

IN THE SUPREME COURT OF THE STATE OF NEVADA

In Re of Discipline of:
GARRETT TANJI OGATA, ESQ.

Case No. 83719

Nevada Bar No. 7469

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Elizabeth A. Brown

**GARRET TANJI OGATA'S (1) MOTION TO STRIKE
THE STATE BAR OF NEVADA'S SCR 111 PETITION, AND;
(2) RESPONSE AND MOTION FOR STAY OF INTERIM SUSPENSION**

Garrett Tanji Ogata, through counsel, hereby: (1) moves to strike the Nevada State Bar's Petition of Bar Counsel Pursuant to SCR 111 (Attorneys convicted of crimes), and; (2) responds to the filing of the certified proof of criminal conviction and moves for a stay of any interim suspension pursuant to SCR 111(7). The Motion to Strike is made on the grounds that the Petition is procedurally improper and violates Mr. Ogata's due process rights. The Response and Motion are based upon the underlying facts of the conviction and that "good cause" exists to stay or forgo any interim suspension based upon continued adherence to his Special Conditions and impending withdrawal of the felony conviction. This motion is made pursuant to NRAP 27, the following Memorandum of Points and Authorities, the attached Declaration of Mr. Ogata, the pleadings on file herein, and such further evidence or argument this Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

In the name of "judicial economy,"¹ the State Bar has procured from a

¹ *State Bar of Nevada's SCR 111 Petition ("Petition")*, p. 7, note 4.

1 Screening Panel an improper final recommended discipline in this case. It did so
2 without notice to or input from Mr. Garrett Ogata. This maneuver not only violates
3 Mr. Ogata's due process rights, it also ignores this Court's obligation "to look
4 beyond the label given to a conviction . . . , in order to determine whether the
5 underlying circumstances of the conviction warrant discipline,"² and circumvents
6 this Court's authority and role under SCR 111(8) to refer the matter for a discipline
7 hearing to determine "the extent of the discipline to be imposed." The Court should
8 strike this Petition and the Recommendation of the Screening Panel.
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12 Mr. Ogata acknowledges his plea, but based upon the Special Conditions,
13 restitution, treatment, and impending withdrawal of the felony conviction, "good
14 cause" exists to stay any interim suspension in consonance with this Court's
15 holding in *In re Discipline of Treffinger*, 133 Nev. 153, 393 P.3d 1084 (2017).
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17 **I. THE COURT SHOULD STRIKE THE PETITION BECAUSE IT**
18 **VIOLATES SCR 111 AND MR. OGATA'S DUE PROCESS RIGHTS.**

19 Discipline proceedings are adversary proceedings of a quasi-criminal nature.
20 *In re Ruffalo*, 390 U.S. 544, 550, 88 S.Ct. 1222, 1226 (1968). Due process attaches
21 to an attorney's right to notice and the opportunity to be heard. *Burleigh v. State*
22 *Bar*, 98 Nev. 140, 145, 643 P.2d 1201, 1204, (1957); *In re Schaeffer*, 25 P.3 191,
23 204, *mod.* 31 P.2d 365 (Nev. 2000) (noting that due process requirements must be
24 met in bar proceedings).
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28 ² *State Bar v. Claiborne*, 104 Nev. 115, 211, 756 P.2d 464, 526 (1988).

The Bar files this Petition under authority of SCR 111(4) which reads:

Bar counsel's responsibility. . . . Upon being advised that an attorney subject to the disciplinary jurisdiction of the supreme court has been convicted of a misdemeanor involving the use of alcohol or a controlled substance and the offense is not the attorney's first such offense, **bar counsel shall investigate** and present the matter to the appropriate panel of the disciplinary board prior to the filing of the petition. The petition shall be accompanied by the **panel's recommendation regarding the appropriate disciplinary action, if any**, to be imposed under these or any other rules of the supreme court that pertain to the conduct of attorneys. (**emphasis** added).

A. Bar Counsel Failed to Investigate.

SCR 111(4) is clear that Bar Counsel *shall* investigate the matter. This means opening a file, sending an investigation letter to the attorney and evaluating the attorney's response prior to taking any action. Bar Counsel skipped over an investigation, and instead merely cut and paste portions of pleadings into a screening memo requesting a suspension. No one at the State Bar even attempted to contact Mr. Ogata or his counsel. See **Exhibit A**, *Declaration of Garrett Ogata*, ¶12. The "Recommendation" of the Screening Panel even notes that, "Respondent received no notice of this hearing." *Petition*, **Exhibit 3**, p. 1: lines 16-17.

Neither the SCR 111 procedures nor attorney discipline is a rote, pro forma exercise. See, i.e., *Romero-Barcelo v. Acevedo-Vila*, 275 F.Supp.2d 177 (D.P.R. 2003) (discipline must reflect each individual lawyer's circumstances and aggravating and mitigating factors in each case). As then-Bar Counsel stated in written comments on ADKT 444, which amended SCR 111 (cited in *Petition*, note

3), “In addition, the subject Respondent attorney would have the benefit of a Screening Panel’s review prior to submission to this Court.”³ This would be true if the State Bar’s investigation here ever bothered to include the attorney in question. This non-existent investigation is more inapt when the Screen Panel’s Recommendations purport to consider “prima facie factors” of mitigation and aggravation under SCR 102.5. *Petition*, **Exh. 3**, ¶ 13.⁴ Almost all of those factors are entirely personal to the subject attorney.

Any investigation and Recommendation that purports to consider these factors necessarily involves contact and information from Mr. Ogata. The State Bar failed to obtain information as to Mr. Ogata’s success or failure in satisfying the Special Conditions of his Plea, including treatment, restitution and compliance. That information is even more critical here because, in just weeks’ time, the conviction may be reduced to a misdemeanor. Mr. Ogata’s compliance with the Plea is an integral part to the entire picture – a picture that neither the State Bar nor the Screening Panel saw due to the State Bar’s failure to investigate.

B. The Screening Panel Recommendation Violates Due Process and Frustrates the Court’s Role and Assessment of Proper Discipline.

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³ *Bar Counsel’s Written Comments re: Proposed Amendment to SCR 111*, Case No. ADKT 444 (January 13, 2010), a true and correct copy attached as **Exhibit B**.

⁴ It includes the nonsensical basis, “prima facie factors of Aggravation and Mitigation (SCR 102.5(1) & (2),” (**Exh. 3**, ¶13). This covers every single factor in the Rule, including “submission of false evidence, false statements,” impossible when Mr. Ogata was excluded from the investigation and screening process.

1 An SCR 105(1)(a) Screening Panel lacks authority to recommend a term of
2 suspension, particularly when Mr. Ogata was tried *in absentia*. That conclusion is
3 the province of a properly noticed and empaneled Hearing Panel pursuant to SCR
4 105(2),⁵ a process that includes notice, cross-examination, and proper consideration
5 of aggravating and mitigating factors.
6

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8 SCR 105(1)(a) governs State Bar and screening panel procedures and scope:

9 1. *Investigation.*

10 (a) Investigation and screening panel review. . . . **At the conclusion**
11 **of an investigation of a grievance file, bar counsel shall**
12 **recommend in writing dismissal with or without prejudice,**
13 **referral to diversion or mentoring pursuant to Rule 105.5, a letter**
14 **of caution, a letter of reprimand, or the filing of a written**
15 **complaint for formal proceedings.** The recommendation shall be
16 promptly reviewed by a screening panel. A screening panel shall
17 consist of three members of the disciplinary board, appointed by the
18 chair or vice chair in accordance with Rule 103(6). Two of the three
19 reviewers must be members of the bar. **By majority vote they shall**
20 **approve, reject, or modify the recommendation, or continue the**
21 **matter for review by another screening panel.** (emphasis added).

22 Disciplinary Rule of Procedure (“DRP”) 8 restates these options and adds the
23 specific amendment to SCR 111 at issue here:

24 *Rule 8. Decision of the Screening Panel.* After reviewing the summary
25 and recommendation submitted by Bar Counsel, the Screening Panel
26 shall decide, by majority vote, whether to approve, reject, or modify
27 the recommendation or continue the matter for review by another
28 Screening Panel. **The options available to a Screening Panel are**
limited to: (a) Hold the matter over for further investigation; (b)
Dismissal with or without prejudice; (c) Refer the attorney to

⁵SCR 105(2)(e) (“A decision to **impose or recommend discipline** requires the concurrence of two members of a three-member panel or three members of a five-member panel.”) (emphasis added).

1 **diversion or mentoring**, pursuant to SCR 105.5, with or without
2 designating an alternate consequence; (d) **Direct a Letter of Caution**
3 **be issued by bar counsel**, . . . ; (e) **Issuance of a Letter of**
4 **Reprimand**, with or without conditions, including but not limited to,
5 restitution a fine of up to \$1,000, and costs as mandated by SCR 120.
6 The Screening Panel Chair shall sign the Letter of Reprimand; (f)
7 **Direct bar counsel to file a written Complaint for formal hearing**;
8 (g) **In accordance with SCR 111, the Screening Panel Chair may**
9 **enter a written order of the disciplinary action, if any, to be**
10 **imposed regarding an attorney who has been convicted of a**
11 **misdemeanor involving the use of alcohol or a controlled**
12 **substance and it is not their first offense. (emphasis added).**

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DRP 8(g) specifically states “a written order of the disciplinary *action*, if any,
to be imposed.” It does not allow for a disciplinary *sanction*. A screening panel
may only recommend to the Supreme Court one of five actions: 1) dismissal, 2)
diversion, 3) letter of caution, 4) letter of reprimand,⁶ or 5) the filing of a written
complaint for formal proceedings. It does not get to recommend, unilaterally, and
in the course of a confidential, non-discoverable, *ex parte* proceeding, that Mr.
Ogata be suspended and required to petition for reinstatement.

This interpretation of the Screening Panel’s recommended disciplinary
“action” rather than “sanction” corresponds with the other provisions of SCR 111.
Section 7 of SCR 111 states: “the court shall enter an order suspending the attorney,
regardless of the pendency of an appeal, *pending final disposition of a disciplinary*
proceeding, which shall be commenced by the appropriate disciplinary board

⁶ Indeed, the attorney has the right to appeal a proposed Letter of Reprimand to a
SCR 105(2) Hearing Panel. *See*, SCR 105(1)(b-d); DRP 9. Thus, a Screening Panel
never imposes binding discipline recommendations unilaterally.

1 *upon referral by the supreme court.*). More pointedly, Section 8 of SCR 111
2 (Referral to disciplinary board) provides: “*the supreme court shall . . . , refer the*
3 *matter to the appropriate disciplinary board* for the institution of a hearing before a
4 hearing panel in which the sole issue to be determined shall be the extent of the
5 discipline to be imposed.” (*emphasis* added). A Screening Panel determining
6 recommended discipline renders moot these provisions of SCR 111. It is axiomatic
7 that this court, when possible, interpret provisions within a common statutory
8 scheme harmoniously with one another in accordance with the general purpose of
9 those statutes. *Dezzani v. Kern & Assocs., Ltd.*, 412 P.3d 56, 59 (2018).

13 Nor should a Screening Panel’s feelings about the appropriate severity of the
14 discipline to be imposed (in this case, a long-term suspension for a second non-
15 practice misdemeanor) be made a part of the record in this case. It is a conclusion
16 bereft of facts, due process, and is an unfairly prejudicial finding in the record
17 before this Court. The Court should strike the Petition and especially Exhibit 3.

19 **II. GOOD CAUSE EXISTS TO STAY ANY INTERIM SUSPENSION.**

21 Mr. Ogata was arrested following a motor vehicle collision on August 30,
22 2019. On January 12, 2020, Mr. Ogata pled No Contest to a misdemeanor and
23 Guilty to a Class B felony, the adjudication of the latter stayed by the District Court
24 until January 11, 2022, two months from now. *See, Petition, Exh. 1*; Respondent’s
25 **Exhibit A**, *Declaration of Garrett T. Ogata*. Mr. Ogata was ordered to comply with
26 the Special Conditions for one (1) year, including community service, treatment and
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1 counseling for alcohol, along with abstaining from same subject to active
2 monitoring, and compliance with all laws and ordinances. *Id.* Mr. Ogata has
3 complied with the Special Conditions. **Exh. A**, ¶¶ 3-5. In addition, while restitution
4 to the two named victims, Verbel Hampton and Kristin Fedon, will be determined
5 and imposed at the next hearing in January, 2022, Mr. Ogata has already made full
6 restitution to both, on March 17, 2020, and September 30, 2021, respectively. *Id.* at
7 ¶¶ 10 -11. Mr. Ogata continues running his solo law practice.

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9 While SCR 111 (7) directs that an attorney who has pled to a felony shall be
10 suspended pending a formal discipline hearing, that same section concludes, “For
11 good cause, the court may set aside its order suspending the attorney from the
12 practice of law.” This Court has found that “good cause” can “relieve a lawyer from
13 automatic interim suspension.” In the case of *In re Discipline of Treffinger*, 133
14 Nev. 153, 393 P.3d 1084 (2017), this Court determined that,

15
16 [We] hold that "good cause" to relieve a lawyer from automatic
17 interim suspension depends, first and foremost, on the danger the
18 lawyer's crime and other established misconduct suggest he or she
19 poses to clients, the courts, and the public [citation omitted]. A related
20 but secondary concern is "whether there is a substantial likelihood,
21 based on all the available evidence, that a significant sanction will be
22 imposed on the [lawyer] at the conclusion of any pending disciplinary
23 proceedings." [citation omitted]. Additional factors suggested by this
24 case include the harm interim suspension will cause the lawyer and
25 the lawyer's existing clients, and the mechanisms available for
26 monitoring the lawyer's conduct so suspension can be stayed and
conditions imposed, rather than set aside outright.

27 *Id.*, at 157-58. Respondent there pled guilty to one count of possession of heroin, a
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1 Class E felony. The District Court placed the attorney on three years' probation and
2 diversion, successful completion of which would yield a dismissal and avoidance of
3 a final judgment of conviction. *Id.*, at 154. The *Treffinger* Court, while granting the
4 State Bar's SCR 111 petition, further held, "We stay the suspension conditioned on
5 Treffinger's continued adherence to the terms and conditions of his probation, his
6 successful participation in his diversion program, and the absence of any further
7 disciplinary offenses."

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10 Here, as set forth in his Declaration, Mr. Ogata has complied with the Special
11 Conditions and made full restitution to the named victims. His continued treatment,
12 counseling, and abstaining from alcohol demonstrates, first and foremost, the lack
13 of "danger the lawyer's crime and other established misconduct suggest he or she
14 poses to clients, the courts, and the public." Once he completes the year's adherence
15 to the Special Conditions, on January 11, 2022, his felony will be reduced to a
16 misdemeanor Reckless Driving. At a subsequent discipline hearing, the record will
17 reflect two misdemeanor driving convictions rather than a felony conviction. Mr.
18 Ogata will be allowed also to properly admit and offer to the Panel factors in
19 mitigation under SCR 102.5(2), among them,
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- 24 (a) absence of a prior disciplinary record;
- 25 (b) absence of a dishonest or selfish motive;
- 26 (c) personal or emotional problems;
- 27 (d) timely good faith effort to make restitution or to rectify
consequences of misconduct;
- 28 (g) character or reputation;
- (i) mental disability or chemical dependency including

- alcoholism or drug abuse when:
- (k) interim rehabilitation;
- (l) imposition of other penalties or sanctions;
- (m) remorse.

As such, Mr. Ogata submits that there is an absence of “a substantial likelihood, based on all the available evidence, that a significant sanction will be imposed on the [lawyer] at the conclusion of any pending disciplinary proceedings.” Finally, Mr. Ogata is currently subject to testing and monitoring. Therefore, mechanisms exist, and only for another 60 days, to monitor his conduct pending a formal discipline hearing. For these reasons, and in light of the improper method by which this matter was brought to the Court, good cause exists to stay any interim suspension until final resolution of the pending felony conviction.

III. CONCLUSION.

The rules of disciplinary procedure were carefully crafted to create a due process mechanism for attorneys to defend their right to practice law. Those procedures were trampled by the State Bar for nothing more than expediency and convenience. This conduct should not be condoned by this Court. For the sake of due process, Mr. Ogata respectfully requests that the State Bar’s Petition, and the rogue Recommendation of the Screening Panel, be stricken from the record.

Further, based upon the factors and sound reasoning in *Treffinger*, Mr. Ogata respectfully requests that any interim suspension arising from his felony plea be

1 stayed pending the further adjudication in January 2022.

2 DATED this 15th day of November 2021.

3 LIPSON NEILSON P.C.

4 */s/ David A. Clark*

5 By: _____

6 DAVID A. CLARK NV Bar No. 4443
7 JANEEN V. ISSACSON NV Bar No. 6429
8 JESSICA A. GREEN NV Bar No. 12383
9 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Garrett T. Ogata, Esq.

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRAP 25, I certify that I am an employee of LIPSON
12 NEILSON P.C. and that on the 15th day of November, 2021, a true and correct
13 copy of the foregoing , in **GARRET TANJI OGATA'S (1) MOTION TO**
14 **STRIKE THE STATE BAR OF NEVADA'S SCR 111 PETITION, AND; (2)**
15 **RESPONSE AND MOTION FOR STAY OF INTERIM SUSPENSION** was
16 served on the following parties by placing a copy, postage fully prepaid for regular
17 mail, and deposited in the United States mail at Las Vegas, Nevada, addressed to:

18 Bruce C. Hahn, Asst. Bar Counsel
19 Nevada Bar No. 5011
20 Laura Peters <LauraP@nvbar.org>
21 3100 W. Charleston Blvd., Suite 100
22 Las Vegas, NV 89102

23 */s/ Debra Marquez*

24 An employee of Lipson, Neilson P.C.

EXHIBIT A

1 **DECLARATION OF GARRETT TANJI OGATA**

2 I Garrett Tanji Ogata, declare under penalty of
3 perjury that the foregoing is true and correct:

- 4 1. That your Declarant has been a solo practitioner
5 in Las Vegas, Nevada for approximately 17 years.
6 I practice in a wide number of areas and I
7 currently have around 500 clients with 41 cases
8 set for bench trial and 2 jury trials scheduled
9 between today and February 17, 2022. A
10 suspension would cause my clients significant
11 adverse impact;
- 12 2. That Declarant was involved in an automobile
13 accident on August 30, 2019, that resulted in his
14 arrest for Driving Under the Influence and
15 Reckless Driving Causing Substantial Bodily Harm;
- 16 3. That Declarant was held in the Clark County
17 Detention Center for approximately thirty (30)
18 hours and was released on August 31, 2019;
- 19 4. That subsequent to his release your Declarant was
20 subject to random breathalyzer testing 6-8 times
21 each day. The tests were administered by Options
22 Company. I participated in the random
23 breathalyzer testing from August 31, 2019, until
24 January 12, 2021. Further, I did not drive for
25 several months subsequent to the August 30, 2019,
26 arrest. I also had a had a breath interlock
27 device installed on my vehicle for approximately
28 one month;

- 1 5. That your Declarant began attending the State Bar
2 of Nevada's Lawyers Concerned for Lawyers
3 meetings on Monday and Wednesday, Thursday
4 starting in September 2019. I am still currently
5 attending the Lawyers Concerned for Lawyers
6 meetings on Monday, and Wednesdays.
7 Additionally, I attended what I believe was a
8 Lawyers Concerned for Lawyers meeting on Thursday
9 hosted by Steve Burris from September 2019, until
10 the meetings were stopped due to Covid-19 in
11 February/March 2020. That I also attended the
12 Graduates AA meeting on Friday afternoons from
13 September 2019, until the meetings were stopped
14 due to Covid-19 in February/March 2020. Finally
15 I attended the Professional Recovery Network by
16 Marc Chase starting in April 2021, and I'm
17 currently attended weekly meetings;
- 18 6. That your Declarant began attending weekly
19 therapeutic meetings with John Pacult, LCSW on
20 September 13, 2019. The therapy consists of
21 treatment to address the various underlying
22 conditions that impact my use of alcohol;
- 23 7. That your Declarant entered a No Contest Plea on
24 January 12, 2021, to Misdemeanor Driving Under
25 the Influence (second offense) and a Guilty Plea
26 to Felony Reckless Driving Causing Substantial
27 Bodily Harm;
- 28

1 8. That your Declarant was adjudicated and sentenced
2 on the charge of Driving Under the Influence
3 (second offense) and placed on informal probation
4 with the following special conditions

- 5 • Ten (10) days on house arrest
- 6 • Pay a fine of one thousand dollars
7 (\$1,000.00)
- 8 • Complete DUI School
- 9 • Participate in Victim Impact Panel
- 10 • Complete ninety-six (96) hours of community
11 service
- 12 • Not to consume or possess any alcoholic
13 beverages whatsoever;
- 14 • Continue to participate in evaluations,
15 treatment, counseling and care related to
16 alcohol and follow any recommendations;
- 17 • Immediately provide to the court upon request
18 any updates related to alcohol treatment;
- 19 • Not to receive any arrests, citations or
20 charges during pendency of information
21 probation, except for minor traffic offenses;
- 22 • Comply with all Municipal, County, State and
23 Federal laws and ordinances;
- 24 • Report to Division of Parole and Probation
25 for Pre-Sentence Investigation Report
26 approximately (3) months prior to returning
27 to Court;

1 9. That adjudication on Reckless Driving Causing
2 Substantial Bodily Harm was stayed for one year.
3 Upon the successful completion of the Special
4 Conditions, the felony Reckless Driving Causing
5 Substantial Bodily Harm will be reduced to a
6 misdemeanor Reckless Driving at the January 11,
7 2022, status check;

8 10. That Kristin Fedon and Verbel Hampton were the
9 two named victims associated with the August 30,
10 2019, accident;

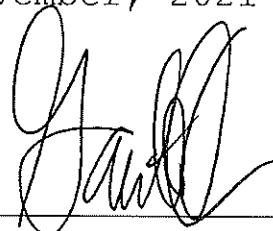
11 11. That on or about March 17, 2020, full
12 restitution was made to Verbel Hampton;

13 12. That on September 30, 2021, full restitution was
14 made to Kristin Fedon;

15 13. That at no time did the State Bar ever contact
16 or communicate with your Declarant or his counsel
17 about any investigation or proceedings that
18 generated the SCR 111 Petition;

19 14. Your Declarant has not had a positive test
20 during the entire time that he was attending the
21 Options program and has continued with his
22 treatment.

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24 DATED this 13th day of November, 2021

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Garrett Tanji Ogata

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF THE
AMENDMENT OF SUPREME COURT
RULE 111

ADKT No. 444

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**BAR COUNSEL'S WRITTEN COMMENTS TO THE PROPOSED
AMENDMENT TO SUPREME COURT RULE 111**

Rob W. Bare, Bar Counsel for the State Bar of Nevada ("State Bar"), hereby provides his Response and Recommendation on behalf of the Office of Bar Counsel in the above matter pursuant to the Nevada Supreme Court Order Scheduling Public Hearing and Allowing Public Comment entered December 8, 2009.

BACKGROUND

Justice Nancy Saitta filed the instant petition to amend Supreme Court Rule ("SCR") 111 (Attorneys Convicted of Crimes) with respect to attorneys who have been convicted of second offense misdemeanors involving the use of alcohol or a controlled substance.

As spelled out in Justice Saitta's petition:

Under the current version of the disciplinary rules, if an attorney is convicted of a misdemeanor involving the use of alcohol or a controlled substance, bar counsel simply files a petition with the supreme court, attaching a certified copy of the conviction. See SCR 111(4). No investigation or recommendation regarding discipline is required. The supreme court is then given the discretion to refer the matter to the appropriate disciplinary board for any action it deems warranted. See SCR 111(9).

The petition then goes on to state that:

The Supreme Court has recently been presented with a number of petitions advising the court that the subject attorneys have convictions for second offense misdemeanors involving the use of alcohol or a controlled substance. In each instance, the supreme court has elected to refer the matter to the appropriate disciplinary board pursuant to its authority under SCR 111(9). This process, however, is inefficient. A more streamlined procedure is needed, one which requires bar counsel, prior to submitting the petition

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

1 required under SCR 111(4), to investigate and present the matter to
2 the appropriate disciplinary board for a recommendation regarding
3 the appropriate disciplinary action, if any, to be imposed.

4 Attached to the petition as Exhibit A, is the relevant proposed rule change. As shown
5 in that Exhibit A, Justice Saitta proposed that SCR 111(4) be amended to include the following
6 language:

7 Upon being advised that an attorney subject to the disciplinary
8 jurisdiction of the supreme court has been convicted of a
9 misdemeanor involving the use of alcohol or a controlled substance
10 and the offense is not the attorney's first such offense, bar counsel
11 shall investigate and present the matter to the appropriate panel of
12 the disciplinary board prior to the filing of the petition. The petition
13 shall be accompanied by the panel's recommendation regarding
14 the appropriate disciplinary action, if any, to be imposed under
15 these or any other rules of the supreme court that pertain to the
16 conduct of attorneys.

17 DISCUSSION

18 There appear to be two (2) matters that may have been relevant in generating the
19 instant petition to amend SCR 111(4). In the first petition that was filed on March 31, 2009,
20 Respondent was charged with second offense DUI following a traffic stop after Respondent
21 failed to maintain his lane of travel. In its order filed November 18, 2009, this Court referred
22 the matter to the appropriate disciplinary board for determination of discipline, if any, to
23 impose.

24 The other petition was filed on May 11, 2009. In that matter, Respondent pled no
25 contest to one count of driving under the influence, a misdemeanor. Respondent had a prior
conviction of reckless driving, or a "wet reckless" as it is termed in California, and the instant
DUI was treated as a second offense. In its order entered October 21, 2009, this Court, as it
did in the above case, referred the matter to the appropriate disciplinary board for
determination of discipline, if any, to impose.

1 Under the proposed Rule change, these matters would have been presented to a
2 Screening Panel of the appropriate disciplinary board pursuant to SCR 105(1)(a) (Procedure
3 on receipt of complaint: Investigation and screening panel review) and in the interest of
4 judicial economy, it would have saved time and resources in having the matter reviewed first
5 before presentation to this Court. Also, under this scenario, this Court would have input from
6 the Screening Panel which might have been helpful. In addition, the subject Respondent
7 attorney would have the benefit of a Screening Panel's review prior to submission to this
8 Court.

9
10 **CONCLUSION**

11 Bar Counsel supports Justice Saitta's proposed changes to SCR 111(4) and
12 appreciates that she has proposed the modification of this rule.

13 Bar Counsel is submitting these written comments and does not intend to supplement
14 the written comments with live testimony at the hearing on January 19, 2010. However, Bar
15 Counsel does intend to be present in the Las Vegas courtroom and will provide supplemental
16 comments should this Court so desire.

17 Respectfully submitted this 13th day of January, 2010.

18 STATE BAR OF NEVADA

19 
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22 Las Vegas, Nevada 89104
23 (702) 382-2200
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25