

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Case No. 83347

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RESPONDENT'S ANSWERING BRIEF

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JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule (“SCR”) 105(3)(b), “a decision recommending a public reprimand, suspension or disbarment shall be automatically reviewed by the supreme court.”

ROUTING STATEMENT

This appeal is presumptively assigned to the Supreme Court pursuant to the Nevada Rules of Appellate Procedure (“NRAP”) because it is an appeal from a case involving attorney admission, suspension, discipline, disability, reinstatement, or resignation. NRAP 17(a)(4).

STATEMENT OF THE ISSUES

1. Was Padgett denied the opportunity to exercise peremptory challenges or challenges for cause?
2. Was Padgett denied the opportunity to call his own witness or introduce his own exhibits?

3. Was Padgett prejudiced by conducting his Formal Hearing via Zoom?
4. Did the State Bar's negotiations with another attorney affect Padgett's Formal Hearing?

STATEMENT OF THE CASE

This is an automatic *de novo* appeal, brought pursuant to the Supreme Court Rules and applicable interpreting case law, of the Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing (hereinafter "Findings") from the duly designated Formal Hearing Panel ("Panel") of the Northern Nevada Disciplinary Board, filed on August 5, 2021. The Panel recommended that this Court impose a five (5) year suspension on Appellant, Brian C. Padgett (hereinafter "Padgett"), to run consecutive to the five (5) year suspension he received in Docket No. 81918. Record on Appeal ("ROA") 1228-37. The Panel also recommended that Padgett pay restitution in the amount of the fees he charged his former clients, approximately \$161,000.00, with interest at the statutory rate. *Id.* Padgett contests the Panel's recommendation.

STATEMENT OF THE FACTS

On March 6, 2012, John DiFrancesco, Robert Feron, and Jacalyn Feron (hereinafter "Grievants") retained the Law Offices of Brian C. Padgett ("LOBCP") to represent them in a lawsuit related to the Truckee River Flood Management Project. ROA 1270-72. Per the fee agreement, Grievants were to pay the LOBCP

\$2,500.00 each month; and, if there were any fees beyond that amount, they were to pay them at a subsequent date. *Id.* at 1274.

John DiFrancesco (hereinafter “Mr. DiFrancesco”) handled the payments to the LOBCP on behalf of the Grievants. *Id.* Mr. DiFrancesco paid LOBCP \$7,500.00 for travel expenses and depositions, but Padgett did not schedule or take any depositions. *See id.* at 1276-79. Louise Watson (hereinafter “Ms. Watson”), an investigator with the State Bar, sent Padgett a Letter of Investigation and inquired about the \$7,500.00 payment. *Id.* at 1358-59. Padgett provided the State Bar with an itemized ledger through November 2016. *Id.* at 1318, 1321-26, 1359.

Padgett claimed that Grievants had an unpaid balance with LOBCP, and that he applied the \$7,500.00 to their outstanding balance. *Id.* at 1327-28, 1360-61. Padgett told Ms. Watson that he would send her a statement of the Grievants’ balance but never did. *Id.* at 1327-28, 1359-60. Padgett never sent an invoice or otherwise notified Mr. DiFrancesco of an outstanding balance; Mr. DiFrancesco believes he paid the LOBCP \$161,000.00 in fees. *Id.* at 1275, 1473.

On July 9, 2012, the LOBCP filed a Complaint against Washoe County, the City of Reno, the City of Sparks, and the TRFMP alleging inverse condemnation and pre-condemnation damages claims on behalf of the Grievants. *See* ROA 1458, 1524-43.

Attorney Amy L. Sugden (hereinafter “Ms. Sugden”) worked for the LOBCP for approximately eight (8) years. ROA 1447-48. Ms. Sugden was initially hired as an independent contractor, but as the years progressed, an employee-employer relationship formed between Ms. Sugden and Padgett. *Id.* at 1448-49, 1451-53. Ms. Sugden became Grievants’ primary legal contact throughout the seven years of their representation. ROA 1279. Mr. DiFrancesco believed that Ms. Sugden worked for Padgett, and Ms. Sugden confirmed that Padgett supervised her while they represented the Grievants. *Id.* at 1280, 1453.

On many occasions during the pendency of the case, Grievants expressed to Ms. Sugden their desire to move the lawsuit, discovery, and depositions toward a trial date. ROA 1281. Ms. Sugden consistently ignored or stalled to complete these tasks. *Id.*

The Five-Year, Want-of-Prosecution Rule (“Five-Year Rule”), as set forth in Nevada Rule of Civil Procedure (“NRCP”) 41 for Grievants’ Complaint triggered on July 9, 2017. Despite Grievants’ requests, after the initial trial was vacated, LOBCP never took action to set another trial date. ROA 1456-59. Ms. Sugden claims that she had a “gentleman’s agreement with opposing counsel” to extend the time to prosecute. ROA 1458-59. There is no stipulation extending or tolling the time to prosecute. *Id.* Grievants were not aware of the Five-Year Rule or its application to their case until after the deadline had passed. *Id.* at 1468-70.

On or about April 20, 2018, Grievants instructed Ms. Sugden to take depositions and to file a motion in limine. ROA 1282. On June 29, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Motion in Limine to Exclude Evidence After August 2012 (“Motion in Limine”). ROA 1464-66. Although an “Index of Exhibits” was included in the Motion in Limine, no exhibits were attached. *Id.* On September 5, 2018, Ms. Sugden, acting on behalf of Grievants, filed a Supplement to the Motion in Limine attaching the missing twenty-six (26) exhibits. *Id.* at 1466-67.

In or around December 2018, Padgett took over Ms. Sugden’s duties as Grievants’ primary contact. ROA 1280. On or about March 12, 2019, Grievants hired attorney Michael Sullivan (hereinafter “Mr. Sullivan”) to substitute Padgett as attorney of record. *Id.* at 1371. By the time the Grievants retained Mr. Sullivan, five (5) years had passed since the filing of their complaint and their case faced mandatory dismissal for want of prosecution. *Id.* at 1365-69. After the Grievants discussed their options with Mr. Sullivan, he filed a Stipulation and Order for Dismissal with Prejudice on April 8, 2019. *See id.*

PROCEDURAL HISTORY

On September 3, 2019, the State Bar received the grievance in question alleging professional misconduct. ROA 1273-74, 1907-12. On May 13, 2020, the State Bar filed a Complaint against Padgett alleging three violations: (1) RPC 1.15

(Safekeeping Property); (2) RPC 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers); and (3) RPC 8.1 (Bar Admission and Disciplinary Matters). ROA 1-8. The State Bar sent a copy of the Complaint via first class and certified mail to Padgett's SCR 79 address at 611 South 6th Street, Las Vegas, NV 89101. *Id.* at 9.

Pursuant to SCR 105(2) and Disciplinary Rule of Procedure ("DRP") 14, Padgett had until June 2, 2020, to file a Verified Response or Answer. Padgett failed to file a Verified Response or Answer. On June 9, 2020, the State Bar filed a Notice of Intent to Proceed on a Default Basis. ROA 15-19. The Notice directed Padgett to file a responsive pleading to the State Bar's Complaint by June 29, 2020. *Id.* The State Bar sent a copy of the Notice to Padgett's SCR 79 address, as well as Padgett's alternate address at 11274 Gammila Drive, Las Vegas, NV 89141, via first class and certified mail. *Id.* at 19.

On June 21, 2020, both mailings were returned to the State Bar's Reno office. *See id.* at 23-37. On or about July 6, 2020, copies of the Notice sent to Padgett's alternate address were also returned to the State Bar's Reno office marked "Return to Sender, Unable to Forward." *Id.*

On July 13, 2020, attorney Richard D. Williamson (hereinafter "Panel Chair") entered default. ROA 38-43.

The Panel Chair held a DRP 17 initial conference took place on July 21, 2020, by telephone. *See id.* at 44-46. Only the Panel Chair and Assistant Bar Counsel Gerard Gosioco (hereinafter “ABC Gosioco”) were present on the call. *See id.* at 50-54. Padgett, though formally noticed, was not present on the call. *Id.* Similarly, Padgett was not present for the DRP 23 pre-hearing conference (“PHC”) held on October 12, 2020. *See generally* ROA 1242-43.

In addition to the attempts to serve Padgett discussed *supra*, the State Bar, through Nationwide Legal, tried to serve Padgett personally with pleadings filed at 1672 Liege Drive, Henderson, NV 89102 on the following dates: (1) September 29, 2020;¹ (2) October 1, 2020; and (3) October 3, 2020. ROA 898-99.

The Formal Hearing for the instant matter was set to commence on October 15, 2020, at 9:00 a.m. Pacific Standard Time (“PST”). *Id.* at 880-82. At approximately 8:11 a.m. PST on October 15, 2020, Padgett emailed ABC Gosioco asking him to continue the Formal Hearing. *Id.* at 901-06. Padgett’s email was the first correspondence he had with the State Bar and/or ABC Gosioco since February 24, 2020, which pertained to Padgett’s other disciplinary cases, OBC19-0604 and OBC19-0798. In his email, Padgett included a letter where he alleged a lack of

¹ The process server, Sean Keseday, noted that although no one answered the door, he stated that could see movement inside the residence. ROA 1441, 1443-45, 2296.

notice of process. *Id.* at 902-06. The Panel reluctantly granted Padgett's request and continued the Formal Hearing. *See id.* at 908-12.

Padgett stated that in or around February 2020, he decided to work from his home office, 1672 Liege Drive, Henderson, Nevada 89102.² ROA 1346-47. Padgett submitted an affidavit from his secretary, Connie Little, stating that she mailed a notice of change of his address to the State Bar on or about February 28, 2020. *Id.* at 1345-51. The State Bar had no record of such a request. *See* ROA 1480. In fact, the State Bar's records show that Padgett did not provide the Liege address until January 5, 2021. *Id.* at 1481.

On October 22, 2020, the State Bar filed a Motion for Leave to File Amended Complaint. ROA 63-81. On October 27, 2020, the Panel Chair granted the State Bar's motion. *Id.* at 82-86. Accordingly, the State Bar filed an Amended Complaint that same day, which charged Padgett with the following additional RPC violations: COUNT 4 – Rule 8.1 (Bar Admission and Disciplinary Matters); COUNT 5 – Rule 8.4 (Misconduct); and COUNT 6 – Rule 8.4 (Misconduct). *Id.* at 87-99. Pursuant to SCR 105(2) and DRP 14, Padgett's Verified Response or Answer was due on or before November 16, 2020.

² Nationwide Legal attempted to personally serve Padgett at the Liege address on or about (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020, but to no avail. ROA 1443.

On November 16, 2020, at approximately, 10:24 p.m. PST, Padgett filed a Motion to Vacate Filings, Orders and Decisions - Including the Amended Complaint; Motion to Dismiss Amended Complaint (hereinafter “Motion to Vacate”).³ *Id.* at 100-37. On November 18, 2020, Padgett filed a Supplement to his Motion to Vacate. ROA 142-47. On December 2, 2020, the State Bar filed an opposition to Padgett’s Motion to Vacate. *Id.* at 148-88. On December 9, 2020, at approximately 8:10 p.m. PST, Padgett filed a Reply to the State Bar’s opposition.⁴ *Id.* at 189-94.

On December 10, 2020, at approximately 5:34 p.m. PST, Padgett filed a Motion for Extension of Time to File Answer and Verified Response. *Id.* at 195-200.

On December 14, 2020, the Disciplinary Board Chair entered an Order denying Padgett’s Motion to Vacate.⁵ *Id.* at 201-04.

On January 5, 2021, the Panel Chair entered default.⁶ *Id.* at 205-10.

³ Although titled “Motion to Dismiss Amended Complaint,” the motion lacked any substantive argument supporting the request for dismissal.

⁴ It is worth noting that DRP 15(c) provides that no replies may be filed to motions to dismiss absent good cause shown. The Disciplinary Board Chair noted that “[w]hile [Padgett] failed to provide a showing of good cause as to why his reply should be considered, it has been read and considered.” *See* ROA 201-04.

⁵ The Disciplinary Board Chair did not address Padgett’s Motion for Extension.

⁶ This default is based on a second Notice of Intent to Enter Default filed on November 17, 2020, because the State Bar did not consider the Motion to Vacate a responsive pleading.

On January 13, 2021, Padgett sent an email to the Panel Chair and the other panel members asking if there is “a provision allowed under the Bar Rules to request a stay of this proceeding[.]” ROA 987-90. Padgett argued that the Opening Brief he filed in the Nevada Supreme Court pertaining to his other disciplinary matters, OBC19-0604 and OBC19-0798 (Docket No. 81918), may have an impact on the instant matter. *Id.* As a result, the Panel Chair requested that the State Bar provide a comprehensive response by January 28, 2021, to address Padgett’s Motion for Extension and informal request to stay the proceedings. *Id.* On January 28, 2021, the State Bar filed a Comprehensive Response. ROA 211-346. On February 5, 2021, at approximately 11:13 p.m. PST, Padgett filed a Reply to the State Bar’s Comprehensive Response. ROA 355-59.

On February 9, 2021, the Panel Chair entered an Order Regarding Padgett’s Motion for Extension of Time to File Answer, Verified Response, and Informal Request to Stay Proceedings. *Id.* at 347-49. In the Order, the Panel Chair set aside the default entered, denied Padgett’s informal request to stay proceedings, and granted Padgett seven (7) calendar days from the date of the order to file a Verified Response or Answer to the State Bar’s Amended Complaint. *Id.* On February 16, 2021, Padgett filed a Verified Response to Amended Complaint. *Id.* at 360-62.

Pursuant to DRP 17, the Panel Chair met telephonically with ABC Gosioco and Padgett on February 22, 2021. *See id.* at 350-54. During that scheduling

conference, the parties agreed that Padgett would provide his initial disclosures on or before March 9, 2021, by 5:00 p.m. PST. *Id.* This deadline was also set forth in the Amended Scheduling Order, which the Panel Chair signed on February 22, 2021, and which was served on all parties that same day. *Id.* The deadlines for initial disclosures were also consistent with DRP 17(a).

On March 9, 2021, at approximately 4:59 p.m. PST, Padgett sent an email and requested extending his initial disclosure deadline to March 12, 2021. ROA 718-20. The State Bar objected to that request. *Id.* Ultimately, the Panel Chair primarily granted Padgett's request for an extension and gave Padgett "until Thursday, March 11, 2021, at 5:00 p.m. PT in which to disclose all witnesses and documents he intends to use in this case. Any information not timely disclosed may be subject to exclusion from the hearing." *Id.*

On March 11, 2021, at approximately 4:38 p.m. PST, Padgett served his Initial Disclosure to the State Bar. ROA 1026-29. Unfortunately, the only named witness was Padgett himself. *Id.* In addition, Padgett's initial disclosure stated that he expected to call two unnamed employees and an unnamed certified fraud investigator, all of whom should be contacted "c/o Law Offices of Brian C. Padgett." *Id.* Padgett failed to produce the identities of any of his witnesses, other than himself. *Id.* Padgett's initial disclosures also vaguely referenced several categories of documents but failed to produce any actual documents. *Id.*

On March 11, 2021, at approximately 4:41 p.m. PST, ABC Gosioco emailed Padgett asking him to produce the names of his witnesses. *Id.* at 1031. Padgett did not respond to ABC Gosioco's March 11, 2021, email. On March 12, 2021, ABC Gosioco called Padgett and left a voicemail asking for a return call. *See id.* at 1033-34. Padgett did not return ABC Gosioco's March 12, 2021, phone call. *Id.* On March 16, 2021, ABC Gosioco requested that Padgett provide witness names and documents by March 17, 2021, at 5:00 p.m. PST. *Id.*

Padgett did not provide any further specificity of the witnesses or documents he intended to use. Accordingly, the State Bar filed a Motion to Compel Production on March 25, 2021. *Id.* at 1036-43. Padgett did not file a response to the Motion to Compel within ten (10) judicial days after the motion was filed and served. *See* DRP 15(b). On April 15, 2021, the Panel Chair granted the State Bar's Motion to Compel which stated the following:

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

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

ROA 367-73.

Padgett failed to produce any documents to the State Bar by 5:00 p.m. PST on Monday, April 19, 2021. Accordingly, on April 20, 2021, ABC Gosiooco sent an email to the Panel Chair and Padgett informing them of the same. *See* ROA 1053-58. In response, Padgett stated that he “counted the deadline as [April 20, 2021] to file” and that he “intend[s] to do so.” *Id.* Padgett did not file anything on April 20, 2021.

Despite not supplementing his own disclosures, on April 5, 2021, at approximately 7:26 p.m. PST, Padgett filed an Objection to the State Bar’s Initial Disclosure. ROA 363-66. On April 19, 2021, the State Bar filed an opposition to Padgett’s Objections. *Id.* at 374-430.

Pursuant to the Amended Scheduling Order, “[a]t or before April 28, 2021 by 5:00 p.m., the parties shall exchange their Final Disclosures including a list of final hearing exhibits, identified numerically by the State Bar and alphabetically by [Padgett], and a list of all witnesses the party intends to call to testify at the Formal Hearing.” *Id.* at 350-54. Accordingly, the State Bar served Padgett its Final Disclosure via email, regular mail, and certified mail on April 28, 2021. *See* ROA

1072-74. Padgett failed to serve a Final Disclosure to the State Bar. Instead, Padgett filed a Rule 60(b) Motion to Set Aside Order Granting State’s Motion to Compel on April 28, 2021. ROA 431-37. On April 29, 2021, the State Bar filed its opposition to Padgett’s Motion to Set Aside. ROA 447-519.

On April 29, 2021, at approximately 6:44 p.m. PST, Padgett filed a Motion to Remove Associate [*sic*] Bar Counsel Gosioco From Case No. OBC19-1111. ROA 520-55. On May 5, 2021, the State Bar filed an opposition to Padgett’s Motion to Remove. ROA 556-818.

On May 17, 2021, Brooke Westlake (hereinafter “Ms. Westlake”) replaced Stephen Boucher as the Panel lay member. ROA 1150-52.

Pursuant to DRP 23, a PHC was held on May 19, 2021. *See* ROA 350-54. The Panel Chair, ABC Gosioco, and Padgett appeared telephonically. *See* ROA 1153-63. During the PHC, the Panel Chair granted Padgett’s Rule 60(b) Motion to Set Aside Order Granting State’s Motion to Compel. *Id.* However, Padgett had until “12:00 p.m. Pacific Time on Thursday, May 20, 2021, in which to oppose the [State Bar’s] Motion to Compel.” *Id.*

Also during the PHC, Padgett argued that he was denied the right to use his peremptory challenges on the Panel members. *See* AOB 16-17. The Panel Chair allowed Padgett to file any challenges to Panel members by noon on May 20, 2021. ROA 1185-86.

On May 20, 2021, at approximately 11:39 a.m. PST, Padgett emailed the Panel Chair and ABC Gosioco stating that he would not be able to file the motions by noon and requested that he be allowed to file those motions by 7:00 p.m. PST that same day. *Id.* The Panel Chair denied Padgett’s request for an extension and asked that he “file [his] motions immediately.” *Id.* As of 6:00 p.m. PST on May 21, 2021, Padgett did not file any motions. *See id.* at 1168. Accordingly, the Panel Chair granted the State Bar’s Motion to Compel. *Id.* at 1164-72.

The Formal Hearing was continued to May 28, 2021, and was set to commence at 9:00 a.m. *See* ROA 350-54, 1258. Padgett did not join the Zoom meeting until approximately 10:23 a.m. PST. *See* ROA 1282-83, 1421. Similarly, the Panel Chair took a recess for lunch and stated that the Formal Hearing would reconvene “at 1:45 sharp.” ROA 1351. Padgett did not return to the Zoom meeting until approximately 2:16 p.m. PST. ROA 1368. The Parties were unable to get through all the witnesses, and as such, the Formal Hearing was continued to June 16, 2021. *See* ROA 1387-89, 1394-99; *see also* ROA 1402-1507.

At approximately 8:37 a.m. PST on June 16, 2021 – twenty-three (23) minutes before the Formal Hearing resumed – Padgett filed a Motion to Set Aside Orders and Dismiss Case. ROA 1204-11; *see* ROA 1405-06. In his motion, Padgett argued that the Formal Hearing should be held in-person due to Governor Sisolak’s June 1, 2021, directive, as well as the June 11, 2021, Las Vegas Justice Court directive.

ROA 1206. The Panel Chair disagreed with Padgett's reasoning for holding an in-person hearing and denied Padgett's motion. ROA 1224-26, 1419-22. After his motion was denied, Padgett left the Formal Hearing and never returned. ROA 1439; *see* ROA 1441, 1445-46, 1460-63, 1471, 1473, 1483, 1498.

After deliberations, the Panel recommended that this Court impose a five (5) year suspension on Padgett to run consecutive to the five (5) year suspension he received in Docket No. 81918. ROA 1228-37. The Panel also recommended that Padgett retake the Nevada bar exam and MPRE prior to petitioning for reinstatement, and that he repay the fees of his former clients (approximately \$161,000.00) by June 16, 2026, with interest at the statutory rate. *Id.*

STANDARD OF REVIEW

This Court reviews the Panel's recommendation *de novo*. SCR 105(3)(b); *In re R. Christopher Reade, Bar No. 6791*, 133 Nev. Adv. Op. 87, NSC Docket No. 70989 (November 16, 2017). "Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation and must examine the record anew and exercise independent judgment." *In re Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001), *cert. denied*, 534 U.S. 1131 (2002). However, the Court uses a deferential standard of review with respect to the hearing panel's findings of fact, SCR 105(3)(b), and will not set them aside unless they are clearly erroneous or not

supported by substantial evidence. *See generally Sowers v. Forest Hills Subdivision*, 129 Nev. Adv. Op. 9, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

The State Bar is required to establish allegations of professional misconduct by clear and convincing evidence. *See SCR 105; see also Schaefer*, 117 Nev. at 515, 25 P.3d at 204. This Court has defined clear and convincing evidence as “evidence which need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn.” *Id.*

Pursuant to SCR 105(2), if an “attorney fails to plead, bar counsel shall enter a default and the charges shall be deemed admitted.” However, the attorney “may thereafter move to set aside the default with the appropriate chair to do so, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.”

The purpose of attorney discipline is not to punish the attorney, but to protect the public and the integrity of the bar. *See State Bar of Nevada v. Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988) (“paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole”).

Furthermore, the Formal Hearing Panel may only find violations of the Supreme Court Rules of Professional Conduct as charged in the Complaint. *Schaefer*, 117 Nev. at 515, 25 P.3d at 204.

SUMMARY OF THE ARGUMENT

Padgett's due process and/or equal protection rights were not violated. Any alleged prejudice he claims to have suffered was self-induced. Further, the State Bar's negotiations with another attorney have no relevance to Padgett's underlying disciplinary matter. Therefore, this Court should adopt the Northern Nevada Disciplinary Board's recommendation to suspend Padgett from the practice of law for five (5) years consecutive to his five (5) year suspension in Docket No. 81918.

ARGUMENT

Throughout the pendency of the underlying matter, Padgett has made a mockery of, and demonstrated a blatant disregard, for the Rules of Professional Conduct as well as the disciplinary process. The arguments Padgett makes are nonsensical as they are either belied by the record or irrelevant.

I. PADGETT HAD THE OPPORTUNITY TO EXERCISE PEREMPTORY CHALLENGES BUT FAILED TO DO SO

Padgett alleges that "Respondent's failure to offer the peremptory challenges from the outset is incurably prejudicial and a violation of Respondent's [*sic*] Due Process and Equal Protection Rights." Appellant's Opening Brief ("AOB") 17. However, Padgett's argument fails for several reasons.

First, Padgett waived his right to exercise his peremptory challenges. DRP

13(a) states:

Prior to the filing of a response to the Complaint, bar counsel and Respondent may exercise five (5) peremptory challenges each to the people listed on the Designation of Hearing Panel Members. Peremptory challenges shall be delivered to the Office of Bar Counsel. If a Notice of Intent to Proceed on a Default Basis is filed and served prior to the exercise of any party's peremptory challenges, then that party has waived the opportunity to exercise any peremptory challenges.

(emphasis added). In order to properly exercise his right to peremptory challenges, Padgett should have (1) delivered his peremptory challenges to the Office of Bar Counsel (2) before a Notice of Intent to Proceed on a Default Basis was filed and served.

After the October 15, 2020, Formal Hearing was continued, the State Bar filed an Amended Complaint on October 27, 2020. ROA 87-99. Respondent failed to timely file a verified response or answer to the Amended Complaint. As a result, the State Bar filed a second Notice of Intent to Proceed on a Default Basis on November 17, 2020. ROA 138-141. Accordingly, Padgett waived the opportunity to exercise any peremptory challenges pursuant to DRP 13(a). Even assuming a Notice of Intent to Proceed on a Default Basis was never filed, Padgett failed to deliver any peremptory challenges to the Office of Bar Counsel prior to filing his Verified Response on February 17, 2021. ROA 360-362.

Second, Padgett's allegation that he was never extended, or denied, peremptory challenges and only limited to challenges for cause is belied by the record. The Panel Chair made it clear that Padgett "could file any motion on any grounds to challenge any panel member." ROA 1405. Directing his attention to Padgett, the Panel Chair told him the following:

I invited you, if you had grounds to pursue either a peremptory challenge or a challenge for cause, I invited you to file those, and we did have a quick turnaround on that motion due to the looming hearing. You elected not to file any of the motions that we discussed at the pretrial hearing and now have filed this motion today, which appears to rehash several prior motions I've already ruled upon.

ROA 1406. Padgett had every opportunity to exercise both peremptory challenges and challenges for cause but failed to exercise the same.

Lastly, the timing in which Padgett raises this is questionable. The Order Appointing Formal Hearing Panel Chair and Hearing Panel were filed on July 8, 2020, and August 4, 2020, respectively. ROA 20-22, 47-49. Even assuming Padgett did not receive the aforementioned orders, he has known the identities of the Panel members since – at the very least – January 13, 2021, when he emailed them asking for a stay in the proceedings. ROA 987-90.

Padgett admits that he first mentions his alleged lack of peremptory challenges to the Panel Chair at the PHC. AOB 16-17. Moreover, for the first time on appeal, Padgett claims that he "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.” AOB 17; *see* NRAP 10.

Padgett was never denied the opportunity to exercise peremptory challenges or challenges for cause. Therefore, Padgett’s argument fails.

II. PADGETT’S INABILITY TO CALL WITNESSES OR INTRODUCE EXHIBITS IS BASED ON HIS BLATANT DISREGARD OF THE DISCIPLINARY RULES OF PROCEDURE

Padgett claims that he was denied the opportunity to call his own witnesses and use his own exhibits in violation of his Due Process and Equal Protection rights. AOB 18-21. However, Padgett’s argument is belied by the record. Padgett was never denied the opportunity to call his own witnesses or use his own exhibits. In fact, Padgett was given numerous opportunities to call his own witnesses and introduce his own exhibits by disclosing the same to the State Bar. Padgett failed to do so. It was because of Padgett’s failures to comply with the DRP and NRCP that led to his preclusion of calling witnesses other than himself and not introducing his own exhibits.

Padgett’s assertion that “[he] provided Initial Disclosures to [the State Bar] on March 9, 2021” is also belied by the record. AOB 18. Padgett did not provide his Initial Disclosure to the State Bar on March 9, 2021. Rather, Padgett requested an extension one minute prior to the deadline to file his Initial Disclosure. ROA 718-

20. When Padgett served the State Bar with his Initial Disclosure on March 11, 2021, it was problematic. ROA 1026-29.

In his Initial Disclosure, the only named witness was Padgett himself; he failed to produce the identities of any other witnesses. *Id.* Additionally, Padgett vaguely referenced several categories of documents but did not disclose any actual documents to the State Bar. *Id.* NRCPP 37(c)(1) states:

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

- (A) may order payment of the reasonable expenses, including attorney fees, caused by the failure;
- (B) may inform the jury of the party's failure; and
- (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).

ABC Gosioco made several unsuccessful attempts to rectify Padgett's incomplete disclosures. *See* ROA 1033-34. When Padgett failed to rectify the issues in his Initial Disclosure, the State Bar filed a Motion to Compel Production on March 25, 2021. *Id.* at 1036-43; *see* NRCPP 37(a)(3)(A).

DRP 15(b) states that "[a]ll responses to motions filed pursuant to this Rule must be filed and served ten (10) judicial days after the motion is filed." Padgett's opposition was due on or before April 8, 2021, and because no opposition had been

filed, the Panel Chair granted the State Bar's motion on April 15, 2021. ROA 367-73. In his Order, the Panel Chair gave Padgett the opportunity to use certain exhibits if he disclosed the same to the State Bar by April 19, 2021, at 5:00 p.m. PST. *Id.* Padgett did not disclose anything to the State Bar by this deadline.

Even more problematic is the fact that Padgett failed to serve a Final Disclosure to the State Bar "[a]t or before April 28, 2021 by 5:00 p.m." *See* ROA 350-54. He was never precluded from preparing his Final Disclosure or a Trial Brief; he simply chose not to prepare the same. *Contra* AOB 19. Instead, on April 28, 2021, Padgett filed a Rule 60(b) Motion to Set Aside Order Granting State's Motion to Compel where he argued that he had until April 19, 2021, to file an opposition to the State Bar's Motion to Compel. ROA 431-37.

Although Padgett's belief that he had until April 19, 2021, to file his opposition is absurd, the Panel Chair graciously gave Padgett yet another opportunity to oppose the State Bar's motion when he granted Padgett's Motion to Set Aside. ROA 1153-63. Nonetheless, Padgett still failed to file his opposition to the State Bar's Motion to Compel. As such, the Panel Chair re-granted the State Bar's Motion to Compel on May 24, 2021.

Based on Padgett's failure to comply with DRP 17, NRCP 16.1, and the Amended Scheduling Order, the Panel Chair's ruling that Padgett may not call any witnesses other than himself was appropriate. Therefore, Padgett's argument fails.

III. ANY ALLEGED PREJUDICE PADGETT SUFFERED WAS SELF-INDUCED

Padgett alleges that he was wrongfully denied of his right to confront his accusers and cross examine witnesses in person. AOB 21-24. However, Padgett chose not to participate.

The Amended Scheduling Order stated that “[Padgett] will submit his evaluation of the conditions relevant to holding the hearing remotely versus holding a live hearing by April 21, 2021; the State Bar will have an opportunity to respond by April 28, 2021 when a final decision will be made by the Panel Chair.” ROA 350-54. After reviewing both Padgett’s and the State Bar’s arguments, the Panel Chair ruled that the underlying Formal Hearing would be conducted virtually via Zoom. *See* ROA 1435-36. When the Panel Chair ruled against Padgett, Padgett engaged in further obstruction. Padgett was unable to examine the State Bar’s witnesses because he refused to participate in good faith.

On May 28, 2021, Padgett’s rescheduled Formal Hearing was scheduled to begin at 9:00 a.m. PST. *See* ROA 1258. However, the Panel Chair did not go on the record until approximately 9:38 a.m. so that he could “give Mr. Padgett a few more minutes.” ROA at 1258-60. At approximately 9:43 a.m., Laura Peters (hereinafter “Ms. Peters”), a paralegal with the State Bar, notified the Panel Chair that Mr. Padgett contacted her as he was having problems with Zoom. ROA 1261. Accordingly, the Panel Chair wanted to wait a few minutes to see if Padgett would

join the Zoom meeting. ROA 1261-65. At approximately 9:53 a.m., after not receiving any other correspondence from Padgett, the Panel Chair allowed ABC Gosioco to give his opening statement. ROA 1265-66. After ABC Gosioco's opening statement concluded at approximately 9:58 a.m., Padgett still was not in attendance. ROA 1269. As such, the Panel Chair allowed the State Bar to call its first witness. *Id.*

Padgett did not join the Zoom meeting until approximately 10:23 a.m. PST. *See* ROA 1282-83, 1421. Padgett complained about his inability to log in to the Zoom meeting or see any witnesses or exhibits. ROA 1284. Accordingly, the Panel Chair asked ABC Gosioco to re-send Padgett any and all exhibits ABC Gosioco intended to reference so that Padgett could follow along. ROA 1298. Padgett confirmed that he had a copy of the State Bar's Final Disclosure printed and could follow along. *Id.*

Padgett admitted to having a laptop with a camera and an iPhone with a camera. ROA 1302. The Panel Chair recommended that Padgett log onto Zoom using one of those devices so that his alleged issue of not being able to see would be resolved. ROA 1303. Padgett then requested to be called as a witness after lunch so that he could get Zoom to work. ROA 1303-04. The Panel Chair gave Padgett three (3) minutes to attempt to log onto Zoom using his iPhone and to call back in by 11:21 a.m. PST if he was unsuccessful. ROA 1306. Padgett did not return by

the agreed upon time. Accordingly, the Panel Chair sent Mr. Padgett two (2) follow up emails. ROA 1307. Padgett did not call back in until approximately 11:31 a.m. PST. *See id.* This was not the only time Padgett did not return to the Zoom meeting timely.

At approximately 12:43 p.m. PST, the Panel Chair suggested to take a recess for lunch and stated that the Formal Hearing would resume “at 1:45 sharp.” ROA 1351. Padgett did not return to the Zoom meeting until approximately 2:16 p.m. PST. ROA 1368. The Parties were unable to get through all the witnesses, and as such, the Formal Hearing was continued to June 16, 2021. *See* ROA 1387-89, 1394-99; *see also* ROA 1402-1507.

At approximately 8:37 a.m. PST on June 16, 2021, Padgett filed a Motion to Set Aside Orders and Dismiss Case. ROA 1204-11; *see* ROA 1405-06. In his motion, Padgett argued that the Formal Hearing should be held in-person due to Governor Sisolak’s June 1, 2021, directive, as well as the June 11, 2021, Las Vegas Justice Court directive. ROA 1206. Padgett admitted that he learned about the Las Vegas Justice Court ruling “on the evening of June 14, 2021,” but he waited to file his motion twenty-three (23) minutes before his Formal Hearing resumed. AOB 24; *see* ROA 1405-06. The Panel Chair disagreed with Padgett’s reasoning for holding an in-person hearing and denied Padgett’s motion. ROA 1224-26, 1419-22.

Padgett also omits the fact that he failed to return to the Zoom meeting after his motion was denied. After his motion was denied, ABC Gosioco suggested to Padgett that he could still use the Zoom link sent to him and see our faces and exhibits to alleviate some of his alleged concern of not being able to see the same. ROA 1437-39. Padgett stated that he would try to log on but failed to ever return. ROA 1439; *see* ROA 1441, 1445-46, 1460-63, 1471, 1473, 1483, 1498. The Panel Chair sent Padgett an email at approximately 10:13 a.m. PST asking whether he would return but received no response. ROA 1483

Based on his conduct discussed *supra*, neither the State Bar nor the Panel caused any harm to Padgett through alleged prejudice; it was self-induced. Therefore, Padgett's argument fails.

IV. THE STATE BAR'S NEGOTIATION WITH AMY SUGDEN IS NOT RELEVANT TO PADGETT'S DISCIPLINARY CASE

Padgett alleges that his Equal Protection and Due Process rights were violated because he "was not offered nor given any opportunity to negotiate a settlement." AOB 27. Padgett's argument is nonsensical and without merit.

Padgett begins by arguing that Ms. Sugden should not have been listed as a witness because she "was subject to attorney-client privilege," and then protests the fact that "the Panel Chair approved [the State Bar]'s Final Disclosures which included Ms. Sugden as a witness for [the State Bar] despite the conflict of interest her testimony provided." AOB 26. Padgett's assertion is belied by the record. First,

Ms. Sugden never acted as counsel of record for Padgett or the LOBCP, and therefore, there is no conflict of interest based on an alleged attorney-client privilege. ROA 430, 1450. Second, even assuming there was a conflict of interest, Padgett would not have suffered any prejudice as the Panel Chair ruled that Ms. Sugden “should not testify to any attorney-client privilege in any case(s) where she represented either Brian C. Padgett and/or the Law Offices of Brian C. Padgett.” ROA 1196. The Panel Chair also reiterated his ruling during the Formal Hearing. ROA 1426.

Padgett concludes his argument by asserting that “neither the Panel Chair or [sic] Associate [sic] Bar Counsel Gosioco disclosed that [the State Bar] had negotiated and settled the matter related to this case with Ms. Sugden.” AOB 26. Padgett fails to cite to any legal authority to support his position that the State Bar is required to disclose the negotiations of another attorney’s disciplinary matter. Further, Ms. Sugden’s Public Reprimand was, and still is, publicly available information as the Panel Chair pointed out. ROA 1424-26. The State Bar did not offer Ms. Sugden any benefit to testify against Padgett.

Lastly, Padgett states that “Associate [sic] Bar Counsel Gosioco refused to negotiate and offer similar terms to [Padgett] during the course of the disciplinary proceedings.” AOB 26. Padgett argues that not being offered or given “any opportunity to negotiate a settlement in this case [is] in direct violation of his Equal

Protection and Due Process rights.” Again, Padgett fails to cite to any legal authority to support his position that he is entitled to receiving a settlement offer. Therefore, Padgett’s argument fails.

CONCLUSION

Based upon the foregoing, the State Bar respectfully requests that this Court AFFIRM the Northern Nevada Disciplinary Board’s recommendation to suspend Padgett from the practice of law for five (5) years, to run consecutive to the five (5) year suspension he received in Docket No. 81918, require Padgett to retake the Nevada Bar Exam and MPRE, and repay the fees of his former clients (approximately \$161,000.00) by June 16, 2026, with interest at the statutory rate.

DATED this 20th day of January, 2022.

Respectfully submitted,

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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 2012 in 14-point font of the Times New Roman style.
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 either proportionately spaced, has a typeface of 14-points or larger, contains no more than 14,000 words, and does not exceed 30 pages.
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. 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 20th day of January, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 20, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Gosioco

Brian Padgett

Laura Peters

Laura Peters, State Bar of Nevada





Padgett Brian C. RAB (83347) (003)

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