

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 REPLY IN SUPPORT OF
(1) MOTION TO STRIKE THE STATE BAR OF NEVADA’S
SCR 111 PETITION, AND; (2) RESPONSE AND MOTION FOR
STAY OF INTERIM SUSPENSION**

On December 9, 2021, the District Court reduced Respondent, Garrett T. Ogata’s, felony conviction to a misdemeanor Reckless Driving. Based upon that reduction, and his fulfillment of every condition of his informal probation, Respondent’s convictions fail to constitute the definition of “serious crime” that requires either a suspension or referral for discipline under SCR 111 (7, 8).

Moreover, the State Bar’s Opposition fails to justify or even cogently explain the propriety of an *ex parte* secret Screening Panel adjudicating a complete recommendation for suspension, including a unilateral determination of aggravating and mitigating factors under SCR 102.5. Regardless of this Court’s disposition of the SCR 111 Petition, Respondent requests that the Court strike and exclude from the record the Screening Panel’s improvident Recommendation.

I. RESPONSE TO SCR 111 PETITION.

A. Now There is No “Serious Crime” to Warrant Suspension.

Attached as **Exhibit C** is a true and correct copy of the statement by J. Chip

1 Siegel, Esq., counsel for Mr. Ogata in the underlying criminal matter. He confirms
2 that, on December 9, 2021, pursuant to the court's prior stayed adjudication, Mr.
3 Ogata's felony conviction was reduced to a misdemeanor Reckless Driving.¹
4

5 Now, Respondent's record before this Court is for two misdemeanor
6 convictions, neither of which constitute a "serious crime" as defined by SCR
7 111(6). As such, the convictions do not trigger the provisions for mandatory
8 suspension and discipline referral set forth in subsections (7) and (8) of SCR 111.
9 Nor do the misdemeanor convictions qualify as a serious crime under subsection (6)
10 as they lack any elements that impugn Mr. Ogata's fitness as an attorney and officer
11 of the court, facts that might warrant in interim suspension under SCR 111(9).
12

13 Further, Mr. Ogata has complied with the Special Conditions for the past
14 year, including staying out of trouble and active monitoring of his abstaining from
15 alcohol use. Therefore, Mr. Ogata is not a threat to the public, making an interim
16 suspension unnecessary.
17
18

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20 **B. This Court Can Decline to Refer Mr. Ogata for Further**
21 **Disciplinary Action Based on His Compliance with Special**
22 **Conditions of His Probation.**

23 As confirmed by Mr. Siegel, the record reflects two misdemeanor driving
24 convictions, for DUI- second offense, and for Reckless Driving. In compliance with
25 his plea agreement, and before the State Bar was involved, Mr. Ogata completed all
26

27 ¹ As soon as Respondent can obtain the Minute Order and Judgment, he will
28 supplement this record.

1 of the Special Conditions, including House Arrest, a fine, Community Service, and
2 almost a year of alcohol evaluation, treatment, abstention, and monitoring. Further,
3 ahead of the Court’s schedule, Mr. Ogata made full restitution to the victims and
4 has avoided any further problems.
5

6 SCR 111(9) provides that,
7

8 Upon receipt of a petition demonstrating that an attorney has been
9 convicted of a crime which is not a serious crime, the supreme court
10 *may refer* the matter to the appropriate disciplinary board for any
11 action it may deem warranted under these or any other rules of the
12 supreme court that pertain to the conduct of attorneys, provided,
13 however, that *the supreme court may decline to refer a conviction
14 for a minor offense to the board (emphasis added).*

15 “[I]n discharging its inherent authority to discipline the bar, this court has the
16 obligation to conduct an independent and de novo review of any record compiled in
17 a disciplinary proceeding in order to determine whether discipline in any particular
18 instance is warranted.” *State Bar v. Claiborne*, 756 P.2d 464, 471 (Nev. 1988).

19 As the pleadings in this matter have discussed, SCR 111 was amended to
20 streamline the process for a conviction “of a misdemeanor involving the use of
21 alcohol or a controlled substance and the offense is not the attorney’s first such
22 offense.” As the Court knows well from its own experience, first offenses are not
23 referred and, for second misdemeanor offenses involving alcohol, discipline panels
24 often impose a term of probation and conditions.²
25

26
27 ² See, also, *State Bar’s Opposition*, p. 4, lines 8-10, “For example, screening panels
28 often recommend a diversion or mentoring program under SCR 105.5 for a second-
offense DUI.”

Mr. Ogata would submit that, on this record, he has already successfully completed an appropriate term of probation and conditions. Moreover, this discipline record and the documented completion of those Special Conditions translates to the following undisputed mitigating factors under SCR 102.5(2),

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (g) character or reputation;
- (i) mental disability or chemical dependency including alcoholism or drug abuse;
- (k) interim rehabilitation;
- (l) imposition of other penalties or sanctions;
- (m) remorse.

Thus, there is sufficient basis for this Court “to determine whether discipline in any particular instance is warranted” and decline to refer this matter for additional disciplinary action.³ This basis is further bolstered by the corrupted record in this case due to the Screening Panel’s improper Finding and Conclusions that have been published already to this Court.

II. THE COURT SHOULD STRIKE THE SCREENING PANEL’S FINDINGS BECAUSE IT VIOLATES SCR 111 AND MR. OGATA’S DUE PROCESS RIGHTS.

Regardless of the Court’s disposition of the SCR 111, Mr. Ogata reiterates his Motion to Strike the Screening Panel’s “Recommendation for Discipline.”

³ *In accord, Opposition*, 2:2-4, “[The Screening Panel] recommendations were provided to offer this Court information on whether to refer *or decline referral* of those matters to formal hearing.” (*emphasis added*).

1 Allowing this type of proceeding and express finding violates Mr. Ogata's due
2 process rights to notice and cross-examination and would set bad precedent if this
3 practice is allowed to become part of discipline proceedings.
4

5 In the SCR 111 Petition itself, the State Bar describes the Screening Panel's
6 finding (**Exhibit 3**) as a "Recommendation for Discipline following Screening."⁴
7 However, in its Opposition, the Bar backpedals, now stating that, "These
8 recommendations were provided to offer this Court information on whether to refer
9 or decline referral of those matters to formal hearing." *supra*, note 2. The Bar
10 explains away this issue on "an ambiguous petition prayer that caused or
11 contributed to Respondent's misapprehension here." *Opposition*, note 2.
12

13 There is neither ambiguity nor misapprehension here. Under SCR 105(1), a
14 Screening Panel cannot recommend a specific term of suspension while weighing
15 aggravating and mitigating factors. The State Bar's labored efforts to justify the
16 investigation and recommendation simply affirm that presenting this Court with a
17 detailed sanction recommendation on an SCR 111 Petition is unfair advocacy that
18 precludes Respondent's rights and ability to answer.
19
20
21

22 In defending its investigation efforts, the State Bar posits,
23

24 The State Bar could have sent Respondent a letter of investigation
25 requesting a response. However, Respondent could not contradict the
26 convictions. Respondent could only offer mitigating information to
the State Bar. **The proper forum for mitigation is at a formal**

27 ⁴ State Bar *SCR 111 Petition*, 1:12; 18, and; note 3 ("provide the court with the
28 Panel's discipline recommendations, if any.").

1 **hearing not a screening.**

2 *Opposition*, 7:8-12 (**emphasis** added). Except, if mitigation is improper at a
3 screening, why then does the Screening Panel’s Recommendations consider “prima
4 facie factors of Aggravation and Mitigation (SCR 102.5(1) & (2).” *Petition*, **Exh. 3**,
5 ¶ 13? If mitigating factors are, by definition, improper at a screening, why are
6 aggravating factors allowed?
7

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9 The State Bar concedes that it could have offered a “conclusory
10 recommendation” that “may comport with a strict reading of the term ‘disciplinary
11 action.’” *Opposition*, 8: 4-7. Instead, the State Bar rationalizes that,
12

13 The Panel offered its perspective of the ABA Discipline baseline
14 standard applicable for the criminal conviction matter [sic]. The Panel
15 thereafter offered a specific recommendation based upon that
16 standard, and observed that aggravating and mitigating factors were
17 likely present that may adjust that baseline. While the Panel’s finding
18 was more specific than the express language of SCR 105 and the
19 Disciplinary Rules of Procedure, it offers foundation.

20 *Id.* at 8:7-13. First, as to the “standard applicable for the criminal conviction
21 matter,” it bears repeating that at all times relevant, from the entry of conviction, to
22 the Screening Panel’s consideration, through the SCR 111 Petition and Opposition,
23 Mr. Ogata’s criminal conviction was pending reduction from felony to
24 misdemeanor. What proper purpose is served here by the Panel opining on a felony
25 conviction baseline?
26

27 Second, as the State Bar knows better than most, ABA Standard for Imposing
28 Lawyer Sanction 1.3 (Purpose of these Standards) provides,

1 They are designed to promote: (1) **consideration of all factors**
2 relevant to imposing the appropriate level of sanction in an individual
3 case; (2) **consideration of the appropriate weight of such factors** in
4 light of the stated goals of lawyer discipline; (3) consistency in the
5 imposition of disciplinary sanctions for the same or similar offenses
6 within and among jurisdictions.

7 ABA *Standard for Imposing Lawyer Sanctions* (ABA 2nd ed. 2019) (**emphasis**
8 added). The *ex parte* secret proceedings of this Screening Panel could not have
9 considered all relevant factors nor their appropriate weight. And certainly opining
10 on the sanction for a felony (suspension) when that conviction is pending reduction
11 to a misdemeanor hardly promotes “consistency in the imposition of disciplinary
12 sanctions.” Indeed, the Screening Panel found unilaterally that Standard 5.12 is the
13 appropriate baseline:
14

15 5.12 Suspension is generally appropriate when a lawyer knowingly
16 engages in criminal conduct which does not contain the elements
17 listed in Standard 5.11 *and that seriously adversely reflects on the*
18 *lawyer’s fitness to practice.*

19 *Id.* at Standard 5.12 (*emphasis added*); *SCR 111 Petition*, **Exh. 3**, Conclusion of
20 Law No. 11. How did a Screening Panel determine a second misdemeanor DUI
21 offense seriously adversely reflects on a lawyer’s fitness to practice? There is no
22 record on which to review this finding. Indeed, this finding itself contradicts SCR
23 111(6) and the State Bar’s own acknowledgement that a second DUI generally
24 warrants diversion or mentoring. *Supra*, note 1. These defects highlight again the
25 uncontested fact that a SCR 105(1) Screening Panel lacks authority and capacity to
26 make these determinations.
27
28

1 Ultimately, the critical harm to this Respondent and all future respondents is
2 that the State Bar offers this Screening Panel recommendation at the critical
3 decision point where this Court decides whether or not to refer the matter for further
4 disciplinary proceedings. The State Bar asserts that the specific recommendation
5 “offers foundation,” and is inserted at this juncture in the process to add
6 “meaningful information to help this Court in deciding whether to refer the matter.”
7 *Opposition*, 10, 12-13.

8 And that is the most harmful and unfair part of the record before the Court.
9 Respondent has no opportunity to challenge, answer, or participate in that
10 Recommendation. This Court has both the inherent authority and express option
11 under SCR 111 to refer or decline to refer this matter to a discipline hearing. The
12 State Bar is attempting to exploit an unfair and improper advantage on this pivotal
13 decision by inserting the Screening Panel recommendation for discipline.

14 The State Bar argues that, “the Screening Panel’s specific recommendation
15 here does not prejudice the Respondent in any subsequent formal hearing this court
16 may direct.” *Id.* 8:14-15. This misses the point. The prejudice is already inflicted
17 because it improperly promotes such referrals, rather than honoring this Court’s
18 exclusive role “to conduct an independent and de novo review of any record
19 compiled in a disciplinary proceeding in order to determine whether discipline in
20 any particular instance is warranted.”

21 ///

1 **III. CONCLUSION.**

2 Respondent respectfully asks that this Court reject the State Bar's request for
3 a temporary suspension on this record. Moreover, given the improper and unfair
4 process of submitting to this Court a recommendation for a suspension of six
5 months and one day, Respondent requests that the Court strike and exclude now and
6 in the future any submission by a SCR 105(1) screening panel of a specific
7 recommendation of a discipline sanction. Such a determination must be made
8 pursuant to due process and based upon the full range of factors under the ABA
9 Standards, the Supreme Court Rules, and the prior decisions of this Court.
10

11 DATED this 13th day of December 2021.

12 LIPSON NEILSON P.C.

13 /s/ David A. Clark

14 By: _____

15 DAVID A. CLARK NV Bar No. 4443
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CERTIFICATE OF SERVICE

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

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/s/ Debra Marquez

An employee of Lipson, Neilson P.C.

EXHIBIT C



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December 10, 2021

Garrett Ogata

EMAILED To: garrettogata@gmail.com

Dear Garrett:

This letter will confirm that Judge Craig DISMISSED the Felony Reckless Driving count and REDUCED your case to misdemeanor Reckless Driving. You received credit time served. We are awaiting the amended Judgement of Conviction and Court Minutes. When I receive these documents, I will let you know.

If your counsel or State Bar Counsel has any questions, please contact me.

Sincerely,

J. Chip Siegel

J. Chip Siegel, Esq.