3 way, I'm not trying to delay anything. I want to go forward. It
4 would be great to be able to see, but let's move forward. Thank
5 you.

6 CHAIRMAN WILLIAMSON: Sure.

7 MR. GOSIOCO: May I proceed, Mr. Chairman?

8 CHAIRMAN WILLIAMSON: Please.

9 MR. GOSIOCO: And just in the interest of time, I'm
10 seeing that it's now 10:28 a.m. and Mr. DiFrancesco does have a
11 medical appointment at 11 o'clock, so I would just ask
12 Mr. DiFrancesco one last question.

13 BY MR. GOSIOCO:

14 Q Mr. DiFrancesco, ultimately, what happened to your case?

15 A Well, we were advised by a new attorney, Michael
16 Sullivan, that we had no chance of proceeding with the case,
17 because the five-year rule had expired, that this case had dragged
18 on beyond the five years, and he felt that we were at potential
19 risk of not only having the case dismissed but also having to pay
20 legal fees for the defendants in this case.

21 So his recommendation, which we found very, very
22 difficult to accept, his recommendation was that we cancel the
23 lawsuit, withdraw the lawsuit. And we followed his advice on
24 that.

25 MR. GOSIOCO: Thank you, Mr. DiFrancesco.

1 I will pass the witness.

2 CHAIRMAN WILLIAMSON: Mr. DiFrancesco -- hold on,
3 Mr. Padgett, because I do want to make sure you have enough time
4 to cross-examine Mr. DiFrancesco.

5 Mr. DiFrancesco, you have a medical appointment at
6 11:00?

7 THE WITNESS: Yes, it's going to take me about
8 20 minutes to get there. I wanted to give a few minutes, but, you
9 know, that's -- I'm having a spinal injection, you know, an
10 injection in my spine for a problem that I've had with pain in my
11 legs for a period of time, so that's what's going to happen.

12 But I can answer a few more questions, I suppose, five
13 or 10 more minutes.

14 CHAIRMAN WILLIAMSON: Will you be lucid after this
15 spinal injection?

16 THE WITNESS: Yes. Yes.

17 CHAIRMAN WILLIAMSON: Do you have availability after
18 your medical appointment to come back on this call?

19 THE WITNESS: Yes.

20 CHAIRMAN WILLIAMSON: Okay. So, Mr. Padgett, if you
21 would like to get started, it sounds like Mr. DiFrancesco has
22 10 minutes, but I also don't want to restrain you to 10 minutes.

23 So if you'd like, we can just take a break now, you can
24 work on your technical difficulties, and Mr. DiFrancesco can log
25 back in after his medical appointment.

1 What would you prefer, Mr. Padgett?

2 MR. PADGETT: Mr. Chair, why don't we do this? Can I
3 ask him a few questions now? And then he can come back and I'll
4 ask the remainder of my questions.

5 CHAIRMAN WILLIAMSON: Absolutely. Why don't you go
6 ahead and cross Mr. DiFrancesco.

7

8 CROSS-EXAMINATION

9 MR. PADGETT:

10 Q **John, how are you?**

11 A Well, I'm doing okay. Thank you.

12 Q **Yeah. Well, I'm sorry to hear about your back.**

13 **How is business?**

14 A My business?

15 Q **How is business?**

16 MR. GOSIOCO: Objection. Relevance.

17 MR. PADGETT: No, no, no, that's, Mr. Chair, goes to the
18 value of his business, it goes to occupancy, rent per square feet
19 and some other items I'm going to get into with Mr. DiFrancesco.

20 CHAIRMAN WILLIAMSON: Overruled.

21 MR. PADGETT: Say again?

22 CHAIRMAN WILLIAMSON: Mr. Gosioco's objection is
23 overruled. You can ask your question. Mr. DiFrancesco can answer
24 the question.

25 ///

1 BY MR. PADGETT:

2 Q So how is business, John?

3 A I would say that we have a mixed -- if you're
4 specifically talking about the Edison property, then I would say
5 that we have a mixed situation, business-wise.

6 During the course of these years that we had this
7 lawsuit, they -- and what initiated the lawsuit was that all the
8 other properties around us were sold, and then all the properties,
9 the industrial park, was demolished. So there's only pads where
10 these buildings were.

11 And our buildings were the only buildings left in a
12 neighborhood of about 12 sites in that vicinity, and that's why we
13 initiated the lawsuit.

14 Subsequently, what's happened, what's been happening is
15 that the property has been taken over with homeless camps.

16 And just in the last few days, I have had to write the
17 City long letters, two-page letters explaining to them the
18 seriousness of the problem. There's at least 50 tents and
19 homeless camps set up on all these sites adjacent to our property.

20 There's probably 15 derelict motor homes and unlicensed
21 trailers that are parked on the street.

22 Q John --

23 A One of the camps --

24 Q John --

25 A -- is behind our property on the river. And people

1 transit through our property constantly, going to a river camp,
2 homeless river camp.

3 There's been one murder that took place behind our
4 property, and one woman that suspiciously burned up in her tent.

5 So there was two women that were burned up in their
6 tent. One has been ruled as a homicide and the other one was
7 ruled as an accidental death.

8 They were picked up on our security cameras. It was not
9 on our property, but they were directly behind our property on the
10 river, and our security cameras picked those up.

11 So we have a constant flow of homeless people transiting
12 through our property and --

13 **Q So Mr. DiFrancesco --**

14 A -- and the City -- and the City cannot handle the
15 problem, let's put it that way.

16 **Q Okay. So --**

17 A And recently they opened up a homeless center that will
18 house a lot of people, but these homeless people don't want to go
19 into the homeless center because they can't drink and they can't
20 do their drugs in this beautiful new facility --

21 **Q Sure.**

22 A -- that they have got.

23 So how's business? I'll tell you what --

24 CHAIRMAN WILLIAMSON: Mr. DiFrancesco, I think you've
25 answered Mr. Padgett's question. He'll go ahead and ask you a

1 second one maybe.

2 BY MR. PADGETT:

3 Q So, John, let me ask you, is that current as of today's
4 situation, right? After COVID and in the middle of COVID?

5 A I'm sorry, Brian, you came across very mumbled. I
6 couldn't hear you.

7 Q I'm sorry. Can you hear me now?

8 A I heard the last thing you said, yes.

9 Q Okay. So my question to you is: And that's as of
10 today, correct?

11 A Correct.

12 Q And that's as of towards the tail end of COVID, correct?

13 A Yes.

14 Q Okay. So let's orient ourselves with a proper date.

15 Now, you filed a bar complaint against me, right?

16 A Yes.

17 Q Okay. And by the way, I wish it had never come to that,
18 but, moving on.

19 I always loved you guys quite a bit, so, moving on.

20 So in 2019, you filed a bar complaint in the Summer of
21 2019, right?

22 A Yes.

23 Q Okay. So at that time, you didn't have the homeless
24 problem, did you?

25 A Oh, yes. Yes, we did.

1 Q It was the same as it is today?

2 A It's been a continual problem with the street and with
3 the City, and with these vehicles that are parked on the street.
4 People abandon their vehicles --

5 Q But Mr. --

6 A People abandon their vehicles constantly.

7 Q So, Mr. DiFrancesco, you didn't have the problems to the
8 extent you do today; isn't that correct?

9 I'll assume that -- I went back and I pulled an aerial
10 of your property as of 2019. So you might have had some people
11 parking on the streets, but you -- really, those pads were fairly
12 empty, weren't they, the surrounding pads that had been demo'd by
13 Washoe County, right?

14 A Well, the homeless camp was on the river, and the
15 people --

16 Q Yeah, but that's not --

17 A The homeless people --

18 Q -- that's not in the industrial park, correct?

19 A It's behind, directly behind our property. And the
20 homeless find it convenient to transit through our property to go
21 to the homeless camp on the river.

22 Q So when I looked at that aerial, it showed that the
23 industrial park was fairly clean, except for your property. And
24 that's a flex space property, right?

25 A Yes, it is.

1 Q And how many square feet per unit, roughly?

2 A 1,000 square feet.

3 Q Per unit. How many units?

4 A Approximately 50.

5 Q Okay. So that homeless camp, how long has it been
6 there?

7 A Several years. I don't -- I couldn't give you the exact
8 dates, but --

9 Q It wasn't in '19, was it? Not in the Summer of '19?

10 A Yeah, I would say, yeah, definitely.

11 Q And so it's down on the riverbank, right?

12 A Yes. Yeah, behind our property.

13 Q Sure. But not in the park, correct?

14 A No. It's not in the park, no.

15 Q Okay. So back in '19, though, when I look at that
16 aerial, it shows that the industrial park is pretty clean.

17 There's your property, and it's occupied. But as far as the other
18 pads go, there's no squatting on those pads; would you agree with
19 that?

20 A Well, I would agree that our property is very clean.

21 And we have to keep the property in tiptop condition because it's
22 inspected by our lender and by the insurance provider and --

23 Q And I remember you -- and I remember you put a lot of
24 extra money into those properties, right?

25 A Tens of thousands, if not more. Yeah.

1 Q Yes, you were a good landlord. You make improvements on
2 the property?

3 A No question about it.

4 Q And you preserve the value, right?

5 A No question about it.

6 Q Yes, I know. And I respect that.

7 But back in '19, though, because that's when we really
8 have to look at this, Summer of '19, that homeless camp, I can't
9 see any indication of that on the map.

10 So if it's down on the riverbank and it's not part of
11 the industrial complex, is that sanctioned by Washoe County?

12 A No, it's not.

13 Q So it's just a makeshift of people that don't have
14 anywhere to go that are kind of squatting on the riverbank?

15 A Yes, that's exactly right.

16 Q Okay. And you are sure that those squatters didn't come
17 right around 2020?

18 A No, they have been there for years.

19 Q Okay. But did they increase in size?

20 A Oh, definitely.

21 Q Sure. And that's logical, right, because of COVID and
22 then people getting kicked out of their places and so on and so
23 forth. Would you agree?

24 A Yes.

25 Q Okay. So you had -- anybody that was living on the

1 riverbank, that would have occurred prior to 2019, right?

2 A Were people living on the riverbank prior to 2019?

3 Q You had the homeless problem prior to 2019, correct?

4 A I'd say, yeah, we've had a constant homeless problem
5 dealing with -- with the fact that we're the only property in that
6 area where they can transit through our property to get to this
7 homeless camp.

8 Q Okay. So -- but that river kind of winds down through
9 the -- what is that, the north side of the entire industrial park?

10 A Well, if you're calling those vacant pads where the
11 buildings were, if you are calling that --

12 Q Correct.

13 A -- industrial park?

14 Q That's correct.

15 A It's hardly been an industrial park since 2012.

16 Q Sure.

17 A It's been an abandoned and demolished series of
18 buildings since 2012. They took down all the buildings that were
19 remaining on that site.

20 Q But going back and orienting you to --

21 THE WITNESS: So, Mr. Chairman --

22 BY MR. PADGETT:

23 Q -- the riverbank --

24 THE WITNESS: -- I'm going to have to leave in order to
25 get to my appointment now.

1 CHAIRMAN WILLIAMSON: No problem. Okay. So let's go
2 ahead and break there. Mr. DiFrancesco, please --

3 MR. PADGETT: Okay. So --

4 CHAIRMAN WILLIAMSON: Hold on, Mr. Padgett.

5 Mr. DiFrancesco, can you please join the hearing again
6 immediately following your medical appointment?

7 THE WITNESS: As soon as I can get back here. There's
8 quite a bit of transit time there.

9 CHAIRMAN WILLIAMSON: Sure. Understood. But, yeah, if
10 you can, come back. Mr. Padgett does have the right to ask you a
11 few more questions.

12 THE WITNESS: Okay.

13 CHAIRMAN WILLIAMSON: So do you mind doing that?

14 MR. PADGETT: Mr. Chair, I have a -- yes, I have some
15 questions for Mr. DiFrancesco.

16 But, John, we'll see you back. Just so you know, where
17 we're leaving off is, we're saying that the homeless are
18 traversing over your property to get to the homeless shelter,
19 which is on the riverbanks, correct?

20 THE WITNESS: I don't understand what you're talking
21 about, homeless shelter. What are you referring to?

22 MR. PADGETT: Well, the --

23 CHAIRMAN WILLIAMSON: Hold on.

24 Mr. Padgett, I'll let you take -- pick up and keep going
25 wherever you want to pick up and keep going, but we're going to

1 stop with the --

2 MR. PADGETT: Sounds good.

3 John, we'll see you in a bit. Thank you.

4 THE WITNESS: Okay. All right.

5 CHAIRMAN WILLIAMSON: Thank you. I'm going to ask
6 everyone else to stay on the Zoom. We will go off the record for
7 a moment.

8 (A discussion was held off the record.)

9 (A recess was taken from 10:46 a.m. to 11:04 a.m.)

10 CHAIRMAN WILLIAMSON: Let's go on the record.

11 We are now back on the record in the matter of State Bar
12 of Nevada v. Padgett, OBC19-1111. It is 11:04 a.m.

13 So Mr. Padgett -- Mr. Padgett is still on the phone, and
14 has asked how to handle exhibits.

15 I want to point out -- and this was an issue I noticed
16 earlier -- there is a trial brief that included all of the State
17 Bar's exhibits, but the numbering is, I guess, a little different
18 than the final disclosure exhibit list.

19 And so, Mr. Gosioco, when you are examining Mr. Padgett,
20 do you intend to use any exhibits?

21 MR. GOSIOCO: Yes, sir, I do.

22 CHAIRMAN WILLIAMSON: Okay. Can we make sure that --
23 can we email to Mr. Padgett all of the exhibits with the -- you
24 know, numbered exhibits so that he can at least pull them up and
25 look at them?

1 MR. GOSIOCO: Yes, sir. We can go ahead and resend
2 that.

3 Just for the record, we did email our final disclosures
4 including all those exhibits to Mr. Padgett, both of his email
5 addresses, on April 28th of this year.

6 MR. PADGETT: Okay. I'll look for that right now.

7 Mr. Chair, can I make a statement on the record?

8 CHAIRMAN WILLIAMSON: Please do. Go right ahead.

9 While Mr. Padgett is doing that, Mr. Gosioco or
10 Ms. Peters, if you can resend the final disclosures so Mr. Padgett
11 has all the exhibits, I would appreciate it.

12 Mr. Padgett, go ahead.

13 MR. PADGETT: So I do have a State Bar of Nevada's
14 Summary of Evidence, Final Designation of Documents and Witnesses,
15 April 28th. Is that it?

16 MR. GOSIOCO: Yes, sir.

17 MR. PADGETT: Okay. So I printed that. So I'm good, so
18 I can follow along.

19 Okay. My only question for you on this list,
20 Mr. Gosioco, was I have the documents that came with it. You
21 mailed it to me. But it doesn't start out with Bates stamp number
22 one, it starts out at 110 or something like that. And so it
23 leaves off the complaint, leaves off, you know, the early stuff.

24 It does get to -- it starts off with, like, I think a
25 default or default judgment. Was that on purpose?

1 MR. GOSIOCO: And, Mr. Padgett, the amended formal
2 hearing packet that we referred to in our sidebar conference with
3 Mr. Williamson is Exhibit 1.

4 MR. PADGETT: Yeah.

5 CHAIRMAN WILLIAMSON: I emailed that to you during our
6 sidebar conference, Mr. Padgett. Have you received that?

7 MR. PADGETT: Okay. Mr. Williamson did you send that to
8 my iCloud or briancpadgett.com?

9 CHAIRMAN WILLIAMSON: I sent it to both. It looks like
10 it got rejected from the iPad because the message is larger than
11 the size limit on messages, but I have not gotten any indication
12 that the other address did not receive.

13 MR. PADGETT: Okay. So let me take a look here. So if I
14 might go on the record real quick.

15 So, Ms. Court Reporter?

16 THE REPORTER: Yes.

17 MR. PADGETT: Okay. We're ready?

18 THE REPORTER: I've been on the record since
19 Mr. Chairman --

20 MR. PADGETT: Okay. Great. I just can't see. I can't
21 see you, so --

22 CHAIRMAN WILLIAMSON: Yeah. No, we're on the record.
23 Are you, Mr. Padgett, are you prepared to move forward and do you
24 have Exhibit 1?

25 MR. PADGETT: So I just got your email. And, let's see.

1 No. Okay. So maybe it's coming a little slow, but the last thing
2 I got was at 10:48 from Ms. Peters, with your office phone number,
3 so I imagine the next one to come through will be your email.

4 So I can go on the record quickly while we wait for
5 that, that would be great.

6 CHAIRMAN WILLIAMSON: Yes. As I mentioned, the
7 Exhibit 1 hearing packet is essentially the record thus far, the
8 pleadings.

9 MR. PADGETT: Okay. Exhibit 1 hearing packet.

10 Okay. So just briefly, I wanted it known that I did go
11 ahead and check in with Zoom yesterday on the State Bar site and I
12 signed in.

13 And the only thing I couldn't do was test the Zoom with
14 the camera because there was nobody on the other side. So I
15 started a little before 9:00 this morning, clicked in everything I
16 was supposed to do, I believe. This is my first time with Zoom.
17 However, seems relatively simple. But I cannot launch a camera,
18 and I had to actually call in on my phone in order to be able to
19 hear what's going on.

20 You know, right after 9 o'clock when I wasn't having any
21 success, I got in touch with Ms. Peters from the State Bar. And I
22 notified Ms. Peters that I wasn't able to get anything up on the
23 video screen, and I couldn't see or hear anything. So I asked her
24 to be patient with me as we were trying to get in.

25 Then finally we got in touch on the phone and she tried

1 to walk me through it, but I wasn't having any success launching
2 the video.

3 So at some point -- and I appreciate your position,
4 Mr. Chair -- you started the hearing without me. That's -- I
5 understand your point, your position.

6 So I decided at that point, rather than fiddle with Zoom
7 any more, that I would get on the phone and I would listen
8 telephonically to, you know, the events and try to catch up.

9 So I did that. I answered -- I asked Mr. DiFrancesco
10 some questions, which will be continued, but I do have concerns
11 over a couple of items.

12 Number one, I can't see anybody. I can't see facial
13 expressions. I can't see, when Mr. DiFrancesco paused a few
14 times, I can't see his face. That's a concern.

15 Also, I can't see any exhibits.

16 Now, Mr. Williamson said he did send me an email. I
17 think I just got it, so let me open it up. But I'm concerned
18 about the delay on the exhibits. I'm concerned about not seeing
19 any faces. We're trying. We're still trying to get in on Zoom,
20 so we'll keep doing that.

21 And maybe over lunch -- we're trying to get a tech guy
22 to come down. So we will see how that goes, but that seems to be
23 the main issue.

24 I feel that -- I'm game to continue to try and move
25 forward, I'm game to do that, but at some point I'll be concerned

1 about a prejudice.

2 So far, I think it worked good enough with
3 Mr. DiFrancesco, but I do think it's going to be difficult with
4 exhibits, but I'm willing to give it a try and I don't want to
5 delay anything.

6 CHAIRMAN WILLIAMSON: Thank you. I appreciate that.
7 And I appreciate -- let's, I do want to sort of complete the
8 record on that point.

9 Also, as you know, we recently just had a sidebar where
10 I summarized for you Mr. DiFrancesco's testimony, and confirmed
11 that he went through Exhibits 3, 5 and 34, as well as summarized
12 his testimony.

13 One quick question, again, I'm a Luddite so I'm sure I
14 won't be able to help much, but Mr. Padgett, can you describe for
15 me the devices that you have around you, and what -- how you have
16 tried to get into Zoom? Are you on a laptop? Are you on an iPad?
17 Did you try to do it on your cell phone? How are you trying to
18 access Zoom, from which media devices?

19 MR. PADGETT: Sure. I'm trying to get in on my laptop
20 because that has a camera, right? And so you can see me and I
21 should be able to see you with this. And this is what I used
22 yesterday to sign up for the Zoom conference which is today.

23 Now I also used my iPhone to call in to you, so that I
24 could be on this call and I could hear what was going on if the
25 proceedings started without me, so I wanted to make sure I could

1 hear everything. The screen on this iPhone is too small.

2 So we're trying to make do -- I mean, if it's going to
3 be Zoom and it's not going to be in-person like I asked for, then
4 I've got to make the best that I can of the situation.

5 However, I've got to be able to see everything. And I
6 just don't feel that the small screen on this iPhone -- if I could
7 get in -- I did try. It went right to telephonic -- on a
8 conference call, because I knew I could get on there, and this is
9 the only phone that I have, so there you go.

10 And I don't want to try and get on the Zoom when
11 conducting, you know, the disciplinary hearing, and I miss any
12 substance of anybody's testimony.

13 CHAIRMAN WILLIAMSON: Okay. Would you -- and I'm fine
14 proceeding and you being examined by phone, if both you and
15 Mr. Gosioco are okay with that, but also, would you like to try to
16 download the Zoom app and try from your phone, and maybe the
17 camera on your phone will have more success than the camera on the
18 laptop.

19 MR. PADGETT: Yeah. So we added the new Adobe Flash
20 Player, we added the Zoom app, per Ms. Peters. It's just not
21 launching, so I can try to phone.

22 But I would ask this, Mr. Chair.

23 Now, Mr. Gosioco, still has exhibits for me. And I
24 would like, if at all possible, that I go after lunch, that I be
25 examined after lunch or in the later afternoon, when it's likely

1 that I've got the Zoom player up. That gives me the best possible
2 chance to defend myself, rather than appear telephonically and
3 fumble through questions.

4 It's just there's -- it puts me at too much of a
5 disadvantage.

6 I know Mr. Gosioco has, you know, got probably six or
7 seven more witnesses. Mr. Gosioco?

8 MR. GOSIOCO: Mr. Gosioco. But I would like to respond
9 to that. No matter what order I call witnesses, the same issues
10 that Mr. Padgett is currently experiencing wouldn't change. So
11 whether I call Mr. Padgett next, which I intend to do, or whether
12 I call another witness instead of Mr. Padgett, he would still be
13 experiencing the same exact issues he's experiencing currently.

14 He had stated that he did receive a copy of our final
15 disclosures that he could refer to while he's on the phone, and I
16 will do my best to guide him through it, but at this point I don't
17 think there's any reason to delay these proceedings any further.

18 CHAIRMAN WILLIAMSON: Okay.

19 MR. PADGETT: Okay. Mr. Chair, if I may?

20 CHAIRMAN WILLIAMSON: Sure.

21 MR. PADGETT: If I may very quickly respond to that.

22 Mr. Gosioco, you and I both know, if you are examining
23 me, that I need every opportunity I have to fully defend myself.

24 Now, you also know there is a significant difference
25 between asking me questions and you asking another witness

1 questions.

2 I'm the person of the disciplinary hearing. There is a
3 difference, you have to agree. And it's a significant one.

4 CHAIRMAN WILLIAMSON: Mr. Padgett, if I can -- and
5 actually both counsel, if you can keep your comments directed to
6 me, and the panel, and not do kind of this cross-nipping at each
7 other.

8 Mr. Padgett --

9 MR. PADGETT: Yes, Mr. Chair.

10 CHAIRMAN WILLIAMSON: -- you know, Mr. Gosioco just made
11 an argument that you're going to run into those issues.

12 MR. PADGETT: Okay. So I'd like to direct that
13 directly, just very briefly. No, I don't think that's the case
14 because, first of all, if he's going to examine me again, I'm the
15 person that's in the disciplinary hearing. I'm the subject of the
16 hearing.

17 Again, I would ask that I have full opportunity to
18 defend myself, and I don't think I can do that just
19 telephonically, number one.

20 Number two, it would be different, Mr. Chair, by
21 allowing me to go after lunch, gives me the best opportunity to
22 get the Zoom player up and running. And I can see Mr. Gosioco, I
23 can see the exhibits. I can see him pointing to things in the
24 exhibits that I can't see telephonically.

25 I can see the facial expressions. I can see quite a

1 bit.

2 CHAIRMAN WILLIAMSON: I understand the advantages of
3 video, Mr. Padgett.

4 Here is my concern. I fail to see how the next
5 45 minutes are going to be the magic 45 minutes that get your Zoom
6 situation working, when presumably -- or I understand from your
7 representations that you have been working on it all morning. So
8 I don't think that's going to change.

9 If you would like to get on Zoom right now, from your
10 phone right now, I'll give you three minutes to do that.
11 Otherwise, let's get going by phone.

12 MR. PADGETT: Okay. Let me try for three minutes.

13 CHAIRMAN WILLIAMSON: Please call back in by 11:21 if
14 you're not on Zoom.

15 MR. PADGETT: Okay. So let me just say for the record,
16 I don't have the big iPhone, I have a regular sized iPhone. It's
17 not -- it's a small screen, okay?

18 So let me try. But I'm concerned, and I will say that,
19 you know, it would be simple to allow me to try and load the Zoom
20 player through lunch.

21 CHAIRMAN WILLIAMSON: Noted.

22 MR. PADGETT: Mr. Gosioco has got me all afternoon.

23 CHAIRMAN WILLIAMSON: Okay. Go ahead and try to Zoom in
24 now, please.

25 MR. PADGETT: Okay. Thank you.

1 CHAIRMAN WILLIAMSON: Let's go off the record until
2 Mr. Padgett returns.

3 (A recess was taken.)

4 CHAIRMAN WILLIAMSON: Yes. Let's go back on the record.
5 It is now 11:30. We broke to provide Mr. Padgett until 11:21 to
6 join either by Zoom or phone.

7 He has not joined by any method. I've sent him two --
8 two emails to follow up. One at 11:24. One at 11:28. I have not
9 heard anything. It's now been almost 10 minutes past the time
10 when he was supposed to rejoin us.

11 It now is 10 minutes past, so I'm going to ask
12 Mr. Gosioco to call his next witness.

13 MR. GOSIOCO: Thank you, Mr. Chairman. And the State
14 Bar would actually move to admit those two emails that you just
15 referred to, your email at 11:24 and your email at 11:28,
16 notifying Mr. Padgett to --

17 MR. PADGETT: Hello. Hello. Hello. Hello.

18 CHAIRMAN WILLIAMSON: Hello. Okay.

19 MR. PADGETT: I kept calling in and it kept giving me
20 elevator music over and over. Thankfully this worked. Okay.

21 CHAIRMAN WILLIAMSON: Okay. Well, you are in now.
22 Welcome back.

23 Given that, Mr. Gosioco, I assume your request to put
24 those emails in is moot?

25 MR. GOSIOCO: Yes, sir.

1 CHAIRMAN WILLIAMSON: Okay. So whoever you would like
2 it to be at this point, Mr. Gosioco, if you please call your next
3 witness.

4 MR. GOSIOCO: Yes. The State Bar would like to call
5 Mr. Padgett to the stand.

6 CHAIRMAN WILLIAMSON: Mr. Padgett, I'm going to ask
7 you -- I can't see you, but I'm going to ask you to raise your
8 right hand, wherever it is you are, so that Ms. Eisenberg can
9 swear you in.

10 MR. PADGETT: Okay.

11

12 BRIAN PADGETT

13 called as a witness, having been duly sworn,
14 testified as follows:

15

16 CHAIRMAN WILLIAMSON: Go ahead, Mr. Gosioco.

17 MR. GOSIOCO: Thank you, Mr. Chairman.

18

19 DIRECT EXAMINATION

20 BY MR. GOSIOCO:

21 Q Good morning, Mr. Padgett. Will you please state your
22 name and spell it for the record?

23 A Brian Padgett. B-R-I-A-N. Padgett, P-A-D-G-E-T-T.

24 Q Thank you, Mr. Padgett.

25 Now, Mr. Padgett, are you familiar with the underlying

1 grievance that brought us here today?

2 A I believe so.

3 Q Did you receive a copy of the grievance that was filed
4 by Mr. John DiFrancesco and Bob Feron?

5 A Is that what I would have received in June or July
6 of 2019?

7 Q And, Mr. Padgett, I understand that you have, you did
8 confirm earlier that you do have a copy of our final disclosures;
9 correct?

10 A So I have a document that is called State Bar of Nevada
11 Summary of Evidence, Final Designation of Documents and Witnesses.

12 Q Correct. If you would turn your attention to
13 Exhibit 34, and what I will do is I will share my screen, showing
14 the panel members the same exact exhibit.

15 A Okay. I will find 34.

16 MR. GOSIOCO: While you're looking for it, Mr. Padgett,
17 can the rest of the panel members see my screen?

18 CHAIRMAN WILLIAMSON: Yes.

19 MR. GOSIOCO: Perfect. Thank you so much.

20 CHAIRMAN WILLIAMSON: Mr. Padgett, I would guess that
21 Exhibit 34 is going to be about 360 pages or so into the packet
22 you said you printed out.

23 THE WITNESS: I'm here on document number 361 and it
24 looks like the first page.

25 MR. GOSIOCO: Yes.

1 BY MR. GOSIOCO:

2 Q Now, Mr. Padgett, so are you viewing Bates stamp 361?

3 A Yes, I am.

4 Q Do you recognize this document?

5 A Well, I recognize it because it came in your package.
6 That's all I can tell you at this time.

7 Q But did you, in fact, receive a copy of this letter?

8 A It would be the copy I'm looking at.

9 Q Let me rephrase. Did you receive a copy of this letter
10 on or around September of 2019?

11 A I haven't seen it, no. Not that I recall.

12 Q Okay. One second.

13 Turning your attention to -- let's see. Well, will you
14 take a look at the grievance and tell me what you believe this
15 document to be, Mr. Padgett.

16 A Well, it looks like a complaint by the clients.

17 Q Okay. And, currently, it is your testimony that you
18 never received this copy -- a copy of this letter from the State
19 Bar in 2019?

20 A No, I'm not saying that I did or I didn't. What I said
21 is I'm not familiar with it.

22 Q Okay. But to the best of your knowledge, Mr. Padgett,
23 do you recall having received this letter from the State Bar at
24 the end of -- towards the end of 2019?

25 A Towards the end of 2019, I might have.

1 Q Okay. And if you received -- and give me one second.

2 Let me turn your attention to Exhibit Number 35. That should be
3 Bates-stamped 390. And I will share that on my screen as well.

4 A 390, okay. Hang on one moment.

5 Okay. I'm looking at 390.

6 Q Okay. And, Mr. Padgett, do you recognize this document?

7 A It's addressed to me.

8 Q And what does it appear to be, Mr. Padgett?

9 A Well, it says regarding grievance file OBC19-1111, John
10 DiFrancesco, et al.

11 Q Okay. And you did just testify that you -- it was
12 addressed to you, correct, Mr. Padgett?

13 A This letter, exhibit -- well, page 10, number 390.

14 Q Yes, sir. Exhibit 35, Bates-stamped 390.

15 A Yes.

16 Q You would agree that this letter was -- okay. Thank
17 you, Mr. Padgett.

18 Did you receive this letter back in 2019?

19 A I might have. I know there was something that got us
20 involved in this grievance, so I can tell you that.

21 Q Okay.

22 A That particular document, I can't tell you at this time.

23 Q Okay. That's not a problem.

24 Now, towards the bottom of the letter on Bates-stamped
25 390, do you see the signature block by a Ms. Louise Watson?

1 A Yes, I do.

2 Q And just above that, there's a one-line paragraph, could
3 you read that to yourself quietly and let me know when you are
4 finished reading.

5 A I finished.

6 Q And could you just summarize what I asked you to read,
7 Mr. Padgett?

8 A It says "Please provide your response no later than
9 September 25, 2019."

10 Q Okay. And did you, in fact, provide a response to the
11 State Bar?

12 A I believe I did. And I believe what I told the State
13 Bar was that we had our server breached and we believed that Amy
14 Sugden was responsible, so --

15 Q Okay. And just --

16 A It also -- it also said that --

17 Q Thank you, Mr. Padgett.

18 Mr. Padgett, I apologize, that's not within the scope of
19 my question.

20 But you believe you responded to this letter, correct?

21 A I might have.

22 Q Okay. And turning your attention to Bates stamp 393,
23 that's Exhibit 37. I'm going to share that on the screen as well.

24 A Yes.

25 Q Okay. So Mr. Padgett, you are currently looking at

1 Bates stamp 393, correct?

2 A Yes.

3 Q And at the top of that page, I guess, do you recognize
4 what this document is?

5 A Well, it looks like a response to Ms. Watson dated
6 October 14, 2019.

7 Q Okay. Perfect.

8 Why exactly -- and let me scroll all the way down to --
9 looks like Bates stamp 405.

10 A Okay. Yes.

11 Q And does that appear to be -- at the bottom of Bates
12 stamp 405, does that appear to be your electronic signature?

13 A Well, it says slash, or a backslash, S, backslash,
14 Brian C. Padgett, but I would have signed this. This was prepared
15 by the lawyer that was working in the office at the time.

16 Q So it's your testimony today that you did not prepare
17 this letter whatsoever?

18 A Well, I believe I would have reviewed the letter.

19 Q Okay. But ultimately you approved the letter as to its
20 form and content; correct, sir?

21 A Well, I believe I saw a draft of it.

22 Q But you did send this to the State Bar; is that correct,
23 Mr. Padgett?

24 A Well, I believe she did.

25 Q But you did review this letter, correct?

1 A As I said, I reviewed a draft.

2 Q Okay. And before signing -- and before sending this
3 letter to the State Bar you would have approved it, correct?

4 A Well, yes, typically that's how we would do it. But I
5 do recall seeing a draft and I gave my comments on the draft, and
6 I don't believe I saw a final back because I gave comments on the
7 draft.

8 Q Okay.

9 A But she -- here's the thing. If I would have reviewed
10 it right before it went out the door -- so she was -- she was a
11 new lawyer working for me at the time -- seasoned, though. If I
12 would have looked at it right before it went out, then there
13 wouldn't have been an electronic signature. It would have been my
14 signature.

15 Q Okay. Well, let me --

16 A Just shortly -- shortly around that time, Mr. Gosioco,
17 we sent you guys a second letter that said, look, the server has
18 been breached and some of the documents that you want, we don't
19 have at this time, we're trying to recover those documents.

20 Q Thank you, Mr. Padgett.

21 A I believe I went through that with Ms. Watson. Thank
22 you.

23 Q Thank you. And again, Mr. Padgett, my last name is
24 pronounced Mr. Gosioco.

25 But let me point -- direct your attention to specific

1 portions of your letter. And I'm going to first --

2 A Hello?

3 Q Let's first -- actually that same page, 4 -- Bates stamp
4 405.

5 Do you see the portion of page 405 that's, I guess,
6 Sections B and C?

7 A On page 405?

8 Q Correct. The one we were just looking at.

9 A Yes, I do.

10 Q Okay. So do you see the text that I'm referring to,
11 Mr. Padgett, under Section B and C?

12 A Yes, I do.

13 Q Could you read quietly to yourself the paragraph under,
14 immediately under Section B, please, and let me know when you're
15 finished.

16 And for the panel members I will highlight that portion
17 on my screen.

18 A Okay. I've read it.

19 Q Perfect. Thank you. Now, can you read quietly to
20 yourself the paragraphs under Section C, please. And let me know
21 when you're finished.

22 And for the panel members on Zoom I'm highlighting that
23 portion on my screen as well.

24 A Okay.

25 Q Thank you, Mr. Padgett.

1 Now, could you summarize just briefly what you had
2 written in that, in those sections to the State Bar.

3 A Well, you know, I can't exactly say, because it's been
4 quite a while. However, what I will tell you is -- so we had, at
5 the time that the DiFrancesco case was handled on a day-to-day
6 basis, that was handled by Amy Sugden, who I believe you'll be
7 calling as a witness. Amy Sugden was an independent contractor.
8 We'll get into that later, I'm sure.

9 However, she worked closely with -- with our legal
10 secretary, Ruth, who handled all of the billing with Amy in this
11 case.

12 So Amy was fired on March 15 of 2019. After that, it
13 was up to us to piece together what we -- what we saw in the files
14 that hadn't been breached. And I will tell you, Ms. Sugden wiped
15 out nine years of emails, I want to say.

16 Q Okay. And let me --

17 A You'll get to her, but my point is, Mr. Gosioco, I think
18 it would be difficult for us to -- for me to recreate the travel
19 costs or the current balance owed by the DiFrancescos because,
20 number one, Amy handled the case day to day. Number one.

21 Number two, so she would have sent out the billing. I
22 would add in my hours, she would add in hers. Ruth would prepare
23 it and send it out the door.

24 About two months after Amy was fired, Ruth was also let
25 go.

1 Q And, Mr. Padgett, I'm going to stop you there. Let me
2 just ask you some specific questions and hopefully we can discuss
3 those points instead.

4 After you had read paragraphs under B and C, did that
5 refresh your recollection as to whether or not you provided the
6 State Bar any invoices or ledgers?

7 A So this is what I recall, Mr. Gosioco. I spoke with Amy
8 Sugden, who was trying to recreate all of -- I believe both B and
9 C. And because Ms. Sugden also kept a laptop that she took
10 between the office and her house, I believe that she had on her
11 hard drive that information. And she said she was working on it.
12 I said okay.

13 We talked at length about exactly what, if anything,
14 that Mr. DiFrancesco still owed the firm, if anything.

15 We talked about the travel costs. We talked about
16 depositions.

17 And Ms. Sugden, who was day to day on the case, said she
18 was preparing it and would be sending it to Ms. Watson, and I left
19 it at that.

20 Q Okay. Mr. Padgett, so after you read Section B on this
21 letter on Bates stamp 405 --

22 A Uh-huh.

23 Q -- do you recall, in fact, sending the State Bar an
24 itemized ledger?

25 A Well, I did not send an itemized ledger to the bar. I

1 don't recall that I did.

2 Q Okay. But on behalf of your firm, it was sent -- an
3 itemized ledger was sent to the State Bar that was attached to
4 your response, correct?

5 A I have no knowledge of that.

6 Q Okay. And, again, Mr. Padgett are you still on Bates
7 stamp 405?

8 A Yes, I am.

9 Q And if you read a particular line, would that help
10 refresh your recollection?

11 A Well, I see Exhibit 11, see Exhibit 12.

12 Q Okay. And, Mr. Padgett, turn your attention to the
13 second line under Section B. It starts with "attach" -- "I
14 attach" -- go ahead and read that sentence to yourself and I'm
15 highlighting that portion on my screen for the panel members to
16 do.

17 And let me know when you are finished, Mr. Padgett.

18 A I'm finished.

19 Q Okay. Let me ask you one more time, Mr. Padgett. Did
20 you attach an itemized ledger with this response to the State Bar?

21 A Well, it says here that it looks like that was the case.

22 Q Okay. And when was that ledger through? I guess, what
23 was the last date the ledger included?

24 A I have no idea. I would have to go to the ledger. And
25 Mr. Gosioco, I mean if we looked at the date on this document --

1 so it's October 14th, 2019 -- so it was a while ago. I haven't --
2 I haven't looked at it in that long, and I think I looked at a
3 draft. And I don't believe that I looked at -- I mean, I would
4 have to have my recollection refreshed.

5 Q Okay. Absolutely.

6 A I'm just trying to be frank.

7 Q And again, we can review the same exact sentence I just
8 asked you to read, so if you want to go ahead and read that one
9 more time. It starts on the second line under Section B. And let
10 me know when you are finished, Mr. Padgett.

11 A I'm done.

12 Q Okay. And go ahead and read the first paragraph under
13 Section C. I will highlight that portion, that entire paragraph,
14 it looks like it's four lines, I will highlight that portion for
15 the panel. And let me know when you are finished.

16 A Okay.

17 Q And let me ask you this, Mr. Padgett. Based on your
18 reading, did that refresh your recollection as to the date, the
19 date range, your itemized ledger that you attached, went through?

20 A Well, it says that the law firm went to a new accounting
21 program and I've tasked the accountant with reconstructing a
22 ledger from 2016, forward.

23 But I don't believe that says whether we had a ledger
24 prior to that, which we -- I believe we did. And that the
25 accountant was then tasked with creating something after that

1 time.

2 However, I did speak with Ms. Sugden, who was on the
3 case day to day, who said she was recreating it.

4 **Q And when was this conversation with Ms. Sugden when she**
5 **was recreating this ledger?**

6 A Well, it would have been after the -- after the date of
7 this letter.

8 **Q Okay. So your testimony is that -- and correct me if I**
9 **am wrong, but you had testified that you had fired Ms. Sugden in**
10 **March of 2019; is that correct?**

11 A That's correct.

12 **Q And you had just testified that this letter was actually**
13 **drafted in October of 2019; correct?**

14 A This wasn't drafted by Ms. Sugden.

15 **Q But you agree with me that this letter was dated in**
16 **October of 2019; is that right, Mr. Padgett?**

17 A Well, that's what it says on the first page, but it was
18 not drafted by Ms. Sugden.

19 **Q And it is your testimony right now that after you had**
20 **sent this letter to the State Bar, October 2019, is when you asked**
21 **Ms. Sugden to create a ledger; is that right?**

22 A No. Actually I didn't ask Ms. Sugden to create a
23 ledger. From my conversation with Ms. Sugden -- I mean, I think
24 for the sake of answering the request of the Bar, any grievances
25 between us were set aside, and she said she was recreating the

1 hours and billables, and I said okay.

2 And she said it's supposed to be due to the Bar, and I
3 said okay. And I was curious as to what the final tally was.

4 But, at the same time, Ms. Sugden never got back to me
5 again. So I assume that if she was requested to provide
6 information to the Bar, then she would have done so, but I never
7 got a copy. However, I did assume that Ms. Sugden did forward it
8 because she had enough information in the phone call to make it
9 seem as though, you know, she was on top of this ledger.

10 Q Okay. And let me ask you this. So you agree with me,
11 Mr. Padgett, that the itemized ledger sent to the State Bar was
12 all the way up through November 2016; correct?

13 A All the way up through November 2016, I can't say that
14 for sure. I don't have the ledger in front of me.

15 Q Okay. Let me turn your attention briefly -- and I'm
16 going to have to scroll a little bit to find the ledger that was
17 included. And once I find that Bates stamp, I will let you know
18 the same. Give me one moment.

19 A Okay.

20 Q Okay. I would like to first turn your attention to
21 Bates stamp 556, Mr. Padgett.

22 A Okay. Let me get to that, please.

23 Q No problem. Let me know when you have located that
24 page, Mr. Padgett.

25 A Okay. I'm there.

1 Q Thank you. And what does this page Bates-stamped 556
2 appear to be?

3 A Looks like an invoice, it says.

4 Q Okay. And what is the date range for this invoice,
5 Mr. Padgett?

6 A It says November 2015 through February 2016, billable
7 hours.

8 Q Okay. And let's scroll down to 557. Does that appear
9 to be a continuation of the invoice, Mr. Padgett?

10 A Well, it's in a different format but it looks to be an
11 accounting of hours.

12 Q But you would agree with me that pages 556 through 559
13 is essentially one invoice; is that right?

14 A This looks like support for the cover page invoice, 556,
15 exhibit number, is what it looks like to me.

16 Q Okay. Let's -- and after -- let's see. Let's go to
17 Exhibit 12, which is immediately after 559, so it would start on
18 561, Mr. Padgett. Let me know when you're there.

19 A Okay. I'm there.

20 Q And do you recognize what this document is?

21 A Well, I can go by what it says. It says DiFrancesco
22 Family Trust.

23 Q Okay. And the page immediately preceding that, that
24 states Exhibit 12, correct?

25 A That's correct.

1 Q Okay. And let's go down to page 565, Mr. Padgett.

2 A Okay.

3 Q I know it's a little tough to read, but if you --
4 towards the -- let's see. It looks like one, two, three --

5 A Yeah, I was going to say that I can't really read it,
6 but go ahead.

7 Q But you have a hard copy, correct, because you had
8 stated you printed these pages out?

9 A No, these came to me in the mail.

10 Q Physical mail?

11 A I -- I believe it did.

12 Q What are you referring to currently, Mr. Padgett? Are
13 you looking at a hard copy?

14 A So I'm looking at a hard copy. And on the first page,
15 it says State Bar of Nevada's Notice of Hearing, dated April 28,
16 2021.

17 Q But on page 565 -- so you've been referring this entire
18 time to hard copies of our documents; correct, Mr. Padgett?

19 A Where I can, yes.

20 Q It's a simple yes or no question, Mr. Padgett. So this
21 entire time you have been viewing your documents, the documents I
22 have been referring to, have you been looking at hard copies of
23 those documents or electronic copies of those documents?

24 A Well, where I can view the electronic, I can just open
25 it up and, yeah, I can magnify it.

1 Q Okay. I'll move on. But you do have hard copies in
2 front of you; correct, Mr. Padgett?

3 A I didn't know if it's a complete set of documents. I
4 mean, it's --

5 Q But you have a hard copy; correct, Mr. Padgett?

6 A I don't know of what.

7 Q Page -- you were just looking at Bates stamp 565,
8 correct?

9 A Correct.

10 Q Are you still looking at that currently?

11 A It's in front of me, yes.

12 Q And is that copy -- is that in electronic form or a hard
13 copy?

14 A Looks like a hard copy.

15 Q Okay. So it appears to be a hard copy, is that what
16 you're saying, what you are looking at?

17 A Well, what I'm saying -- and I'm sorry to be unclear --
18 yes, I'm looking at a hard copy, but I'm having a hard time
19 reading the hard copy.

20 Q Okay. Well, you also say that you have an electronic
21 version available, correct?

22 A Well, I don't think these are the same documents. So
23 the last thing I was sent was -- I've got some documents from
24 Ms. Peters I'm trying to go through so that I can match things up.

25 Q Okay. Well, let's -- that's okay. Let's look at

1 page -- Bates stamp 565. Are you still with me there,
2 Mr. Padgett?

3 A Yes, I am.

4 Q And to the best of your ability, at the bottom right
5 corner, it looks like at the very rightmost column, it looks like
6 four spaces up. I will Zoom it in for the panel. And if you
7 could, just to the best of your ability, let me know what that
8 last date says.

9 A And where am I looking again?

10 Q The bottom right-hand corner.

11 A The bottom right-hand corner. Okay.

12 Q Of Bates stamp 565, Mr. Padgett.

13 A Yes.

14 Q And what does that date state?

15 A Well, it's blank.

16 Q And there's -- it's going to be the rightmost column and
17 four rows up. Do you see what I'm referring to, Mr. Padgett?

18 A There's a date there.

19 Q And can you read that date, Mr. Padgett?

20 A 27, 16, I'm not --

21 Q If I told you Mr. Padgett that it said 09/27/16, would
22 you have any reason to doubt that statement?

23 A Well, if you want me to take your word for it, okay. We
24 can discuss it on that hypothetical. I'm sure that's what it
25 says. I can't read it, but -- and let me say for the record,

1 Mr. Gosioco, again, I'm on this disciplinary hearing via
2 telephonic conference. I don't have the luxury of Zoom. I can't
3 see the exhibits you are highlighting. I can't see your facial
4 expressions. I can't see anything.

5 Q And I understand that, Mr. Padgett, but do you have a
6 copy -- as you had testified earlier, you have a copy of the State
7 Bar's final designation of witnesses, the final disclosures, in
8 electronic form, as well, correct?

9 A Okay. So I believe they should have been sent to me.
10 However, the last thing I have is an email from Mr. Williamson,
11 the chair, asking me to join the hearing now so that we can
12 resume.

13 Q And that wasn't my question, Mr. Padgett.

14 CHAIRMAN WILLIAMSON: Let me -- Mr. Gosioco, let me just
15 jump in.

16 Mr. Padgett, on Bates stamp 565.

17 MR. PADGETT: Yes, sir. Yes.

18 CHAIRMAN WILLIAMSON: Do you have any reason to believe
19 that that does not state 09/27/16?

20 MR. PADGETT: No, I don't have reason to believe that it
21 doesn't say that.

22 CHAIRMAN WILLIAMSON: Okay. Thank you.

23 MR. GOSIOCO: Thank you, Mr. Chairman.

24 BY MR. GOSIOCO:

25 Q And just, Mr. Padgett, scrolling to the top -- and this

1 is, this document we were just looking at is Exhibit 12, correct?

2 If you look at Bates stamp 560?

3 A You want me to look at Bates stamp number 560?

4 Q Correct. Just to verify that the document we were just
5 looking at, the ledger, is, in fact, Exhibit 12?

6 A That's correct.

7 Q Okay. And I'm going to scroll all the way back to your
8 actual letter to the State Bar, which is on Bates stamp 405.

9 A Okay. You want me to look at 405 now?

10 Q Yes, sir.

11 A Okay.

12 Okay. So go ahead.

13 Q Do you see the section, Section C, on 405?

14 A I do.

15 Q And you already had a chance to review the contents of
16 Section C, correct, Mr. Padgett?

17 A A few minutes ago, yes.

18 Q Yes. And is it true that you stated in that section
19 that you'll be supplementing that ledger, Exhibit 12, to the State
20 Bar from 2016, forward?

21 A Okay. So it says that it will be supplemented along
22 with the total fees and costs still owed by the DiFrancescos.
23 After that, I have given you testimony, sir, that I had spoken
24 with Amy Sugden, who handled the case on a day to day basis.

25 Q Okay. And, Mr. Padgett, that's not my question. My

1 question is simply, did you state that you would supplement
2 Exhibit 12 to the State Bar?

3 A That's what it says here.

4 Q And did you, in fact, supplement this ledger, Exhibit 12
5 that we just reviewed, to the State Bar?

6 A Well, I believe we were relying on Ms. Sugden to do so.

7 Q Okay. So you were relying on Ms. Sugden after this
8 letter was drafted in October of 2019. Is that right?

9 A I think I testified that I had spoken with Ms. Sugden
10 after the date of this letter, which I believe to be the case. I
11 don't think it was before. But once I had spoken with her and it
12 looked like she was putting hours together, I believed that, based
13 on my conversation with her, she would be supplementing that to
14 the Bar.

15 Now, being that she was working under her Ace Legal,
16 LLC, company when she was working as an independent contractor for
17 the law office, and was handling the day-to-day matters for the
18 DiFrancesco case, I have no reason to believe that she wasn't the
19 best person to put that together.

20 And as I said, we put aside, you know, any grievances
21 between us, because I think this matter needed immediate
22 attention, I think she agreed.

23 And I think that, at that point in time, I had no reason
24 to believe she would not supplement, and, therefore, the questions
25 that were asked by Ms. Watson would be satisfied.

1 Q Okay. So if I'm understanding this correctly, you were
2 relying on Ms. Sugden to supplement this ledger for your
3 grievance; is that correct?

4 A Well, my understanding, Mr. Gosioco, was at the time she
5 worked for the firm as an independent contractor, and she handled
6 the day-to-day matters for the DiFrancesco case. She would have
7 been the best person to do that.

8 When I talked to her, it looked like that some of the
9 same questions that the State Bar had of me were also put to
10 Ms. Sugden.

11 When I spoke to her on the phone, it being that she
12 prepared the hours along with Ruth, our legal secretary, it seemed
13 to make sense she would be the one to put those together. And
14 based on my conversation with her, that's what she was doing. So,
15 therefore, yes.

16 Q Okay. Let me actually ask you to turn your attention
17 to, really, Ms. Sugden. So you had testified that Ms. Sugden
18 worked for the Law Office of Brian C. Padgett; correct?

19 A I wrote her compensation to Ace Legal, LLC.

20 Q Okay. So -- but did she ever work for the Law Offices
21 of Brian C. Padgett?

22 A Well, Ace Legal did. And let me explain. Ace Legal
23 stands for Amy, Chris and Emma, Chris being her husband and Emma
24 being her first child.

25 She married Chris Sugden shortly after she was doing

1 part-time work for the office, because she wanted to get married
2 and didn't want to be tied down to a lot of work.

3 **Q Okay.**

4 A And she kept that kind of free spirit mentality to an
5 extent as she started clocking in more hours with the firm.

6 And as soon as she got married and she had Emma, she
7 created Ace Legal. And I think Amy came to us in 2011, I want to
8 say, possibly. And she'd been with us for just about nine years.

9 **Q Okay. And so you're saying "she's been with us." So by**
10 **"us," you mean the Law Office of Brian C. Padgett; is that right?**

11 A Well, being with us meaning, like, she was in the fold.
12 She's working as an independent contractor. She always made that
13 clear. That's why I wrote every check to Ace Legal. However --

14 **Q Okay.**

15 A -- when I say, you know, "us," look, I tried cases with
16 her. She was working side by side with me for nine years. Prior
17 to that she had -- she had probably about five years of
18 experience, prior -- five or six years prior to the nine that she
19 worked for me.

20 She was familiar with how I handled a case, and we
21 always, you know, we had case updates, so it was -- yes, the
22 day-to-day matters on a case, the billing went with -- you know,
23 was left to her and Ruth. She would ask me what hours I had.

24 **Q Mr. Padgett, so you did just testify that. So**
25 **Ms. Sugden did, in fact, work for you. You just testified to**

1 that, correct?

2 A Let me be clear. Ms. Sugden worked for Ace Legal, LLC.

3 Q Okay. Well, let me ask you this, Mr. Padgett.

4 A Ace Legal. Hold on, please.

5 Ace Legal was what -- was the company that the Law
6 Offices of Brian C. Padgett hired. And we signed all payroll
7 checks to Ace Legal. Never Amy Sugden.

8 Q Okay. So you hired -- so your law offices hired Ace
9 Legal, correct?

10 A As an independent contractor, yes.

11 Q But you just testified that your office hired Ace Legal,
12 correct?

13 A Let me be very clear. We compensated Ace Legal for the
14 hours spent on the cases that we agreed that they would take.

15 Q Okay.

16 A That she would take.

17 Q And I understand that.

18 Aside from Ms. Sugden, was anybody else part of Ace
19 Legal?

20 A You know, it says -- the Ace is Amy, Chris and Emma.
21 Obviously, Emma was too young to work. I don't know what her
22 husband Chris did for her.

23 Q Okay. But as far as --

24 A Go ahead.

25 Q But as far as your firm's compensation to Ace Legal,

1 those were solely for the work that Amy Sugden provided, correct?

2 A Well, I said I couldn't say that because I don't know
3 exactly what her husband did, if anything.

4 Q Did you ever -- and I apologize for cutting you off,
5 Mr. Padgett -- but did you ever issue a check to Ace Legal with
6 the intention of it going to Chris?

7 A We just wrote the check to Ace Legal.

8 Q Okay. And so Ace Legal -- let me ask you this,
9 Mr. Padgett.

10 Were you, at any point during those nine years, you
11 stated possibly 2011, on, were you Ms. Sugden's supervisor?

12 A So if you'll allow me to explain, please. The reason
13 that I hired Ace Legal, who I suppose Ms. Sugden worked for, that
14 was at her request.

15 Now, that said, when you say was I her supervisor, so
16 Ms. Sugden, as far as I know, worked in Missouri before -- after
17 she got done in law school, she worked in Missouri.

18 Q Mr. Padgett, I apologize for cutting you off, but the
19 question I'm asking for, just is asking for --

20 A Was I her supervisor?

21 Q Yes. Were you her supervisor?

22 A No, it's not that simple, and so please let me explain,
23 and if that's not satisfactory to you then I'll try to do it
24 differently.

25 But let me just explain to you that -- so Ms. Sugden

1 then worked for another firm when she came to Nevada. And then
2 she, prior to working for -- prior to Ace Legal, working for my
3 firm in an independent contractor capacity, she worked for Leach,
4 Johnson, Song and Gruchow. So that's Kirby Gruchow. I've known
5 Kirby Gruchow for 20 years now. And Kirby worked for condemning
6 authorities. And that's how I met Ms. Sugden. It's very rare
7 that you have anybody who is knowledgeable in the field of eminent
8 domain.

9 Because I have a high regard for Mr. Gruchow and his
10 knowledge of eminent domain law and his ability to and his wont to
11 teach people, I saw the work in opposing Mr. Gruchow in an NV
12 Energy case. I was representing the landowner. I got to see
13 Ms. Sugden work, firsthand, in actually two NV Energy cases back
14 to back. And I thought she was very competent and I thought Kirby
15 did a very good job working with her.

16 **Q Okay. But Mr. Padgett --**

17 A She came to me, after six years or so, she came to me
18 very well-seasoned as far as eminent domain goes.

19 And, again, that's a niche area for sure. Not too many
20 people know it. But if you know it, then you don't -- then I
21 would say Ms. Sugden, after six or seven years of practice, was
22 certainly knowledgeable about the primary statute for eminent
23 domain, the case law that, you know, the case law that controlled
24 in certain situations, the way that condemning authorities work,
25 their methodical process for coming up with offers to landowners

1 versus their ultimate settlement numbers, which I thought was
2 extremely important.

3 I got the other side of the coin with Ms. Sugden's
4 company, Ace Legal. She could look at it from a condemning
5 authority perspective, whereas I've only represented homeowners.

6 Q And that's why you hired Ace Legal; correct,
7 Mr. Padgett?

8 A I hired Ace Legal because they -- because Amy Sugden was
9 very knowledgeable in the field of eminent domain --

10 Q Perfect.

11 A -- working for Kirby Gruchow.

12 Q And I'll ask you again, Mr. Padgett. While Ms. Sugden
13 or Ace Legal was working for your firm, the Law Office of Brian
14 Padgett, while you were writing the checks to Ace Legal, did you
15 act as Ms. Sugden's supervisor?

16 A Okay. So, like I said, Ms. Sugden came in very
17 well-seasoned; however --

18 Q And, Mr. Padgett, if you could just limit your response
19 to a yes or no question. Yes or no answer.

20 Were you Ms. Sugden's supervisor when you were issuing
21 checks to Ace Legal?

22 A It's not so simple, Mr. Gosioco.

23 Mr. Chair, can I elaborate, please?

24 CHAIRMAN WILLIAMSON: No, you'll have an opportunity to
25 do your own examination. You can do your own, you know, obviously

1 sort of narrative direct.

2 Just, I mean, if the answer is no, the answer is no. If
3 the answer is yes, the answer is yes.

4 Can you please respond to Mr. Gosioco's question of
5 whether or not you were Ms. Sugden's supervisor while she or Ace
6 Legal, LLC, were doing work for the Law Offices of Brian Padgett.

7 THE WITNESS: Well, I can't say I was her supervisor.
8 She was an independent contractor, per se.

9 However, for a limited period of time, I did make sure
10 that she was familiar with the way I practiced law and the way
11 that we represented landowners.

12 BY MR. GOSIOCO:

13 Q Okay. Now Mr. Padgett, at any point during your law
14 office's association with Amy Sugden or Ace Legal, did you, I
15 guess, review any of Ms. Sugden's work?

16 A Did I -- will you restate the question, please?

17 Q While there was an ongoing business relationship between
18 the Law Offices of Brian Padgett and Amy Sugden and/or Ace Legal,
19 did you review any of Ms. Sugden's work?

20 A I'm sure I did at one point.

21 Q And during those same time periods, did you at any point
22 order her to, you know, file a pleading or draft something a
23 certain way?

24 A So I can't -- I can't say any particular time that that
25 happened, because the firm holds -- in eminent domain there's not

1 a lot of new breaking law, so we have a lot of boilerplates on
2 summary judgment, motions in limine, motions to dismiss, certain
3 eminent domain case law that we rely on.

4 And Ms. Sugden was certainly seasoned enough to know
5 about summary judgments, motions to dismiss, motions in limine,
6 also motions for date of valuation, and motions for a date of a
7 taking. She's drafted all of those using our boilerplate.

8 You know, if she asked me, would you take a look at
9 this, of course I would.

10 But, again, you know, I really respect Kirby Gruchow. I
11 had seen Ms. Sugden's work.

12 It was initially important to me that she knew how we
13 prepared a case for landowners, and walked through timelines when
14 certain things would be filed, you know, working on the theory of
15 the case. And then she would get -- she would get her assignment,
16 as far as her independent contractor assignment.

17 **Q Okay. And did you assign cases to her, Mr. Padgett?**

18 A I assigned Ms. Sugden day-to-day work on certain cases,
19 yes.

20 **Q Did you assign Ms. Sugden to the DiFrancesco matter?**

21 A Ms. Sugden and Ace Legal handled the day-to-day work on
22 that case. However, I did go up to Reno for a summary judgment
23 hearing and certainly handled some matters on the case. I met
24 with the clients up in Reno.

25 And so I would say, to answer your question, yes,

1 Ms. Sugden was asked to handle the day-to-day matters on the case,
2 but, yes, I conferred with the clients, we took phone calls with
3 the client, went and met with the clients, handled motions up in
4 Reno. But day to day, Ms. Sugden.

5 Q Okay. But the DiFrancesco matter was a client of the
6 Law Office of Brian Padgett, correct?

7 A Well, when Amy, full timing, would take a case, I
8 believe we'd make it clear that Ace Legal was working with the Law
9 Offices of Brian C. Padgett. However, at the end of the day,
10 yeah, I mean, I believe that they -- that that was made apparent.

11 Q And you had just testified that Ms. Sugden handled the
12 day-to-day matters for the DiFrancesco matter, correct?

13 A That's correct.

14 Q At any point did you take over her role as primary
15 contact for John DiFrancesco or Bob Feron?

16 A No, but I would say that if there was a point in time
17 when they weren't communicating with each other the way that I
18 thought they should have, so I interjected myself in some calls
19 and some emails, and I spoke with the clients, and I think we got
20 back on the same page.

21 I think Ms. Sugden was somewhat frustrated by the
22 clients. And if they are listening, I'd point to that, towards
23 the end of our time together, a certain email that Ms. Sugden sent
24 out that I then called them on and said let's talk about this,
25 because I think Ms. Sugden was frustrated by --

1 Q Mr. Padgett, you just mentioned an email. What email
2 are you talking about, exactly?

3 A Oh, I just -- I think that there was -- clear that, you
4 know, I think that she wanted the clients to understand that there
5 was an offer on the table and the clients weren't receptive to it.

6 At the time that we came in and took the case, Washoe
7 County had put an offer on the table for the clients and then
8 revoked it.

9 And so it was our job to get them to come back to the
10 table or go to trial. And I think there was some pushing and
11 pulling between Ms. Sugden and the clients, as far as how much
12 money Washoe County had, how -- what their appetite was to
13 continue to negotiate.

14 She knew the lawyer for Washoe County very well, so --
15 and better than I did. So I believed that, based on her
16 relationship with this gentleman, that, you know, that he would be
17 pretty straightforward with her. And so she had a good line on,
18 you know, what Washoe County could do and what they couldn't do.

19 Q Okay. And, Mr. Padgett, I guess in your opinion, did
20 there seem to be a breakdown between the relationship, the
21 relationship between Ms. Sugden and John DiFrancesco or Bob Feron?

22 A Well, I think there was some frustration on both sides.
23 And so I came in, I talked to both sides, and I made sure that,
24 you know, everybody was back on the same page.

25 Q Okay.

1 A Now, I trusted Ms. Sugden to handle the case as she has
2 done others. She has had some very good results for the office,
3 or Ace Legal did, I should say. And, like I said, we have been in
4 trials together and I knew her work ethic and -- at that time, and
5 I also knew that she put in a good amount of time, you know,
6 outside of the office too.

7 And I don't believe that she shortchanged the clients at
8 that time. I believed that, you know, any push and pull between
9 her and the clients was based on her caring about the clients and
10 having a good understanding where Washoe was coming from, that
11 maybe the clients didn't have.

12 So my job was to try and get the clients to understand
13 where she was coming from, and then get direction from the
14 clients.

15 But I think, overall, I think that the clients felt
16 that -- you know, I can't say. I can't say.

17 But I will say this. There were a couple of times when,
18 you know, I felt there was some push and pull, but Ms. Sugden felt
19 that it was imperative that they understand the position of Washoe
20 County and what she could get on the table and what she couldn't,
21 and what that would mean for their case going forward, depending
22 on what they chose to do.

23 And, you know, I think that because of that, you know,
24 that, you know, I needed to come in at some point and convey it
25 maybe in a different format, you know.

1 Q Okay. Mr. Padgett, did you -- I want to turn your
2 attention to a specific document. That will be Exhibit 32,
3 Bates-stamped SBN 356. And I'm going to share that on my screen
4 for the panel.

5 A 356, what is it?

6 Q Exhibit 32. Bates-stamped 356.

7 A Okay. Hold on.

8 Q And let me know when you are there, Mr. Padgett.

9 A Okay.

10 Q Okay. And you are currently looking at Bates stamp 356?

11 A That's correct.

12 Q And Mr. Padgett, what does that document appear to be?

13 A A letter to the clients.

14 Q Is this a letter or an email, Mr. Padgett?

15 A It's an email to the clients.

16 Q And who is it from?

17 A From me.

18 Q Okay. And let's scroll down to the following page, 357.

19 Do you see where it says -- do you see where it says from Amy
20 Sugden, Mr. Padgett?

21 A That's correct.

22 Q And this was sent to you; is that right?

23 A It looks like copy to the clients as well.

24 Q But it was sent to you; correct, Mr. Padgett?

25 A Directly, but also copied to clients, yes.

1 Q Okay. And let's scroll down to the next page, 358.

2 A Okay.

3 Q And is there another email located on that page?

4 A Looks like it, yes.

5 Q And who is that email from?

6 A Ms. Sugden.

7 Q And who is it to?

8 A Myself.

9 Q Okay. And does that appear to be the last email in this
10 exhibit, Exhibit 32?

11 A It doesn't really say what exhibits are what, so I don't
12 know, but it looks like 359 is the last in this run, or could be
13 360.

14 Q Okay. And so I'm specifically speaking about pages 356
15 to 359. Do you recall receiving these emails, Mr. Padgett?

16 A Yeah, I have some recollection, yes.

17 Q And based on your recollection, what did this email
18 thread -- what was this email thread about?

19 A Well, I think I encapsulated it in my earlier testimony
20 when I said that I think that Amy had some insight into what
21 Washoe County wanted to do or what their appetite was for putting
22 money on the table in settlement, and that that money could get
23 reallocated elsewhere.

24 The clients weren't as receptive, as I think Amy felt
25 the urgency, knowing the backstory with Washoe. I think they

1 wanted to look at it further and see if they could get the number
2 up higher.

3 Q So, Mr. Padgett --

4 A What?

5 Q So, Mr. Padgett, this email thread, is this an example
6 of what you were referring to, kind of a disagreement between
7 Ms. Sugden and Mr. DiFrancesco and Mr. Feron?

8 A No, I can't -- if I could just finish what I was
9 originally saying, Mr. Gosioco. Can I do that?

10 CHAIRMAN WILLIAMSON: No, Mr. Padgett. If you could
11 answer Mr. Gosioco's questions. Again, you'll have an opportunity
12 to respond, but you don't need to provide a narrative response
13 every time. You can just answer his questions so that we can all
14 move on.

15 THE WITNESS: Thank you, Mr. Chair.

16 What was the question, Mr. Gosioco?

17 BY MR. GOSIOCO:

18 Q Gosioco.

19 Was this a disagreement between Amy Sugden and
20 Mr. DiFrancesco and Mr. Feron?

21 A I think this was an email from Amy to me stating that
22 she was unhappy over certain things with regard to the clients.

23 Q Okay. And I'm looking at Bates stamp 358. Do you see
24 the font in red from Ms. Sugden to yourself?

25 A I've got a black and white copy.

1 Q Okay. Let me just rephrase then.

2 Immediately under the, I guess, from the "from," "date,"
3 "to" and "subject," there's a line that says "draft." Do you see
4 that, Mr. Padgett?

5 A Yes, I do.

6 Q Can you read that paragraph immediately preceding the
7 word "draft" quietly to yourself and let me know when you are
8 finished. I'll highlight that portion to the panel.

9 CHAIRMAN WILLIAMSON: Immediately following the word
10 "draft."

11 MR. GOSIOCO: Correct.

12 THE WITNESS: Yeah, I've read it.

13 BY MR. GOSIOCO:

14 Q Okay. And we're going to scroll up or go up to
15 page 357, in another email. Do you see what I'm referring to,
16 Mr. Padgett?

17 A No.

18 Oh. "Can you please review and then send"?

19 Q Yes.

20 A Okay.

21 Q So I'm looking at that and this email, as you testified
22 earlier, Mr. DiFrancesco was actually cc'd on this email, correct?

23 A It looks that way, yes.

24 Q Okay. And let's go up to page 356. Let me know when
25 you are there, Mr. Padgett.

1 A Okay. I'm there.

2 Q And you had testified earlier, you know, that sometimes
3 Ms. Sugden and your client didn't see eye-to-eye and you would
4 interject yourself because you didn't like the way Ms. Sugden was
5 handling the case; correct?

6 A No. Here in this case Ms. Sugden asked me to send them
7 a letter because she said I really think it will be better from
8 you.

9 Q Okay. And then email on page 356, who wrote that email?

10 A I did.

11 Q And who is it addressed to?

12 A To the clients.

13 Q And was anybody cc'd on this email?

14 A Ms. Sugden.

15 Q Okay. And if you will do me a favor -- it looks like a
16 pretty short email, Mr. Padgett -- would you read the entire email
17 starting with "Bob and John," all the way to "all the best," right
18 above your signature, quietly to yourself and let me know when you
19 are finished.

20 A I have read it.

21 Q Okay. And pointing your attention -- and do you
22 recognize -- do you remember writing this email, Mr. Padgett?

23 A I don't remember writing it but I've read it and I
24 recall it.

25 Q But would you say it's a fair statement that you sent

1 this email to John DiFrancesco and Bob Feron?

2 A That's what it says.

3 Q Okay. And looking at this third line below "Bob and
4 John," I'm going to highlight it. It starts with "At that time."
5 Do you see what I am -- what line I'm referring to, Mr. Padgett?

6 A Yes.

7 Q Would you read that to yourself again and let me know
8 when you're finished.

9 A I've read it.

10 Q And summarize it, I guess you can summarize. What did
11 that line say?

12 A It says at the time I told her to remove the -- or find
13 another attorney -- language, because that's not the way my office
14 works.

15 Q Okay. And I'm going to move on from this.

16 Mr. Padgett, what is your current address?

17 A 1672 Liege Drive, but also now we're reopening 611 South
18 6th Street as well.

19 Q Okay. But let me ask you this. What is your home
20 address, Mr. Padgett?

21 A 1672 Liege Drive.

22 Q Okay. And at any point did you notify the State Bar
23 that you were residing at 1672 Liege Drive?

24 A Well, the first thing I did in February of 2020 was I
25 sent a notice of change of address to you, or to the State Bar,

1 Mr. Gosioco.

2 Then as my license needed to be renewed with CLE credits
3 and fees paid, I updated -- I noticed that in my own private
4 website that typically, or my own particular individual
5 information on the Bar, from the Bar -- that typically Ruth
6 handled, but she wasn't there anymore, Ruth was let go -- the
7 information wasn't up to date, so I updated it.

8 Q Okay. But you did at some --

9 A That was on my own personal page, I believe.

10 Q But, Mr. Padgett, you did at some point notify the State
11 Bar that you would be using 1672 Liege Drive as your main address,
12 correct?

13 A February 2020.

14 Q Okay. So on February 2020, it's your testimony today
15 that on or around February 2020 you notified the State Bar that
16 you would be using 1672 Liege Drive as your primary residence for
17 State Bar contact; is that correct?

18 A No, I believe what we said was we were moving the office
19 to 1672 Liege, as I do have an office here, and we would be
20 working out of that office as our server was breached, and our
21 investigator Mick Elliott, who's a 25-year FBI special agent, had
22 recommended that we work off flash drives and hard drives, because
23 the server was not secure.

24 Q Okay. But the reason for you sending this letter in
25 February of 2020 to the State Bar was to notify the State Bar that

1 if we had to communicate you, we should reach you at 1672 Liege

2 Drive, correct?

3 A Well -- so Connie Little had sent that to you, but
4 shortly after that -- I'm not sure when you received it -- but
5 shortly after that we had the pandemic and the state of emergency
6 was called for.

7 And when I look at your emails, and those of the other
8 State Bar members, Mr. Gosioco, there's a disclaimer down below
9 the signature line that says because of the pandemic we're going
10 to be working from our homes, and please be advised that if you
11 send any mail to us, we may not get it and it may impact your
12 case, so very similar.

13 Q Okay. But ultimately you did, your testimony is around
14 February of 2020, you notified the State Bar that you could be
15 reached at 1672 Liege Drive?

16 A Or the office. And that was done by Connie Little. I
17 believe she supplied an affidavit to that extent.

18 Q Okay. And you submitted that affidavit, correct,
19 Mr. Padgett?

20 A Yes, I did.

21 Q Okay. And, actually, we can look at that affidavit
22 right now, which is -- it's going to be Exhibit 46 and it starts
23 on Bates stamp 714, Mr. Padgett.

24 Let me start sharing my screen. Again, that's Bates
25 stamp 714.

1 A I'm looking at 714.

2 Q **Okay. And what does that document appear to be?**

3 A I'm notifying you again that you can reach me at 1672
4 Liege Drive, because none of your mailings went to 1672 Liege
5 Drive, they went to either the law office at 611 South 6th Street
6 or my old home residence at 11274 Gammila Drive. And I wasn't
7 getting any of your mailings.

8 And so I went ahead and sent this to you at the same
9 time that I notified you that I didn't have any notice of this
10 case.

11 Q **Okay. What was the date this email was sent,**
12 **Mr. Padgett?**

13 A It says October 15th, but I had sent you a letter prior
14 to that as well.

15 Q **But this email specifically is October 15th, 2020,**
16 **correct?**

17 A That's what it says, yes.

18 Q **And that was the date of the formal hearing initially,**
19 **correct?**

20 A I don't recall, but we sent you something just prior to
21 that, that was three or four pages long, explaining, with
22 exhibits, the situation.

23 Q **Okay. And let me scroll down. And this is -- I'm going**
24 **to look at Bates stamp, starting at Bates stamp 720.**

25 Let me know when you are there, Mr. Padgett.

1 A Okay. Exhibit A.

2 Q And Mr. Padgett, in that email that you sent on
3 October 15th, 2020, you attached a letter which included exhibits
4 to that email, correct?

5 A Oh, this was -- we sent you a letter, and attached to
6 the letter there were exhibits, yes.

7 Q And Bates stamp 720 and 721, those are exhibits that you
8 sent to the State Bar on October 15th, 2021, via email; correct?

9 A 720 and 721?

10 Q Right. 720 says Exhibit A, and 721 appears to be an
11 affidavit, or declaration. Affidavit.

12 A Yeah, the affidavit is pages 721 to 722.

13 Q Yes. And did you submit this to the State Bar,
14 Mr. Padgett?

15 A I believe it's in an exhibit to the letter that was sent
16 to the State Bar, yes.

17 Q But you submit this letter in the exhibit to the State
18 Bar, correct?

19 A My office did, yes.

20 Q Under your direction, correct?

21 A I suppose. Yes, I would say so.

22 Q Okay. Looking at Bates stamp 721, Mr. Padgett,
23 paragraph -- starting with paragraph 5, can you read five and six
24 for me, Mr. Padgett, on Bates stamp 721?

25 I will highlight that portion for the panel on my

1 screen.

2 A I see it.

3 Q Okay. And so is it a correct statement that on
4 February 28 of 2021, according to Ms. Little, she mailed a notice
5 of change of the law firm's address to the State Bar per your
6 request; is that a correct statement?

7 A That's what it says here on paragraph 6.

8 Q Okay. And these are all true and correct statements,
9 correct? It's on an affidavit?

10 A I believe Ms. Little made this statement and then it was
11 notarized.

12 Q Okay. But you submit this statement to the State Bar;
13 correct?

14 A I believe it was submitted, yes.

15 Q Okay. Would you agree with me that starting on
16 page 714, Bates-stamped 714. Let's look at 714. Let me know when
17 you are there, Mr. Padgett.

18 A I'm there.

19 Q At the very top of page 714, was -- this is an email,
20 correct?

21 A That's what it looks like.

22 Q And does it appear to be -- did you send any attachments
23 along with this email, Mr. Padgett?

24 A It says NVbarresponse.PDF.

25 Q So you would agree with me that there was an attachment

1 to your email, correct, Mr. Padgett?

2 A That's what it says.

3 Q Okay. And going to page 715, it looks like it's start
4 of a letter. Do you see where I'm at, Mr. Padgett?

5 A I do.

6 Q Would you agree with me that this was part of the
7 attachment in your email on October 15th, 2020?

8 A Well, it's dated earlier.

9 Q Would you agree with me that this was the attachment
10 that was sent along with your email on October 15, 2020?

11 A You know, I can't say unless I look in my computer, but
12 I can tell you that this was sent to the bar.

13 MR. GOSIOCO: Okay. Mr. Chairman, I will pass the
14 witness.

15 CHAIRMAN WILLIAMSON: Why don't we take a break there.
16 So it's 12:43. Let's resume at 1:45 sharp, after lunch.

17 And again, Mr. Padgett, hopefully over the lunch hour,
18 you can get Zoom working, but we will be starting at 1:45 sharp.

19 Does anyone have any questions or need any other
20 accommodations?

21 MR. GOSIOCO: No, sir.

22 MR. PADGETT: No, thank you.

23 Oh, Mr. Chair?

24 CHAIRMAN WILLIAMSON: Yes.

25 MR. PADGETT: Who are the other panel members?

1 CHAIRMAN WILLIAMSON: You've got Nathan Aman and Brooke
2 Westlake.

3 MR. PADGETT: Thank you.

4 CHAIRMAN WILLIAMSON: And we are off the record.

5 (A recess was taken.)

6 CHAIRMAN WILLIAMSON: Okay. Let's go on the record.

7 It is now 1:45, resuming the formal hearing in State Bar
8 of Nevada versus Brian C. Padgett, OBC19-1111.

9 A couple of housekeeping matters, I guess, just while
10 we're seeing if Mr. Padgett will rejoin us.

11 One of our panel members needs to leave at 3 o'clock so
12 we really do need to kind of try to move things along. And I
13 would encourage both parties to, if -- you know, obviously, make
14 whatever points you need to make, but if it's not material let's
15 try to just focus on what we need with regard to the merits of
16 this case and the points that each party needs to make.

17 And, likewise, if Mr. Padgett was here listening, I
18 would encourage him strongly to just give clear and straight
19 answers.

20 As he is not here, we were in the middle of his
21 testimony, but Mr. Gosioco had passed the witness.

22 I'm going to assume Mr. Padgett is going to be fine
23 with, at this point, with just reserving, and he can state his
24 response and his direct, his direct narrative in his case in
25 chief.

1 So as Mr. Padgett is not here with us right now,
2 Mr. Gosioco, do you have another witness?

3 Do you have another witness, Mr. Gosioco?

4 MR. GOSIOCO: I apologize, my Internet apparently is
5 unstable right now, so I'm going to try to make sure I'm off of
6 WiFi on other things.

7 I do have -- well, I was informed that Mr. DiFrancesco
8 was back. I don't know how you would like to handle that,
9 Mr. Williamson. I did have a few other questions for him, but in
10 the interest of time, because he did have that appointment, that I
11 did pass the witness to allow Mr. Padgett to ask some questions as
12 well.

13 CHAIRMAN WILLIAMSON: Sure. Yeah. No, I think really
14 the -- that witness is Mr. Padgett's right now. I'm fine if --
15 obviously, I would think any questions you have could logically
16 come up in rebuttal, and so let's hold off on Mr. DiFrancesco.

17 Was there anyone else you needed to include? Either the
18 other grievants or more preferably, you know, any process servers,
19 anything like that you want to just knock out and get that taken
20 care of?

21 MR. GOSIOCO: Yeah. State Bar would call Sean Cassiday
22 to the stand, please.

23 CHAIRMAN WILLIAMSON: Okay.

24 MR. GOSIOCO: Mr. Chairman, if you would like, in the
25 interest of time, I'm trying to see who else is ready. Looks like

1 they may be looking for Mr. Cassiday at the moment.

2 CHAIRMAN WILLIAMSON: Do you we know if -- we've got a
3 new face. I don't know where it is in your gallery. For me it's
4 at the bottom. We think that's Mr. Padgett or one of the
5 witnesses?

6 MS. PETERS: That is Sean Cassiday's employer. He was
7 going to use her computer, but in the meantime Mike Sullivan is in
8 the breakout room.

9 CHAIRMAN WILLIAMSON: Okay. Let's get Mike in here.
10 Let's get anybody. Give me a witness.

11 MR. GOSIOCO: Yeah, State Bar would like to call Mike
12 Sullivan to the stand, please.

13 CHAIRMAN WILLIAMSON: Okay.

14 MR. GOSIOCO: And, Ms. Peters, could you please put
15 Mr. Cassiday's window back in the breakout room for now?

16 MS. PETERS: Louise Watson is also here.

17 Now, here is Mr. Padgett.

18 CHAIRMAN WILLIAMSON: Oh, good.

19 MS. PETERS: I'll let him in.

20 CHAIRMAN WILLIAMSON: Okay.

21 Mr. Padgett, are you there?

22 MR. GOSIOCO: I don't believe that's Mr. Padgett. I
23 believe that audio is Mr. Cassiday.

24 MS. PETERS: Oh, okay. That's who it is. Okay.

25 MR. GOSIOCO: Is Mr. Cassiday now available?

1 MR. CASSIDAY: Yes.

2 CHAIRMAN WILLIAMSON: Do it.

3 MR. GOSIOCO: Okay. The State Bar would like to call
4 Sean Cassiday to the stand, please.

5 Mr. Cassiday, can you please raise your right hand and
6 prepare to be sworn.

7 MS. PETERS: Oops. Where'd she go?

8 CHAIRMAN WILLIAMSON: Uh-oh.

9 Ms. Peters: Uh-oh. It says he's in here.
10 Well, I'm trying.

11 MR. GOSIOCO: Ms. Peters, are you able to admit any of
12 the other witnesses in, in the meantime?

13 MS. PETERS: How about Louise?

14 MR. GOSIOCO: That's fine. Let's try to put Louise in,
15 please.

16 MS. PETERS: Okay.

17 MR. GOSIOCO: The State Bar would call Ms. Louise Watson
18 to the stand.

19 CHAIRMAN WILLIAMSON: Good afternoon, Ms. Watson. Can
20 you hear us?

21 MS. PETERS: Uh-oh. Now where did she go?

22 CHAIRMAN WILLIAMSON: The universe is against us here.
23 I don't know what's going on.

24 MS. PETERS: There you are.

25 MS. WATSON: Sorry. I went into a breakout room, I

1 think. Wrong button.

2 CHAIRMAN WILLIAMSON: Ms. Watson, could you please your
3 right hand.

4

5 LOUISE WATSON

6 called as a witness, having been duly sworn,
7 testified as follows:

8

9 CHAIRMAN WILLIAMSON: Mr. Gosioco, your witness.

10 MR. GOSIOCO: Thank you, Mr. Chairman.

11 DIRECT EXAMINATION

12 BY MR. GOSIOCO:

13 Q Good afternoon, Ms. Watson. Could you please state your
14 name and spell it for the record, please.

15 A My name is Louise Watson, W-A-T-S-O-N.

16 Q Thank you so much. And, Ms. Watson, how are you
17 employed?

18 A I'm a paralegal/investigator with the Office of Bar
19 Counsel.

20 Q Okay. And at any point during your duties as a
21 paralegal/investigator, were you assigned to Grievance Number
22 OBC19-1111?

23 A Yes.

24 Q That was a grievance pertaining to Brian C. Padgett,
25 correct, Ms. Watson?

1 A Correct.

2 Q And who are the grievants in that matter?

3 A It was, I believe his name -- oh. It's gone off the top
4 of my head -- is Mr. Feron and his business partner.

5 Q Okay. And was that business partner John DiFrancesco?

6 A Correct.

7 Q Thank you, Ms. Watson.

8 Now, what was the nature of the grievance regarding
9 Mr. Padgett?

10 A They complained generally of a lack of diligence in
11 the -- Mr. Padgett's office had assumed in their case. It was
12 some kind of eminent domain/property rights case that they claim
13 Mr. Padgett's office failed to prosecute timely, didn't prosecute
14 within a five-year limitation; there were times when there was
15 lack of communication that they complained about, and complaints
16 regarding fees they had paid in anticipation of depositions being
17 taken; the one -- just -- so lots of general lack of diligence
18 complaints.

19 Q Okay. Thank you. And, Ms. Watson, you testified that
20 you are a paralegal and investigator. As it pertains to this
21 specific matter, were you assigned as a paralegal or an
22 investigator?

23 A It's an investigative position, so I was an
24 investigator.

25 Q Perfect. Thank you.

1 Now, as part of your investigations, when you receive a
2 grievance of this nature, what is your next step once you received
3 this grievance?

4 A We review it for the issues and a letter of
5 investigation is developed to send to the responding attorney to
6 have them provide a response to the allegations within the
7 grievance.

8 Q Okay. And in this matter, did you actually -- did you
9 send a letter investigation to Mr. Padgett?

10 A I did.

11 Q And briefly, I just want to share my screen. And I'm
12 showing you what's been previously marked and admitted as
13 Exhibit 35.

14 Now, Ms. Watson, can you see my screen fine?

15 A Yes.

16 Q Thank you. And do you recognize this document?

17 A Yes. That is the letter of investigation that I sent to
18 Mr. Padgett.

19 Q Okay. And at the bottom, is this your signature here?

20 A Yes.

21 Q Okay. Thank you so much, Ms. Watson.

22 Now, in this letter of investigation, what kind of
23 things did you ask Mr. Padgett to provide?

24 A At this one it was a response to the allegations of the
25 grievance, along with a complete copy of his file, and that that

1 would include his retainer agreement, any correspondence, billing
2 records, pleadings in the case, whatever would be in his file.

3 Q And, Ms. Watson, did Mr. Padgett, in fact, respond to
4 your letter of investigation?

5 A He did.

6 Q Okay. I'm going to share my screen briefly. Showing
7 you what's been previously marked and admitted as Exhibit 37.

8 Ms. Watson, can you see my screen okay?

9 A Yes.

10 Q And do you recognize this document, Ms. Watson?

11 A Yes, that is the response that we received from
12 Mr. Padgett.

13 Q Okay. Perfect. Thank you so much.

14 And, Ms. Watson, to the best of your recollection, did
15 Mr. Padgett provide the invoices as requested?

16 A He provided invoices from the initiation of the case, I
17 think through November of 2016; but beyond that, he did not have
18 invoices that he could produce.

19 Q Okay. And did he mention anything about any invoices
20 past November 2016?

21 A He indicated that he had changed programs and he would
22 supplement his response with those invoices or his accounting
23 records, but he did not do so.

24 Q Okay. And did he -- okay. So you testified that
25 Mr. Padgett did not send you a supplement to those invoices.

1 A No.

2 Q So as far as -- the only invoices received, the last
3 date that you were able to review was November 2016; is that
4 correct?

5 A Correct.

6 Q Okay. And just briefly, my understanding is that
7 Ms. Sugden was also mentioned in these grievance -- by these
8 grievants, correct?

9 A Yes, she was an employee or an associate in
10 Mr. Padgett's office that had some responsibility in this case.

11 Q Okay. And did you ask Mr. Padgett about his
12 relationship with Ms. Sugden?

13 A I didn't specifically ask him about his relationship.
14 In his response, I believe he, of his own accord, mentioned that
15 she had responsibility for this case, and it was his opinion that
16 he couldn't be held responsible as her supervisor because she was
17 a contracted employee within his office rather than an actual
18 employee.

19 Q Okay. And, Ms. Watson, in this grievance, was there any
20 mention -- I believe you testified earlier that there was some
21 mention about some payments made by the grievants to go towards
22 depositions; is that correct?

23 A Correct.

24 Q Did Mr. Padgett -- did you ask Mr. Padgett about those
25 payments?

1 A I believe I did, and his -- asked him to explain that,
2 oh, how he accounted for those. And he explained that it was --
3 because the clients owed money on prior invoices, that those funds
4 were applied to that balance, even though they were intended for
5 deposition payments --

6 **Q Okay.**

7 A -- and costs.

8 MR. GOSIOCO: Thank you. And I have no further
9 questions for Ms. Watson.

10 CHAIRMAN WILLIAMSON: Okay. Mr. Padgett not being here,
11 Ms. Watson, you are excused. Thank you.

12 THE WITNESS: Thank you.

13 CHAIRMAN WILLIAMSON: Mr. Gosioco, please call your next
14 witness.

15 MR. GOSIOCO: Ms. Peters, is either Sean Cassiday or
16 Mike Sullivan ready to go?

17 MS. PETERS: This will be Mike Sullivan. Well --

18 MR. GOSIOCO: Thank you. Then the State Bar would call
19 Mike Sullivan to the stand, please.

20 CHAIRMAN WILLIAMSON: Okay.

21 MR. GOSIOCO: Ms. Peters, are there any other witnesses
22 available right now in the breakout room?

23 CHAIRMAN WILLIAMSON: You're on mute, Laura.

24 MR. SULLIVAN: What do I do, just wait? Am I going to
25 be going next?

1 MS. PETERS: Yeah, hold on.

2 It says Mike Sullivan should be in the room and I don't
3 know why he's not. He has logged on.

4 MR. SULLIVAN: Yeah, I never left.

5 MS. PETERS: Yeah. Yeah. I know you didn't, Mike.

6 MS. FLOCCHINI: If he looks down at the bottom where the
7 breakout rooms are, and clicks on the button that says "breakout
8 rooms," there may be, like, an "enter" and "out" down there that
9 he just has to click again.

10 MR. SULLIVAN: I'm doing it right now. Do I sign in One
11 spot or Two?

12 MS. PETERS: One.

13 MR. GOSIOCO: Mr. Sullivan, if it's not too much
14 trouble, could you maybe leave and then rejoin the room?
15 Hopefully that works.

16 MS. PETERS: Yeah, I moved him and now I'll move him
17 back.

18 MR. SULLIVAN: Now, I'm in Room Two and there are three
19 people in there.

20 MS. PETERS: Yeah, I just shook it up, so maybe you'll
21 be -- you'll appear now. You should be in Room One, that's where
22 everybody else is.

23 MR. SULLIVAN: Yeah, that's what it says, it says you
24 are in Room One.

25 MS. PETERS: Okay. Huh-oh.

1 MR. SULLIVAN: I'm the only person I see.

2 MS. FLOCCHINI: Can you now leave the breakout room?

3 Can you go to the leave button and leave the breakout room?

4 MR. SULLIVAN: Do I try the "leave room"?

5 MS. PETERS: Yeah. Yeah. Do that.

6 MR. SULLIVAN: Now it says returning back.

7 MS. PETERS: Okay. You are showing up. There you are.

8 CHAIRMAN WILLIAMSON: There you are. Good. All right.

9 Just a moment.

10 Thank you for joining us.

11 Would you please raise your right hand.

12 MR. SULLIVAN: So this is for me, Mike Sullivan?

13 CHAIRMAN WILLIAMSON: Yes, it is.

14

15 MICHAEL SULLIVAN

16 called as a witness, having been duly sworn,

17 testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. GOSIOCO:

21 Q Good afternoon, Mr. Sullivan.

22 A Good afternoon.

23 Q Will you state and spell your name for the record,
24 please.

25 A Michael Sullivan. Last name spelled S-U-L-L-I-V-A-N.

1 Q Thank you so much, Mr. Sullivan.

2 Mr. Sullivan, how long have you been practicing law in
3 the State of Nevada?

4 A Just over 29 years.

5 Q And of those 29 years, how many of those years have been
6 spent in Washoe County?

7 A 29.

8 Q Okay. So your entire practice has been in Washoe
9 County; is that correct, Mr. Sullivan?

10 A Yeah. I practiced outside of the Reno area but my
11 office has always been in Reno.

12 Q Okay. Thank you so much.

13 Now, Mr. Sullivan, about how many cases do you take to
14 trial? In your 29 years, could you give me an approximate number.

15 A I can definitely give you an exact number. I've had 10
16 or 11 jury trials. And I would say probably about the same amount
17 or a little bit more for bench trials, and at least a hundred
18 arbitrations.

19 Q Thank you, Mr. Sullivan.

20 Mr. Sullivan, do you know an individual by the name of
21 John DiFrancesco?

22 A Yes.

23 Q What about Bob Feron?

24 A Yes.

25 Q And how do you know those two individuals, Mr. Sullivan?

1 A Approximately two years ago I represented them for a
2 brief period of time in a lawsuit that was in Washoe County.

3 Q Okay. And did they, do you know why they hired you,
4 Mr. Sullivan, in your opinion?

5 A I do. They had previously, for approximately seven
6 years, been represented by Brian Padgett and Amy Sugden, in
7 Las Vegas, and they contacted me because they were not satisfied
8 with how their attorneys were treating them, and they wanted to
9 have my law firm substitute in as counsel for some damage control.

10 Q Okay. And ultimately, Mr. Sullivan, how did the case
11 end?

12 A Let me give a little bit of background to put it into
13 context.

14 I was contacted by these two gentlemen to assist them
15 with the case, it was Case Number CV12-01788 in front of Judge
16 Polaha, that had been going for about seven years.

17 And they -- when they contacted me they said, hey, we've
18 talked to some other lawyers in Reno and Vegas about this Nevada
19 five-year rule. We understand that after a case is filed, if you
20 don't bring it to trial in five years, it can be dismissed against
21 us. And we think we're out several hundred thousand dollars,
22 maybe millions of dollars in damages.

23 But we're concerned, we've paid our lawyers a lot of
24 money and we don't know who is telling us the truth, because the
25 attorney we were dealing with, Amy Sugden, is not really

1 responding to us, and our former attorney, her boss, Mr. Padgett,
2 has gone off the air. And we're worried that we're sort of being
3 bamboozled and not being told exactly what's going on.

4 And so we need you to review this and find out, do we
5 have a legitimate case, and if so, would you be able to take it to
6 trial, because our attorneys who are in Vegas, they don't seem
7 interested in actually trying the case or getting a settlement
8 conference.

9 So after that, I picked up the phone and I called the
10 adverse party's counsel, who is a very good attorney, Steve Silva.
11 I asked him the situation. He said, Mike, the five-year rule had
12 indeed ran, at least one year before I got involved, and he was
13 waiting also to hear from both Ms. Sugden and Mr. Padgett. And he
14 said his calls were not being returned.

15 So I said is there the chance to go to a settlement
16 conference and see if we can resolve it, even though, basically,
17 my hands are tied, and you could always laugh at me and say the
18 five-year rule is running. And he said, no, the reason that's not
19 going to work is two- or three-fold.

20 First, obviously as defense counsel, we don't really
21 think that we have a lot of liability, but that the fund was set
22 up several years ago, really doesn't have any money in it. And
23 the only way it gets money is to go to the legislature.

24 So even if you wanted to go, even if you could convince
25 me that there was something, I don't think we would have any

1 ability to fund it, even a modest amount. And, therefore, I've
2 been instructed to dismiss the case.

3 And I said, so you're going to file a motion that
4 basically says the five-year rule is absolute, there's no way to
5 get around it, and therefore we lose; and then you're going to ask
6 for your costs? Yes, and those are at least 10 to \$20,000, and
7 then we could ask for attorney's fees.

8 So with all of that being said, I went back to both
9 clients and I said here's the deal. If the other side moves for
10 the five-year rule, there's no way to get around it that I'm aware
11 of. I've looked at the case law, I've talked to some of my
12 friends who are judges, you can't get around it.

13 The only way you could have got around it is to start
14 the trial one day before the five-year rule runs, have the judge
15 know what's going on and then extend the trial out. That never
16 happened.

17 So if I were you guys, I would dismiss the lawsuit, lick
18 your wounds, and do what you have to do.

19 And that's exactly what we ended up doing.

20 And the other side, Mr. Silva, said the only way his
21 clients would accept it would be to do a dismissal with prejudice.
22 Whether that has any legally-binding effect remains to be seen. I
23 think it probably does.

24 And, therefore, my clients were not subjected to paying
25 the other side's costs or paying my firm any more money than they

1 already had, to do damage control, and that's how we left it.

2 So my client got rid of the case, because that's all
3 they could do.

4 **Q Okay. So ultimately your clients, John DiFrancesco**
5 **and --**

6 MR. PADGETT: Hello.

7 CHAIRMAN WILLIAMSON: Hold on, while --

8 MS. PETERS: Mr. Padgett just showed up.

9 CHAIRMAN WILLIAMSON: Mr. Padgett --

10 MR. PADGETT: Hello.

11 MR. WILLIAMSON: -- is joining us. It's 2:16.

12 Mr. Michael Sullivan is in the middle of --

13 MR. PADGETT: Yes, Padgett has been -- Mr. Who?

14 CHAIRMAN WILLIAMSON: Mr. Sullivan is in the middle of
15 testifying.

16 MR. PADGETT: Okay.

17 Just for the record, I called in on this telephone-only
18 number and I get elevator music, and then there's a brief gap
19 where I can say hello to you guys, and then elevator music again.
20 So there you go.

21 CHAIRMAN WILLIAMSON: Go ahead, Mr. Sullivan.

22 THE WITNESS: I think, if I recall correctly, the last
23 question was how did the case resolve or end.

24 It ended with a stipulation to dismiss with prejudice,
25 with each side to bear its, his or her own costs and attorney's

1 fees. And that's what we did. And that was probably sometime in
2 the latter part or the middle part of the year 2019, and that's
3 how we left it.

4 BY MR. GOSIOCO:

5 Q Okay. Thank you, Mr. Sullivan.

6 And is it your testimony that by the time John
7 DiFrancesco and Bob Feron approached you regarding the case, that
8 the five-year rule had already expired?

9 A Yes. Not only had the five-year rule expired with no
10 possibility of resurrecting it, save and except for theoretically
11 the party being sued allowing it -- when they knew that it was
12 there -- stipulating. And even if they stipulated, the judge
13 would have to stipulate.

14 So there was no chance of resurrecting it. It was dead
15 on arrival when it got to me, so I was trying to recover some of
16 my clients' damages and mitigate what they had gone through.

17 Q Thank you, Mr. Sullivan.

18 Now, based on your 29 years of experience practicing in
19 Washoe County, is there any reason why this case could not have
20 been tried within the five-year rule?

21 A Hypothetically speaking, yes, but not in reality, not in
22 my understanding of how things work here in Washoe County.

23 There was nothing in the file that I reviewed or in
24 talking with either client that would have, in reality, prevented
25 this case from being -- going to trial within five years.

1 And I vetted it pretty carefully, because any time
2 anybody tells me that a case is more than five years, there's
3 already a problem. A case should be resolved in one or two years
4 unless it's in Las Vegas where things just take a lot longer.

5 But in Washoe County things are typically done in two
6 years. But yes, if there was a pandemic or if somebody died or
7 the judge died, there could be an extenuating circumstance where
8 it could go three or four years.

9 But to not get a case to trial in five years would take
10 some extraordinary explanation that was never provided to me by
11 anybody, even though I reached out to try to figure out why it
12 took so long.

13 MR. GOSIOCO: Thank you. And I'll pass the witness.

14 CHAIRMAN WILLIAMSON: Okay. Thank you, Mr. Gosioco.

15 Mr. Padgett, any questions for Mr. Sullivan?

16 MR. PADGETT: Yes. Thank you, Mr. Chair.

17

18 CROSS-EXAMINATION

19 BY MR. PADGETT:

20 Q **Mr. Sullivan, how are you?**

21 A Great.

22 Q **Good. So how long have you been practicing where?**

23 A I've been practicing law since 1992 in both Washoe
24 County, State of Nevada, and also in the State of California.

25 Q **Where did you go to law school?**

1 A I went to the University of San Francisco for law
2 school.

3 Q Yeah, my dad went to Golden Gate. Okay.

4 But back into it.

5 So when did you get the case in issue, when did you take
6 it over?

7 A Well, the substitution of counsel, I believe, was signed
8 by your office, Amy Sugden, on March 18th, 2019. I'm looking at
9 the substitution of counsel.

10 So it would have come in to me probably about 30 days
11 before that, because there were several emails, voicemails and
12 conversations with your assistant, trying to get you guys to
13 respond to me.

14 So I would imagine 30 days before is when I was first
15 contacted.

16 Q Okay. Sir, are you aware that Ms. Sugden was terminated
17 on March 15th, 2019?

18 A I don't have that -- I don't have that committed to
19 memory, no. I would not know that.

20 I do know that you sent me an email that indicated that
21 she was no longer with your firm. I don't know the exact dates.

22 Q Okay. That's fair.

23 Okay. So you got the case around March 18th, and did
24 you have any conversations with Washoe County or the attorney of
25 record for Washoe?

1 A I did.

2 **Q What did he tell you?**

3 A His name is Steve Silva, and he told me that he had had
4 a lot of difficulty in the last year, year and a half, in
5 communicating with your office.

6 He was very candid, and he said at the very beginning of
7 the case your office was very polite, cordial and professional
8 with him, but for reasons he didn't fully understand towards the
9 end of it case, the last couple of years, the communications with
10 your office, whether that was with you or Ms. Sugden, kind of fell
11 apart and he was not being responded to.

12 Because, when I first called him, I said I've made
13 several phone calls with both you on your voicemail, emails to
14 you, and then leaving voicemail messages with Amy and also your
15 assistant, and so when I called him, I remembered him kind of
16 saying, yeah, you're sort of facing the same problems I'm facing.

17 **Q Interesting.**

18 Well, at that time Ms. Sugden was let go and shortly
19 thereafter Ruth was as well.

20 So when you got the case, what did the clients tell you?
21 What were they looking for?

22 A They gave me background information and they said that
23 when they first retained your office, everything sounded really
24 good, and that it sounded like they had this very promising case.

25 They did not give me exact dollar figures but it seemed

1 to me like their expectations were north of a million dollars,
2 whether that's 1, 2 or 3 million, I can't tell you, but that they
3 were convinced that after speaking with you and the other lawyers
4 in your office, that they had a very strong case that was worth
5 pursuing, and they did so; but they said in the last year, year
6 and a half, that the case sort of just fell apart and they weren't
7 getting any responses to.

8 And I remember them saying something like they sent
9 \$7,500 that was requested, I believe by Amy, to do work, I can't
10 remember if it was a deposition or an appraisal, but it was
11 something necessary for the case.

12 They sent it, but this was well after the five-year rule
13 had run. And they asked me questions about the five-year rule,
14 and they said that it had been discussed and that Amy had
15 mentioned it, but not in the concrete black and white detail that
16 I tell people.

17 To me, if I know, I say you're up against the wall, the
18 five-year rule has run.

19 That was not the impression they were getting. They
20 were getting the impression that the five-year rule was more of a
21 guidance, yeah, the court has discretion to dismiss the case.

22 I said, no, unfortunately, it's black and white and you
23 can't grovel on your knees and get it back, and Steve Silva is not
24 about to do that.

25 So I said I don't know what you guys want me to do but

1 the patient is now dead, not on life support. I can try to use my
2 best skills to see if we can negotiate something. And I was
3 trying to go to a mediation. He said, unfortunately, we can't do
4 that. There's no money available right now. And, two, my clients
5 know about the five-year rule and I'm about to file a motion.

6 But I pled with him, please don't do that, and if we can
7 just simply dismiss the case, walk away from it, that way at least
8 my clients wouldn't be having -- my clients wouldn't be
9 responsible for paying 10 or 15 or \$20,000 worth of costs and
10 possibly attorney's fees.

11 So that's the conversation I had with both Mr. Silva and
12 both of the clients.

13 **Q Do you remember the offer you made to me to settle any**
14 **issues outstanding?**

15 A I remember a couple of conversations with you, some may
16 have been leaving each other voice messages, some might have been
17 emails.

18 And I think there was a substantive conversation, one --
19 I think there were two that stood out.

20 One, I think, was over the \$7500 that I think was a
21 specific payment for a specific task that was done -- I don't
22 think the task ever got completed. I think it was we're going to
23 go send 7500. My memory is Amy said, hey, we need to do this one
24 last thing to get the case ready for settlement conference.

25 They sent the \$7500 in. That task, whatever it was, was

1 never completed. And I think I wrote a demand letter on that
2 saying, hey, you ought to give them the 7500 back, the five-year
3 rule has run. You didn't need to do it, moreover, even more
4 importantly, you didn't do it. And it was specifically earmarked
5 for a specific task.

6 And I wrote a letter -- that I helped write for the
7 clients -- to say well, at least you'll get the 7500 back. And
8 the response was either no response or we're not going to pay
9 that. That was one specific item I remember.

10 The second one I remember -- I can't swear that it was
11 you, it could have been Amy, but it was one of the two of you --
12 is once I knew the five-year rule was going to run, I made the
13 suggestion that said I think you guys should give some of the
14 money back that these two clients have paid after the five-year
15 rule ran, because you don't have a letter to them that says, yeah,
16 the five-year rule ran but we still could do this.

17 And I don't know what the billing amounts are. You
18 would have to ask them.

19 But I said morally, legally, ethically, if I were you, I
20 would try to resolve this by giving them some of their money back.
21 And if you don't think they deserve it or they owe you money,
22 please give me an accounting of what was paid and what was done.

23 I couldn't get that from your office, from your
24 assistant, and also from the lady, I think her name was Rose,
25 whoever your assistant was, paralegal.

1 **Q Ruth.**

2 A Yeah, Ruth. I would talk to Ruth many times. And I
3 would say, Ruth, if you -- I said I defend lawyers all the time.
4 If my clients are wrong, let me know. But they have paid a
5 substantial amount of money. The five-year rule has run. So I'm
6 not suggesting that there's attorney malpractice, I don't know.
7 And I don't know if they have actual provable losses. They think
8 they do, and they very well could, but I said but for you to do
9 work after the five-year rule runs, when that probably can't help
10 them, because the other side can just snap their fingers and have
11 the case over, I would insist that you give them some of that
12 money back. And if you don't think they owe it, then give a
13 written response. And that fell on deaf ears.

14 But those were the only two settlement proposals that I
15 ever remember discussing with your office.

16 **Q Okay. So I recall that you and I spoke about the 7500,**
17 **what I told you was --**

18 CHAIRMAN WILLIAMSON: Mr. Padgett. Mr. Padgett. Hold
19 up, Mr. Padgett. I'm going to stop you right there. So this is
20 your opportunity to ask questions of Mr. Sullivan.

21 MR. PADGETT: Yes, Mr. Chair.

22 CHAIRMAN WILLIAMSON: If you would like to testify later
23 in your case in chief, obviously you're more than welcome to do
24 that.

25 MR. PADGETT: Yeah. Yes, you're not looking for me to

1 testify at this time. Okay.

2 BY MR. PADGETT:

3 Q So, Mr. Sullivan, you did speak to me once, though,
4 right?

5 A I believe so, yes.

6 Q Did I tell you that, you know, Amy was no longer with us
7 and I needed to kind of look at the bill and get back to you, so I
8 couldn't give you an opinion on the 7500 at that time?

9 A I'm not disputing that you may have said that. I don't
10 recall the specifics of you saying Amy's gone. But if you did, I
11 have no reason to disagree with it.

12 Q Sure. So I didn't give you a refusal on the 7500, did
13 I? Or did I say to you, I really need to look at this, and with
14 her gone it's going to take me a little bit of time -- but I
15 didn't give you a flat out refusal, did I?

16 A I don't recall you ever saying no, I'm definitely not
17 going to do it. You were very charming and very polite with me.
18 You didn't say anything that was negative or bad.

19 I was sort of pleading with you, I need you to get this.
20 And again sort of giving you big brother advice, that if I were
21 you, I would address it right away, because these guys are very
22 smart, good business men, and they feel jilted.

23 And this \$7500, I specifically remember was for a task,
24 so I left it with you to get back to them within a reasonable
25 amount of time.

1 And I do know, from looking at my records today, I had
2 left many messages and/or emails with you, your office, Amy -- I
3 would always have copied you and Ruth at your office -- and just
4 could never get a response.

5 Q Were you aware that we believed that Amy had breached
6 our server and wiped out a lot of our records?

7 A I have no information about that.

8 Q Okay. So are you aware of the email I got from Steve
9 Silva last summer? Did you get a copy of that?

10 A You would have to try to refresh my memory. I don't
11 know what Steve Silva sent you, so I don't know.

12 Q Sure. So if -- I don't have -- unfortunately, I don't
13 have access to Zoom so I'm on a telephonic call, so I'm not able
14 to put the document in front of you, but I believe it's part of
15 the record. And that document was a conversation between me and
16 Mr. Silva where I asked him, was there an issue with the five-year
17 rule considering Judge Polaha had continued the case for some
18 time.

19 Did Mr. Silva tell you what his opinion on the five-year
20 rule was?

21 A Yes. Mr. Silva told me that in no uncertain terms he
22 was aware that if he were to file a motion to dismiss, it would be
23 granted. He said Mike, this is black and white, I teach classes
24 on this stuff.

25 And I know a lot about Steve Silva. I know he's a very

1 intellectual, scholarly type person who I trust and --

2 Q He is.

3 A -- I've had a case with him in the past. And he told me
4 that the five-year rule had run and that it was jurisdictional.

5 And I don't know this for certain, but I assume that he
6 was trying -- why he didn't file a motion to dismiss sooner than
7 he did, I don't know, because perhaps he may have been in
8 communication with your office before I got in. But when I talked
9 to him, he said for about the last year, year and a half, his
10 communications were, at best, sporadic and not very responsive.

11 And that's why he was happy that I was coming in,
12 because he said win, lose or draw, I know where I'm going to stand
13 with you, and if we agree to disagree, so be it.

14 But that's where he left it with me, and I'm convinced
15 that he knew if at any time he wanted to file a motion to dismiss,
16 he would get it and win it.

17 Q Okay. So are you familiar with what Washoe County
18 offered the clients when we took the case?

19 A Would you please repeat that? I couldn't hear the
20 question. Would you say it slowly?

21 Q I'm sorry. So were you aware of what Washoe County had
22 offered the clients, had on the table at the time that my office
23 took the case? And that Ms. Sugden's --

24 THE REPORTER: I couldn't hear the last part of the
25 question.

1 MR. PADGETT: Ma'am, the question was: Were you aware
2 of the settlement number that Washoe County had put on the table
3 at the time my office took the case?

4 THE WITNESS: No. I don't know.

5 BY MR. PADGETT:

6 Q Okay. So would it surprise you to learn that it was
7 zero dollars and zero cents down from 4.2 million?

8 A It would not surprise me, because I have no basis to
9 know. I can't agree or disagree. I wouldn't be surprised.

10 Q Okay. So were you aware that right around that time we
11 were still going through the recession, if it was about 2012?

12 A I recall the recession being primarily in the year 2008,
13 and every year after that it seemed to get a little bit better,
14 depending on where you lived and worked, but by about 2012, things
15 were starting to turn up.

16 Q And were you aware of what Washoe County put on the
17 table for the clients, according to Ms. Sugden, in your
18 conversations with Mr. Silva, prior to us handing the case over to
19 you?

20 A No.

21 MR. GOSIOCO: Objection, relevance.

22 THE WITNESS: I don't know.

23 MR. PADGETT: I think it -- Mr. Chair, I think it's
24 relevant in showing that through her work and through us -- I
25 guess, through Ms. Sugden having rapport with Mr. Silva, I think

1 that it shows that the number put on the table was in excess of
2 the 4.2 they originally offered, and that's to the best of my
3 recollection.

4 CHAIRMAN WILLIAMSON: Okay. Yeah, I believe it's in the
5 best of your recollection. I'm actually not going to sustain the
6 objection on relevance. What I'm going to say is the witness has
7 already testified he has no idea what Washoe County offered the
8 first time or the second time. So there's really no point.

9 I believe you and the best of your recollection, but
10 you're not the witness.

11 MR. PADGETT: Sure.

12 CHAIRMAN WILLIAMSON: And the witness has already
13 testified he has no idea what Washoe County offered to these
14 people five or seven of years before --

15 MR. PADGETT: Sure.

16 CHAIRMAN WILLIAMSON: -- they were his clients.

17 MR. PADGETT: Sure. Well, Mr. Chair, this was right
18 before Mr. Sullivan took over the case, end of, I want to say 18,
19 November 18, I want to say, if my recollection holds, regarding
20 what -- being what I gleaned from Ms. Sugden.

21 BY MR. PADGETT:

22 Q Okay. So let me ask you, how big is the client's
23 property?

24 A I know that there is approximately 40 tenants there.
25 I've never visited the site.

1 **Q Okay. You never visited the site?**

2 A I have not, not that I'm aware of. I did not in this
3 particular case go to the site. I have lived in Reno my whole
4 life and ride bicycles, so it's possible I've been there, but I'm
5 not certain how big it is or what the dimensions are.

6 **Q Okay. So do you believe that the clients have been hurt**
7 **in this case by my --**

8 THE REPORTER: Stop. I couldn't hear the question.
9 There was interference.

10 CHAIRMAN WILLIAMSON: Hold up.

11 THE REPORTER: So I didn't hear the question or the
12 answer.

13 CHAIRMAN WILLIAMSON: Okay. So go back --

14 MR. PADGETT: So let me start over with the question.

15 CHAIRMAN WILLIAMSON: Okay. There you go.

16 MR. PADGETT: Okay. So, Ma'am, the question asked was:
17 Do you believe that your clients, Mr. Sullivan, were injured by my
18 office?

19 THE WITNESS: Yes.

20 MR. PADGETT: Or their property was injured by my
21 office? And Mr. Sullivan said --

22 THE WITNESS: Yes.

23 MR. PADGETT: Mr. Sullivan, you said -- okay.

24 BY MR. PADGETT:

25 **Q So are you aware of -- have you done any work in eminent**

1 domain?

2 A A little bit.

3 Q How much is a little bit?

4 A A couple of cases, but I am not an expert on eminent
5 domain, don't claim to be.

6 Q Okay. So then it's safe to say that that's why you
7 probably have no reason to go out and look at the property, right?

8 A No. That's exactly opposite.

9 By the time the clients came to me, I was in mission
10 critical, trying to save the clients from incurring more
11 attorney's fees from my office, losing a motion to dismiss, and
12 potentially, theoretically being exposed to a hundred thousand
13 dollar or more judgment against them, if the court were going to
14 award them attorney's fees.

15 So I never was able to get into the meat and potatoes of
16 how valuable or how good or strong the clients' claims were.

17 All I can tell you is this. If the claims were as good
18 as the clients thought they were, after being represented by your
19 office for seven years, if they were that good, then my
20 conversations to the client would have been why didn't the law
21 firm with Mr. Padgett or Amy Sugden go to a settlement conference
22 within the five years, and then you would know one way or the
23 other and get an independent evaluation from a judge, or
24 alternatively, have the case tried within five years, or
25 alternatively, start the case four years, 11 months, 30 days

1 before, and then you could continue for a year. That's another
2 way to continue it.

3 And I said, but since we can't get to that answer, all I
4 can do is damage control. So that's why they didn't want to pay
5 me to go out and see the property on the Truckee River, look at
6 the rentals, do all the stuff that your office presumably did over
7 seven years.

8 Q Sure. Okay.

9 So -- but you had no reason to look at a, say, income
10 approach for an appraisal, right?

11 A Can you say that one more time, please.

12 Q So you had no reason to look at an income approach and
13 value the property through that, correct?

14 A Correct.

15 Q Okay. Did the clients ever tell you at any point in
16 time that the biggest problem they would have is finding a
17 replacement property if Washoe County took theirs?

18 A They did not tell me that that would be their biggest
19 problem.

20 Q Okay. So you're familiar with how to value a property,
21 right? You look at -- or a commercial property, you look at the
22 square footage and how many units, and then you look at the price,
23 the lease price per square foot; right?

24 A That is one way to do it. I believe that there are
25 several different methodologies that appraisers use on commercial

1 property, but the one you just stated does seem to be a perfectly
2 acceptable mechanism.

3 Q Sure. And there's a comparable sales approach too,
4 right?

5 A True.

6 Q Okay. And then probably the replacement value approach?

7 A I agree with that.

8 Q Sure. So eminent domain, that the statute says you get
9 the most probable price; is that correct?

10 A I don't know that for certain, but that sounds
11 reasonable to me, that sounds like what the law would say.

12 Q Well, it's probable price. Okay.

13 So if, would you be surprised to know that if you took
14 the square footage value with --

15 THE REPORTER: I couldn't understand.

16 MR. PADGETT: -- and you multiplied that by --

17 THE REPORTER: Excuse me.

18 MR. PADGETT: Am I really faint? Because I'm talking
19 pretty loud.

20 THE REPORTER: It's garbled.

21 CHAIRMAN WILLIAMSON: You sort of mumbled.

22 MR. PADGETT: All right. Let me talk a little louder.

23 BY MR. PADGETT:

24 Q So would you be surprised that the law says the
25 landowners should get the highest price for their land, according

1 to highest and of best use?

2 CHAIRMAN WILLIAMSON: Mr. Padgett, I'm sorry, I'll
3 interject here. I want to give you an opportunity to
4 cross-examine every witness offered against you.

5 At the same time, Mr. Sullivan is not here to
6 demonstrate whether he's an expert on eminent domain valuation.
7 In fact, he stated at the beginning he is not.

8 And the question is, and the issues that are pertinent
9 to the matter before you, is did the five-year rule pass, yes or
10 no; were the clients damaged, yes or no; were you communicating
11 with the clients, yes or no; did Mr. Sullivan attempt to reach a
12 resolution with you regarding fees that were allegedly paid, and
13 that were allegedly not properly incurred or no work was done to
14 earn those fees; those types of things.

15 So I really, to help me and help the other panel members
16 evaluate the allegations against you, it would be really helpful
17 if we focused on your conduct and your involvement with these
18 clients, not Mr. Sullivan's knowledge of different methods -- or
19 different valuation methodologies.

20 MR. PADGETT: Thank you, Mr. Chairman.

21 However, Mr. Sullivan said that the clients were
22 substantially hurt by Ms. Sugden's handling of the case and my
23 office.

24 So I want to do is to show him a valuation that might
25 surprise him. And that's why I asked him, were you aware that

1 your client said that the biggest problem they would have if
2 Washoe County ended up condemning the property was finding a
3 replacement property. Because a 1033 exchange, which you get in
4 an eminent domain case, allows you to hold the property -- hold
5 the cash, the just compensation, for up to three years, and then
6 reinvest it in lifetime property.

7 So the reason I'm asking him the question, Mr. Chair,
8 because he says they've been hurt, well, I beg to differ, and
9 there's a reason for that, you know. If I can have a little
10 latitude, I can get a little further into that.

11 CHAIRMAN WILLIAMSON: I'll tell you what, Mr. Padgett,
12 I'll certainly give you latitude if your defense is I did the
13 clients a favor, letting the five-year rule lapse. By all means,
14 I'm not going --

15 MR. PADGETT: No.

16 CHAIRMAN WILLIAMSON: -- to preclude you from making
17 that defense.

18 MR. PADGETT: That's not the picture.

19 CHAIRMAN WILLIAMSON: Please don't interrupt, the court
20 reporter can only take one of us at a time.

21 As I mentioned at the outset, I noticed you hadn't
22 joined us yet again after the lunch break, but one of the panel
23 members needs to leave at 3 o'clock. We might have a little bit
24 of latitude on that, which I'll be happy to check on at a break,
25 but we're running out of time.

1 And so I'll give you a little bit of latitude, but I
2 encourage you, for your own sake, focus on the issues that are
3 alleged against you.

4 MR. PADGETT: Yes. Yes.

5 CHAIRMAN WILLIAMSON: And so with that admonition, how
6 ever you want to defend yourself, you go right ahead.

7 MR. PADGETT: Are we, Mr. Chair, are we reconvening on
8 another day?

9 CHAIRMAN WILLIAMSON: Yeah, I think we're really going
10 to have to, right? You haven't --

11 MR. PADGETT: Okay.

12 CHAIRMAN WILLIAMSON: We have been able -- some
13 witnesses have come and gone, but clearly Mr. DiFrancesco has not
14 gotten to complete his testimony. I don't know if you plan on
15 doing any kind of direct, so it looks like we are.

16 But, again, Mr. Padgett, we are here for you, there are
17 three volunteer panel members attempting to give you a fair
18 hearing, but I think -- we've been going since 9 o'clock, and you
19 have probably been on here for an aggregate period of about two
20 hours. And so it's very frustrating that all of us have been
21 trying to move your case forward in your absence, so I would ask
22 you to be respectful of the panel's time.

23 MR. PADGETT: Well, Mr. Chair, I'm happy to come back on
24 any day you would like. I apologize, but Zoom won't come up on my
25 screen, it won't come up on my screen. I wanted a live hearing,

1 that's what I preferred, but I'm trying to do the best that I can
2 with the telephone.

3 Of course, I lodge an objection that I should have to do
4 that. I feel like I'm being -- that my ability to defend myself
5 is prejudiced for sure, for certain. However, I'll do the best I
6 can.

7 BY MR. PADGETT:

8 Q Mr. Sullivan.

9 A Yes.

10 Q So if you've lived in Reno your whole life, you're
11 familiar with that area where the clients' property is?

12 A Yes, generally.

13 Q Okay. Is it close to the airport?

14 A I believe it's close to the Truckee River, but I don't
15 think it -- when you say "close," you'd have to give me a mileage
16 or a kilometers.

17 Q Well, are you aware of any flex storage space close to
18 the -- closer to the airport than my clients' property, or your
19 clients' property?

20 A I am not.

21 Q Okay. Would it sound reasonable to you if I told you
22 that that they have the closest flex storage space to the airport
23 than any property in Washoe County as of the day of the clients'
24 complaint?

25 A I would have no ability to agree or disagree with that.

1 Q But you've lived there for your whole life, right?

2 A I have, except when I went to law school and when I went
3 to UCLA for a year.

4 Q Okay. So in your conversations with Washoe County, sir,
5 did you -- Mr. Silva said there was no money available?

6 A Mr. Silva said that the amount of funds that were
7 available, by the time I got into the case, were substantially
8 depleted, and that they had been significant about one or two
9 years before.

10 He did not give me exact amounts, but my impression was
11 that it was less than a hundred thousand dollars of a fund that at
12 one time had millions of dollars in it for people who had
13 situations like our clients did.

14 Q Sure. So are you aware of Ms. Sugden pressing the
15 clients to pay attention to the last offer made by Washoe County
16 when she was handling the day-to-day matters on the case?

17 A No, Ms. Sugden never told me about any offers or about
18 any settlement negotiations or why there had not been a settlement
19 conference or mediation scheduled. So, no, I wouldn't know that.

20 Q Okay. So no mention of a settlement number from
21 Mr. Silva?

22 A No.

23 Q That was given to your clients?

24 A I couldn't understand your last question. Can you
25 please repeat it.

1 Q I said so no mention of a settlement number from
2 Mr. Silva that Ms. Sugden --

3 MR. GOSIOCO: Objection. Asked and answered already.

4 THE WITNESS: Correct. There was no settlement numbers.

5 BY MR. GOSIOCO:

6 Q Okay. Would it surprise you that the offer might have
7 been north of 4.2 million?

8 A It wouldn't surprise me. Nothing would surprise me.

9 Q Okay. Now as far as the -- as far as the \$7500 goes,
10 when you contacted me and we spoke, I told you, you'd have to get
11 back to me, because I hadn't been familiar with the records,
12 correct, as far as the cost accounting?

13 A I don't recall you giving me anything specific about
14 that particular item. I remember sending a letter. I believe I'm
15 the one that drafted the letter that says send the 7500 back,
16 because it was for a specific task and that task never got
17 performed.

18 I'm pretty convinced that the money that was allocated
19 for the task, the task never got performed. And so for that very
20 limited -- well, this one's a no-brainer, we'll write a \$7500
21 demand letter -- that never got responded to.

22 And even after I sent a letter out, it's always my
23 practice to call, email, have my secretary call just to make sure
24 that my letter was received.

25 And then I never got any kind of a response on that

1 \$7500 issue.

2 Q Well, you and I talked to the phone, didn't we?

3 A We did talk on the phone.

4 Q Okay. Now, are you aware that there was a substantial
5 period of time where we did not bill your clients monthly?

6 A I believe that that's a position that you've taken.
7 I've never seen anything to substantiate that.

8 Q Okay. So if I were to show you -- I -- unfortunately, I
9 can't show you on the billable hours, because -- well, I don't
10 have Zoom, I can't show you an exhibit -- but did the clients
11 mention to you at any period of time that in excess of one year
12 that we did not bill them and the case continued on?

13 A There was some discussion about Amy -- this is my
14 recollection, the clients telling me --

15 MR. GOSIOCO: I'm going to object to that question as to
16 relevance. It calls for speculation.

17 CHAIRMAN WILLIAMSON: Mr. Sullivan, to the extent that
18 that --

19 MR. PADGETT: Well, I think he's entitled to answer.

20 CHAIRMAN WILLIAMSON: -- you know.

21 THE WITNESS: Yeah. I recall Amy talking to me a few
22 times on the phone, seeming to sort of want to cover, if not for
23 you, for the firm, like hey, I'm just kind of the worker bee, I'm
24 the associate, I'll see what I can do.

25 Never once did she or you or anyone from your office

1 ever send me anything or tell me on the phone the reason \$7500
2 wasn't returned, was because you owed it.

3 I was always asking for the whole file from your office.
4 Never got it. I was always asking for the billing records,
5 whatever. What am I missing here? What do I go back and tell
6 these clients, who feel like, for the last seven years, have paid
7 money.

8 And I said there's got to be a letter that says, hey,
9 guys, your case is not that good, it's not that strong, I think
10 you should take \$4 million. I never saw any of that type of
11 information, so I had nothing to go back to the client with.

12 So all I had was no communication from Amy or your
13 office. And I've got Steve Silva telling me he's got a gun to my
14 head, he's going to pull the trigger. So that's why I was only in
15 on a limited engagement.

16 But nobody ever gave me anything from your office,
17 verbally or otherwise, that said we did not charge your client for
18 one year because we were the good guys.

19 BY MR. GOSIOCO:

20 Q Okay. And when you requested the file, you didn't get
21 the file?

22 A I don't believe so, no.

23 No, I got something from your assistant, which I think
24 were just pleadings. Yes, I did get that from Ruth.

25 Q But you got you made a more comprehensive request?

1 A Yes, I made a comprehensive request for everything.

2 What I was really looking for, what I'm always looking
3 for, would be the communications your office would have had to the
4 clients, and the communications your office would have had with
5 Mr. Silva, so that I could see where the disconnect was.

6 Why, after five years, wasn't there, at a minimum, a
7 settlement conference? I was looking for that. Or offers back
8 and forth, where Steve Silva would write and say, no, we're not
9 going to give you more than this, and here is why. I never got
10 any of that from your office.

11 I did get some pleadings from your office, but that was
12 it, and it was sporadic, and it was after several attempts to get
13 it.

14 Q Well, I apologize for that, that we don't typically work
15 like that.

16 MR. PADGETT: Okay. Mr. Chair? Do we have to adjourn
17 at 3:00 p.m.? Because I can end now.

18 CHAIRMAN WILLIAMSON: I would like to finish with this
19 witness, if we can, if you've got a few more questions. I would
20 like to at least get Mr. Sullivan excused, and so --

21 MR. PADGETT: I don't think I can be finished by
22 3 o'clock and I would like to be able to share some documents.
23 However, I can't do that because I only have a telephone -- not on
24 a telephonic conference.

25 CHAIRMAN WILLIAMSON: I understand. Do you anticipate

1 being able to functionally use Zoom by another hearing date?

2 MR. PADGETT: Yeah, I don't see why not. I mean I think
3 that -- I think that would be the case, yes.

4 CHAIRMAN WILLIAMSON: Okay. All right. I'm going to
5 tell you what, we're -- Mr. Sullivan, number one, thank you for
6 your time.

7 Mr. Gosioco, do you have any objection to at least
8 adjourning right now?

9 MR. GOSIOCO: None for the State Bar.

10 CHAIRMAN WILLIAMSON: Okay. Mr. Sullivan, thank you for
11 your time. Would you be amenable to coming back and completing
12 your testimony at a later date, obviously, to be coordinated with
13 you?

14 MR. SULLIVAN: Yeah, and that would be -- the only
15 caveat -- I'm more than happy to come back, and I can start as
16 early as 7:00 and work late into the evening, but I do have a very
17 busy calendar in the next month, month and a half, so if we could
18 accommodate and maybe give me a ballpark estimate as to the total
19 time.

20 And if there are documents that are going to be
21 reviewed, and if Mr. Padgett doesn't have the ability to put them
22 up on the screen, if he could get them to your office or something
23 so we could do it. But, yes, I would be available.

24 And I do have time during the weekday, but I would like
25 somebody to contact my office and give me two or three possible

1 different time and date slots.

2 CHAIRMAN WILLIAMSON: Absolutely. I'm sure that --

3 MR. PADGETT: Mr. Chair?

4 CHAIRMAN WILLIAMSON: -- State Bar will take care of
5 that.

6 Yes, Mr. Padgett.

7 MR. PADGETT: Would it be possible that I could send
8 some documents to Mr. Sullivan so that his time coming back would
9 be minimized, because he would be familiar with the documents and
10 then I could ask him some questions?

11 MR. GOSIOCO: I'm going to object to that. I don't --

12 CHAIRMAN WILLIAMSON: Yeah, wait. We've got a couple of
13 problems there, Mr. Padgett. Number one --

14 MR. PADGETT: Let me --

15 CHAIRMAN WILLIAMSON: Sure. Let me just go ahead and
16 address your question. Number one, I'm not going to give a
17 witness homework. Obviously, if you and Mr. Gosioco after this
18 hearing want to work something out and the witnesses are amenable
19 to it, I'm not going to get in the way of it either, but I'm
20 certainly not going to -- unless we're going to pay his, what I'm
21 sure is a fairly sized billable rate, I'm not going to give
22 Mr. Sullivan any homework.

23 The other practical problem --

24 MR. PADGETT: Well --

25 CHAIRMAN WILLIAMSON: -- if you may recall, is you have

1 not even done initial disclosures or final disclosures.

2 The document, the universal documents on which to rely
3 would be the documents that are already admitted into evidence.
4 I'm not going to allow you to find and enter new evidence now
5 after the discovery period is closed.

6 So we can deal with all of that at another time. We
7 don't need to monopolize Mr. Sullivan's time any more. So why
8 don't we adjourn now.

9 MR. PADGETT: Mr. Sullivan, thank you.

10 CHAIRMAN WILLIAMSON: Sorry? Go ahead.

11 MR. SULLIVAN: You're welcome.

12 MR. PADGETT: No, I said Mr. Sullivan, thank you.

13 MR. SULLIVAN: Sure.

14 CHAIRMAN WILLIAMSON: So we'll excuse Mr. Sullivan and
15 work on scheduling a different time. I would think we could do
16 with the -- with the panel, at their convenience.

17 But if there's any questions, evidentiary matters,
18 housekeeping matters, I'm happy to stick around, I'll stay here as
19 late as you guys want, but let's at least excuse the witness now,
20 go off the record, we can stay on the call, and decide where to go
21 from here.

22 MR. SULLIVAN: All right. So I'll go ahead and leave?

23 CHAIRMAN WILLIAMSON: Okay. Yeah, you are excused.

24 Thank you, Mr. Sullivan.

25 MR. SULLIVAN: Thank you.

1 MR. PADGETT: Thank you.

2 CHAIRMAN WILLIAMSON: Okay. And I think, unless anyone
3 has any objection, we'll also go off the record.

4 MR. GOSIOCO: None from the State Bar.

5 CHAIRMAN WILLIAMSON: Mr. Padgett, are you okay going
6 off the record, or do you want to get something on the record?

7 MR. PADGETT: No, I think I'm fine going off the record
8 at this time.

9 CHAIRMAN WILLIAMSON: Okay. So we can -- thank you,
10 Ms. Eisenberg. We can go off the record.

11 (A discussion was held off the record.)

12 CHAIRMAN WILLIAMSON: Okay. Mr. DiFrancesco, can you
13 please raise your right hand?

14

15 JOHN DiFRANCESCO

16 called as a witness, having been duly sworn,

17 testified as follows:

18

19 MR. DiFRANCESCO: Yes, I do. So help me God. Can say
20 that anymore?

21 CHAIRMAN WILLIAMSON: You are certainly welcome to.

22 Yep. Yeah.

23 So you are good. Thank you. You can put your hand down
24 now.

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EXAMINATION

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BY CHAIRMAN WILLIAMSON:

Q And, Mr. DiFrancesco, really, just one question. Do you understand that all of your testimony that you gave this morning was under that same oath, and that all of that testimony was given with the intent that it is -- it is your binding testimony given under penalty of perjury?

A Yes.

CHAIRMAN WILLIAMSON: Okay. I think that will do it for today, unless Mr. Gosioco or Mr. Padgett, you have any -- again, no new evidentiary questions, but anything to tie up that potential loose end there?

MR. GOSIOCO: Nothing further from the State Bar.

CHAIRMAN WILLIAMSON: Okay. Mr. Padgett?

MR. PADGETT: No, Mr. Chair, I have nothing further at this time.

CHAIRMAN WILLIAMSON: Great. Let's go back off the record.

(The proceedings concluded at 3:05 p.m.)

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1 STATE OF NEVADA)
) ss.
2 WASHOE COUNTY)

3

4 I, CONSTANCE S. EISENBERG, a Certified Court Reporter,
5 do hereby certify:

6 That on Friday, May 28, 2021, at the hour of 9:38 a.m.
7 of said day, I was present in Reno, Nevada, and took verbatim
8 stenotype notes of the proceedings held before the State Bar of
9 Nevada, Northern Nevada Disciplinary Board, via Zoom
10 videoconference, in the within-entitled matter, and thereafter
11 transcribed the same into typewriting as herein appears;

12 That I am not a relative nor an employee of any of the
13 parties, nor am I financially or otherwise interested in this
14 action;

15 That the foregoing transcript, consisting of pages 1
16 through 145, inclusive, is a full, true and correct transcription
17 of my stenotype notes of said proceedings.

18 DATED: At Reno, Nevada, this 26th day of June, 2021.

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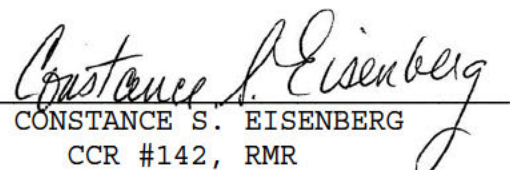
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CONSTANCE S. EISENBERG
CCR #142, RMR

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1 Case No. OBC19-1111

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STATE BAR OF NEVADA

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NORTHERN NEVADA DISCIPLINARY BOARD

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10 STATE BAR OF NEVADA,

11 Complainant,

12 vs.

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BRIAN C. PADGETT, ESQ.,

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Nevada Bar No. 7474,

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Respondent.

16

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TRANSCRIPT OF PROCEEDINGS

18

HEARING

19

VIA ZOOM VIDEOCONFERENCE

20

DAY 2

21

WEDNESDAY, JUNE 16, 2021

22

23 Job No. 770596

24

Reported By: Peggy B. Hoogs, CCR No. 160, RDR, CRR

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IN PROPER PERSON, APPEARING VIA ZOOM

ALSO PRESENT:

LAURA PETERS, EXECUTIVE SECRETARY
VICKI HETHERINGTON

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2 RENO, NEVADA; WEDNESDAY, JUNE 16, 2021; 9:04 A.M.

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5 CHAIRMAN WILLIAMSON: Let's go on the record.

6 I want to preliminarily address Mr. Padgett's
7 motion before we begin the hearing in earnest.

8 This is the date and time set for the continued
9 hearing of State Bar of Nevada v. Brian Padgett.

10 Before we resume the hearing, I wanted to first
11 address the motion that Mr. Padgett filed this morning.
12 I've confirmed with assistant bar counsel that he also
13 received it this morning. I'm sure he didn't have a long
14 time to look at it but at least has reviewed it.

15 Before I hear from Mr. Gosioco in opposition to
16 that motion, I want to address one incorrect statement
17 that I noticed in your motion, Mr. Padgett, and that is,
18 you stated that in the pretrial hearing you were limited
19 to only peremptory challenges -- excuse me -- only
20 challenges for cause. That is incorrect.

21 I think if you actually go back and look at the
22 transcripts, I made it very clear that you could file any
23 motion on any grounds to challenge any panel member. I
24 pointed out that I believe the time for peremptory

1 challenges passed -- I think if you look at the DRP, it
2 passes once a default is entered, and it does not get
3 renewed when a defaulted party then later appears -- but,
4 again, I invited you, if you had grounds to pursue either
5 a peremptory challenge or a challenge for cause, I
6 invited you to file those, and we did have a quick
7 turnaround on that motion due to the looming hearing.
8 You elected not to file any of the motions that we
9 discussed at the pretrial hearing and now have filed this
10 motion today, which appears to rehash several prior
11 motions I've already ruled upon.

12 So with that said, I'd like to hear from
13 Mr. Gosioco in opposition, and then, Mr. Padgett, I'll
14 give you an opportunity to speak in reply of your motion.
15 We'll then address the motion and can turn to the
16 hearing.

17 MR. GOSIOCO: Thank you, Mr. Chairman.

18 I apologize ahead of time if my thoughts are
19 kind of all over the place. I'm going to try my best to
20 keep it as organized as possible.

21 So as you stated, Mr. Chairman, I did receive
22 Mr. Padgett's motion to set aside orders and dismiss the
23 case at 8:37 this morning. He makes six points, and I'll
24 address each one of them briefly, if I may.

1 Mr. Padgett's first point is the appointment of
2 the hearing panel chair without giving the respondent the
3 designation of the hearing panel members' list an
4 opportunity to use peremptory challenges to exclude.

5 As Mr. Chairman had stated at the prehearing
6 conference which was held on -- one moment -- the
7 prehearing conference held on May 19, 2021, you did state
8 that Mr. Padgett did have the opportunity to make any
9 challenges for cause or peremptory challenges he thought
10 was fit within 24 hours. The reason it was 24 hours was
11 because his challenges of the panel members are
12 absolutely untimely.

13 As you had stated, Mr. Chairman, the
14 Disciplinary Rules of Procedure are very clear as to when
15 the appropriate time would be to challenge any members.
16 Rule 13(a) for peremptory challenges states that "The
17 peremptory challenges shall be delivered to the Office of
18 Bar Counsel" and "If a Notice of Intent to Proceed on a
19 Default Basis is filed and served...then that other party
20 has waived the opportunity to exercise any peremptory
21 challenges." So not necessarily the default itself,
22 Mr. Chairman, but the Notice of Intent to Proceed on a
23 Default Basis, which in this case had been filed actually
24 two separate occasions, once before the original hearing

1 on October 15, 2020, and once before the instant hearing
2 today.

3 As to the for-cause challenge, that is also
4 untimely because the motion must be filed within ten
5 judicial days after the members of the panel are
6 appointed or the party receives notice of the grounds for
7 disqualification, whichever occurs later.

8 At no point did Mr. Padgett mention any reasons
9 for disqualification, any grounds for notification, and
10 he has been noticed of the panel members since at least
11 January when he had sent an email to the chairman as well
12 as the other panel members requesting a stay of these
13 proceedings. So he was on notice of the panel members
14 already, and at that prehearing conference, the only
15 person -- the only panel member that I was amenable to
16 Mr. Padgett filing any type of a challenge was regarding
17 Ms. Westlake because she had come in earlier to replace
18 another panel member, and because of her late
19 appointment, I did not oppose to Mr. Padgett filing any
20 challenges as to Ms. Westlake.

21 So for those reasons, his challenges are
22 untimely, and not only are they untimely, they're without
23 merit.

24 As to his second point, Mr. Padgett brings up

1 no live hearing so respondent cannot confront his
2 accusers and effectively cross-examine. This argument
3 actually states that he has been prejudiced because this
4 has been held on Zoom and, based off of directives of
5 Governor Sisolak, that we should not be having these
6 hearings via Zoom. He also argues that this is an equal
7 protection violation as similarly situated lawyers in
8 disciplinary hearings would have been allowed to face
9 their accusers and examine and cross-examine witnesses
10 directly with no Zoom barrier.

11 Mr. Padgett was on the call on May 28th or
12 29th. He had an opportunity to cross-examine those
13 individuals. Not only that, Mr. Padgett was aware of
14 these proceedings being conducted on Zoom since at least
15 February 22, 2021, when we held the initial case
16 conference with Mr. Padgett on the phone where we had
17 held that it's going to be held on Zoom until further
18 notice and that he may submit his reasoning to conduct a
19 live hearing by April 28th. Mr. Padgett did, in fact,
20 submit his reasonings on April 21st. The State Bar
21 responded on April 28th. Mr. Panel Chair ruled on
22 April 28th and held that it was on Zoom.

23 So any prejudice based on this is created by
24 Mr. Padgett's own conduct. He knew this was going to be

1 happening over Zoom, and, again, this is untimely.
2 is this being raised 23 minutes before the continued
3 formal hearing?

4 As to his third point, again, he states that
5 the first day of the hearing started without respondent
6 who only had telephonic access. Again, I reiterate my
7 points as to his second argument. Mr. Padgett has been
8 aware that this hearing would be conducted via Zoom. He
9 should have prepared for the Zoom hearing. In fact,
10 prior to today's hearing, Ms. Peters actually emailed
11 Mr. Padgett on June 11th to ask if he would like to do a
12 run-through to make sure there were no issues, and I
13 believe Mr. Padgett responded yesterday that -- he said
14 he tried, and he still had some issues coming up with his
15 camera and that he's working on it. But, again, this is
16 untimely.

17 As to his fourth argument, he states that he
18 was denied the opportunity to call his own witnesses and
19 use his own exhibits. As I stated in my trial brief, the
20 Amended Scheduling Order clearly dictates when motions
21 and disclosures were to be due. The State Bar has abided
22 by every one of those deadlines. Mr. Padgett has not.

23 First and foremost, the initial disclosures,
24 they were due on May 9th -- I'm sorry -- March 9, 2021.

1 I believe Mr. Padgett sent an email -- and that was due
2 at 5:00 p.m. I believe Mr. Padgett sent Mr. Chairman as
3 well as myself an email at 4:59, one minute prior to the
4 deadline requesting an extension.

5 Mr. Chairman graciously allowed him to --
6 granted an extension for two days, and Mr. Padgett did
7 file what he describes as his initial disclosures.
8 However, no witnesses were identified except for
9 Mr. Padgett. He vaguely mentions documents. He did not
10 actually produce any documents, and so the State Bar
11 requested multiple times that he provide those identities
12 of the witnesses as well as documents so that the State
13 Bar has an opportunity to review what evidence
14 Mr. Padgett would like to present at the formal hearing.

15 Mr. Padgett did not fix those issues, so the
16 State Bar was forced to file a motion to compel, and,
17 again, with the motion to compel, Mr. Chairman gave
18 Mr. Padgett an ample amount of time to respond. He
19 chalks it up to being a misunderstanding to the Amended
20 Scheduling Order. However, at the end of the day,
21 Mr. Chairman did again graciously give Mr. Padgett a
22 response to file an opposition to the State Bar's motion
23 to compel.

24 So Mr. Padgett already complained that he

1 didn't have the opportunity to oppose the State Bar's
2 motion because the panel chair had already ruled on it,
3 and Mr. Chairman did set aside that order giving
4 Mr. Padgett the opportunity to file that opposition so
5 that Mr. Panel Chair could revisit that issue, but,
6 again, after being given a second opportunity to file an
7 opposition to the State Bar's motion to compel,
8 Mr. Padgett didn't submit anything. So, therefore, I
9 would ask that that argument be denied, and it's without
10 merit.

11 The second-to-last argument is failure to
12 remove myself from the case. As I stated in my
13 opposition, Mr. Padgett's motion was extremely untimely.
14 The Amended Scheduling Order clearly stated that any
15 motions shall be -- the parties shall file any motions on
16 or before April 5, 2021, and Mr. Padgett filed the motion
17 to remove myself from this case on April 30, 2021,
18 25 days after the deadline. And not only that, in my
19 opposition, his arguments are essentially a regurgitation
20 of his Supreme Court briefs in his other disciplinary
21 case, which his reasoning is -- it's a regurgitation of
22 his arguments in the Supreme Court briefs which were
23 filed well before the April 5 deadline, so there was no
24 reason Mr. Padgett could not have made these arguments

1 prior to the motion deadline. Instead, this motion is
2 simply -- is a frivolous motion and is not made in good
3 faith and was made for purposes of delay.

4 In his motion to remove myself from this case,
5 he requested that the instant proceedings be stayed until
6 a new assistant bar counsel be assigned. Mr. Panel Chair
7 denied this motion, and, again, he's bringing it up
8 23 minutes before today's hearing, so for that reason the
9 State Bar would request that you deny this argument.

10 And, lastly, Mr. Padgett takes issue with
11 Ms. Sugden. He states that she was hired as an
12 independent contractor, that she handled all these cases
13 regarding the DiFrancescos, and he makes this argument
14 that Ms. Sugden compromised his firm and deleted emails
15 and breached his security servers without any proof. My
16 opposition would state that essentially these are all
17 attempts -- not only this argument, but his other
18 arguments in his motion -- to introduce evidence that he
19 was excluded from introducing in this case.

20 Not only that, he makes another
21 misrepresentation where he states that, "However, she is
22 not facing discipline and will be called as a witness for
23 the State Bar in this disciplinary case." It's public
24 record that Ms. Sugden did receive a public reprimand for

1 the DiFrancesco case, so that's another material mistake
2 in Mr. Padgett's motion.

3 But for the foregoing reasons, Mr. Chairman,
4 the State Bar would respectfully request that
5 Mr. Padgett's motion in its entirety be denied.

6 Thank you.

7 CHAIRMAN WILLIAMSON: Thank you, Mr. Gosioco.

8 Mr. Padgett, anything in reply or in rebuttal?

9 MR. PADGETT: Yes, Mr. Chair. Just a couple
10 points.

11 By and large on the whole, I'll stand by my
12 written pleadings. I will state that any public
13 reprimand received by Ms. Sugden is news to me. It's
14 news to me, and it should not be news to me. Ms. Sugden
15 was handling the day-to-day matters in this case. She
16 got a public reprimand, yet I'm going through a
17 disciplinary hearing. I find that to be very
18 interesting, and it seems we're being treated
19 dissimilarly. I had no idea. I think that would
20 certainly factor into the bearings on this disciplinary
21 hearing, sir. I feel that I've been extremely prejudiced
22 as to that.

23 I'd also tell you that in the last -- in day
24 one of this hearing, which was supposed to be cumulative,

1 a cumulative hearing, a prior attempt was made in good
2 faith to conduct a hearing without a camera being
3 workable for Zoom, so I participated telephonically. We
4 did not finish a single witness, and I lodged all
5 necessary objections to my having to participate
6 telephonically.

7 And so today, as I had noticed with Ms. Peters,
8 it looks like the camera on the laptop is burned out, so
9 I would be relegated to a telephonic session, and I will
10 tell you that the reason that I lodged my objections
11 previously is because telephonic is not going to do it.
12 I'm sure Mr. Gosioco would be thrilled if I was to agree
13 to that and go forward telephonically. However, I can't
14 do that. This is my license to practice.

15 I have never, and I repeat never, been
16 sanctioned in any way, shape, or form until we got three
17 cases that came before the -- came before the Bar that
18 were then forwarded to me in the summer of 2019, all
19 three with Ms. Sugden's fingerprints on them, and
20 Ms. Sugden had just been fired three to four months prior
21 to that time. So I would have to say that there is
22 certainly a tangent here, a correlation between
23 Ms. Sugden and what happened in those cases.

24 She worked for me for nine years as an

1 independent contractor. She went home when she wanted;
2 she came in when she wanted. We wrote all checks to Ace
3 Legal, LLC, the name of her contracting company. We had
4 every reason to trust that -- in nine years I had seen
5 enough from Ms. Sugden that I trusted her ability to
6 handle the day-to-day matters in the cases, in certain
7 cases, and yet at the same time that's not what she was
8 doing.

9 I cited in my motion that there were about
10 three instances where I sent written correspondence to
11 the Bar, detailing to the Bar that I was extremely
12 concerned that the server had been breached, that we
13 believed it was Amy Sugden. It looks like that was
14 confirmed by an IT company as well as an independent
15 investigator hired by my firm. That also hampered our
16 ability to pull documents and put them on in this case in
17 my own defense.

18 So to that extent, I just want to make one last
19 point, and then I'll stand on the written pleadings.

20 I am stunned to hear that Ms. Sugden got a
21 reprimand for this. She was handling the day-to-day
22 matters. She also handled the DKB case and the case with
23 Ian Richie. I'm not aware she got any reprimand there.
24 I know that I was suspended for five years, which doesn't

1 stack up anywhere close to similar situations. I didn't
2 have any hands on to the extent it would have been
3 necessary to give me that type of penalty.

4 So in this particular case, yes, I vehemently
5 object to the fact that anyone advised me there was a
6 public reprimand, and if it was public, why didn't I hear
7 about it? It must not have been so public. I'd like to
8 see what Ms. Sugden got in relation to me. There was no
9 opportunity to discuss this case with Mr. Gosioco. There
10 was no opportunity to discuss a reprimand situation. I
11 don't know that I would have taken one. However, I don't
12 know that I would not have. It was never offered.

13 So, again, here we have similarly situated
14 individuals treated differently. So to that, again, I
15 say the proceedings in this hearing have irreparably
16 prejudiced and harmed me, and I would ask that this case
17 be set aside and stand down so I can take a look -- for
18 those reasons set forth in my written pleadings, but also
19 because I want to see what Ms. Sugden got, what type of a
20 reprimand did Ms. Sugden get, and why should it be lesser
21 than I know what Mr. Gosioco would like to hang on me.

22 So to that extent I'd ask that this time be
23 taken to explore that, and then perhaps a resolution can
24 be reached as I will not stand for a hearing where I'm

1 relegated to the telephone again when, as you stated,
2 Mr. Chair, in your Amended Scheduling Order, you're going
3 to follow what is required by health officials. Health
4 officials right now are saying everything is wide open,
5 just as the justice court, five days ago, went ahead and
6 withdrew their mandate for Zoom or BlueJeans -- excuse
7 me -- BlueJeans conferencing or telephonic conferencing
8 only in hearings.

9 Thank you very much.

10 CHAIRMAN WILLIAMSON: Okay. Thank you,
11 Mr. Padgett. I wanted to go through each one if I can.

12 Before we get there -- well, I'll go through
13 each one.

14 So first off on the peremptory challenges, I'm
15 going to deny that on a couple grounds.

16 First, as Mr. Gosioco pointed out, any
17 challenge for peremptory was waived, and any challenge
18 for cause was untimely. Moreover, you were given the
19 opportunity to assert any challenges you wanted to, did
20 not do that timely even after I provided an extension,
21 and even this motion just vaguely complains that you
22 didn't get a chance to challenge but yet does not
23 challenge. So the motion should also be denied on the
24 merits because there's simply no support.

1 Regarding -- let me just kind of make sure I've
2 got your arguments in order, Mr. Padgett. Okay.

3 Regarding the live hearing, again, this is --
4 you basically refiled the same motion that you had filed
5 several months ago asking for a live hearing. You are
6 right that after we already commenced this Zoom hearing,
7 that the health conditions did change effective
8 January 1st -- excuse me -- effective June 1st, but this
9 hearing commenced in May, and we had to go by what the
10 public health officials and what the rules were at the
11 time.

12 I'd also point out that in May you wanted to
13 force everyone to fly to the same place and prevent
14 anyone from wearing masks, which would have been a
15 violation of both local and state regulations. So, yes,
16 things have changed, but this hearing has already
17 commenced. Moreover, you're reraising this untimely.
18 You're reraising this this morning, on June 16th, a few
19 minutes before we start the hearing rather than bring it
20 up on June 1st and saying, "Hey, things have changed.
21 Can we change the protocols for the hearing?" I don't
22 know what I would have done if a properly supported
23 motion had been filed on June 1st, but certainly minutes
24 before the hearing I'm not inclined to change what we've

1 already got set in place, particularly when at the end --
2 and now this sort of goes into your third point --
3 particularly when at the end of the last hearing and on
4 the subsequent conversations scheduling today's dates, I
5 made very clear that you needed to have Zoom access; you
6 needed to do whatever you needed to do to be able to
7 participate via Zoom.

8 And I'm sorry that you feel or are somehow
9 relegated to telephone access. I realize people are in
10 different situations, and I am sympathetic to that, and I
11 do recognize computer equipment can be expensive. At the
12 same time, I, like you, am a litigator, and I'm quite
13 used to -- over the last 18 months, numerous things have
14 had to be held via Zoom and other remote means. I can
15 get Zoom on my phone, on my iPad, on my desktop at work,
16 and on my laptop at home, as well as my children have
17 Zoom. So I find it a little bit incredulous for you to
18 state that you are without the abilities to participate
19 via Zoom.

20 Again, this seems to be a calculated move to
21 try and delay this case, but, regardless, you know, I
22 also practice in California -- I'm not sure whether you
23 do -- and numerous things are done there via telephone,
24 via CourtCall, you know, long before the pandemic. It

1 does not present any due process concerns. You certainly
2 have the ability to participate by whatever means you
3 choose, and I feel that if you had done your level best
4 to find a way to participate via video, via Zoom, you
5 could have done that. For whatever reason you're not
6 able to. I'm glad you're here on time this morning by
7 telephone, and I strongly encourage you to participate
8 the full day via telephone.

9 The fact that we started the Zoom hearing
10 without your participation the last time, yes, that is
11 true. As I think even your moving papers pointed out,
12 you said approximately the first hour was done without
13 your participation. That's actually not true. We waited
14 for you, I think, until 9:54, so 54 minutes after the
15 hearing was supposed to commence. Let me just check my
16 notes on that, but I believe it was sometime around the
17 late 9:00 o'clock hour, and then you did not join us
18 until 10:23, so an hour and 23 minutes after the hearing
19 was supposed to start.

20 Again, as you know, the panel members are
21 volunteers. I cannot just make them sit on Zoom until
22 maybe sometime in the afternoon when someone feels like
23 showing up for their formal hearing that's been noticed
24 for months. So, yes, after giving you more than ample

1 time to appear and participate, we did commence the
2 hearing around approximately 9:54 -- again, the record
3 may bear me out on that or I may be off a few minutes one
4 way or the other, but we did wait quite a long time and
5 allow you plenty of time to show up. I know it was after
6 9:30, and so I believe we only proceeded without you for
7 less than 30 minutes or approximately 30 minutes before
8 you finally did join us. So, again, that aspect of your
9 motion is denied.

10 With regard to your complaint that you were
11 unreasonably denied the opportunity to call your own
12 witnesses and use your own exhibits, that is actually not
13 true. So, number 1, as Mr. Gosioco pointed out, you had
14 ample notice when the initial disclosures were due. You
15 did not make any initial disclosures by the date stated
16 in the Amended Scheduling Order. Again, as Mr. Gosioco
17 pointed out, a few minutes before 5 o'clock, you asked me
18 for additional time, and I gave you additional time, and
19 then I believe on March 11th you filed initial
20 disclosures that were woefully inadequate.

21 And, again, I would remind you that the subject
22 of this hearing is your performance in a litigation case,
23 and some of the evidence we have already heard goes to
24 whether or not you pursued discovery appropriately based

1 on your clients' expectations and your clients's express
2 directives, and yet, amazingly, your initial disclosures
3 blatantly violated NRCP 16.1 and the Disciplinary Rules
4 of Procedure, and so, again, I think you need to look
5 maybe a little more in the mirror as to why you have
6 limitations on what witnesses you can call.

7 But even with your inadequate disclosures, as
8 you recall, I did not preclude you from calling all
9 witnesses. Rather, your initial disclosures only listed,
10 I believe, yourself by name. Everything else was through
11 some sort of pseudonym, that you didn't actually list
12 other witnesses, and so I confirmed that you could
13 call -- excuse me -- you could speak yourself and appear
14 as a witness, and, frankly, your initial disclosures did
15 not list any other named witnesses. Therefore, you
16 precluded yourself.

17 You also chose to not file any final
18 disclosures at all. You filed no final disclosures in
19 this case. Again, under the DRP, that and Rule 37 of the
20 NRCP precludes you from being able to call witnesses.

21 With regard to your complaint on Ms. Sugden, I
22 don't even think you listed her as a witness. I don't
23 have your initial disclosures up in front of me, but I do
24 not believe she was even one of your named witnesses.

1 Again, I think you were the only named witness in your
2 initial disclosures, so I think it's very difficult for
3 you to complain that you can't call her as a witness
4 because you didn't seek to call her as a witness, but,
5 certainly, if she appears and testifies, you are more
6 than welcome to cross-examine her. Again, I did not
7 preclude you from cross-examining any other witnesses.

8 Two other clarifications I want to point out:
9 First, you stated we did not finish any other -- any
10 witnesses at the last hearing. That's actually not true.
11 There was a witness from the State Bar -- and I
12 apologize. Let me review my notes.

13 MR. PADGETT: I believe Mr. Sullivan and
14 Mr. DiFrancesco.

15 CHAIRMAN WILLIAMSON: Also Louise Watson
16 testified, and she completed her testimony.

17 MR. PADGETT: Was Ms. Watson first in time,
18 because I never heard her testimony at all?

19 CHAIRMAN WILLIAMSON: She was called at
20 1:57 p.m., and as you recall, we resumed at -- I think we
21 agreed to resume at either 1:30 or 1:45.

22 The ultimate point I want to point out is you
23 complained you had no knowledge of Ms. Sugden's public
24 reprimand. While I was kind of preparing my response

1 here, I went on the State Bar's website, typed in
2 "Sugden," and her disciplinary record is publicly
3 available on the State Bar's website.

4 My guess, although I don't know, is that it was
5 also in the back of the Bar magazine at some point over
6 the last few months because when I clicked on the
7 hyperlink on the website for the State Bar, the public
8 reprimand that came up for Ms. Sugden was file-stamped
9 January 26, 2021. So I'm sorry that you did not do your
10 due diligence or were not aware of that, but, again,
11 that's publicly available information. Certainly, if
12 you're preparing to cross-examine a witness, I would
13 think you would want to at least check their State Bar
14 status.

15 I also see that she received the public
16 reprimand based on a conditional guilty plea in exchange
17 for a stated form of discipline. So I also want -- I was
18 not involved in that case. I don't know anything about
19 it. From just my facial review, it does not appear that
20 there's any disparate treatment. Rather, Ms. Sugden
21 chose to enter into a conditional guilty plea for a
22 stated form of discipline so that she sort of knew what
23 she was getting. That's her right. You have chosen to
24 vociferously dispute and defend and argue in these

1 proceedings, and that's your right. So it is not that
2 the State Bar is treating anyone differently. It is that
3 the two respondents chose markedly different strategies
4 for how to respond to their respective Bar complaints.

5 But, again, if Ms. Sugden appears and
6 testifies, you're welcome to cross-examine her on
7 whatever basis you see fit. I would just caution you, on
8 the motion that you filed, that you don't want any
9 testimony where supposedly Ms. Sugden may have
10 represented you or where there may be an attorney-client
11 relationship between you. So if you choose in any
12 cross-examination of Ms. Sugden to invade your claimed
13 attorney-client privilege, I just want to warn you that
14 would waive the privilege, and at that point, despite my
15 prior ruling, then Mr. Gosioco would be able to go into
16 any client privilege issues.

17 As to the failure to remove Mr. Gosioco, again,
18 you filed that motion late, but you also filed it about
19 45 days ago, it was disposed of, and I see no grounds to
20 revisit it here. It is equally unsupported in this
21 motion as it was in the previous motion, and it is even
22 more so untimely now than it was before. So I'm going to
23 deny that portion of your order as well.

24 And, finally, I already touched on this subject

1 a little bit, but your statement that, you know, she was
2 an independent contractor and so on and so forth, to me,
3 seems like one of the factual issues that you are raising
4 in this hearing. Again, I want to welcome you to raise
5 any factual issues or disputes that you see fit, but
6 based on the last hearing, I already understand it's the
7 Bar's position she was an employee, it's your position
8 that she was an independent contractor, and regardless of
9 what her employment status was, I think another key issue
10 is whether or not you were the supervising attorney of
11 her in the DiFrancesco case and whether or not you
12 fulfilled your duties to the Bar, to the public, and,
13 most importantly, to your clients in that role, if any.

14 So to the extent you raise some sort of factual
15 disputes as to the characterization of Ms. Sugden as
16 either an independent contractor or an employee, to me
17 that seems like a factual issue that will be decided in
18 this hearing and is not appropriate for some sort of a
19 dispositive motion filed on the morning of the final
20 hearing. So I'm not going to rule one way or the other
21 on whether she was an employee or an independent
22 contractor but will reserve judgment to the extent that
23 that affects the outcome of these disciplinary
24 proceedings whatsoever.

1 So I think I've now addressed everything in
2 short. To the extent I didn't already state this, your
3 motion was untimely, all the grounds therein were
4 untimely, many were unsupported by either factual and/or
5 legal support, and so I am denying the motion.

6 I'll ask Mr. Gosioco to prepare a proposed
7 order. Obviously we've got other things to do today, so
8 that written order can come later, but I will deny the
9 motion on all the grounds filed.

10 With that, Mr. Gosioco, could you please call
11 your next witness.

12 MR. GOSIOCO: Thank you, Mr. Chairman.

13 MR. PADGETT: Mr. Chairman, if I might before
14 Mr. Gosioco gets started, I can't continue in this manner
15 with no video. I need an in-person hearing, as I've
16 requested, or some manner other than telephonic. It's
17 absolutely untenable. And then hearing Mr. Gosioco talk
18 about, well, Mr. Padgett, you did appear at the last
19 hearing, and, you know, you did participate, and you
20 asked some questions. Yes, I did. I did the best that I
21 could in good faith while still maintaining my
22 objections. However, it's impossible to adequately
23 defend myself with no video. Actually, it's impossible
24 to defend myself without having an in-person hearing.

1 That's the objection. It's the primary objection in this
2 case. You cannot relegate somebody whose license is on
3 the line to telephonic or even Zoom.

4 Now, I understand that you might have done
5 Zoom, but I will tell you in every BlueJeans hearing I've
6 done, I've opted for the telephonic option because I've
7 found that it was much easier direct, and as long as my
8 pleadings got filed, I wasn't dealing with evidence, I
9 wasn't dealing with examining or cross-examining
10 witnesses.

11 This puts me at a significant disadvantage and
12 makes it so -- sure, I've got a tiny iPhone, but the only
13 way I can work with exhibits, I've got to have a fixed
14 camera, and the reason, apparently, I wasn't able to tap
15 into Zoom before was simply that the video itself was
16 out.

17 So now we find this out, and I'm saying to you,
18 listen, your Amended Scheduling Order says that you're
19 going to follow what's going on healthwise in the county
20 at the time. As of May 28th, we had schools that had
21 resumed classes, the governor had mandated masks in
22 casinos for those people that had not -- for those people
23 that had not been vaccinated at that point in time and
24 ruled out large arena-style gatherings. Other than that,

1 we've resumed kind of a back-to-normal schedule. So I'd
2 ask that, yes, everybody convene in Las Vegas because
3 DRP, the Disciplinary Rules of Procedure, I believe Rule
4 20, says that's what I'm supposed to be able to have.
5 I'm supposed to be able to have a hearing down here in
6 Las Vegas at my principal place of business, and that is
7 Las Vegas.

8 Now, any time that you and I and Mr. Gosioco
9 had talked about this, you had mentioned while up in Reno
10 but the rules don't even contemplate and never did
11 contemplate having a hearing in Reno. They contemplated
12 having a hearing in Las Vegas, and now we're hearing
13 Zoom.

14 The reason Mr. Gosioco -- I want to make a
15 clear record here. We had stated -- we had this
16 discussion in February, and he told you at that time we
17 should do the Zoom conference, and I said, Mr. Chair, I'd
18 like us to look at this a little closer in time to the
19 hearing because if the vaccinations start rolling, we
20 could have a different situation here in a month, two
21 months, three months from today. It could markedly
22 change the climate and the environment for an in-person
23 hearing.

24 We did discuss it again in April, and you

1 declined a live hearing at that time, and then at the
2 prehearing conference on May 19th, you declined it again.
3 And my thought was, well, wait a minute now, if we look
4 at when you put in the Amended Scheduling Order, which
5 was filed in February of 2021, it says that you're going
6 to follow health guidelines regarding this hearing, and
7 it says here -- and I'll just be very brief, Mr. Chair --
8 it says here the hearing for this matter, it says here,
9 will take place either via Zoom or in person pursuant to
10 public health recommendations.

11 Both for the first hearing on the 28th, public
12 health recommendations said it would have been fine to
13 convene a group setting, small group settings. I believe
14 there's ten people on the phone. I believe group
15 gatherings were allowed at that point in time, and,
16 frankly, I was surprised that there hadn't been the issue
17 of a live in-person hearing broached now as a result
18 of -- as a result of what's been going on with the
19 vaccination rates.

20 We're now at 70 percent of all Americans
21 vaccinated, so we're almost close to that herd immunity,
22 but in any event, there's no masks anywhere now except
23 for those people that haven't been vaccinated, and I was
24 surprised considering my request multiple times to have

1 this hearing take place live and in person so I could
2 work with exhibits and witnesses. You can't do that on a
3 telephone. I think you know that, Mr. Chair, and you
4 can't do that over Zoom. I think you know that, too.

5 And no trial lawyer would ever agree to do a
6 trial on Zoom. They would punt until the situation got
7 better, which is what I had asked us to do. Let's look
8 at the situation. Let's have a hearing on this. Let's
9 look at it as close in time as we can, and at the time we
10 looked at it, health guidelines did allow for an
11 in-person hearing, and that in-person hearing should have
12 been relegated to Las Vegas, you know, where I regularly
13 reside and practice as a matter of course here in
14 Las Vegas.

15 So to that extent I cannot go forward on the
16 telephone. It is absolutely prejudicial and ludicrous
17 for me because I cannot defend myself, because the rules
18 allow for an in-person hearing, and at the time of the
19 May 28th hearing, there was ample opportunity to follow
20 the guidelines. If they let children back in school,
21 then they should have -- Your Honor, you should have
22 allowed -- Mr. Chair, you should have allowed a hearing
23 in person on May 28th.

24 And certainly -- so if Ms. Watson was examined.

1 It must have been very quick. We had two other
2 witnesses, Mr. DiFrancesco and Mr. Sullivan, and I don't
3 think we got through half of their testimonies in total.
4 There's no reason why we cannot have held an in-person
5 hearing, and if I read your Amended Scheduling Order
6 correctly, it states you're going to follow public health
7 guidelines, so that should be something that we test the
8 sensitivity of regularly. I've asked three times for an
9 in-person hearing. I've been denied each time even
10 though the guidelines suggested that that would have been
11 fine. Now we have --

12 CHAIRMAN WILLIAMSON: Mr. Padgett, you just
13 stated if you're reading the Amended Scheduling Order
14 correctly. Can you point to me where in the Amended
15 Scheduling Order you are reading from when you discuss
16 the guidelines?

17 MR. PADGETT: Absolutely. Hold on a minute.

18 So as I look at the Amended Scheduling Order,
19 it's page 3, paragraph 8. Okay. It says, "The hearing
20 for this matter shall be set for one day, to wit, May 28,
21 2021, starting at 9:00 a.m., and will take place either
22 via Zoom or in person pursuant to public health
23 recommendations." That's what I'm looking at.

24 CHAIRMAN WILLIAMSON: Correct. And that was in

1 May; correct?

2 MR. PADGETT: Well, at that point in time --

3 CHAIRMAN WILLIAMSON: May 28th?

4 MR. PADGETT: Yes, that was on May 28th.

5 Now, there is no line of demarcation on June 1
6 when Governor Sisolak said no masks because schools have
7 reconvened. The governor said you didn't need to wear
8 masks for small gatherings, and most people, according to
9 CDC guidelines, were not mandated to wear masks unless
10 they weren't vaccinated. Okay?

11 So if that's the case, there was -- if children
12 can reconvene a classroom of 20 to 30 people, then we
13 should have been able to convene a hearing of ten
14 people -- I suppose there's ten people here on this line
15 now -- at that time on May 28th. And just because,
16 Mr. Chair, you denied my request on May 19th to hold an
17 in-person hearing doesn't mean -- with the short work we
18 got into on May 28th, there's absolutely no reason to say
19 that because we started on Zoom, although I was
20 telephonic, we should continue on Zoom as a result. That
21 scheduling order seems to suggest that we test the
22 sensitivity as we go, and that's what I'm arguing for
23 today.

24 CHAIRMAN WILLIAMSON: Understood.

1 And the other important point about the
2 scheduling order is paragraph 6, which stated,
3 "Respondent will submit his evaluation of the conditions
4 relevant to hearing the hearing remotely versus holding a
5 live hearing by April 21, 2021. The State Bar will have
6 an opportunity to respond by April 28, 2021, when a final
7 decision will be made by the panel chair."

8 That transpired, and you specifically asked in
9 your emailed motion on April 21st that you did not want
10 anyone to wear masks so that you could adequately examine
11 and cross-examine witnesses called in the case, and,
12 again, we could not have done a live hearing without
13 masks on May 28th when this was scheduled for.

14 I also want to address something else. So in
15 my response on April 28th, I did state that, thankfully,
16 a Zoom hearing would allow us to do away with masks so
17 that faces can be seen through Zoom video, and that was
18 on April 28th.

19 Again, we proceeded via Zoom on May 28th before
20 the mask requirement was lifted, and that's when this
21 hearing commenced, and then at the conclusion of this
22 hearing, when we didn't finish, everyone discussed and
23 scheduled a new date for a new Zoom hearing, and that
24 date was finalized on June 4, 2021. So this would have

1 been after the governor's -- the governor changed the
2 mask mandate.

3 And in that email I then stated, "We will start
4 promptly at 9:00 a.m. and make the most of our time.
5 Therefore, please make sure that you can be on Zoom a few
6 minutes before we start. I would also recommend testing
7 your hardware and the Zoom application far in advance so
8 that you don't have any problems on the morning of the
9 hearing."

10 So on June 4th, Mr. Padgett, you were aware
11 that we were proceeding by Zoom. I, in fact, even warned
12 and recommended that you get your application tested,
13 figure out whatever you needed to do so that you could
14 participate by phone.

15 I also -- and I'm glad you brought this up
16 because I wanted to clarify something else -- Mr. Gosioco
17 stated that you were aware this was going to be a Zoom
18 hearing as far back as in January. I believe you
19 actually knew at least as far back as October. I know
20 Mr. Aman and I were on the original formal hearing,
21 getting ready to start, in October of 2020 via Zoom, and
22 that morning you apparently contacted Mr. Gosioco and
23 asked for a continuance.

24 So my guess is that you actually knew this was

1 going to be by Zoom all the way back in October, but
2 certainly all through the spring you knew it was going to
3 be by Zoom. It was on Zoom on May 28th in accordance
4 with public health guidelines, and when we reset it for
5 the subsequent hearing on June 4th and I again explained
6 it was going to be by Zoom, you did not object. You did
7 not ask for a live hearing at that point even though the
8 health recommendations had, arguably, changed, and, in
9 fact, you now waited until a few minutes before the
10 hearing this morning to say that suddenly we need to do a
11 live hearing.

12 So your arguments are untimely, and they are
13 waived, and your motion on that ground is denied.

14 One final point and then we are going to move
15 on to witnesses. You stated the venue issue. I believe
16 Mr. Gosioco is in Las Vegas, and I presume, since I can
17 see you're calling from a 702 number, that you are in
18 Las Vegas. So you are in Las Vegas. No one forced you
19 to fly to Reno or anywhere else in the state. You are in
20 Clark County, and if you are outside of Clark County, it
21 is by your own choosing. So there's certainly no issue
22 with venue because you are, as you stated, where you live
23 and where you practice.

24 So, again, your now thrice-renewed motion to

1 have a live hearing is denied.

2 Mr. Gosioco, please call your next witness.

3 MR. PADGETT: Thank you for hearing me out,
4 Mr. Chair.

5 CHAIRMAN WILLIAMSON: You're welcome.

6 MR. GOSIOCO: Thank you, Mr. Chair.

7 And just briefly, if I may make just a quick
8 suggestion. I did hear that Mr. Padgett was able to --
9 his camera wasn't working. The nice thing about Zoom, as
10 long as he has a working Internet connection, he can log
11 on and still see our faces as well as the exhibits.

12 But with that, I will continue, and,
13 Mr. Chairman, I don't know how you would like to
14 proceed --

15 CHAIRMAN WILLIAMSON: Mr. Gosioco, thank you
16 for bringing that up.

17 Mr. Padgett, Mr. Gosioco is right, and so you
18 may have us at a disadvantage. I encourage you to log
19 in, and then you can spy on all of us and see all the
20 witness reactions although we won't be able to see you.

21 MR. PADGETT: Mr. Gosioco, good question. You
22 won't be able to see me, but I can see you?

23 MR. GOSIOCO: That's correct.

24 MR. PADGETT: Okay. So that really doesn't fix

1 the problem, but okay. Let me try that while you're
2 moving forward. Thank you very much.

3 CHAIRMAN WILLIAMSON: Mr. Gosioco, please
4 proceed.

5 MR. GOSIOCO: Mr. Chairman, how would you like
6 to proceed?

7 CHAIRMAN WILLIAMSON: Based on the experience
8 last time, I'd say whatever witness is ready and is able
9 to be extracted into the main hearing room here, that is
10 fine.

11 I do want to make sure that Mr. Padgett gets an
12 opportunity. I don't think he finished his
13 cross-examination of either Mr. DiFrancesco or
14 Mr. Sullivan, so I do want to make sure that happens, but
15 we've already been bouncing around, and I do want to be
16 mindful of witness schedules. So whichever witness is
17 available to be called right now, let's go ahead and call
18 that person and just keep moving.

19 MR. GOSIOCO: The State Bar will go ahead and
20 call Mr. Sean Keseday, and I will resume -- would you
21 like me to start my questioning when Mr. Padgett returns
22 and tries to log in?

23 CHAIRMAN WILLIAMSON: Yeah. Let's get
24 Mr. Keseday in. We could even get him sworn, but then,

1 yeah, let's give --

2 MR. GOSIOCO: Mr. Keseday, can you hear us?

3 MR. KESEDAY: Yes.

4 MR. GOSIOCO: Madam Court Reporter, for the
5 time being, while we're waiting on Mr. Padgett, can you
6 please swear in Mr. Keseday.

7 SEAN KESEDAY,

8 having been first duly sworn,

9 was examined and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. GOSIOCO:

13 Q Mr. Keseday, we are waiting on Mr. Padgett to
14 return, but, just briefly, can you please state your name
15 and spell it for the record, please.

16 A First name Sean, S-e-a-n, last name Keseday,
17 K-e-s-e-d-a-y.

18 Q Thank you, Mr. Keseday.

19 Mr. Chairman, how long would you like us to
20 wait for Mr. Padgett to return before I start my
21 questioning?

22 CHAIRMAN WILLIAMSON: I believe Mr. Padgett is
23 back. We've got a 702 phone number, and, in fact, audio
24 has lit up a few times on that number, so I assume that's

1 Mr. Padgett ending in 5444.

2 MR. GOSIOCO: No, sir. That's the audio
3 connected for Mr. Keseday.

4 CHAIRMAN WILLIAMSON: Got it. Thank you,
5 Counsel.

6 I tell you what, it's 10:00 o'clock. Let's
7 give Mr. Padgett five minutes to get squared in.

8 MR. GOSIOCO: Understood. Thank you,
9 Mr. Chairman.

10 (A recess was taken.)

11 BY MR. GOSIOCO:

12 Q Good morning, Mr. Keseday. How are you doing?

13 A Good morning.

14 Q Mr. Keseday, how are you employed?

15 A I work as a legal process server.

16 Q And as a legal process server, what are your
17 general duties?

18 A Serve legal documents, investigate.

19 Q You said serving legal documents. At any point
20 in during your employment, did you attempt to serve an
21 individual by the name of Brian Padgett?

22 A That's correct.

23 Q And I will just share my screen briefly.

24 Showing you what's been previously marked and

1 admitted as Exhibit 48, Mr. Keseday, can you see my
2 screen?

3 A Yes.

4 Q Perfect. I'm going to scroll down just
5 briefly.

6 Do you recognize this document, Mr. Keseday?

7 A Yes, I do.

8 Q And what does this appear to be?

9 A It's a picture of a vehicle that was parked in
10 a driveway.

11 Q Okay. And I'll show you what's been previously
12 marked and admitted as Exhibit 53.

13 Do you see this document, Mr. Keseday?

14 A Yes, I do.

15 Q And do you recognize this document?

16 A Yes, I do.

17 Q And what is this document?

18 A This is an Affidavit of Due Diligence.

19 Q And is this your signature at the bottom of
20 this page, sir?

21 A Yes, that is.

22 Q And did you complete this affidavit?

23 A Yes.

24 Q Okay. And I'd like to turn your attention -- I

1 will highlight on the screen -- if you could just read it
2 to yourself quietly and let me know when you are
3 finished.

4 A Attempted at 1672 Liege Drive, Henderson,
5 Nevada.

6 Q Okay. Is that the address you attempted to
7 serve Mr. Padgett at, sir?

8 A That's correct.

9 Q And correct me if I'm wrong, sir, but it looks
10 like you attempted to serve Mr. Padgett on three separate
11 occasions; is that right?

12 A Yes, it is.

13 Q And were you able to get to the house on all
14 three occasions?

15 A Yes, I was.

16 Q Were you alone, sir?

17 A I was security-escorted to the property.

18 Q Was that on all three occasions?

19 A Yes, it was.

20 Q Okay. And just briefly, I'm going to highlight
21 the first portion of this attempt.

22 Can you read that to yourself quietly, sir, and
23 let me know when you're finished.

24 A Yes.

1 Q I just want some clarification, Mr. Keseday.

2 You had written in your affidavit that there's
3 no answer but could see movement inside.

4 Now, what did you mean by that, Mr. Keseday?

5 A Sometimes I don't go full distance into what I
6 actually saw, but I did see a dog inside come to the door
7 when I had rang the doorbell.

8 The address -- the house has shaved glass on
9 the front door so I could not directly see the entire
10 front of the house inside, but on the edges it was clear.
11 So I saw a dog come to the front door, and then in the
12 background I saw a woman's high heels and a man wearing
13 slacks and shoes walking around by a table behind the
14 dog.

15 Q Okay. Thank you, Mr. Keseday.

16 Just for clarification purposes, you stated the
17 door had both shaved glass and clear glass?

18 A Correct.

19 Q Okay. And when you attempt to serve an
20 individual at a residence, what do you typically do when
21 you arrive at the house?

22 A Ring the doorbell, knock on the door. I look
23 around to see if anybody is looking out the windows, if
24 any lights are turned on or off. If I do have a clear