

Brian C. Padgett
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702) 497-3204
Email: Brian.Padgett@icloud.com

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S OPENING BRIEF

I. NRAP 26.1 DISCLOSURE

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

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

NONE.

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

NONE.

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IV. JURISDICTIONAL STATEMENT

A. Basis of Jurisdiction

This is an appeal from the Notice of Entry of Decision, filed August 10, 2021, (hereinafter “Decision”) by Respondent State Bar of Nevada against Appellant Brian C. Padgett. This Court has jurisdiction over this appeal pursuant to Article 6, section 21 (1) of the Nevada Constitution and the Nevada Rules of Appellate Procedure (hereinafter “NRAP”), Rule 3D(b & c).

B. Timeliness of Appeal

Appellant Brian C. Padgett filed a Motion to Extend Time to File Opening Brief (First Request) on September 7, 2021 seeking a thirty (30) day extension of time – until October 11, 2021 - within which to file Appellant’s Opening Brief. That request was granted by the Court.

Appellant then filed a Motion to Extend Time to File Opening Brief (Second Request) seeking a thirty (30) day extension of time to file the Opening Brief until November 10, 2021 due to ongoing medical issues. This request was granted by the Court.

Appellant filed a Motion to Extend Time to File Opening Brief (Third Request) seeking a seven (7) day extension of time to complete the Opening Brief and deliver it to the Court on or before November 17, 2021. This request is pending approval by the Court as of November 18, 2021.

On November 17, 2021, Appellant filed a Motion to Extend Time to File Opening Brief (Fourth Request) seeking a one (1) day extension of time to deal with technical issues regarding the Appendices and complete the Opening Brief and deliver it to the Court on or before November 18, 2021. This request is pending approval by the Court as of November 18, 2021.

Pending Court approval of the Motions to Extend Time, filing of the Opening Brief has been made within 98 days after service of the order. *See* NRAP 3D(d).

C. Appeal from Final Order of Judgment

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

V. ROUTING STATEMENT

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

VI. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Respondent erred and substantially prejudiced Appellant by failing to extend peremptory challenges to exclude Panel Members in violation of his Due Process and Equal Protection rights.

2. Whether the Respondent erred and substantially prejudiced Appellant when it denied Appellant the opportunity to call his own witnesses and use his own exhibits for the disciplinary hearing.
3. Whether the Respondent erred and substantially prejudiced Appellant by wrongfully denying him the right to confront his accusers and cross-examine witnesses in person.
4. Whether the Respondent violated Appellant's Equal Protection Rights by settling the disciplinary case against Amy Sugden for a reprimand while refusing to negotiate a settlement with Appellant.
- 5.

VII. STATEMENT OF THE CASE

This is an appeal from a disciplinary hearing held by the Respondent State Bar of Nevada who arrived at their Entry of Decision in violation of Appellant's Due Process and Equal Protection rights under the law.

VIII. STATEMENT OF FACTS

In the summer of 2019, Appellant was advised that two Bar Complaints had been filed against him by a former client and a former employee Appellant provided with pro bono legal aid (OBC19-0604 and OBC19-0798). Later that year, Appellant was made aware a third Bar Complaint was filed against him by another client

(OBC19-1111). Prior to the filing of these Complaints, Appellant had only had one Bar Complaint filed against him during the entire course of his 20 year legal career in Nevada – and he successfully defended against it before it went beyond the initial inquiry phase.

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

Finally, case no. OBC19-1111 was filed by a former client whose case was also primarily handled by Ms. Sugden in her capacity as an independent contractor working with Appellant's law firm.

Prior to and during his response to the State Bar investigation, Appellant learned that his law firm's server had been breached by Amy Sugden and approximately half of the Firm's archived emails and case documents were deleted from the server without Appellant's knowledge. Appellant then notified the State

Bar on October 11, 2019, February 24, 2020 and October 14, 2020 that several of those emails, PDF and Word documents needed to respond to the State Bar's investigations were removed from the law firm's server without authorization. *ROA Vol. X, pages 2273-2277.*

When Appellant's law firm server was breached again at the end of February 2020 the decision was made to move full time to Appellant's home office at 1672 Liege Drive, Henderson, Nevada 89012 and work from flash drives and computer hard drives.

As the Law Office made the move to Henderson from downtown Las Vegas, Appellant's secretary, Connie P. Little, mailed the Respondent a notice of change of address, temporarily changing the Law Firm address to Respondent's home office at 1672 Liege Drive, Henderson, Nevada 89012. *ROA Vol. III, pages 520-555.* For the rest of 2020 and 2021, the Law Firm's mail was received at Appellant's home office and this address along with new email address was also available to Respondent on the Clark County District Court Portal.

Despite the notice of change of the law firm's address to 1672 Liege Drive, Henderson, Nevada 89012, the State Bar continued to send all mail to Appellant's 611 S. 6th Street downtown law office address and to a home he had not owned in more than a year at 11274 Gammila Drive, Las Vegas, Nevada 89141. Even though these mailings were returned to sender, the State Bar continued to send mailings to

the same addresses. These mailings for case no. OBC19-1111 included the Complaint, First Designation of Panel Members, Notice of Intent to Take Default and Entry of Default, among others. This is confirmed by Respondent's July 10, 2020 Declaration of Service According to SCR 109(1) In Support of Entry of Default. *ROA Vol. I, pages 23-37*.

During that time of Covid-19 quarantine, Appellant lost an uncle, helped evacuate his parents from California and faced his own medical issues. Meanwhile, Respondent's case against Appellant continued toward the October 15, 2020 hearing date when Respondent reached out to Appellant's lawyer, Garrett Ogata and advised him of the hearing. Appellant then made contact with Respondent on October 14, 2020 and the Hearing was continued to allow Respondent to file an Amended Complaint and for Appellant to file an Answer to the Amended Complaint. *ROA Vol. X, pages 2273-2277*. Appellant was not given an opportunity to use peremptory challenges on a Designated Panel Members List. However, in an October 21, 2020 letter from Respondent, Appellant was required to provide proof that his uncle passed away and proof of his own illness at that time, among others.¹

Thereafter, in 2021, the Panel Chair ordered a Zoom disciplinary hearing despite the appeal of Appellant to face his accusers and cross-examine witnesses live

¹ This document was drafted by Respondent and should be part of the Record on Appeal but it has not been found in Respondent's Appendices.

and in-person. Appellant was also stripped of his ability to call his own witnesses and produce documents for the hearing. Further prejudicing Appellant, he could not access the Zoom hearing and had to participate telephonically and so could not see the proceedings, he could not effectively handle exhibits and while he struggled with access the hearing started and carried on without him. All of these actions effectively robbed Appellant of his Due Process and Equal Protection rights and left him unable to defend himself on the merits.

IX. SUMMARY OF THE ARGUMENT:

A. Nevada Courts have a long history of protecting the Due Process rights and Equal Protection rights of participants in civil actions.

1. The Respondent erred by failing to extend peremptory challenges to Appellant to exclude Panel Members in violation of his Due Process and Equal Protection rights.
2. The Respondent erred when it denied Appellant the opportunity to call his own witnesses and use his own exhibits for the disciplinary hearing.
3. The Respondent erred and substantially prejudiced Appellant by wrongfully denying him the right to confront his accusers and cross-examine witnesses in person at the hearing.

4. The Respondent violated Appellant's Equal Protection Rights and by settling the disciplinary case against Amy Sugden for a reprimand while refusing to negotiate a settlement with Appellant.

X. LEGAL ARGUMENT

On an appeal from an adverse Hearing Panel determination that was taken in violation of Appellant's Due Process and Equal Protection rights, this Court "may reserve such action or take any alternative action provided in this subsection." Nev. Const. art. 6, sec. 21(1). This Court "is not bound by the Panel's conclusions of law. *In re Varain*, 114 Nev. 1271, 1276, 969 P.2d 305, 309 (1998). Factual determinations are reviewed to determine "whether the evidence in the record as a whole provides clear and convincing support" for the Panel's findings." *Id.*

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

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

Nevada courts have a history of protecting the Equal Protection and Due Process rights of participants in civil actions. Decisions denying a person within

its jurisdiction equal protection of the laws and decisions made in absence of one party are not favored by the law. As stated by the Nevada Supreme Court in *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 561, 598 P.2d 1147 (1979):

[It is] the basic policy of each case decided upon its merits. In the normal course of events, justice is best served by such a policy.

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

Nevada has long held to these precepts as essential rights for all parties and it is applicable here to protect the due process and equal protection rights of the Appellant by overturning the decision of the Hearing Panel and allow Appellant an opportunity to defend himself on the merits.

1. Peremptory Challenges to Exclude Panel Members Were Never Extended to Appellant In Violation of His Due Process and Equal Protection Rights

Pursuant to Rule 13 of the Disciplinary Rules of Procedure, Respondent was to be served with a Complaint and First Designation of Panel Members.

According to Rule 13(a) Respondent was also to be given five (5) peremptory challenges to be used to eliminate people listed on the First Designation of Panel Members list. These challenges were to be used for any reason or no reason at all to ensure that Appellant had an opportunity to have input in selecting a fair and

independent Panel Chair and Hearing Panel.

At the end of February 2020, Appellant mailed a Notice of Address Change to Respondent that notified it that Appellant's Law Office had moved to 1672 Liege Drive, Henderson Nevada 89012 and that all mail should be sent to that address. *ROA Vol. X, pages 2279-2280.*

Respondent's Complaint and First Designation of Panel Members was filed on May 13, 2020 but not served on Appellant. *ROA Vol. I, pages 1-12.* As a result, an Order Appointing Hearing Panel Chair was filed on July 8, 2020 without the input of Appellant. *ROA Vol. I, pages 47-49.*

According to Respondent's July 10, 2020 Declaration of Service According to SCR 109(1) In Support of Entry of Default, the Respondent did not serve the Complaint and Designation of Hearing Panel Members list on Appellant at his new 1672 Liege Drive law office address pursuant to his February 28, 2020 notice of change of address.² *ROA Vol. I, pages 23-37.* Respondent only attempted service of these documents at Plaintiff's former residence at 11274 Gammila Drive in Las Vegas, Nevada 89141 and his former law office address at 611 S. 6th Street in Las Vegas, Nevada 89101. *ROA Vol. I, pages 23-37.* Respondent's first attempted service on Appellant at his 1672 Liege Drive address was not until 9/29/2020,

10/1/2020 and 10/3/2020 while Appellant was in California.³

It was not until the end of September / beginning of October 2020 that Respondent contacted former counsel for Appellant, Garrett Ogata, with information on the Disciplinary Hearing in this matter that Appellant even knew to get in touch with Respondent. Appellant then sent a letter to Respondent – again advising them of his 1672 Liege Drive address - and that he had no notice of the upcoming disciplinary hearing. *ROA Vol. X, pages 2273-2277*. Thereafter, the hearing was stayed and the Panel Chair allowed Respondent to file an Amended Complaint and Appellant was then allowed to file an Answer. The Amended Complaint did not come with a First Designation of Hearing Panel Members and no mention was made to Appellant of any right to use five (5) peremptory challenges to eliminate any prospective Panel Members and shape the Hearing Panel. Both the Hearing Panel Chair and Formal Hearing Panel were appointed before Appellant accepted service of a formal Complaint in this matter in October 2020.

Appellant later learned he was never given an opportunity to use peremptory challenges on the Hearing Panel List through no fault of his own because he was never served with the Complaint until October 2020. Appellant brought this matter

³ A “Summary of Service” should be part of the Record on Appeal but it has not been found in Respondent’s Appendices. It was previously designated by Respondent as SBN 00736 and SBN 00743.

before the Panel Chair at the Pre-Hearing Conference.⁴ At that time, Appellant was denied the right to use peremptory challenges by the Panel Chair who would only allow a challenge for cause within a less than 24 hour window.⁵

A challenge for cause is not the same as a peremptory challenge which would have allowed Appellant to exclude the Panel Chair for any reason or no reason at all. Appellant had reason to use a peremptory challenge to remove the Panel Chair as he practices in the field of eminent domain and is a direct competitor for these small amount of cases that arise annually in Nevada.

Appellant revisited his loss of peremptory challenges in his June 16, 2021 Motion to Set Aside Orders and Dismiss Case. *ROA Vol. VI, pages 1204-1213*. This Motion was also denied by the Panel Chair. *ROA Vol. VI, pages 1224-1227*.

Respondent's failure to offer the peremptory challenges from the outset is incurably prejudicial and a violation of Respondent's Due Process and Equal Protection Rights. For this reason Appellant asks that the Decision of the Hearing

⁴ The Panel Chair's rulings from that May 19, 2021 hearing have not been found in Respondent's Index or Appendices – only his Order regarding Appellant's Motion to Set Aside.

⁵ The Panel Chair ruled that Appellant would only be allowed to challenge Panel Members for cause within a window of less than 24 hours – along with filing Oppositions to other motions within this same time period. All this while Appellant had client filing deadlines due within that same period of time. The client matters took up the bulk of the time window and Appellant was unable to draft any responsive pleadings within the Panel Chair's time window so he sought an extension of time from the Panel Chair and was denied.

Panel be overturned and Appellant be allowed to defend himself on the merits of the case with all of the rights accorded other similarly situated members of the Nevada State Bar.

2. Appellant Was Substantially Prejudiced When Denied the Opportunity to Call His Own Witnesses and Use His Own Exhibits In Violation of His Due Process and Equal Protection Rights

Appellant provided Initial Disclosures to Respondent on March 9, 2021. Thereafter, pursuant to the Amended Scheduling Order, the parties were to 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. *ROA Vol. II, pages 350-354.*

Respondent filed a Motion to Compel regarding Appellant's Initial Disclosures prior to April 5, 2021. Before Appellant could begin to prepare an Opposition, the Panel Chair found in favor of Respondent and stripped Appellant of his right to produce witnesses and documents on April 15, 2021 – four full days before the April 19, 2021 date scheduled for Appellant to prepare an Opposition. *ROA Vol. II, pages 367-373.*

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

Appellant then filed an NRCP 60 Motion to Set Aside the ruling. *ROA Vol. II, pages 431-437*. This Motion was not heard until May 19, 2021 at the Pre-Hearing Conference. At that time, the Panel Chair ruled that the Motion to Set Aside would be granted. However, rather than grant Appellant the four days he had left to prepare and file an Opposition under the Amended Scheduling Order, the Panel Chair ordered Appellant would have less than 24 hours to file an Opposition to Respondent's original Motion to Compel along with several other motions.⁶

That same day, Appellant had clients who relied on him to prepare Justice Court appeals for District Court to keep them in their homes pursuant to the CDC Moratorium. Appellant took care of the clients with deadlines first and then, at

⁶ The Panel Chair's May 19, 2021 Order Regarding Defendant's Rule 60(b) Motion To Set Aside Order Granting State's Motion to Compel has not been found in Respondent's Index or Appendices.

11:39am on Thursday May 20, 2021 he asked for an extension of the Panel Chair's filing deadline and was denied. As a result, the Panel Chair then filed an Order granting the Respondent's Motion to Compel and Appellant was unable to call his own witnesses or use his own documents to defend himself at the hearing. *ROA Vol. V, pages 1164-1172.*

The ruling of less than 24 hours to prepare several Motions and subsequent refusal to grant an extension of time for same was arbitrary and capricious and violated Appellant's Due Process rights giving him no real opportunity to defend himself in such a short time window with other client obligations to satisfy during that same time period. Furthermore, the ruling denied Appellant Equal Protection under the laws as he was denied the full time set forth in the Amended Scheduling Order to draft his Opposition unlike other similarly situated members of the Nevada State Bar who have been the subject of disciplinary proceedings and have had the full time set forth in the Scheduling Order to file responsive pleadings . For this reason, Appellant asks that the Decision of the Hearing Panel be overturned and Appellant be allowed to defend himself on the merits of the case

with all of the rights accorded other similarly situated members of the Nevada State Bar.

3. Respondent Wrongfully Denied Appellant the Right to Confront His Accusers and Cross-Examine Witnesses In Person

Disciplinary Rules of Procedure, Rule 32, states that “the venue shall be the county in which the respondent resides or maintains his or her principal place of business. Hearings will be conducted in the Reno or Las Vegas office of the State Bar unless otherwise ordered by the hearing panel chair upon showing of good cause.”

In the February 19, 2021 Amended Scheduling Order, paragraph 8 notes that the hearing “will take place either via Zoom or in person, pursuant to public health recommendations”. *ROA Vol. II, pages 350-354.*

On April 28, 2021, after taking written argument, the Panel Chair ruled that the disciplinary hearing would take place via Zoom conference and he denied Appellant the right to be able to face his accusers and cross-examine them in person because of the Covid-19 pandemic. In his ruling, the Panel Chair noted “the State Bar should select a method that ensures all participants can see each other and any testifying witnesses. Mr. Padgett must be allowed the opportunity to

see and reasonably examine any witnesses testifying against him.”⁷

At the pre-hearing conference, on May 19, 2021, despite notice from Governor Sisolak that schools had been reconvened and masks were only mandatory for those casinos and for those not vaccinated, the Panel Chair again denied a renewed request from Respondent for a live, in-person hearing – despite having stated in his February 19, 2021 Amended Scheduling Order that the hearing would take place “either via Zoom or in person, pursuant to public health recommendations.” *ROA Vol. II, pages 350-354*.

This ruling went against the Amended Scheduling Order as Nevada public health recommendations allowed small group gatherings such as would be had during the disciplinary hearing.

The Panel Chair’s ruling violated the right of confrontation and right of cross-examination allowed under the Sixth Amendment of the United States Constitution. While these rights are typically reserved for criminal proceedings, in this case, the Appellant was accused of wrong-doing and stood to garner punishment if found guilty of the accusations against him. Therefore, it was essential to extend those Sixth Amendment rights to Appellant and appearance via Zoom was not sufficient to protect Appellant’s Constitutional rights.

⁷ The Panel Chair’s April 28, 2021 email “Re: Live Hearing Justification” should be part of the Record on Appeal but it has not been found in Respondent’s Appendices.

The first day of the hearing was held on May 28, 2021 and for more than the first hour of the hearing Appellant could not access the Zoom conference and was in touch with Respondent that first hour making them aware that he could not access Zoom and worked with Bar staff to try to gain access. Despite being in contact with the State Bar, the Panel Chair convened the hearing without Appellant. *ROA Vol. VI, pages 1255-1401.*

Shortly after learning the hearing started without him, Appellant had to call in via telephone and was then relegated to examining two witnesses via telephone as the Panel Chair would not continue the hearing. Appellant could not face his accusers in person nor was he able to cross-examine his accusers in person. nor could not freely handle exhibits as needed. Witnesses had also been examined without Appellant present and without Appellant having the opportunity to examine them. Thereafter, it was agreed that the hearing would be continued to June 16, 2021 in order to examine all of the remaining witnesses. *ROA Vol. V, pages 1200-1203.*

Prior to the next hearing date, on June 1, 2021, Governor Sisolak made masks mandatory only for those who had not been vaccinated. Furthermore, on June 11, 2021 Las Vegas Justice Court rescinded its mandate for Blue Jeans or telephonic appearance for all counsel, parties and witnesses. *ROA Vol. VI, pages 1204-1213.*

Appellant learned of the Justice Court ruling on the evening of June 14, 2021 and filed a Motion before the Panel Chair on the morning of June 16, 2021 to hold the hearing live in Las Vegas, Nevada as public health recommendations in Nevada now allowed gatherings with or without masks. Because of the substantial prejudice that attached to Appellant on Day 1 of the hearing it was also requested that this disciplinary hearing be stricken and a new, in-person hearing be scheduled so Appellant could confront his accusers in person and cross-examine them in person. *ROA Vol. VI, pages 1204-1213.*

The Panel Chair denied Appellant's request and due to additional technical difficulties the hearing started without Appellant and Appellant was again relegated to telephonic access. After additional discussion, the Panel Chair was unwilling to continue the hearing and so Appellant concluded the hearing unable to confront his accusers and cross-examine them in violation of his Sixth Amendment rights and his Due Process and Equal Protection rights. *ROA Vol. VI, pages 1224-1227.*

4. Respondent Settled the Disciplinary Case Against Amy Sugden For A Reprimand While Respondent Refused to Negotiate A Settlement With Appellant

Ms. Sugden worked with Appellant as an independent contractor to his law firm for 9 years. Prior to that time she had been a practicing attorney for several

years in the field of eminent domain prior to working with Appellant. After more than six (6) years working with Appellant she was routinely contracted to handle certain eminent domain cases on a daily basis. During that time she also represented Appellant and Appellant's law firm in various matters. Ms. Sugden primarily handled the subject case in issue for Appellant's law firm on a day to day basis.

On March 15, 2019, Ms. Sugden was terminated by Appellant's law firm for cause. Shortly thereafter, it was discovered that Ms. Sugden intentionally deleted nine (9) years of company emails, Word and PDF documents. Appellant made Respondent aware of this via correspondence on October 11, 2019, February 24, 2020 and October 14, 2020. *ROA Vol. X, pages 2273-2277*. As a result of Ms. Sugden's actions, Appellant was not been able to retrieve all documents necessary to defend himself due to Ms. Sugden compromising the Firm's server prior to and after her dismissal.

Appellant subsequently learned that since the initiation of OBC19-0604 and this instant matter, Respondent has been referring cases to Ms. Sugden while she has been cited for investigation and a disciplinary hearing in these same cases.⁸

ROA Vol. VI, pages 1204-1213.

⁸ After Ms. Sugden was terminated from Appellant's law firm, Appellant received an email directed to Ms. Sugden from a prospective client that stated he was referred to her by the Nevada State Bar.

Respondent also listed Ms. Sugden as a witness in his Disclosure of Documents and Witnesses. *ROA Vol. II, pages 440-446*. During the Pre-Hearing conference on May 19, 2021 Respondent made an oral motion to approve his Final Disclosure of Documents and Witnesses. Appellant objected to a blanket approval of the Disclosures. Among others, Appellant objected to Ms. Sugden being listed as a witness as she had been Appellant's attorney and was subject to attorney-client privilege, she had been terminated from Appellant's law firm for cause and she had helped contrive Bar Complaint for OBC19-0798 against Appellant. Despite these objections, the Panel Chair approved Respondent's Final Disclosures which included Ms. Sugden as a witness for Respondent despite the conflict of interest her testimony provided.

At that time neither the Panel Chair or Associate Bar Counsel Gosioco disclosed that Respondent had negotiated and settled the disciplinary matter related to this case with Ms. Sugden for only a written reprimand. Appellant did not learn of this settlement until it was disclosed by Mr. Gosioco on the second day of his disciplinary hearing that Ms. Sugden settled her case with Respondent and received a written reprimand while Associate Bar Counsel Gosioco refused to negotiate and offer similar terms to Appellant during the course of the disciplinary proceedings. *ROA Vol. VI, pages 1204-1213; 1224-1227*.

Ms. Sugden was the attorney that handled this case on a day to day basis as

an independent contractor for Appellant's law firm and it was her conduct that spurred the clients to file a Bar complaint. However, she was allowed to conclude her disciplinary proceedings via settlement of a written reprimand. On the other hand, unlike Ms. Sugden, Appellant was not offered nor given any opportunity to negotiate a settlement in this case in direct violation of his Equal Protection and Due Process rights.

XI. CONCLUSION

The Hearing Panel's Entry of Decision should be overruled because the Panel rulings made prior to and during the course of the disciplinary hearing were violative of Appellant's Due Process and Equal Protection Rights making a fair hearing impossible.

Appellant respectfully requests that this Court set aside the decision of the Hearing Panel and remand this matter to the State Bar for new disciplinary proceedings which allow Appellant a full and fair opportunity to defend himself on the merits.

DATED this 18th Day of November 2021.

/s/ Brian C. Padgett

Brian C. Padgett
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702) 497-3204
Email: Brian.Padgett@icloud.com
Appellant in Proper Person

CERTIFICATE OF COMPLIANCE

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

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

DATED this 18th day of November, 2021.

/s/ Brian C. Padgett

Brian C. Padgett
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702) 497-3204
Email: Brian.Padgett@icloud.com

Appellant in Proper Person

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that on the 18th day of November, 2021, I did serve by way of electronic filing, a true and correct copy of the foregoing **APPELLANT’S OPENING BRIEF** on the following:

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

/s/ Brian C. Padgett

Brian C. Padgett
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Telephone: (702) 497-3204
Email: Brian.Padgett@icloud.com

Appellant in Proper Person