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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. 83347
BRIAN C. PADGETT, ESQ.	)	
NEVADA BAR NO. 7474	)	
	)	
	)	
	)	

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**APPELLANT'S REPLY 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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### III. LEGAL ARGUMENT

#### 1. Appellant Never Waived His Right to Peremptory Challenges

Appellant was never waived his right to Peremptory Challenges because the First Designation of Panel Members was never served on him with the Complaint or with the Amended Complaint pursuant to Rule 13 of the Disciplinary Rules of Procedure and Supreme Court Rule 105(2)(a).

At the end of February 2020, Appellant mailed a Notice of Address Change to Respondent to send all relevant mail to his 1672 Liege Drive, Henderson, Nevada 89012 address. *ROA Vol. X, pages 2279-2280*. This is not disputed by Respondent.

Respondent's Complaint and any First Designation of Panel Members was filed on May 13, 2020 but not served on Appellant at his 1672 Liege Drive address. This is not disputed by Respondent.

When Appellant learned in September 2020 that the State Bar was proceeding forward with a disciplinary hearing he contacted the Bar and the hearing was cancelled and the process was re-started because Appellant had not been served at the 1672 Liege Drive address. *ROA Vol. X, pages 2273-2277*. This is not disputed by Respondent.

Thereafter, the Panel Chair granted ABC Gosioco the right to file an Amended Complaint. However, the Amended Complaint did not come with a First

Designation of Hearing Panel Members and no mention was made to Appellant of his right to use peremptory challenges. This is also not disputed by Respondent.

Despite Respondent's recent assertion, Appellant also timely filed a Verified Response to Respondent's Amended Complaint and so never waived his right to challenge prospective panel members.

Despite this, the Panel Chair would only allow Appellant to exercise challenges for cause. However, this did not preserve Appellant's right to a fair hearing. Allowing a challenge for cause is not the same as a peremptory challenge which can automatically exclude a prospective panel member for any reason or no reason at all.

Appellant was not given the same rights as similarly situated attorneys who have Bar Complaints filed against them in violation of his Equal Protection rights and his ability to have a fair and impartial hearing was irreparably prejudiced as a result.

**2. Appellant Was Irreparably Prejudiced When He Could Not Meet An Arbitrary 24 Hour Time Period Set By The Panel Chair**

Contrary to the assertion of Respondent, the Amended Scheduling Order controlled the dates for the filing of Motions by April 5, 2021, Oppositions by April 19, 2021 and Replies by April 26, 2021. *ROA Vol. II, pages 350-354.*

Thereafter, when Respondent filed a Motion to Compel, Appellant scheduled the preparation and filing of his Opposition by the April 19, 2021 deadline. This included supplementing his Initial Disclosures. However, on April 15, 2021 the Panel Chair granted Respondent's Motion to Compel and stripped Appellant of his right to produce witnesses and documents. This came four (4) full days before the April 19, 2021 date for filing Oppositions set forth in the Amended Scheduling Order.

Appellant then filed a Motion to Set Aside the ruling and the Panel Chair granted the Motion on a conference call. *ROA Vol. II, pages 431-437*. This was an acknowledgement that Appellant was not given the time previously established in the Amended Scheduling Order to file an Opposition. Respondent does not dispute this.

However, during the conference call the Panel Chair refused to give Appellant the four (4) days he had remaining to originally file his Opposition. He only gave Appellant an arbitrary period of less than twenty-four (24) hours to prepare and file his Opposition which started at the end of the conference call.

This time period is significant because Appellant was not simply being dilatory in failing to file an Opposition after prevailing in the Motion to Set Aside as suggested by Respondent in his Brief. The short, arbitrary time frame given made it impossible for Appellant to timely file an Opposition because the Panel

Chair also wedged into this time period the only opportunity to file challenges for cause and Appellant already had a deadline during that time period to help a family file a Las Vegas Justice Court appeal to stay in their home.

Prior to the tolling of this time period, Appellant asked for an extension of time to file the Opposition and any challenges because the Justice Court appeal took most of the allotted time. The Panel Chair denied the extension request and again took from Appellant his right to call his own witnesses and use his own exhibits at the disciplinary hearing.

The twenty-four hour time period for drafting and filing was arbitrary and capricious. It did not give the Appellant back the four (4) days the Panel Chair ruled he should have had to draft his Opposition in the first place and it set the stage to once again take away Appellant's opportunity to call his own witnesses and use his own exhibits. By not granting Appellant the full time proscribed to file an Opposition as set forth in the Amended Scheduling Order he was not given Equal Protection under these Rules as other similarly situated lawyers and was irreparably prejudiced as a result.

**3. Appellant Was Denied the Opportunity to See And Reasonably  
Examine Witnesses and Fairly Participate In The Hearing**

In denying Appellant's initial request for a live hearing in Las Vegas, Nevada, the Panel Chair ruled a Zoom conference hearing would "... ensure all

participants can see each other and any testifying witnesses.” He stressed that Appellant “must be allowed the opportunity to see and reasonably examine any witnesses testifying against him.”<sup>1</sup>

However, these imperatives for a Zoom hearing were denied Appellant. Prior to the start of the hearing, Appellant could not access the conference via Zoom on his laptop. Appellant informed the Panel and then spent more than an hour working with State Bar paralegal Laura Peters to access Zoom without success.

Contrary to representation made by Respondent, at no time was the Panel in the dark about Appellant’s status. In fact, Appellant also asked Ms. Peters to contact the Panel Chair and confirm that Appellant was indeed having a problem as he had described to them earlier that morning. Despite getting this information for Appellant and Ms. Peters, the Panel Chair started the hearing without Appellant and allowed Respondent to present an Opening Statement and examine the first witness without Appellant present. *ROA Vol. VI, pages 1255-1401*.

Thereafter, without Zoom access, Appellant had to telephonically call in to the hearing in order to participate – he had no video visibility of the hearing and so could not see any participants or view exhibits. The Panel Chair then had

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<sup>1</sup> 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.



Appellant cross-examine the next two witnesses telephonically - despite Appellant's objections he could not see the participants and testifying witnesses nor reasonably examine them without visibility. Cross-examining witnesses without being able to see them was like flying blind and it certainly impaired Appellant's ability to conduct an effective cross-examination.<sup>2</sup>

Finally, Appellant was never allowed the opportunity to give an Opening Statement nor cross-examine the first witness. This is not denied by Respondent and it is an important point example of a larger issue: There was a pervasive insistence on pushing the hearing forward with or without Appellant and regardless of whether or not he could actually see and reasonably examine witnesses testifying against him.

Ultimately, Appellant was not afforded Equal Protection under the laws to face his accusers as other lawyers facing similar hearings and this prejudice was pervasive and took from Appellant the fair opportunity to defend himself against charges of wrongdoing and the threat of severe punishment – even though he was not the attorney handling the civil case that spawned the Bar Complaint.

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<sup>2</sup> Respondent argues that Appellant could have accessed the Zoom hearing on his cell phone camera. However, Appellant uses a small iPhone and the screen is too small to effectively see participants and exhibits and his laptop camera was not operable. However, neither argument is on point because he could not access the Zoom hearing via internet at all.

**4. Respondent Hid Their Dealings With Ms. Sugden From Appellant And Irreparably Prejudiced Appellant's Ability to Defend Himself**

Despite Respondent's contention, the substance and outcome of Respondent's disciplinary case against attorney Amy Sugden is extremely relevant here because it regards her handling of the same client and case that Appellant is being cited for herein.

Appellant did not handle this between 2016 and 2019 as he was involved in another business venture that took up the majority of his time. Appellant contracted with Ms. Sugden to be the principal attorney handling this cases for Appellant's law firm with the knowledge and approval of the clients.

Despite Ms. Sugden being the principal attorney handling the case, the State Bar is seeking to suspend Appellant for five (5) years in this case – just as they did in Supreme Court case no. 81918 (for which Amy Sugden was also the principal attorney).

On the second day of the disciplinary hearing in this case, Respondent disclosed for the first time they had previously settled with Ms. Sugden in both this case and in case no. 81918 for minor reprimands only.

Appellant was shocked to learn that they did this despite knowing that Ms. Sugden was the principal attorney handling these cases and despite having received correspondence from Appellant - prior to settling with Ms. Sugden - that detailed

her termination by Appellant's firm and her subsequent theft of emails and documents from his server pertinent to her handling of this case and case no. 81918. Appellant was also shocked to learn he was never interviewed prior to her settlement and that despite all this, Respondent even continued referring prospective clients to her while her disciplinary cases were ongoing.

Respondent's actions are completely incongruous with the facts above and that suggests Ms. Sugden said or did things in the handling and settlement of her own disciplinary matters that led the Respondent to believe Appellant was the actual perpetrator of the ethical violations in both cases. However, Appellant has no idea what she said to them or what documents she gave to them that convinced them this fact pattern was true resulting in them giving her only a minor reprimand while seeking severe penalties for Appellant who did not handle the cases.

Had Appellant known Respondent had settled with Ms. Sugden and that she received only a minor punishment – as the principal attorney handling these cases - Appellant would have immediately done discovery into her dealings with Respondent to determine what she told them and what she gave them to determine that Appellant was the villain even though she handled the cases.

Ms. Sugden's actions and statements in her disciplinary cases – involving the same clients in the same civil cases – are permanently intertwined with the direction of this case (and case no. 81918) – and Appellant has been so

substantially and irreparably prejudiced (in both cases) as a result of Respondent concealing these matters during discovery that Appellant hereby requests that this Court set aside the adverse rulings against Appellant and grant him new disciplinary proceedings - with full discovery periods - in this case (and case no. 81918) in order to preserve his constitutional rights to Equal Protection and Due Process.

#### **IV. CONCLUSION**

The Hearing Panel's Entry of Decision should be set aside because the Panel rulings set forth above, both prior to and during the course of the disciplinary hearing denied Appellant the same protection under the laws as received by other lawyers in similar situations and this made it impossible for Appellant to receive a fair hearing.

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 in this case (and in case no. 81918) because it is clear that Respondent purposely kept material facts regarding Ms. Sugden and her claims of handling this case (and case no. 81918) from Appellant during the course of each of his cases which has prevented Appellant from having a full and fair opportunity to defend

himself on the merits and his Equal Protection and Due Process rights have been violated as a result.

DATED this 29<sup>th</sup> day of March 2022.

/s/ Brian C. Padgett

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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 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 2630 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 29<sup>th</sup> day of March, 2022.

/s/ Brian C. Padgett

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*Appellant in Proper Person*

**CERTIFICATE OF SERVICE BY ELECTRONIC FILING**

I hereby certify that on the 29<sup>th</sup> day of March, 2022, I did serve by way of electronic filing, a true and correct copy of the foregoing **APPELLANT’S**

**REPLY BRIEF** on the following:

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