

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                   Electronically Filed  
3                   Nov 29 2021 10:57 a.m.  
4                   Elizabeth A. Brown  
5                   Clerk of Supreme Court

6                   IN THE MATTER OF                   )  
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8                   BRENT HARSH, ESQ.,                   )  
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1 Counsel R. Kait Flocchini, Esq. represented the State Bar of Nevada ("State  
2 Bar"). Christian L. Moore, Esq. represented Respondent.

3 The Panel found that the facts established by clear and convincing  
4 evidence that Respondent was informed of the other attorney's  
5 representation of the defendant when Respondent sent the letter directly  
6 to the defendant, and therefore, knowingly violated RPC 4.2.

### 7 **2. Number of Grievances**

8 This case arose from a single grievance.

### 9 **3. Rules of Professional Conduct**

10 The Panel found that Respondent violated RPC 4.2 (Communication  
11 with Person Represented by Counsel).

### 12 **4. Mental State**

13 The Panel found that Respondent acted knowingly when violating  
14 RPC 4.2.

### 15 **5. Injury**

16 The Panel found that Respondent's violation of RPC 4.2 had the  
17 potential to cause injury but did not actually cause injury in the underlying  
18 matter.

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1 2. Be required to pay costs, provided for in SCR 120, in the amount  
2 of \$1,500 plus the hard costs of these proceedings. Such payment  
3 shall be made no later than the 30<sup>th</sup> day after issuance of the  
4 Nevada Supreme Court's Order approving and accepting the Panel  
5 Recommendation.

Nov 22, 2021

6 DATED this \_\_\_\_\_ day of November 2021.

7  
8 **STATE BAR OF NEVADA**  
9 **DANIEL M. HOOGE, BAR COUNSEL**

10 By: Kait Flocchini

11 R. Kait Flocchini, Assistant Bar Counsel  
12 9456 Double R Blvd., Suite B  
13 Reno, Nevada 89521  
14 (775) 329-4100  
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# Case Summary for ROA

Final Audit Report

2021-11-22

Created:	2021-11-22
By:	Laura Peters (laurap@nvbar.org)
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## "Case Summary for ROA" History



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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

IN RE:

DISCIPLINE OF  
BRENT HARSH, ESQ.  
STATE BAR NO. 8814

**Case No:**

**Volume 1**

**RECORD OF DISCIPLINARY PROCEEDINGS,**  
**PLEADINGS**  
**AND TRANSCRIPT OF HEARINGS**

R. Kait Flocchini, Esq.  
Assistant Bar Counsel  
Nevada Bar #9861  
9456 Double R Blvd., Ste. B  
Reno, NV 89512

Attorney for State Bar of Nevada

Christian L. Moore, Esq.  
6005 Plumas Street, Third Floor  
Reno, NV 89519

Attorney for Respondent

**INDEX**  
**ALPHABETICAL LIST OF DOCUMENTS**

<u>Description</u>	<u>Page Nos.</u>	<u>VOL</u>
Certificate of Service	472	II
Complaint and First Designation of Formal Hearing Panel Members (Filed June 25, 2021)	1-9	I
Findings of Fact, Conclusions of Law and Recommendation After Formal Hearing (Filed November 17, 2021)	167-175	I
Notice of Hearing (Filed August 31, 2021)	109	I
Order Appointing Formal Hearing Panel Chair (Filed July 15, 2021)	22-24	I
Order Appointing Formal Hearing Panel (Filed August 9, 2020)	30-32	I
Order After Pre-Hearing Conference (Filed September 15, 2021)	124-127	I
Order Denying Motion for Summary Judgment (Filed September 7, 2021)	120-123	I
Respondent's Motion for Summary Judgment (Filed August 9, 2021)	33-41	I
Respondent's Peremptory Challenges (Filed July 13, 2021)	11-13	I
Respondent's Reply in Support of Motion for Summary Judgment (Filed September 3, 2021)	113-119	I

1	Respondent’s Trial Brief	128-137	I
2	(Filed September 22, 2021)		
3	Scheduling Order	25-29	I
4	(Filed August 5, 2021)		
5	State Bar’s Hearing Brief	138-161	I
6	(Filed September 22, 2021)		
7	State Bar’s Final Disclosures	110-112	I
8	of Documents and Witnesses		
	(Filed August 31, 2021)		
9	State Bar of Nevada’s Memorandum of Costs	162-166	I
10	(Filed November 1, 2021)		
11	State Bar of Nevada’s Opposition to	42-108	I
12	Motion for Summary Judgment		
	(Filed August 23, 2021)		
13	State Bar of Nevada’s Peremptory Challenges	10	I
14	(Filed June 25, 2020)		
15	Verified Answer to Complaint	14-21	I
16	(Filed July 15, 2021)		
17	Transcript – 9/29/20	176-240	I
18		241-357	II
19	Exhibits	358-471	II
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FILED

JUN 25 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Case No: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
 )  
Complainant, )  
vs. )  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
Respondent. )

COMPLAINT

TO: Brent Harsh, Esq.  
c/o Christian Moore, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2) a VERIFIED RESPONSE OR ANSWER to this Complaint must be filed with the Office of Bar Counsel, State Bar of Nevada, 9456 Double R Boulevard, Ste. B, Reno, Nevada, 89521, within twenty (20) days of service of this Complaint. Procedure regarding service is addressed in SCR 109.

Complainant, State Bar of Nevada (“State Bar”), by and through its Assistant Bar Counsel, R. Kait Flocchini, is informed and believes as follows:

1. Attorney Brent Harsh, Esq. (“Respondent”), Bar No. 8814, is currently an active member of the State Bar of Nevada and at all times pertinent to this complaint had his principal place of business for the practice of law located in Washoe County, Nevada.

2. Respondent was retained to represent David and Sheela Clements (the “Clements”) to pursue their claims related to a November 5, 2020, vehicle-pedestrian accident.

3. Sandra L. Sei (“Sei”) was the driver in the accident and David was the pedestrian.

4. Sei was insured by The Hartford.

5. Reed Werner is a Senior Staff Attorney with the Law Offices of Eric R. Larsen, Employees of a Subsidiary of The Hartford Financial Services Group.

6. Werner was retained by The Hartford to represent Sei against the Clements’ claims.

7. On November 16, 2020, Respondent sent a demand letter to one of The Hartford’s Claim Consultants, Katherine Baarson, seeking additional coverage for Sheela Clements’ claimed injuries related to the accident. Respondent’s letter also requested that Baarson identify Sei’s personal counsel.

8. Baarson did not respond to Respondent’s November 16 letter, and instead, forwarded it to Werner for consideration.

9. Werner sent a letter to Respondent on December 18, 2020, identifying Sei as his client and requesting additional information and time to analyze the demand.

10. Werner sent a letter to Sei identifying that his office had been retained to represent her in the dispute with the Clements.

11. On January 5, 2021, Respondent filed a Complaint in the Second Judicial District Court on behalf of the Clements and against Sei.

12. Rule 4.2 of the Nevada Rules of Civil Procedure (“NRCP”) provides that a Summons and Complaint be personally served on a defendant or a defendant’s authorized agent, such as counsel.

13. Respondent served the Summons and Complaint personally on Sei.

14. With the Summons and Complaint Respondent included a letter addressed directly to Sei communicating that he would be seeking a judgment that was more than her insurance policy limits and recommending that she seek personal counsel. Respondent provided the names of four lawyers in Reno who specialize in protecting parties whose interests might be adverse to their insurance carriers.

15. Werner did not give Respondent consent to communicate directly with Sei. Nor was Respondent authorized to do so by law or a court order.

16. Respondent did not provide Werner, or The Hartford, with a copy of the Complaint, Summons, or letter to Sei, but he did ask Sei to contact The Hartford and forward them a copy of the Summons and Complaint.

**COUNT ONE- RPC 4.2 (Communication with Person Represented by Counsel)**

17. RPC 4.2 states

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

///

///

18. In light of the foregoing, including without limitation paragraphs 2 through 16, Respondent has violated RPC 4.2 (Communication with Person Represented by Counsel).

WHEREFORE, Complainant prays as follows:

1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;
2. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120; and
3. That pursuant to SCR 102, such disciplinary action be taken by the Northern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

Dated this 25th day of June, 2021.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, Bar Counsel



By: \_\_\_\_\_

R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
(775) 329-4100





FILED

JUN 25 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT H. HARSH, ESQ., )  
NEVADA BAR No. 8814 )  
)  
Respondent. )

DESIGNATION OF  
HEARING PANEL MEMBERS

TO: Brent H. Harsh, Esq.  
c/o Christian L. Moore, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519

The following are members of the Disciplinary Board for the Northern District of Nevada. Pursuant to Nevada Supreme Court Rule (SCR) 105, you may issue peremptory challenge to five (5) such individuals by delivering the same in writing to the Office of Bar Counsel within twenty (20) days of service of the complaint.

The Chair of the Southern Nevada Disciplinary Board will thereafter designate a hearing panel of three (3) members of the Disciplinary Board, including at least one member who is not an attorney, to hear the above-captioned matter.

1. Eric Stovall, Esq., Chair
2. Kendra Bertschy, Esq., Vice-Chair
3. Barth Aaron, Esq.
4. Nathan Aman, Esq.

- 1 5. Adam Cate, Esq.
- 2 6. Marilee Cate, Esq.
- 3 7. Travis Clark, Esq.
- 4 8. Lucas Foletta, Esq.
- 5 9. Scott Hoffman, Esq
- 6 10. Alison Kertis, Esq.
- 7 11. Asher Killian, Esq.
- 8 12. Katherine Lyon, Esq.
- 9 13. Nicholas C. Pereos., Esq.
- 10 14. Judy Prutzman, Esq.
- 11 15. Amos Stege,, Esq.
- 12 16. Michael Sullivan, Esq.
- 13 17. Richard Williamson, Esq.
- 14 18. Jan T. Barker, Laymember
- 15 19. Steve Boucher, Laymember
- 16 20. Brian Duffrin, Laymember
- 17 21. Deveron Feher, Laymember
- 18 22. Lynda Goldman, Laymember
- 19 23. Michelle Hritz, Laymember
- 20 24. Michael LaBadie, Laymember
- 21 25. Timothy Meade, Laymember
- 22 26. Sadiq Patankar, Laymember
- 23 27. Richard Teichner, Laymember

24 ///

25 ///

1                                28.    Brook M. Westlake, Laymember

2                                DATED this 25<sup>th</sup> day of June, 2021.

3                                **STATE BAR OF NEVADA**  
4                                Daniel M. Hooge, Bar Counsel

5                                By:   
6                                Kait Flocchini (Jun 25, 2021 12:12 PDT)  
7                                R. Kait Flocchini, Assistant Bar Counsel  
8                                9456 Double R Blvd., Ste. B  
9                                Reno, NV 89521  
10                                Phone: (775) 329-4100






# 6-25-21.1st designation

Final Audit Report

2021-06-25

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## **DECLARATION OF MAILING**

Laura Peters, under penalty of perjury, being first and duly sworn, deposes and says as follows:

1. That Declarant is employed as a paralegal for the State Bar of Nevada. That in such capacity, Declarant is Custodian of Records for the Discipline Department of the State Bar of Nevada.
2. That Declarant states that the enclosed documents are true and correct copies of the **COMPLAINT, DESIGNATION OF HEARING PANEL MEMBERS and STATE BAR OF NEVADA'S PEREMPTORY CHALLENGES** in the matter of the State Bar of Nevada v. Brent H. Harsh, Esq., Case No: OBC21-0067.
3. That pursuant to Supreme Court Rule 109, the Complaint, First Designation of Hearing Panel Members and State Bar's Peremptory Challenges were served on the following by emailing a copy of same to:

BRENT H. HARSH, Esq.  
c/o Christian L. Moore, Esq.  
[clm@lge.net](mailto:clm@lge.net)

DATED the 25<sup>th</sup> day of June, 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada



FILED

JUN 25 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Case No: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
)  
Respondent. )

**STATE BAR OF NEVADA'S**  
**PEREMPTORY CHALLENGES**

Pursuant to Supreme Court Rule 105(2)(a), the State Bar of Nevada hereby exercises its peremptory right to challenge the following member of the Northern Nevada Disciplinary Board from the Formal Hearing Panel in the above referenced matter:

1. Sadiq Patankar, Esq.
2. Nicholas C. Pereos, Esq.

Dated this 25th day of June 2021.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, Bar Counsel

By: Kait Flocchini  
R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
(775) 329-4100



FILED

JUL 13 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Christian L. Moore, Esq., NSB #3777  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
Telephone: (775) 786-6868  
Fax: (775) 786-9716  
clm@lge.net; dal@lge.net  
*Attorneys for Defendants*

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

CASE NO.: OBC21-0067

vs.

**RESPONDENT'S PEREMPTORY  
CHALLENGES**

BRENT HARSH, ESQ.,  
BAR NO. 8814,

Respondent.

Respondent, BRENT HARSH, ESQ., pursuant to Supreme Court Rule 105(2)(a), hereby exercises his peremptory right to challenge the following members of the Northern Nevada Disciplinary Board from the Formal Hearing Panel in the above captioned matter:

1. Marilee Cate
2. Alison Kertis
3. Katherine Lyon
4. Judy Prutzman

///

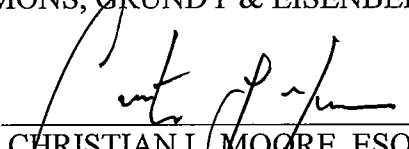
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1 5. Amos Stege

2  
3 DATED this 13<sup>th</sup> day of July 2021.

4  
5 LEMONS, GRUNDY & EISENBERG

6 By:   
7 CHRISTIAN L. MOORE, ESQ. (SBN3777)  
8 6005 Plumas St, Third Floor  
9 Reno, Nevada 89519  
10 *Attorneys for Respondent*

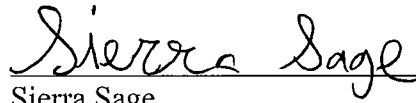


CERTIFICATE OF SERVICE

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a party to the within action; that on July 13<sup>th</sup>, 2021, I served a copy of the foregoing **RESPONDENT'S PEREMPTORY CHALLENGES**, via Hand Delivery and Electronic Filing to the following recipients:

laurap@nvbar.org

R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
kaitf@nvbar.org

  
Sierra Sage



FILED

JUL 15 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Christian L. Moore, Esq., NSB #3777  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
Telephone: (775) 786-6868  
Fax: (775) 786-9716  
clm@lge.net; dal@lge.net  
*Attorneys for Defendants*

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

CASE NO.: OBC21-0067

vs.

VERIFIED ANSWER TO COMPLAINT

BRENT HARSH, ESQ.,  
BAR NO. 8814,

Respondent.

Respondent, BRENT HARSH, ESQ., by and through his undersigned counsel in this matter, admits, denies, and alleges as follows:

1. Admitted that Respondent, State Bar of Nevada Bar Number 8814, is an active member of the State Bar of Nevada; and has his principal place of business for the practice of law located in Washoe County, Nevada.

2. Admitted that Respondent has been retained to represent David and Sheela Clements to pursue their claims related to a November 5, 2020, vehicle-pedestrian accident.

3. Admitted that Sandra L. Sei was the driver in the accident and David was the pedestrian.

4. Admitted that Ms. Sei is insured by The Hartford.

///

///

1           5.       Admitted, based on information and belief, that Reed Werner is a Senior Staff  
2 Attorney with the Law Offices of Eric R. Larsen, Employees of a Subsidiary of The Hartford  
3 Financial Services Group.

4           6.       Denied that attorney Werner was retained by The Hartford to represent Sei against  
5 the Clements' claims. Instead, attorney Werner received an assignment from The Hartford claims  
6 professional Katherine Baarson to provide a coverage opinion to determine if a separate policy  
7 limit under The Hartford's insurance policy applied to Mrs. Clements' claim against Ms. Sei. As  
8 such, attorney Werner in fact represented The Hartford.

9           7.       Admitted that Respondent sent a November 16, 2020 demand letter to The  
10 Hartford claims professional Baarson seeking additional coverage for Mrs. Clements' claimed  
11 injuries related to the accident, and also requesting the identity of Ms. Sei's personal counsel.

12           8.       Admitted, based on information and belief, that Ms. Baarson did not immediately  
13 respond to Respondent's November 16 letter, and instead forwarded it to attorney Werner.

14           9.       Admitted that attorney Wenrer sent a letter to Respondent on December 18, 2020  
15 that included in the reference section the words "Our Client : Sandra Sei" that nevertheless  
16 discussed the Negligent Infliction of Emotional Distress claim by Ms. Clements that presented  
17 the coverage issue with The Hartford.

18           10.      Denied, based on lack of information and belief, that attorney Werner sent a letter  
19 to Ms. Sei identifying that his office had been retained to represent her in the dispute with Mr.  
20 and Mrs. Clements. In fact, attorney Werner was ethically prohibited from representing Ms. Sei  
21 because he was representing The Hartford and providing coverage advice adverse to Ms. Sei's  
22 interests. Further, as discovered during the May 20, 2021 deposition testimony of Ms. Sei in the  
23 underlying case number CV20-02081, where Ms. Sei is represented by attorney Christopher  
24 Turtzo, Esq. of the law firm of Morris, Sullivan & Lemkul, LLP (not attorney Werner or anybody  
25 affiliated with "The Law Offices of Eric R. Larsen – Employees of a Subsidiary of The Hartford  
26 Financial Services Group, Inc."), it is readily apparent that in fact attorney Werner never  
27 represented Ms. Sei when one reviews the following excerpt of transcript:

1 20 Q Did you ever talk to Reed Warner?  
2 21 MR. TURTZO: Just for the purposes of the  
3 22 record, it's a yes or no question.  
4 23 BY MR. HARSH:  
5 24 Q It's a yes or no. I'm not asking about any  
6 25 details, I'm asking have you ever had a conversation  
7 with Reed Warner? Page 33  
8 MR. TURTZO: That's okay. Go ahead and answer  
9 if you know.  
10 THE WITNESS: I don't remember the name, no.  
11 BY MR. HARSH:  
12 Q Have you ever been contacted -- besides your  
13 attorney that's sitting here, have you ever had a  
14 conversation with any attorneys with The Hartford? I'm  
15 not talking about the attorney sitting next to you.  
16 A No.  
17 Q Any other communications with The Hartford from  
18 your third conversation with Kat, and then I'm assuming  
19 your attorney that's sitting here now, and I want to be  
20 very clear. I don't want to know any conversations  
21 you've had with your attorney. I'm just trying to see  
22 who else from The Hartford you talked to.  
23 A Nobody.

18 11. Admitted that on January 5, 2021, Respondent filed a Complaint in underlying  
19 case number CV20-02081 in the Second Judicial District Court on behalf of Mr. and Mrs.  
20 Clements against Ms. Sei.

21 12. Admitted that Rule 4.2(a) of the Nevada Rules of Civil Procedure ("NRCP")  
22 provides that a Summons and Complaint be personally served on a defendant or a defendant's  
23 authorized agent, such as counsel if the attorney in fact represents the defendant and has authority  
24 from the defendant to accept service.

25 13. Admitted that Respondent, as permitted by Rule 4.2(a) of the Nevada Rules of  
26 Civil Procedure ("NRCP"), arranged for service of the Summons and Complaint in underlying  
27 case number CV20-02081 on Ms. Sei.

28 ///

1           14.     Admitted that the Summons and Complaint served on Ms. Sei included  
2 Respondent's letter addressed directly to Ms. Sei communicating that a judgment was being  
3 sought that was more than what her insurance company contended was her insurance policy  
4 limits and recommending that she seek the advice of personal counsel. This recommendation  
5 included the names of four lawyers in Reno who specialize in protecting parties whose interests  
6 might be adverse to their insurance carriers.

7           15.     Admitted that attorney Werner did not give Respondent consent to communicate  
8 directly with Ms. Sei. Such consent was not required as attorney Werner, having been engaged  
9 by The Hartford to provide coverage opinions, could not, as specified in RPC 1.7 (Conflict of  
10 Interest: Current Clients) ethically represent Ms. Sei in the defense of the claims presented  
11 against Ms. Sei in case number CV20-02081. This conflict existed because attorney Werner's  
12 representing The Hartford to contend there was no additional insurance policy limit was in direct  
13 conflict with the interest of Ms. Sei since Ms. Sei would be insulated from any personal exposure  
14 if The Hartford were to concede that the insurance policy it sold to Ms. Sei provided additional  
15 insurance coverage. The Nevada Supreme Court has clearly stated that "Where the clients'  
16 interests conflict, the rules of professional conduct prevent the same lawyer from representing  
17 both clients" when one client is an insurer and the other client is the insured. *State Farm v.*  
18 *Hansen*, 131 Nev. 743, 748, 357 P.3d 338, 341 (2015). In *Hansen*, the Nevada Supreme Court  
19 analyzed certified questions sent by the United States District Court for the District of Nevada  
20 as to when an insurer must provide independent counsel for its insured. In its discourse on the  
21 topic, the *Hansen* opinion examined several Nevada Rules of Professional Conduct and observed  
22 "counsel may not represent both the insurer and the insured when their interests conflict and no  
23 special exception applies. RPC 1.7." *Id.* at 747, 341.

24           Further, even if attorney Werner ignores the above discussed ethical prohibition, Mr.  
25 Harsh's letter to Ms. Sei discussed a matter that could not have been the subject of attorney  
26 Werner's representation of Ms. Sei. The subject of Respondent's letter to Ms. Sei focused on the  
27 insurance coverage available to Ms. Sei, which, as already established, could not have been the  
28 subject of attorney Werner's purported representation of Ms. Sei. Indeed, in interpreting Rule

1 4.2, the Nevada Supreme Court has demonstrated that it will carefully examine the circumstances  
2 surrounding the purported improper contact by an attorney of a supposedly represented person.  
3 *Palmer v. Pioneer Inn Associates, Ltd.*, 338 F.3d 981 (9th Circuit 2003). In *Palmer*, the United  
4 States Court of Appeal for the Ninth Circuit certified a question to the Nevada Supreme Court  
5 to discuss the application of Supreme Court Rule 182 which was repealed by Order of the Nevada  
6 Supreme Court on February 6, 2006 and in turn replaced by the Nevada Rules of Professional  
7 Conduct, based upon the Bar Association Model Rules of Professional Conduct to include RPC  
8 4.2. While the interpretation in *Palmer* of Rule 4.2 focusses on an issue distinct from the  
9 grievance discussed in this letter, a touchstone of the Nevada Supreme Court's analysis is that  
10 the primary purpose of, now RPC 4.2, is "to protect the attorney-client relationship from  
11 intrusion by opposing counsel." *Id.* at 987. Mr. Werner clearly did not have an attorney-client  
12 relationship with Ms. Sei to defend her in any litigation as is demonstrated by (1) the fact that  
13 attorney Christopher Turtzo of the law firm of Morris, Sullivan & Lemkul filed an answer within  
14 20 days after Ms. Sei was served with the letter from Mr. Harsh, and (2) Ms. Sei's above quoted  
15 May 20, 2021 deposition testimony wherein she testified she had no communications with  
16 attorney Werner.

17 16. Respondent admits that he did not provide attorney Werner or The Hartford with  
18 a copy of the documents served on Ms. Sei; but did ask Ms. Sei contact The Hartford and provide  
19 a copy of the Summons and Complaint.

20 17. Admitted that RPC 4.2 states (Communication with Person Represented by  
21 Counsel) states "In representing a client, a lawyer shall not communicate about the subject of  
22 the representation with a person the lawyer knows to be represented by another lawyer in the  
23 matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or  
24 a court order."

25 18. Respondent denies that he has violated RPC 4.2.

26 ///

27 ///

28 ///

1 WHEREFORE, Respondent prays as follows:

- 2 1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;
- 3 2. That Complainant is not granted the remaining prayer stated in the Complaint;
- 4 and
- 5 3. That the Complaint be dismissed.

6

7 DATED this 14<sup>th</sup> day of July 2021.

8 LEMONS, GRUNDY & EISENBERG

9

10 By: 

11 CHRISTIAN L. MOORE, ESQ. (SBN3777)

12 6005 Plumas St., Third Floor

13 Reno, Nevada 89519

14 *Attorneys for Respondent*

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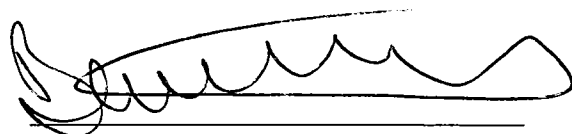
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VERIFICATION PURSUANT TO NRS 15.010

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF WASHOE    )

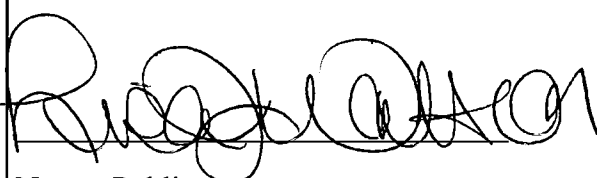
Under penalties of perjury, the undersigned declares that he is the Respondent named in the foregoing Answer and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

DATED this 7 day of July 2021.

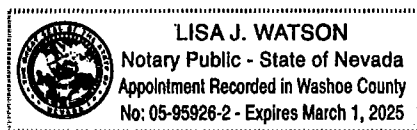


BRENT HARSH, ESQ.

SUBSCRIBED and SWORN to before me  
on this 7th day of July 2021.



Notary Public



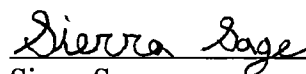


**CERTIFICATE OF SERVICE**

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a party to the within action; that on July 14<sup>th</sup>, 2021, I served a copy of the foregoing **VERIFIED ANSWER TO COMPLAINT**, via Hand Delivery and Electronic Filing to the following recipients:

laurap@nvbar.org

R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
kaitf@nvbar.org

  
Sierra Sage



FILED

JUL 15 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Case Number: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
)  
vs. )  
)  
BRENT HARSH, ESQ. )  
NV BAR No. 8814 )  
Respondent. )  
)  
)

ORDER APPOINTING  
HEARING PANEL CHAIR

**IT IS HEREBY ORDERED** that the following member of the Northern Nevada  
Disciplinary Board has been designated and as the Hearing Panel Chair.

1. Eric Stovall, Esq., Chair

DATED this 15 day of July, 2021.

STATE BAR OF NEVADA

By: [Signature]  
Eric Stovall, Esq., Chair  
Northern Nevada Disciplinary Board

# North Hearing Chair Ord\_Harsh

Final Audit Report

2021-07-15

Created:	2021-07-15
By:	Cathi Britz (cathib@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAv7f_v-MmNULYy58bcXrOO3xX1NILsCrC

## "North Hearing Chair Ord\_Harsh" History

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-  Agreement completed.  
2021-07-15 - 9:20:04 PM GMT

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **Order**

**Appointing Hearing Panel Chair** was served electronically upon:

Eric Stovall, Esq. - eric@ericstovalllaw.com

Christian L. Moore, Esq. - clm@lge.net

Kait Flocchini – kaitf@nvbar.org

Dated this 15<sup>th</sup> day of July 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada

Case Number: OBC21-0067



FILED

AUG 05 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRENT HARSH, ESQ.,  
BAR NO. 8814

Respondent.

**SCHEDULING ORDER**

Pursuant to Rule 17 of the Disciplinary Rules of Procedure, the Hearing Chair Eric Stovall, Esq., met telephonically with R. Kait Flocchini, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Christian L. Moore, Esq., on behalf of Respondent Brent Harsh, Esq., on July 22, 2021 at 9:00 a.m. to conduct the initial conference in this matter. Initial disclosures, discovery issues, the potential for resolution of this matter prior to the hearing, and the hearing date were discussed during the Initial Conference.

During the Initial Conference, the parties agreed to the following:

1. All documents may be served electronically, unless otherwise required by the Nevada Supreme Court Rules.

1           2.     State Bar of Nevada's initial disclosures shall be served on or before July 29,  
2 2021.

3           3.     Respondent will provide initial disclosures which shall be served on or before  
4 August 6, 2021. Such disclosures shall identify and provide all documents reasonably  
5 calculated to lead to the discovery of admissible evidence and identify, with contact  
6 information, all witnesses Respondent intends to call to testify at the hearing.

7           4.     The parties shall file and serve any substantive Motions on or before August  
8 9, 2021.

9           5.     At or before September 7, 2021 at 9:00 a.m., the parties shall exchange a list  
10 of final hearing exhibits, identified numerically by the State Bar and alphabetically by  
11 Respondent, and a list of all witnesses the party intends to call to testify at the Formal  
12 Hearing. At or before 12:00 p.m. on September 8, 2021, the parties shall exchange  
13 objections to final hearing exhibits and intended hearing witnesses.

14          6.     The parties shall meet with Chair Stovall on September 9, 2021 at 9:00 a.m.  
15 via simultaneous audio/visual transmission (i.e. Zoom) hosted by the State Bar for the Pre-  
16 hearing Conference. Pursuant to Rule 23 of the Disciplinary Rules of Procedure, at the Pre-  
17 hearing conference (i) the parties shall discuss all matters needing attention prior to the  
18 hearing date, (ii) the Chair may rule on any motions or disputes including motions to  
19 exclude evidence, witnesses, or other pretrial evidentiary matter, and (iii) the parties shall  
20 discuss and determine stipulated exhibits proffered by either bar counsel or respondent as  
21 well as stipulated statement of facts, if any. The State Bar shall provide the meeting  
22 information no less than 48 hours before the meeting time.

23          7.     The parties shall file and serve any Hearing Brief no later than 5:00 p.m. on  
24 September 15, 2021.

25

8. The hearing for this matter shall be set for one day, to wit September 29, 2021, starting at 9:00 a.m. and shall take place via simultaneous audio/visual transmission (i.e. Zoom) hosted by the State Bar. The State Bar shall provide the meeting information no less than 48 hours before the hearing time.

9. The Findings of Fact, Conclusion of Law, and Recommendation or Order in this matter shall be due October 29, 2021.

10. The parties stipulate to waive SCR 105(2)(d) so that the remaining hearing panel members may be appointed more than 45 days prior to the scheduled hearing.

Based on the parties' verbal agreement to the foregoing during the telephonic Initial Conference and good cause appearing, IT IS SO ORDERED.

Dated this 5<sup>th</sup> day of August, 2021.

NORTHERN NEVADA DISCIPLINARY BOARD

*W. A. R. R.*

Eric Stovall, Esq.  
HEARING CHAIR

# 8-5-21.Scheduling Order

Final Audit Report

2021-08-05

Created:	2021-08-05
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAM3TrWKrLy9sTrZfn6iTI2WQQSgm2rVjj

## "8-5-21.Scheduling Order" History

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2021-08-05 - 11:13:28 PM GMT
-  Email viewed by Eric A. Stovall (eric@ericstovalllaw.com)  
2021-08-05 - 11:15:47 PM GMT- IP address: 76.209.6.196
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Signature Date: 2021-08-05 - 11:17:01 PM GMT - Time Source: server- IP address: 76.209.6.196
-  Agreement completed.  
2021-08-05 - 11:17:01 PM GMT



**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **State Bar's Initial Disclosures of Documents and Witnesses** was served electronically upon:

Eric Stovall, Esq. - eric@ericstovalllaw.com  
Christian L. Moore, Esq. - clm@lge.net  
Kait Flocchini – kaitf@nvbar.org

Dated this 22nd day of August 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada



FILED

AUG 09 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

BRENT HARSH, ESQ.  
NV BAR No. 8814  
Respondent.

ORDER APPOINTING  
FORMAL HEARING PANEL

IT IS HEREBY ORDERED that the following members of the Northern Nevada Disciplinary Board have been designated as members of the formal hearing panel in the above-entitled action. The hearing will be convened on the 29<sup>th</sup> day of September, 2021 starting at 9:00 a.m. via Zoom video conferencing.

1. Eric Stovall, Esq., Chair;
2. Lucas Foletta, Esq.
3. Mike LaBadie, Laymember

DATED this 9<sup>th</sup> day of August, 2021.

STATE BAR OF NEVADA

By: [Signature]  
Eric A. Stovall, Esq., Chair  
Northern Nevada Disciplinary Board

# North Hearing Pnl Ord\_Harsh

Final Audit Report

2021-08-09

Created:	2021-08-09
By:	Cathi Britz (cathib@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAALFOgQptcan0iRO3LVQaxjoWW_46okR5x

## "North Hearing Pnl Ord\_Harsh" History

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2021-08-09 - 10:42:01 PM GMT- IP address: 76.209.6.196
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Signature Date: 2021-08-09 - 10:43:43 PM GMT - Time Source: server- IP address: 76.209.6.196
-  Agreement completed.  
2021-08-09 - 10:43:43 PM GMT

## **CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **Order**

**Appointing Formal Hearing Panel** was served electronically upon:

Christian L. Moore, Esq. - [clm@lge.net](mailto:clm@lge.net)

Kait Flocchini – [kaitf@nvbar.org](mailto:kaitf@nvbar.org)

Eric Stovall, Esq. - [eric@ericstovalllaw.com](mailto:eric@ericstovalllaw.com)

Lucas Folletta, Esq - [lfoletta@mcdonaldcarano.com](mailto:lfoletta@mcdonaldcarano.com)

Mike LaBadie - [Mlab12770@gmail.com](mailto:Mlab12770@gmail.com)

Dated this 9<sup>th</sup> day of August 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada



FILED

AUG 09 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Christian L. Moore, Esq., SBN #3777  
Todd R. Alexander, Esq., SBN #10846  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
Telephone: (775) 786-6868  
Fax: (775) 786-9716  
clm@lge.net; tra@lge.net  
*Attorneys for Respondent*

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

BRENT HARSH, ESQ.,  
BAR NO. 8814,

Respondent.

CASE NO.: OBC21-0067

**RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT**

Respondent, BRENT HARSH, ESQ., hereby moves for summary judgment of the Complaint filed against him in this disciplinary proceeding. This motion is made and based on the following memorandum of points and authorities, the exhibits attached hereto, and any further information this Disciplinary Board deems it appropriate to consider.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is a disciplinary proceeding in which Respondent Brent Harsh ("Harsh") is accused of violating NRPC 4.2 by sending a letter to Sandra Sei, a named defendant in a personal injury claim Harsh is handling for his clients, David and Sheela Clements. This disciplinary proceeding was initiated by Reed Werner, an attorney for The Hartford Insurance Company.

It is alleged that Harsh knew Sei was represented by Werner in the personal injury case.

1 The problem with Bar Counsel's Complaint is that, at the time of the communication at  
2 issue, Harsh understood that Werner could not legally or ethically have represented Sei because  
3 Werner was then engaged in handling the insurance coverage issues presented in the case, and  
4 Werner was taking a position detrimental and directly contrary to Sei's best interests.

5 Harsh knew the legal and ethical rules prohibiting Werner from representing Sei when  
6 he was also engaged in the insurance coverage dispute. Thus, Harsh's presumption that other  
7 lawyers follow the applicable legal and ethical rules resulted in a reasonable presumption that  
8 Werner did not represent Sei. In short, Harsh did not know Sei was represented by counsel in  
9 the personal injury litigation. In fact, he had every reason to believe otherwise.

## 10 II. STATEMENT OF UNDISPUTED FACTS

11 Harsh represents David and Sheela Clements, husband and wife, in pursuit of a recovery  
12 for personal injury claims arising out of a vehicle vs. pedestrian accident. Specifically, David  
13 Clements was struck by a car while walking across a crosswalk and was left paralyzed. Sandra  
14 Sei was the driver of the vehicle that struck Mr. Clements, and she was insured by The Hartford.  
15 (State of Nevada Traffic Crash Report, attached hereto as **Exhibit 1**, numbered SBN 215-221).<sup>1</sup>

16 Harsh initially communicated with Katherine Baarson, a claim consultant at The  
17 Hartford, in an effort to negotiate a settlement of the Clements' claims. (Email exchange  
18 between Harsh and Baarson, dated November 11 and 30, 2020, attached hereto as **Exhibit 2**, and  
19 numbered SBN 30-31, 33 and 39). The Hartford reached a relatively quick decision that it was  
20 willing to pay Sei's \$100,000 policy limit to settle David Clements' personal injury claims.  
21 (Exhibit 2, SBN 31). The only remaining dispute between Harsh and Baarson was an insurance  
22 coverage dispute over whether there was an additional \$100,000 policy limit available for Sheela  
23 Clements' claim for negligent infliction of emotional distress ("NIED"). (Exhibit 2, SBN 30).  
24 The email communications between Harsh and Baarson concluded with Baarson's statement that  
25 she disagreed with Harsh's coverage position, but that she "will check with our legal." (Exhibit  
26 2, SBN 30).

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27  
28 <sup>1</sup> The documentary evidence submitted in support of this Motion is authenticated in the  
Declaration of Brent Harsh, which is attached hereto as Exhibit 4.

1 On November 16, 2020, Harsh sent a settlement demand to The Hartford, explaining his  
2 position that the available policy limit for the incident was \$200,000, rather than only \$100,000.  
3 (Settlement demand letter, attached hereto as **Exhibit 3**, SBN 35-37). In that same letter, Harsh  
4 asked that Baarson “please inform me who your insured’s personal counsel is, so I can discuss  
5 further.” (Exhibit 3, p. 3). Baarson never responded to Harsh’s request to identify Sei’s personal  
6 counsel. (Declaration of Brent Harsh, attached hereto as **Exhibit 4**, para. 6).

7 On December 21, 2020, Baarson informed Harsh by telephone that attorney Reed  
8 Werner, Esq. was dealing with the insurance coverage issue on behalf of The Hartford. (Exhibit  
9 4, para. 7). As such, Harsh was always under the impression that Werner was engaged to address  
10 the coverage issue of whether an additional policy limit was available to cover Ms. Clements’  
11 NIED claim. (Exhibit 4, para. 14). Furthering this impression, Werner’s written  
12 communications identify him as a Senior Staff Attorney with the “Law Offices of Eric Larsen,  
13 Employees of a Subsidiary of The Hartford Financial Services Group.” (Email exchange  
14 between Harsh and Werner, dated December 21-22, 2020, attached hereto as **Exhibit 5**, SBN  
15 45, 49 and 50). Also furthering Harsh’s impression that Werner was engaged to address the  
16 coverage issue, all of Werner’s requests for information from Harsh appeared to be geared  
17 toward determining whether Sheela Clements had suffered anything that could be considered a  
18 separate “bodily injury,” so as to trigger the separate per-person limit of Sei’s Hartford insurance  
19 policy. (Exhibit 5, SBN 49).

20 After speaking with Baarson on December 21, 2020, Harsh received an email from  
21 Werner requesting additional information on Sheela Clements’ NIED claim, apparently in order  
22 to make a coverage recommendation. (Exhibit 5, SBN 49). Attached to Werner’s email was a  
23 letter to Harsh written on December 18, also requesting further information on Sheela Clements’  
24 NIED claim. (Letters from Werner to Harsh dated December 18, 2020, attached hereto as  
25 **Exhibit 6**, SBN 46-47). Werner’s December 18 letter has a line in the subject heading that reads  
26 “Our Client: Sandra Sei.” (Exhibit 6). On December 22, Werner again wrote to Harsh stating  
27 that he did not have enough information to make a decision regarding Sheela Clements’ NIED  
28 claim. (Exhibit 5, SBN 49).

1 Harsh's office filed a Complaint naming Sandra Sei as a defendant on December 22,  
2 2020. (Complaint filed December 22, 2020, attached hereto as **Exhibit 7**, SBN 52-60). Because  
3 of the then-ongoing coverage dispute, Harsh and his clients refused to settle for the single  
4 \$100,000 policy limit. Instead, Harsh wrote a letter to Sei on January 2, 2021, informing Sei  
5 that Harsh and his clients were unable to reach a settlement with The Hartford, that he had filed  
6 a complaint naming Sei as a defendant, and recommending that Sei retain personal counsel to  
7 address the insurance coverage dispute. (Letter from Harsh to Sei, dated January 2, 2021,  
8 attached hereto as **Exhibit 8**, SBN 71). The Clements' Complaint, the summons, and Harsh's  
9 letter to Sei was served on January 4, 2021. (Proof of Service filed January 5, 2021, attached  
10 hereto as **Exhibit 9**, SBN 170-173).

11 Unbeknownst to Harsh, on January 14, Werner posted a complaint to the State Bar of  
12 Nevada, accusing Harsh of violating RPC 8.4. (Werner email to State Bar dated January 14,  
13 2021, attached hereto as **Exhibit 10**, SBN 68). In his complaint, Werner contends that Sei was  
14 his client and that Harsh "was aware that the client, Sandra Sei, was represented by counsel."  
15 (Exhibit 10, para. 2).

16 Contrary to Werner's statement that Sei was his client, attorneys Will Lemkul and  
17 Christopher Turtzo of Morris, Sullivan & Lemkul, LLP appeared and answered the Complaint  
18 on behalf of Sandra Sei on January 26, 2021. (Answer filed January 26, 2021, attached hereto  
19 as **Exhibit 11**, SBN 83-92).

20 On May 20, 2021, Harsh took Sandra Sei's deposition. (Sei Deposition dated May 20,  
21 2021, pertinent portions of which are attached hereto as **Exhibit 12**, SBN 107-123). Sei testified  
22 that she has never spoken with attorney Reed Werner. (Exhibit 12, pp. 32-33). In fact, she  
23 testified that she was not even familiar with Reed Werner's name. (Exhibit 12, p. 33). Thus,  
24 she had never even heard of the attorney who purportedly represented her prior to Turtzo and  
25 Lemkul. (Exhibit 12, pp. 32-33).

### 26 III. STANDARD FOR GRANTING SUMMARY JUDGMENT

27 Under SCR 119(3), the Nevada Rules of Civil Procedure apply in disciplinary cases.  
28 Rule 56 of the Nevada Rules of Civil Procedure permits a party to move for summary judgment



1 on any claim or defense. NRCP 56(a). "The court shall grant summary judgment if the movant  
2 shows that there is no genuine dispute as to any material fact and the movant is entitled to  
3 judgment as a matter of law. The court should state on the record the reasons for granting or  
4 denying the motion." *Id.*

5 Summary judgment is proper when the pleadings, depositions, answers to interrogatories,  
6 admissions, documents, electronically stored information, affidavits, declarations, stipulations,  
7 or other materials that are properly before the court demonstrate that no genuine issue of material  
8 fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56(c)(1)(A)  
9 (discussing materials to support an assertion of fact); and *Wood v. Safeway, Inc.*, 121 Nev. 724,  
10 731, 121 P.3d 1026, 1031 (2005).

11 On summary judgment, the evidence must be viewed through the prism of the substantive  
12 evidentiary burden. *Ferguson v. LVMPD*, 131 Nev. 939, 944, 364 P.3d 592, 595 (2015). The  
13 substantive evidentiary burden is important in this case because "[i]n bar disciplinary matters, a  
14 higher degree of proof is required than in ordinary civil proceedings. Clear and convincing  
15 evidence must support any findings of misconduct." *In re Discipline of Drakulich*, 111 Nev.  
16 1556, 1566, 908 P.2d 709, 715 (1995) (emphasis added). "Clear and convincing evidence" is  
17 defined as "evidence [which] must be so clear as to leave no substantial doubt." *Id.*

#### 18 IV. LEGAL ARGUMENT

19 Bar Counsel's Complaint alleges a violation of Rule 4.2 of the Nevada Rules of  
20 Professional Conduct. NRPC 4.2 states as follows:

21 In representing a client, a lawyer shall not communicate about the subject of the  
22 representation with a person the lawyer knows to be represented by another  
23 lawyer in the matter, unless the lawyer has the consent of the other lawyer or is  
authorized to do so by law or a court order.

24 The Rule requires the element of knowledge on the part of the accused lawyer. Thus, to  
25 withstand summary judgment, Bar Counsel must present clear and convincing evidence of  
26 Harsh's state of mind—that Harsh knew Werner represented Sei in the personal injury litigation.  
27 This is a burden Bar Counsel cannot meet in this case.

28 ///

1       There is no evidence, let alone clear and convincing evidence, that Harsh knew Sei was  
2 represented by counsel in the personal injury litigation. This is especially so because Harsh was  
3 given every indication, from Baarson and from Werner himself, that Werner was handling the  
4 coverage dispute for The Hartford and could not, therefore, legally or ethically represent Sei in  
5 the personal injury litigation. The evidence revealed after the fact, from the appearance of  
6 counsel other than Werner to answer the complaint and from Sei's deposition, further bolsters  
7 Harsh's knowledge that Werner did not represent Sei and that Sei was completely unaware of  
8 any attorney-client relationship between herself and Werner.

9                   **A. The evidence from Katherine Baarson**

10       Katherine Baarson is a claim consultant working directly for The Hartford. (Exhibit 2,  
11 SBN 30). She quickly determined that The Hartford was willing to pay its insured's single, per-  
12 person policy limit of \$100,000 to settle David Clements' bodily injury claims. (Exhibit 2, SBN  
13 31). After that determination was made, the only remaining dispute was whether an additional  
14 per-person limit was available to cover Sheela Clements' NIED claim. Baarson informed Harsh  
15 that the coverage determination regarding Sheela Clements' claim was being referred to "our  
16 legal." (Exhibit 2, SBN 30). Baarson never responded to Harsh's request for the identity of  
17 Sei's personal counsel. (Exhibit 4, para. 6). Instead, Baarson subsequently told Harsh that  
18 attorney Reed Werner was handling the coverage issue. (Exhibit 4, para. 7). It was apparent to  
19 Harsh that Werner was the "our legal," to whom Baarson had previously referred. Based on this  
20 evidence alone, it was reasonable for Harsh to believe from the outset that Werner represented  
21 The Hartford in making its coverage determination regarding Sheela Clements' NIED claim.

22                   **B. The evidence from attorney Reed Werner**

23       Reed Werner is an attorney with one of The Hartford's in-house law firms. (Exhibit 5,  
24 SBN 45). Werner holds himself out as one of the "Employees of a Subsidiary of The Hartford  
25 Financial Services Group." (Exhibit 5, SBN A45).

26       All of Werner's requests for information from Harsh appeared to be geared toward  
27 determining whether Sheela Clements had suffered anything that could be considered a separate  
28 "bodily injury," so as to trigger the separate per-person limit of Sei's Hartford insurance policy.

1 (Exhibit 5, SBN 49; Exhibit 6, SBN 46-47). He stated that he needed “more information on the  
2 claim in order to make a recommendation”—presumably a recommendation to his employer,  
3 The Hartford, as to whether an additional per-person policy limit should be available to cover  
4 Sheela Clements’ NIED claim. (Exhibit 5, SBN 45). For example, one of Werner’s questions  
5 was whether Mrs. Clements received any medical treatment of her own. (Exhibit 6, SBN 47).  
6 In other words, he was asking whether Mrs. Clements suffered what could be characterized as a  
7 separate “bodily injury” so as to trigger the separate per-person policy limit.

8         Although there was one line in the subject heading of Werner’s letter to Harsh that read  
9 “Our client: Sandra Sei,” such a notation is reasonably interpreted, under all the circumstances  
10 that had already transpired, to mean “Our insured.” Further, Harsh does not recall reading the  
11 heading containing the words “Our client” as he was already familiar with the subject matter of  
12 the letter such that he believes he skipped over the subject heading. (Exhibit 4, para. 9). Notably,  
13 none of Werner’s emails or letters specifically stated that he or his firm represented Sandra Sei.  
14 (Exhibits 5 & 6). Based on Baarson’s affirmative statement that Werner was engaged to handle  
15 the coverage dispute and then all of Werner’s actions that bolstered that statement, Harsh was  
16 always under the impression that Werner represented The Hartford, not Sandra Sei. (Exhibit 4,  
17 para. 14).

18         Importantly, the Nevada Supreme Court has held that when an attorney represents both  
19 an insurer and its insured, “[w]here the clients’ interests conflict, the rules of professional  
20 conduct prevent the same lawyer from representing both clients.” *State Farm v. Hansen*, 131  
21 Nev. 743, 748, 357 P.3d 338, 341 (2015). In *Hansen*, the Nevada Supreme Court analyzed  
22 certified questions sent by the United States District Court for the District of Nevada as to when  
23 an insurer must provide independent counsel for its insured. The Court examined several of the  
24 Nevada Rules of Professional Conduct and, citing to Rule 1.7, it observed, “counsel may not  
25 represent both the insurer and the insured when their interests conflict and no special exception  
26 applies.” *Id.* at 747, 357 P.3d at 341.

27         Here, the coverage dispute eventually broke down when Werner did not reach the  
28 conclusion that Sandra Sei was covered for Mrs. Clements NIED claim. This was a conclusion

1 directly in conflict with Sei's best interests, which would be to have the greatest possible amount  
2 of insurance coverage. Based on that determination, it was apparent to Harsh that Werner could  
3 not have legally or ethically represented Sei.

4 **C. The evidence revealed after the fact**

5 After the coverage dispute between Harsh and The Hartford broke down, and Harsh  
6 therefore filed a complaint on behalf of David and Sheela Clements, attorneys Will Lemkul and  
7 Christopher Turtzo of Morris, Sullivan & Lemkul, LLP appeared and answered the Complaint  
8 on behalf of Sandra Sei. (Exhibit 11, filed January 26, 2021, SBN 83-92). Neither Werner nor  
9 anyone affiliated with his office appeared on Sei's behalf. (Exhibit 11). Finally, at Sei's  
10 deposition, she testified that she had never spoken to or even heard of Reed Werner. (Exhibit  
11 12, pp. 32-33). According to Sei, she has never heard of the attorney who now claims to have  
12 represented her.

13 **V. CONCLUSION**

14 All the evidence in this case shows that Harsh reasonably and in fact believed Werner  
15 represented The Hartford in making its coverage determination regarding Mrs. Clements' NIED  
16 claim, and that Werner did not (and indeed could not) represent Sandra Sei. In fact, based on all  
17 the evidence, this was the only reasonable conclusion. The evidence doesn't merely fall short of  
18 the clear and convincing proof needed to withstand summary judgment, it is directly contrary to  
19 that standard.

20 Based on all the evidence, Bar Counsel cannot, as a matter of law, meet its burden to  
21 withstand summary judgment in this case. It is respectfully requested that summary judgment  
22 be entered in favor of attorney Brent Harsh.

23 DATED this 9<sup>th</sup> day of August 2021.

24 LEMONS, GRUNDY & EISENBERG

25  
26 By: 

27 CHRISTIAN L. MOORE, ESQ. (SBN # 3777)  
TODD R. ALEXANDER, ESQ. (SBN #10846)  
6005 Plumas St., Third Floor  
Reno, Nevada 89519

*Attorneys for Respondent*

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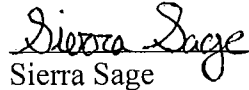
**CERTIFICATE OF SERVICE**

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a party to the within action; that on August 9, 2021, I served a copy of the foregoing **RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**, via Electronic Filing to the following recipients:

laurap@nvbar.org

R. Kait Flocchini, Assistant Bar Counsel, SBN #9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
kaitf@nvbar.org

Eric Stovall, Esq., Hearing Chair, SBN #3167  
200 Ridge St. Ste. 222  
Reno, NV 89501  
eric@ericstovalllaw.com  
Diane@ericstovalllaw.com

  
Sierra Sage



FILED

AUG 23 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Case No: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
)  
Respondent. )

**STATE BAR OF NEVADA'S**  
**OPPOSITION TO**  
**RESPONDENT'S MOTION FOR**  
**SUMMARY JUDGMENT**

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini, hereby responds to Respondent's Motion for Summary Judgment and requests that the motion be denied.

This Opposition is based on the following Memorandum of Points and Authorities, the pleadings in this matter, and any oral argument requested by the Board Chair.

**MEMORANDUM OF POINTS AND AUTHORITIES**

The requested summary adjudication of the sole alleged violation of the Rules of Professional Conduct is based on Respondent Brent Harsh, Esq. ("Respondent") presuming, interpreting, and implying a result that was directly contrary to the written statement that Reed Werner, Esq. represented Sandra Sei . The Motion uses synonyms for "assume" at least 12 times. Television and film writer Jerry Belson is credited with popularizing the phrase "Never

ASSUME, because when you do you make an ASS out of U and ME.” Assumptions are insufficient to support a conclusion as a matter of law.

At best, the Motion’s arguments require weighing of evidence, which renders a request for summary judgment inapplicable.

**A. Undisputed Material Facts.**

1. Respondent represents David and Sheela Clements in their claims against Sandra Set related to a vehicle vs pedestrian accident.	Motion at 2:11-12.
2. Sei was insured by The Hartford at the time of the accident.	Motion at 2:13-15.
3. Respondent initiated an attempt to settle the Clements’ claims with The Hartford employee Katherine Baarson.	Motion at 2:16-19.
4. Reed Werner was retained by The Hartford to represent Sei in the matter with the Clements.	Motion at Exhibit 6
5. Werner was not asked to, and did not, provide an opinion to The Hartford on whether Sei would be covered for claims alleged by Sheela Clements.	Letter from Reed Werner, dated March 1, 2021, SBN 93-95, attached hereto as <b>Exhibit A.</b>
6. On December 18, 2020, Werner sent a letter to Sei explaining that he had been retained to represent her against the Clement claims.	Letter from Reed Werner, dated December 18, 2020, SBN 239- SBN 240, attached hereto as <b>Exhibit B.</b>
7. On December 18, 2020, Werner sent Respondent a letter identifying Sei as his client. Werner also emailed this letter to Respondent on December 21, 2020.	Motion at Exhibit 5 and Exhibit 6.
8. Werner requested information from Respondent to evaluate Sheela Clements’ alleged claim for damages.	<i>Id.</i>
9. In all email correspondence to Werner, Respondent included Baarson, the Hartford employee.	Emails (SBN 201 – SBN 236), collectively attached as <b>Exhibit C.</b>
10. None of Werner’s emails to Respondent stated that he was attempting to issue a coverage opinion in the Sei/Clements matter.	<i>Id.</i>

10. In the December 22, 2020 email exchange, Werner reiterated The Hartford's offer to settle David Clements' claim for policy limits of \$100,000 and requested documentation to support a damages evaluation for Sheela Clements.	SBN 208, in Exhibit C.
11. Respondent rejected the settlement offer to David Clements and did not provide the requested documentation for Sheela Clements' claims.	<i>Id.</i>
12. On December 22, 2020, Respondent filed a Complaint on behalf of the Clements and against Sei.	Motion at Exhibit 7.
13. On January 4, 2021, Respondent had Sei personally served with the Complaint, the Summons, and a letter addressed to her from Respondent.	Motion at 4:4-10 (referencing Exhibit 8 and Exhibit 9).
14. No other counsel contacted Respondent on Sei's behalf between December 22, 2020 and January 4, 2021.	
14. On January 7, 2021, Respondent emailed the Complaint and Summons to Werner and Baarson. Respondent did not include his letter to Sei in either email to Werner or Baarson.	Emails with attachments (SBN222-236), in Exhibit C.
15. On January 5, 2021, Sei faxed the Complaint, Summons, and letter to The Hartford.	Fax Cover Page and attachments (SBN 2-14), attached hereto as <b>Exhibit D.</b>

**B. Disputed Facts.**

Respondent's impressions, presumptions and interpretations supersede Werner's actual literal communication.

**C. Immaterial Facts.**

Lemkul and Turtzo's appearance as counsel of record for Sei when the Answer was filed on January 26, 2021 is irrelevant to this proceeding. That appearance happened 24 days after Respondent sent the letter directly to Sei. Sei's testimony regarding whether she remembered Werner was her counsel sixteen months prior is also irrelevant to this proceeding.



#### **D. Applicable Legal Standard.**

Rule 56(a) of the Nevada Rules of Civil Procedure provides that summary judgment may be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

A request for summary judgment is considered through the eye of a rational trier of fact. An issue cannot be summarily adjudicated if a rational trier of fact could return a verdict for the nonmoving party. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731-732, 121 P.3d 1026, 1031 (2005). Since the State Bar is the nonmoving party for this motion, that means that if a rational trier of fact, *i.e.* a panel member in this disciplinary matter, could find that Respondent’s direct letter to Sei violated RPC 4.2 then summary judgment cannot be granted.

“The trial judge may not in granting summary judgment pass upon the credibility or weight of the opposing affidavits or evidence. That function is reserved for the trial.” *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 83 Nev. 143, 425 P.2d 599, (Nev. 1967)); *see also Borgerson v. Scanlon*, 117 Nev. 216, 19 P.3d 236 (Nev. 2001) (*affirming Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*). Thus, if adjudication of the claims requires weighing evidence or opposing statements, then it cannot be decided outside of a hearing at which the triers of fact considers such evidence.

The Motion for Summary Judgment requires weighing Werner’s actual statement that Sei was his client against Respondent’s impression of whether Werner should be representing Sei in the underlying matter. This ‘weighing’ renders summary adjudication inappropriate.

#### **E. A Reasonable Trier of Fact Could Find that Respondent Knew Werner Represented Sei When Harsh Hand-Delivered a Letter Directly to Sei.**

It is undisputed that Werner’s first attempted communication with Harsh, the December 18 letter, stated that Sei was his client. Werner re-sent the December 18 letter via

e-mail. It cannot be disputed that Werner never revoked this assertion of an attorney-client relationship. It undisputed that Werner never stated to Respondent that he was engaging in a coverage analysis. Based on these undisputed facts, a reasonable trier of fact could find that Respondent knew Sei was represented by Werner when he sent a letter, giving legal advice, directly to Sei on January 4, 2021, and therefore, violated RPC 4.2.

**F. Respondent's Assumptions are Insufficient to Support a Finding as a Matter of Law.**

Summary adjudication requires that every reasonable trier of fact look at a set of facts and be forced to conclude the same result. The applicable law must be objectively applied to the facts. The Motion for Summary Judgment relies on what Respondent assumed about Werner's relationship with The Hartford and Sei. Yet, Respondent's assumptions are belied by Werner and his own conduct.

The first argument is that Baarson's statement that she would "check with our legal" and that Werner's appearance in the matter shortly thereafter means he was the "legal." The Motion makes another leap in arguing it was reasonable for Respondent to then assume that Werner was representing only The Hartford's interest via a coverage opinion. *See* Motion at 6:14-21. This assumption is contradicted by (i) Werner's statement in his initial correspondence to Respondent that his client was Sei, (ii) Respondent's continued emails with Baarson after Werner appeared, and (iii) the lack of the term 'coverage' or 'opinion' in any of the email communication. *See* Exhibit C. If Respondent truly believed that Werner only represented The Hartford, then why would he continue to communicate directly with Baarson, an employee of The Hartford? If Respondent must explain why these facts do not contradict his assumption then this matter cannot be summarily adjudicated. Personal explanations means that a matter cannot be decided as a matter of law.

The second argument is that the tenor of Werner's communications and Respondent "skipping over the subject hearing" in Werner's December 18 letter led Respondent to assume Werner was not representing Sei. *See* Motion 6:23-7:17. In order to summarily adjudicate the claim against Respondent, Werner's actual December 18 letter must be ignored. This is not supported by the law. Comment 9 to Model Rule 4.2 of the ABA Model Rules of Professional Conduct states "the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious."

Neither Baarson nor Werner told Respondent that Werner was analyzing whether there was 'coverage' for Sheela's separate claim. *See generally*, Exhibit C. Werner's communication with Respondent attempted to settle David's claim and stated that he lacked sufficient information to evaluate Sheela's claim. *See* Email (SBN 208), Exhibit C. Summary adjudication would require finding that, despite concrete evidence contradicting them, Respondent's presumptions and interpretations are a reasonable basis to conclude that Sei was unrepresented on January 4, 2021. This reasonableness is not a determination that can be made as a matter of law. *See e.g. Broussard v. Hill*, 100 Nev. 325, 330, 682 P.2d 1376, 1379, (1984) ("The determination of whether that decision was reasonable depends on matters which should properly be determined by the finder of fact."); *see also Boyd v. McDonald*, 81 Nev. 642, 652, 408 P.2d 717, 723, (1965) ("the court must determine, as a question of fact, whether the McDonalds, as reasonable purchasers knowing their boundary lines, had a right to expect, without further inquiry, that their purchase insured continued use in the added driveway and the patio, though these were not on their land.")

In *Broussard* the Nevada Supreme Court stated that, like summary adjudication, a directed verdict could not stand if there was "conflicting evidence on a material issue, or if reasonable persons could draw different inferences from the facts, [because] the question is

one of fact for the jury and not one of law for the court.” *Broussard v. Hill*, 100 Nev. at 327. The Court found that “reasonable men could differ as to whether [the defendant] breached his duty as an escrow agent to the detriment of [the plaintiff],” and thus, the case could not be decided as a matter of law.

The Motion’s second argument also relies on the application of the Nevada Supreme Court’s *Hansen* decision regarding conflicts of interest preventing the representation of an insurer and an insured. In *Hansen*, the Court found that when there is an actual conflict of interest, not just a potential conflict, the insurer must provide independent counsel of the insured’s choosing. See *State Farm Mut. Auto. Ins. Co v. Hansen*, 131 Nev. 743, 751, 357 P.3d 338, 343 (2015). This prong of the argument also *assumes* facts, to wit, ones that establish there was an actual conflict of interest that prohibited Werner from representing Sei. Respondent’s assumptions based on more assumptions are insufficient to support summary adjudication of the claim in this case.

The Motion for Summary Judgment asks that Respondent’s inferences of the circumstances be found to be the only reasonable interpretation. Just like in *Broussard*, this determination must go to the trier of fact and cannot be decided as a matter of law.

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**G. Conclusion.**

The Motion for Summary Judgment fails to show that no rational trier of fact could find that Respondent's conduct violated RPC 4.2. Based on the foregoing, the State Bar requests denial of the Motion.

Dated this 23rd day of August, 2021.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, Bar Counsel

By: \_\_\_\_\_



R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Boulevard, Suite B  
Reno, Nevada 89521  
(775) 329-4100

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **State Bar of Nevada's Opposition to Respondent's Motion for Summary Judgment** was served electronically upon:

Christian L. Moore, Esq. - [clm@lge.net](mailto:clm@lge.net)  
Kait Flocchini – [kaitf@nvbar.org](mailto:kaitf@nvbar.org)  
Eric Stovall, Esq. - [eric@ericstovalllaw.com](mailto:eric@ericstovalllaw.com)

Dated this 23rd day of August 2021.

*Laura Peters*

---

Laura Peters, an employee of  
the State Bar of Nevada

# Exhibit A

# Exhibit A

# Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.

9275 W. Russell Rd., Ste. 205  
Las Vegas, NV 89148

OFFICE:  
Telephone (702) 387-8070  
Facsimile (877) 369-5819

Debra M. Watson, Legal Assistant  
Telephone (702) 387-8092

***Reed J. Werner, Esq.***  
Admitted in Nevada and California

DIRECT DIAL:  
Telephone (702) 387-8080  
Reed.Werner@thehartford.com

Debra.Watson@thehartford.com

March 1, 2021

**Via Email laurap@nvbar.org**

Laura Peters  
Office of Bar Counsel  
9456 Double R. Blvd., Suite B  
Reno, NV 89521

**RE: OBC21-0067 Brent Harsh**

Dear Ms. Peters:

I am in receipt of the letter from Christian Moore. Please allow me to correct his misunderstandings and supposition which distort the reality of his client's unethical behavior.

Mr. Harsh's client was in a bad accident and he wanted to maximize recovery for his clients. He came up with a strategy to try to recover more than the \$100,000 policy limits. He told several different stories about how the accident occurred and the injuries suffered. Naturally more questions came up in attempting to explore the claims being made. A letter was mailed as well as emailed to Mr. Harsh. The letter itself identified Ms. Sei as my client. So on December 21 2020 before the lawsuit was filed Mr. Harsh knew that Ms. Sei was represented by counsel. Despite this knowledge Mr. Harsh sent a letter to the client advising her that she should retain counsel to bring suit against her own insurance company and seeking to raise a question whether the insurance company had her best interest in mind.

Mr. Harsh points out that Ms. Sei is currently represented by a different law firm, Morris Sullivan & Lemkul, LLP. In an abundance of caution, and because of the potential that the case value exceeds the insurance policy limits the case was sent out to a different law firm. This does not change the knowledge that Mr. Harsh had back in December 2020 that Ms. Sei was represented by counsel. Despite his clear knowledge of the same he still proceeded to contact the represented party by sending her a letter.

Mr. Harsh then creates a circular argument that since there is a conflict of interest or a potential conflict of interest and insurance company cannot utilize the same counsel. Despite the contention of Mr. Harsh and Mr. Moore, our office was never retained as coverage counsel and never offered a coverage opinion in this case. Our office was



retained to assist in finalizing the settlement of claims against the insured, Ms. Sei. A potential exposure above the policy after settlement discussions broke down is exactly this reason that I am not still representing Ms. Sei. The comical part of Mr. Moore's letter is that Mr. Harsh for many years did the same sort of work and his name appeared on letterhead stating that he was an employee of Farmers Insurance Company and yet he represented individuals and had duties to those individual clients. He claims in his letter no reasonable attorney could know that she was represented by counsel. That statement is blatantly false since the letter he received from my office clearly indicated that Ms. Sei was my client. What Mr. Moore meant to say, was no reasonable attorney would send a letter such as Mr. Harsh did knowing full well that the party was represented by counsel. If Mr. Harsh was unsure about the representation, the appropriate action would be to contact me and ask. Instead he ignored the rules in an effort to gain an advantage in the litigation and sow seeds of doubt in the mind of the client. The reason that the ethical rule exists barring attorneys from talking to opposing parties who are represented is to avoid situations such as this one where the attorney appears to be trying to assist the party, but does not have the person's best interest in mind since he is representing someone adverse.

Mr. Harsh potentially violated NRPC 1.7 because he was contacting a party who is directly adverse to his current client and providing legal advice to that client.

Potentially he violated NRPC 1.18 as he appears to have been soliciting a new client on behalf of other lawyers. He recommended several lawyers and provided their contact information. He potentially violated Rule 1.5, to the extent he would be seeking a fee for referring the client to one of his friends.

Mr. Harsh violated NRPC 4.1 in making a false representation that he did not know that Ms. Sei was represented by counsel when clearly the letter he received from me indicated the same.

Mr. Harsh violated NRPC 4.2 by communicating with a party he knew was represented. Even if he was ignorant and did not read the letter he received from counsel, he did not make the client aware that his intentions in this matter were anything but altruistic. He was attempting to manipulate the situation by speaking directly with a represented party. If counsel had contacted his client and made representations that perhaps counsel was not having the client's best interest in mind, it would create an issue and surely Mr. Harsh and Mr. Moore can understand how problematic that would be. Instead they attempt to disparage counsel and muddle a clear violation.

Mr. Harsh perhaps thinks that his letter to Ms. Sei was an advertisement? If so, it would violate 7.3. As it was targeted and he has no prior relationship with the party.

Section 8.4 is violated when a party violates the rules of professional conduct or seeks to gain an advantage in a litigation by violating the rules of professional conduct. In this case Mr. Harsh was simply trying to pressure the insurance company to meet his demands of paying \$200,000 on this case. Unfortunately, Mr. Harsh has forgotten that there are rules of professional conduct which prohibit direct contact of a represented party especially when that contact is made in an attempt to gain an advantage in litigation.

If this type of behavior is allowed in this State, it will be a detriment to the legal profession. Please let me know if you want additional information emails, etc. in this case.

Very truly yours,

Law Offices of ERIC R. LARSEN

*/s/ Reed J. Werner*

Reed J. Werner, Esq.

# Exhibit B

# Exhibit B

# Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.

## MAILING ADDRESS:

*Reed J. Werner Esq.*

Admitted in Nevada and California

## STREET ADDRESS:

9275 W. Russell Rd., Ste. 205  
Las Vegas, NV 89148

Direct Dial: (702) 387-8070

Email: Reed.Werner@thehartford.com

Office Telephone: (702) 387-8070

Office Facsimile: (877) 369-5819

December 1, 2020

Sandra Sei  
85 Devere Way  
Sparks, NV 89431-2307

Re: Clements, David v. Sei, Sandra  
Claim No.: Y51AL19182  
Policy No.: 55PHB326169  
Injury Date: 11/5/2020  
Insured: Sandra Sei

Dear Ms. Sei:

The above-captioned matter has been referred to this office for investigation of the above-referenced incident, which occurred on 11/5/2020. No lawsuit has been filed in court at this time; however, we anticipate that a Complaint may be filed sometime in the near future. Our pre-suit investigation may include reviewing documents, retaining experts and conducting an on-site inspection. We are a staff legal office and employees of a Subsidiary of The Hartford Fire Insurance Company, an affiliate of your insurance company, Hartford Insurance Company of the Midwest ("The Hartford"). It is our goal to defend you against any Complaint, if one is filed, and a pre-suit investigation is critical to our ability to be able to do so.

It is important that you contact me immediately if you are served with a Complaint so that I can determine whether appropriate service has been effectuated against your company. Additionally, upon receipt of a Complaint, you will need to immediately forward the papers to this office. If private counsel currently represents your company, please have him/her contact me immediately. I will be happy to cooperate with you or your company's attorney in this regard.

Your company's cooperation is essential for conducting a timely investigation in to the cause and origin of the incident as well as the anticipated defense of this matter. You or your witnesses may be called upon to assist in preparing for a potential trial and to testify at depositions. As such, we need the proper contact information for yourself as well as the contact information for any of the persons who may have knowledge of this incident giving rise to this claim and any potential lawsuit. At this time, I ask that you fill out, sign, and immediately return to my attention the attached document to provide me with necessary information.

Also, should you have any information or documents concerning this incident, such as correspondence, statements, computer data, reports, photographs, videotape or witness

Harsh ROA 56

information, please forward that information to me at your earliest convenience.

In the event that your company relocates or you are no longer the authorized representative of your company, please advise me in writing of this change. Please also indicate on the enclosed form whether you would like me to communicate with you via email as we will be informing you of significant developments in the ongoing investigation of this claim, and sending you copies of correspondence and pleadings that my office would prepare or receive concerning a potential lawsuit. As you review the documents, please call me if you have any questions. It is also important that you understand that documents are generally maintained by my office in electronic format. It is our policy that any documents you sign or provide to us will be maintained in their original form through any appeal period applicable to any lawsuit at a minimum or returned to you. If you require a copy of any document(s) related to this matter from us, please notify my office.

Please be assured that you will be kept advised of the progress of the pre-suit investigation. To enhance our line of communication, my e-mail address, telephone number and regular mailing address are on page 1. To preserve all attorney-client communications, I ask that you do two things. First, ensure that any e-mail address you provide is secure from access by others. Second, do not copy, forward, or show to any other individual any hard copy or electronic materials you receive from this office without first checking with me. If anyone contacts you or your company to discuss the facts of this claim or any future Lawsuit, please refer them to me.

We look forward to receiving the completed form back at your first opportunity and working with you toward a successful resolution of this claim.

Very truly yours,

*/s/ Reed J. Werner*

Reed J. Werner

RW/dmw

cc: Katherine Baarson, Y51AL19182-001

# Exhibit C

# Exhibit C

**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 Regarding: Clements, David/Sheela [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:27:56 AM  
**Attachments:** [image001.png](#)

---

---

**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Monday, December 21, 2020 12:32 PM  
**To:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>; Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Subject:** PA0018907997 Regarding: Clements, David/Sheela

Reed,

Kat called me and said you will call re: the policy limits demand that expires today.

Feel free to call me on my cell 775-846-6900

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



\*\*\*\*\*  
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\*\*\*\*\*

**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: Clements, David v. Sei, Sandra ( Y51AL19182 ): PA0018907997 Regarding: Clements, David/Sheela [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:27:57 AM  
**Attachments:** [image001.png](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Monday, December 21, 2020 2:14 PM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>; Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>  
**Cc:** Paige Taylor <paige@coulterharshlaw.com>  
**Subject:** RE: Clements, David v. Sei, Sandra ( Y51AL19182 ): PA0018907997 Regarding: Clements, David/Sheela [HIGHLY RESTRICTED]

Reed,

The claim re: David is not resolved. I made a global policy limits of \$200,000 and that expired today.

As way of background, on November 16, 2020, a policy limits demand was made, which expired on December 1, 2020. On November 30, 2020, THE HARTFORD requested 3 weeks. On December 1, 2020, three weeks were granted based on the time frame THE HARTFORD created so they can reasonably and timely evaluate the claim. Even with the pending policy limits demand and the catastrophic injury, THE HARTFORD sends a letter.

The op note discusses the procedure. There is a complete severance. He is wheel chair bound. Sheela has had to spend everyday at the house dealing with contractor to build a new bathroom and ramp for her husband.

If you want to talk, great, please feel free to call (775-846-6900). I'm drafting the complaint and filing tomorrow.

Paige,  
Please draft a complaint.

---

**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Monday, December 21, 2020 12:35 PM  
**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: Clements, David v. Sei, Sandra ( Y51AL19182 ): PA0018907997 Regarding: Clements, David/Sheela [HIGHLY RESTRICTED] (Encrypted Delivery)

Brent,

Here is the letter I sent you on Friday. I need a little more information on the claim in order to make a recommendation. Please provide the information requested. I am about to go into an arbitration but you can call me later if you have questions. My direct line is 702-387-8080.

REED J. WERNER, ESQ  
Senior Staff Attorney  
The Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.  
9275 W. Russell Rd. Ste. 205  
Las Vegas, Nevada 89148  
W: 702-387-8080  
F: 877-369-5819  
[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)

---

**From:** Brent Harsh [<mailto:brent@coulterharshlaw.com>]  
**Sent:** Monday, December 21, 2020 12:32 PM  
**To:** Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>; Werner, Reed J (Claims Solutions and Analytics)



<Reed.Werner@thehartford.com>

**Subject:** PA0018907997 Regarding: Clements, David/Sheela

Reed,

Kat called me and said you will call re: the policy limits demand that expires today.

Feel free to call me on my cell 775-846-6900

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:26:26 AM  
**Attachments:** [image001.png](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Tuesday, December 22, 2020 10:00 AM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>; Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL]

It is both. But dealing with the trauma after the care is more a loss of consortium, which is likely a derivative.

She is getting into JoAnn Lippert, Ph.D. to deal with PTSD. As an example, she can no longer drive by the accident site because she will go into a panic attack. As you might know, she only lives a few blocks from the crash area, and now she just goes out over her way to never go by it.

During the recorded conversation with her UIM carrier, she broke down and couldn't stop crying and shaking.

Her main trauma is the PTSD stemming from seeing her paralyzed husband in the crosswalk and thinking he was dead. Also, the police office would not let her go next to her husband, and she thought that was because he was dead.

If you want me to make her available for an unrecorded telephone call, I'm happy to make her available.

---

**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Tuesday, December 22, 2020 9:50 AM  
**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

Brent,

Sorry I was not able to call you last night. My arbitration did not get over until nearly 6 pm. Do you have anything that shows that Sheela received treatment after the injury to her husband, or is the claim that she was traumatized and now has to deal with caring for her husband?

REED J. WERNER, ESQ  
Senior Staff Attorney  
The Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.  
9275 W. Russell Rd. Ste. 205  
Las Vegas, Nevada 89148  
W: 702-387-8080  
F: 877-369-5819  
[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)

---

**From:** Brent Harsh [<mailto:brent@coulterharshlaw.com>]  
**Sent:** Tuesday, December 22, 2020 9:41 AM  
**To:** Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>; Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Subject:** PA0018907997 FW: Clements, David

Kat and Reed,

As requested, please see the report re: the spinal cord injury.

Demand is again hereby made to tender the \$200,000 with regards to David and Sheela.

This is extended until 12/23/20 at 4:00 PM (PST).

Looking forward to hearing from you.

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:26:11 AM  
**Attachments:** [image001.png](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Tuesday, December 22, 2020 11:42 AM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>; Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL]

Reed and Kat,  
Sheela will be in my office at noon, if either of you wanted to talk about the emotional trauma she has suffered from coming upon the scene and thinking her husband died.

Feel free to call me on my cell 775-846-6900

---

**From:** Brent Harsh  
**Sent:** Tuesday, December 22, 2020 10:00 AM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

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She is getting into JoAnn Lippert, Ph.D. to deal with PTSD. As an example, she can no longer drive by the accident site because she will go into a panic attack. As you might know, she only lives a few blocks from the crash area, and now she just goes out over her way to never go by it.

During the recorded conversation with her UIM carrier, she broke down and couldn't stop crying and shaking.

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If you want me to make her available for an unrecorded telephone call, I'm happy to make her available.

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**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Tuesday, December 22, 2020 9:50 AM  
**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

Brent,

Sorry I was not able to call you last night. My arbitration did not get over until nearly 6 pm. Do you have anything that shows that Sheela received treatment after the injury to her husband, or is the claim that she was traumatized and now has to deal with caring for her husband?

**REED J. WERNER, ESQ**  
Senior Staff Attorney  
The Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.  
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W: 702-387-8080  
F: 877-369-5819  
[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)

---

**From:** Brent Harsh [<mailto:brent@coulterharshlaw.com>]  
**Sent:** Tuesday, December 22, 2020 9:41 AM  
**To:** Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>; Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Subject:** PA0018907997 FW: Clements, David

Kat and Reed,

As requested, please see the report re: the spinal cord injury.

Demand is again hereby made to tender the \$200,000 with regards to David and Sheela.

This is extended until 12/23/20 at 4:00 PM (PST).

Looking forward to hearing from you.

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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\*\*\*\*\*

**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: Clements, David v. Sei, Sandra ( Y51AL19182 ) [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:28:01 AM  
**Attachments:** [image001.png](#)

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---

**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Tuesday, December 22, 2020 2:56 PM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Cc:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>  
**Subject:** RE: Clements, David v. Sei, Sandra ( Y51AL19182 ) [CONFIDENTIAL]

Reed,

Thank you for your correspondence. I disagree. I believe there is ample opportunity to have reasonably and timely evaluated the above claim based on the information provided. Please be advised that THE HARTFORD is actually the one who decided on the timing of what they needed.

Nonetheless, I will file the complaint.

Thank you for your prompt response.

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



---

**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Tuesday, December 22, 2020 2:53 PM  
**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>  
**Cc:** Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** Clements, David v. Sei, Sandra ( Y51AL19182 ) [CONFIDENTIAL] (Encrypted Delivery)

Brent,

We have reviewed the limited records provided and we again offer the \$100,000 policy limits to resolve David Clements' claim and all derivative claims including loss of consortium. We do not have enough information at this time regarding Sheela's claim for negligent infliction of emotional distress. There is not sufficient information regarding the claim for negligent infliction of emotional distress at the present. Please provide the documentation to support her claim once it is obtained including treatment records. We need to get her testimony about what she saw or didn't see at the time she arrived at the scene. We can arrange an examination under oath, but you indicated that you instead plan to file suit tomorrow. If your client decides to accept the \$100,000 offer let me know and I will send over a release.

REED J. WERNER, ESQ  
Senior Staff Attorney  
The Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.  
9275 W. Russell Rd. Ste. 205  
Las Vegas, Nevada 89148  
W: 702-387-8080  
F: 877-369-5819  
[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)

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**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:25:56 AM  
**Attachments:** [image001.png](#)

---

---

**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Tuesday, December 22, 2020 12:08 PM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>; Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL]

I guess I'm confused. Yes, I have seen the Remsa Report. Give me a call  
775-846-6900

---

**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Tuesday, December 22, 2020 12:04 PM  
**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

Brent,

Do you have the EMT report? My insured has a different version of what happened at the scene.

---

**From:** Brent Harsh [<mailto:brent@coulterharshlaw.com>]  
**Sent:** Tuesday, December 22, 2020 11:42 AM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL]

Reed and Kat,  
Sheela will be in my office at noon, if either of you wanted to talk about the emotional trauma she has suffered from coming upon the scene and thinking her husband died.

Feel free to call me on my cell 775-846-6900

---

**From:** Brent Harsh  
**Sent:** Tuesday, December 22, 2020 10:00 AM  
**To:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

It is both. But dealing with the trauma after the care is more a loss of consortium, which is likely a derivative.

She is getting into JoAnn Lippert, Ph.D. to deal with PTSD. As an example, she can no longer drive by the accident site because she will go into a panic attack. As you might know, she only lives a few blocks from the crash area, and now she just goes out over her way to never go by it.

During the recorded conversation with her UIM carrier, she broke down and couldn't stop crying and shaking.

Her main trauma is the PTSD stemming from seeing her paralyzed husband in the crosswalk and thinking he was dead. Also, the police office would not let her go next to her husband, and she thought that was because he was dead.

If you want me to make her available for an unrecorded telephone call, I'm happy to make her available.

---

**From:** Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Sent:** Tuesday, December 22, 2020 9:50 AM



**To:** Brent Harsh <[brent@coulterharshlaw.com](mailto:brent@coulterharshlaw.com)>; Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>  
**Subject:** RE: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)

Brent,

Sorry I was not able to call you last night. My arbitration did not get over until nearly 6 pm. Do you have anything that shows that Sheela received treatment after the injury to her husband, or is the claim that she was traumatized and now has to deal with caring for her husband?

REED J. WERNER, ESQ  
Senior Staff Attorney  
The Law Offices of Eric R. Larsen

Employees of a Subsidiary of The Hartford Financial Services Group, Inc.  
9275 W. Russell Rd. Ste. 205  
Las Vegas, Nevada 89148  
W: 702-387-8080  
F: 877-369-5819  
[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)

---

**From:** Brent Harsh [<mailto:brent@coulterharshlaw.com>]  
**Sent:** Tuesday, December 22, 2020 9:41 AM  
**To:** Baarson, Kat (Liability Claims) <[Katherine.Baarson@thehartford.com](mailto:Katherine.Baarson@thehartford.com)>; Werner, Reed J (Claims Solutions and Analytics) <[Reed.Werner@thehartford.com](mailto:Reed.Werner@thehartford.com)>  
**Subject:** PA0018907997 FW: Clements, David

Kat and Reed,

As requested, please see the report re: the spinal cord injury.

Demand is again hereby made to tender the \$200,000 with regards to David and Sheela.

This is extended until 12/23/20 at 4:00 PM (PST).

Looking forward to hearing from you.

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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and destroy all copies.

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\*\*\*\*\*

**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 FW: Clements, David [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:26:45 AM  
**Attachments:** [image001.png](#)  
[clements.pdf](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Tuesday, December 22, 2020 9:41 AM  
**To:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>; Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Subject:** PA0018907997 FW: Clements, David

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Brent H. Harsh  
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Reno, Nevada 89501  
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\*\*\*\*\*

**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 Re: Clements, David/Sheela [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:20:23 AM  
**Attachments:** [image001.png](#)  
[Police Report-5613.pdf](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Monday, December 28, 2020 11:54 AM  
**To:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>; Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Subject:** PA0018907997 Re: Clements, David/Sheela

I just received this today

**Brent H. Harsh**  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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\*\*\*\*\*

Event Number: 55 Sparks Police Department: STATE OF NEVADA - DO NOT DUPLICATE! Scene Information

Code Revision: 11/2017

TRAFFIC CRASH REPORT  
SCENE INFORMATION SHEET  
Revised 12/2018

Crash Number: SPPD20-8351

<input checked="" type="checkbox"/> 1) Urban <input type="checkbox"/> 2) Rural		<input type="checkbox"/> 1) Emergency Use <input type="checkbox"/> 2) Office Report		<input type="checkbox"/> 1) Preliminary Report <input type="checkbox"/> 2) Initial Report		<input type="checkbox"/> 3) Resubmission <input checked="" type="checkbox"/> 4) Supplement Report		<input type="checkbox"/> 1) Hit and Run <input type="checkbox"/> 2) Private Property		<input type="checkbox"/> 1) Property <input checked="" type="checkbox"/> 2) Injury <input type="checkbox"/> 3) Fatal	
Crash Date 11/05/2020		Time 1505		Day Thu		Beat / Sector 1		<input type="checkbox"/> 1) County <input checked="" type="checkbox"/> 2) City SPARKS		Agency Name: Sparks PD	

Is this a Secondary Collision: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Roadway Clearance Time:		Incident Clearance Time:	
Mile Marker	# Vehicles 1	# Non Motorists 1	# Occupants 1	# Fatalities 0	# Injured 1
# Restrained 1					

Occurred On: (Highway # or Street Name)  
☐ 1) Parking Lot ☐ 2) Active School Zone  
 PYRAMID WY

☒ 1) At Intersection With: YORK WY

☐ 2) Or ☒ 3) Feet ☐ 4) Miles ☐ 5) Approximate

Of (Cross Street)

<b>Roadway Character</b> <input type="checkbox"/> 1) Curve & Grade <input type="checkbox"/> 2) Curve & Hillcrest <input type="checkbox"/> 3) Curve & Level <input type="checkbox"/> 4) Straight & Grade <input type="checkbox"/> 5) Straight & Hillcrest <input checked="" type="checkbox"/> 6) Straight & Level <input type="checkbox"/> 7) Unknown <input type="checkbox"/> 8) Other		<b>Roadway Conditions</b> <input checked="" type="checkbox"/> 1) Dry <input type="checkbox"/> 2) Icy <input type="checkbox"/> 3) Wet <input type="checkbox"/> 4) Snow <input type="checkbox"/> 5) Sand / Mud / Dirt / Gravel <input type="checkbox"/> 6) Other <input type="checkbox"/> 7) Slush <input type="checkbox"/> 8) Standing Water <input type="checkbox"/> 9) Moving Water <input type="checkbox"/> 10) Unknown <input type="checkbox"/> 11) Oil		<b>Surface</b> <input checked="" type="checkbox"/> 1) Asphalt <input type="checkbox"/> 2) Concrete <input type="checkbox"/> 3) Gravel <input type="checkbox"/> 4) Dirt <input type="checkbox"/> 5) Other		<b>Intersection</b> <input checked="" type="checkbox"/> 1) Four Way <input type="checkbox"/> 2) > Four Way <input type="checkbox"/> 3) T <input type="checkbox"/> 6) Other <input type="checkbox"/> 4) Y <input type="checkbox"/> 5) Roundabout <input type="checkbox"/> 7) L		<b>Total Thru Lanes</b> Main Road <input type="checkbox"/> 1) One <input type="checkbox"/> 2) Two <input type="checkbox"/> 3) Three <input type="checkbox"/> 4) Four <input type="checkbox"/> 5) Five <input type="checkbox"/> 6) > 5 Total All Lanes:		<b>Access Control</b> <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 2) Full <input type="checkbox"/> 3) Partial	
--	--	---	--	---	--	--	--	--	--	---	--

<b>Pavement Markings</b> <input type="checkbox"/> 1) Centerline, Broken Yellow <input type="checkbox"/> 2) Centerline, Solid Yellow <input type="checkbox"/> 3) Centerline, Double Yellow <input type="checkbox"/> 4) Lane Line, Broken White <input type="checkbox"/> 5) Lane Line, Solid White <input type="checkbox"/> 6) No Passing, Either Direction <input type="checkbox"/> 7) Turn Arrow Symbols <input type="checkbox"/> 8) Center Turn Lane Line <input type="checkbox"/> 9) Edge Line, Left Yellow <input type="checkbox"/> 10) Edge Line, Right White <input type="checkbox"/> 11) Other <input type="checkbox"/> 12) None <input type="checkbox"/> 13) Unknown		<b>Roadway Description</b> <input checked="" type="checkbox"/> 1) Two-Way, Not Divided <input type="checkbox"/> 2) Two-Way, Divided, Unpro, Median <input type="checkbox"/> 3) Two-Way, Divided, Median Barrier <input type="checkbox"/> 4) One-Way, Not Divided <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 6) Off Road		<b>Weather Conditions</b> <input checked="" type="checkbox"/> 1) Clear <input type="checkbox"/> 2) Cloudy <input type="checkbox"/> 3) Snow <input type="checkbox"/> 4) Rain <input type="checkbox"/> 5) Blowing Sand, Dirt, Soil <input type="checkbox"/> 6) Other <input type="checkbox"/> 7) Fog, Smog, Smoke, Ash <input type="checkbox"/> 8) Severe Crosswinds <input type="checkbox"/> 9) Sleet / Hail <input type="checkbox"/> 10) Unknown <input type="checkbox"/> 11) Blowing Snow	
--	--	---	--	---	--

<b>Light Conditions</b> <input type="checkbox"/> 1) Dusk <input type="checkbox"/> 2) Dawn <input checked="" type="checkbox"/> 3) Daylight <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other <input type="checkbox"/> 6) Dark—No Roadway Lighting <input type="checkbox"/> 7) Dark—Spot Roadway Lighting <input type="checkbox"/> 8) Dark—Continuous Roadway Lighting <input type="checkbox"/> 9) Dark—Unknown Roadway Lighting		<b>Vehicle Collision Type</b> <input type="checkbox"/> 1) Head On <input type="checkbox"/> 2) Rear End <input type="checkbox"/> 3) Backing <input type="checkbox"/> 4) Angle <input type="checkbox"/> 5) Rear to Rear <input type="checkbox"/> 6) Sideswipe - Meeting <input type="checkbox"/> 7) Sideswipe - Overtaking <input checked="" type="checkbox"/> 8) Non Collision <input type="checkbox"/> 9) Unknown <input type="checkbox"/> 10) Rear to Side		<b>Location of First Event</b> <input type="checkbox"/> 1) Travel Lane <input type="checkbox"/> 2) Turn Lane <input type="checkbox"/> 3) Gore <input type="checkbox"/> 4) Median <input type="checkbox"/> 5) Inside Shoulder <input type="checkbox"/> 6) Outside Shoulder <input checked="" type="checkbox"/> 7) Intersection <input type="checkbox"/> 8) Private Property <input type="checkbox"/> 9) Roadside <input type="checkbox"/> 10) Other <input type="checkbox"/> 11) Ramp <input type="checkbox"/> 12) Unknown <input type="checkbox"/> 13) Separator <input type="checkbox"/> 14) Parking Lane/Zone	
---	--	---	--	---	--

<b>Roadway / Environment Factors</b> <input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 2) Weather <input type="checkbox"/> 3) Debris <input type="checkbox"/> 4) Glare <input type="checkbox"/> 5) Other Roadway <input type="checkbox"/> 6) Other Environmental <input type="checkbox"/> 7) Shoulders <input type="checkbox"/> 8) Road Obstruction <input type="checkbox"/> 9) Worn Traffic Surface <input type="checkbox"/> 10) Wet, Icy, Snow, Slush <input type="checkbox"/> 11) Ruts, Holes, Bumps <input type="checkbox"/> 14) Animal in Roadway <input type="checkbox"/> 15) Unknown <input type="checkbox"/> 16) Visual Obstruction <input type="checkbox"/> 17) Backup Prior Crash <input type="checkbox"/> 18) Backup Non Recurring Incident		<input type="checkbox"/> 19) Backup Regular Congestion <input type="checkbox"/> 20) Work Zone <input type="checkbox"/> 21) Non Highway Work <input type="checkbox"/> 22) Railway Grade Crossing # <input type="checkbox"/> 23) Shared User Path/Trail		<b>Type of Work Zone</b> <input type="checkbox"/> 1) Lane Closure <input type="checkbox"/> 2) Lane Shift/Crossover <input type="checkbox"/> 3) Work on Shoulder or Median <input type="checkbox"/> 4) Intermittent/Moving Work <input type="checkbox"/> 5) Other <b>Workers Present</b> <input type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No		<b>Work Area Zone</b> <input type="checkbox"/> 1) Advanced Warning Area <input type="checkbox"/> 2) Transition Area <input type="checkbox"/> 3) Activity Area <input type="checkbox"/> 4) Termination Area <b>Law Enforcement Present</b> <input type="checkbox"/> 1) No <input type="checkbox"/> 2) Officer Present <input type="checkbox"/> 3) LE Vehicle Only Present	
---	--	---	--	--	--	--	--

Describe Property Damage:

Property Damage To Other Than Vehicle

Owner's Name:

Owner's Address: (Street Address City, State Zip)

☐ 1) Owner Notified

First Harmful Event	Code # 214	Description: MOTOR VEHICLE IN TRANSPORT
Investigation Complete <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No	Photos Taken <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No	Scene Diagram <input type="checkbox"/> 1) Yes <input checked="" type="checkbox"/> 2) No
Statements <input checked="" type="checkbox"/> 1) Yes <input type="checkbox"/> 2) No # 3	Date Notified 11/05/2020	Time Notified 1506
Arrival Date 11/05/2020	Arrival Time 1508	

Investigator(s) rusty scovel	ID Number 412	Date 11/05/2020	Reviewed By erick chavez	Date Reviewed 12/17/202	Page 1 of 7
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Event Number: 55	Sparks Police Department: Controlled Environment - DO NOT DUPLICATE!	Crash Number: SPPD20-8351	Scene Information
Code Revision: 11/2017	<b>STATE OF NEVADA</b> <b>TRAFFIC CRASH REPORT</b> <b>SCENE INFORMATION SHEET</b> Revised 12/2018	Agency Name: Sparks PD	

**Description of Crash / Narrative**

V1 WAS TRAVELING W/B YORK WY ATTEMPTING TO MAKE A LEFT HAND TURN ONTO S/B PYRAMID ON A FLASHING YELLOW LIGHT. NM1 WAS ATTEMPTING TO CROSS PYRAMID STARTING FROM THE SOUTH WEST SIDE WALKING E/B. V1 STRUCK NM1 IN THE CROSS WALK CAUSING MULTIPLE INJURIES.

NM1 HAD LACERATIONS ON HIS FACE, AND EXTREMITIES. NM1 HAD JUST HAD SURGERY 5 OR 6 DAYS BEFORE THE ACCIDENT OCCURED. DURING THIS ACCIDENT HE REOPENED SUTURES FROM THE SURGERY. SPEAKING WITH NM1 FAMILY IT APPEARS THAT HE IS NOW PARALIZED FROM THE WASTE DOWN.

WITNESSES ON SCENE STATED W/B AND E/B TRAFFIC ON YORK WY HAD A GREEN LIGHT INDICATING THAT V1 HAD A FLASHING YELLOW LIGHT.

I WILL ATTEMPT TO CONTACT HIM AT A LATER DATE TO SEE WHAT INJURIES HE SUSTAINED IN THE ACCIDENT.

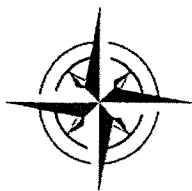
12/14/2020 AT APPROXIMATELY 11:00AM I CONDUCTED FOLLOW UP WITH THIS CASE TO IDENTIFY ANY INJURIES NM1 SUSTAINED.

I WAS UNABLE TO MEET WITH NM1 IN PERSON DUE TO CURRENT COVID19 RESTRICTION BUT WAS ABLE TO SPEAK WITH NM1 OVER THE PHONE.

NM1 STATED THAT HE IS NOW PARALIZED FROM THE WAIST DOWN, T7,T8,T9 VERTIBRAE HAVE BEEN FUSED DUE TO THIS ACCIDENT. NM1 ALSO SUFFERED 2 BROKEN RIBS AND HIS RIGHT HIP WAS DISLOCATED.

I ASKED NM1 IF I COULD GET A COPY OF HIS MEDICAL RECORDS FOR THIS ACCIDENT SO I MAY ADD IT TO THE CASE AND HE SAID HE WILL CALL ME WHEN IT IS AVAILABLE.

AS OF NOW I DO NOT HAVE ANY FURTHER INFORMATION FOR THIS CASE.



Indicate North

A.I.C.: \_\_\_\_\_

Event Number: 55		Sparks Police Department: <b>STATE OF NEVADA</b> - DO NOT DUPLICATE!				Vehicle Information																									
<b>TRAFFIC CRASH REPORT</b> <b>VEHICLE INFORMATION SHEET</b> Revised 12/2018		SPPD20-8351		Agency Name: Sparks PD																											
Vehicle # 1	# Occupants 1	<input checked="" type="checkbox"/> 1) At Fault <input type="checkbox"/> 2) Non Contact Vehicle		Direction of Travel:		Roadway / Street Name: YORK WY																									
<input type="checkbox"/> 1) North <input type="checkbox"/> 2) South <input checked="" type="checkbox"/> 3) East <input type="checkbox"/> 4) West <input type="checkbox"/> 5) Unknown		Travel Lane #: L1		Vehicle Action:		<input type="checkbox"/> 1) Straight <input checked="" type="checkbox"/> 2) Backing <input checked="" type="checkbox"/> 3) Left Turn <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 6) Parked <input type="checkbox"/> 7) Wrong Way <input type="checkbox"/> 8) Stopped <input type="checkbox"/> 9) Passing <input type="checkbox"/> 10) Racing <input type="checkbox"/> 11) Leaving Parked <input type="checkbox"/> 12) Entering Lane <input type="checkbox"/> 13) Leaving Lane <input type="checkbox"/> 14) Enter Parked <input type="checkbox"/> 15) Lane Change <input type="checkbox"/> 16) Driverless Vehicle <input type="checkbox"/> 17) Negotiating a Curve <input type="checkbox"/> 18) Unknown																									
Driver: (Last Name, First Name, Middle Name Suffix) SEI, SANDRA L				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other																											
Street Address: 85 DEVERE WAY				Transported To:																											
City: SPARKS		State / Country NV		Zip Code: 89431		Person Type: 1																									
<input type="checkbox"/> 1) Male <input checked="" type="checkbox"/> 2) Female <input type="checkbox"/> 3) Unknown		DOB: 01/16/1946		Phone Number: 7752334800		Seating Position: 1																									
Occupant Restraints: 7		Injury Severity: 0		Injury Location:																											
License Status 0		Airbags: 2		Airbag Switch: 4		Ejected: 0																									
Trapped: 0		<b>Driver Factors</b> <input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 2) Had Been Drinking <input type="checkbox"/> 3) Drug Involvement <input type="checkbox"/> 4) Apparently Fatigued / Asleep <input type="checkbox"/> 5) Obstructed View <input type="checkbox"/> 6) Driver Ill / Injured <input type="checkbox"/> 7) Other Improper Driving <input type="checkbox"/> 8) Driver Inattention / Distracted <input type="checkbox"/> 9) Physical Impairment <input type="checkbox"/> 10) Unknown																													
<b>Compliance:</b> <input type="checkbox"/> 1) Restrict <input type="checkbox"/> 2) Endorse		<b>Endorsements</b> <input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 2) Evidentiary Breath <input type="checkbox"/> 3) Driver Admission		<b>Restrictions</b> <input type="checkbox"/> 4) Urine Test <input type="checkbox"/> 5) Blood Test <input type="checkbox"/> 6) Preliminary Breath Test		<b>Test Results:</b> <input type="checkbox"/> 1) Not Involved <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 4) Drugs <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 6) Marijuana																									
Vehicle Year: 2008		Vehicle Make: TOYOTA		Vehicle Model: HIGHLANDER		Vehicle Type: SUV/CARRY-																									
Plate / Permit No.: 909JCJ		State: NV		Expiration Date: 06/06/2021		Vehicle Color: WHITE																									
Vehicle Identification Number: JTEES42A682091140																															
Registered Owner Name: SEI, SANDRA L																															
<input checked="" type="checkbox"/> 1) Same As Driver																															
Registered Owner Address: 85 DEVERE WAY SPARKS NV 89431																															
Insurance Company Name: AARP																															
<input checked="" type="checkbox"/> 1) Insured																															
Policy number: 55PHB326169		Effective: 06/30/2020		To: 06/30/2021																											
Insurance Company Address or Phone Number:																															
<input type="checkbox"/> 1) Vehicle Towed <input type="checkbox"/> 2) Towed Due to Disabling Damage		Towed By:		Removed To:																											
<b>Traffic Control</b> <input checked="" type="checkbox"/> 2) Traffic Control Signal <input type="checkbox"/> 3) Flashing Traffic Control Signal <input type="checkbox"/> 4) School Zone Sign / Device <input type="checkbox"/> 5) Pedestrian Signal / Sign <input type="checkbox"/> 6) No Passing <input type="checkbox"/> 7) No Controls <input type="checkbox"/> 8) Warning Sign <input type="checkbox"/> 9) Other		<input type="checkbox"/> 11) Stop Sign <input type="checkbox"/> 12) Yield Sign <input type="checkbox"/> 13) Railway Crossing Sign / Device <input type="checkbox"/> 17) Chain / Snow Tire Req. <input type="checkbox"/> 20) Officer / Flagger <input type="checkbox"/> 19) Unknown		Distance Traveled After Impact: 5 FEET		<b>Speed Estimate</b> From To Limit																									
<b>Sequence of Events</b> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Code #</th> <th>Description</th> <th>Collision With Fixed Object</th> <th>Most Harmful Event</th> </tr> </thead> <tbody> <tr> <td>1st 201</td> <td>PEDESTRIAN</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>2nd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>3rd</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>4th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>5th</td> <td></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>								Code #	Description	Collision With Fixed Object	Most Harmful Event	1st 201	PEDESTRIAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2nd		<input type="checkbox"/>	<input type="checkbox"/>	3rd		<input type="checkbox"/>	<input type="checkbox"/>	4th		<input type="checkbox"/>	<input type="checkbox"/>	5th		<input type="checkbox"/>	<input type="checkbox"/>
Code #	Description	Collision With Fixed Object	Most Harmful Event																												
1st 201	PEDESTRIAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>																												
2nd		<input type="checkbox"/>	<input type="checkbox"/>																												
3rd		<input type="checkbox"/>	<input type="checkbox"/>																												
4th		<input type="checkbox"/>	<input type="checkbox"/>																												
5th		<input type="checkbox"/>	<input type="checkbox"/>																												
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending		Violation		NOC		Citation Number																									
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC		Violation		NOC		Citation Number																									
Investigator(s) rusty scovel		ID Number 412		Date 11/05/2020		Reviewed By erick chavez																									
				Date Reviewed 12/17/2020		Page 3 of 7																									

Event Number: 55		Sparks Police Department: <b>STATE OF NEVADA</b> <b>TRAFFIC CRASH REPORT</b> <b>VEHICLE INFORMATION SHEET</b> Revised 12/2018			Case Number: <b>SPPD20-8351</b> Agency Name: <b>Sparks PD</b>		Vehicle Information				
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other							
Street Address:				Transported To:							
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:		Person Type:		Seating Position:		Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown		DOB:		Phone Number:		Injury Severity:		Injury Location:			
<input type="checkbox"/> 2) Female											
				Airbags:		Airbag Switch:		Ejected:		Trapped:	
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other							
Street Address:				Transported To:							
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:		Person Type:		Seating Position:		Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown		DOB:		Phone Number:		Injury Severity:		Injury Location:			
<input type="checkbox"/> 2) Female											
				Airbags:		Airbag Switch:		Ejected:		Trapped:	
Name: (Last Name, First Name, Middle Name Suffix)				Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other							
Street Address:				Transported To:							
City:		State / Country <input type="checkbox"/> 1) NV		Zip Code:		Person Type:		Seating Position:		Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown		DOB:		Phone Number:		Injury Severity:		Injury Location:			
<input type="checkbox"/> 2) Female											
				Airbags:		Airbag Switch:		Ejected:		Trapped:	
<input type="checkbox"/> 1) Trailing Unit 1 VIN :				Plate:		State: <input type="checkbox"/> 1) NV		Type:			
<input type="checkbox"/> 1) Trailing Unit 1 VIN :				Plate:		State: <input type="checkbox"/> 1) NV		Type:			
<input type="checkbox"/> 1) Trailing Unit 1 VIN :				Plate:		State: <input type="checkbox"/> 1) NV		Type:			
<b>Commercial Vehicle Configuration</b>											
<input type="checkbox"/> 1) Commercial Vehicle <input type="checkbox"/> 2) Bus											
<input type="checkbox"/> 1) Bus, 9 - 15 Occupants <input type="checkbox"/> 2) Bus, > 15 Occupants <input type="checkbox"/> 3) Single 2 Axle and 6 Tire <input type="checkbox"/> 4) Single > 3 Axle <input type="checkbox"/> 5) Any 4 Tire Vehicle						<input type="checkbox"/> 6) Tractor Only <input type="checkbox"/> 7) Tractor / Trailer <input type="checkbox"/> 8) Tractor / Doubles <input type="checkbox"/> 9) Tractor / Triples <input type="checkbox"/> 10) Truck with Trailer					
<input type="checkbox"/> 11) Tractor / Semi Trailer <input type="checkbox"/> 12) Passenger Vehicle, (Haz-Mat) <input type="checkbox"/> 13) Light Truck, (Haz-Mat) <input type="checkbox"/> 14) Other Heavy Vehicle						<b>Source</b> <input type="checkbox"/> 1) Driver <input type="checkbox"/> 2) Log Book <input type="checkbox"/> 3) Shipping Papers / Trip Manifest <input type="checkbox"/> 4) State Reg. <input type="checkbox"/> 5) Side Of Vehicle <input type="checkbox"/> 6) Other			<b>Hazmat</b> <input type="checkbox"/> 1) Hazmat Placard Displayed <input type="checkbox"/> 2) Hazmat Released <input type="checkbox"/> 3) Was release ≥ 25 gal. or 3 cubic yds.? <u>Location of Hazmat Release, Regardless of Amount</u> <input type="checkbox"/> 1) Tractor Only <input type="checkbox"/> 3) Combination Tractor & Cargo <input type="checkbox"/> 2) Cargo Only		
Carrier Name:						Power Unit GCWR/GVWR <input type="checkbox"/> 1) ≤ 10,000 Lbs. <input type="checkbox"/> 2) 10,001 - 26,000 Lbs. <input type="checkbox"/> 3) ≥ 26,001 Lbs.					
Carrier Street Address:						City:		State <input type="checkbox"/> 1) NV		Zip Code:	
<b>Cargo Body Type</b> <input type="checkbox"/> 1) Pole <input type="checkbox"/> 6) Van / Box <input type="checkbox"/> 11) Grain, Gravel Chips <input type="checkbox"/> 2) Tank <input type="checkbox"/> 7) Concrete Mixer <input type="checkbox"/> 12) Bus, 9—15 Occupants <input type="checkbox"/> 3) Flatbed <input type="checkbox"/> 8) Auto Carrier <input type="checkbox"/> 13) Bus, > 15 Occupants <input type="checkbox"/> 4) Dump <input type="checkbox"/> 9) Garbage / Refuse <input type="checkbox"/> 14) Other <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 10) Not Applicable						Haz-Mat ID #:		Type of Carrier <input type="checkbox"/> 1) Single State <input type="checkbox"/> 2) USDOT <input type="checkbox"/> 3) Canada <input type="checkbox"/> 4) Mexico <input type="checkbox"/> 5) None		NAS Safety Report #:	
						Hazard Classification #:				Carrier Number:	
										Page 4 of 7	



Event Number: 55		<b>STATE OF NEVADA</b> <b>TRAFFIC CRASH REPORT</b> NON-MOTORIST INFORMATION SHEET REVISED 12/2018				Non-Motorist SPPD20-8351	
Non-Motorist # 1		<input type="checkbox"/> 1) At Fault <input checked="" type="checkbox"/> 2) Non-Contact (person)		Agency Name: Sparks PD			
Non-Motorist Type <input checked="" type="checkbox"/> 1) Pedestrian <input type="checkbox"/> 5) Wheel Chair <input type="checkbox"/> 2) Pedal Cyclist <input type="checkbox"/> 6) Unknown <input type="checkbox"/> 3) Skater <input type="checkbox"/> 4) Other _____			Direction of Travel <input type="checkbox"/> 1) North <input type="checkbox"/> 2) South <input checked="" type="checkbox"/> 3) East <input type="checkbox"/> 4) West <input type="checkbox"/> 5) Unknown				
			Highway / Street Name: YORK WY				
Non-Motorist: (Last Name, First Name, Middle Name Suffix) CLEMENTS, DAVID				Transported By: <input type="checkbox"/> 1) Not Transported <input checked="" type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____ 310230-20			
Street Address: 2480 STINE WY				Transported To: RENOWN REG. MEDICAL CENTER			
City: SPARKS		State/Country <input type="checkbox"/> 1) NV NV		Zip Code: 89431		Person Type: 4    Seating Position:    Occupant Restraints:	
<input checked="" type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown <input type="checkbox"/> 2) Female		DOB: 02/08/1959		Phone Number: 7754436782		Injury Severity: A    Injury Location: 2    5    7	
OLN / ID Card:		State: <input type="checkbox"/> 1) NV NV		Airbags:		Airbag Switch:    Ejected:    Trapped: 0	
Non-Motorist Condition							
<input checked="" type="checkbox"/> 1) Apparently Normal <input type="checkbox"/> 3) Under Influence: Medication / Drugs / Alcohol <input type="checkbox"/> 5) Emotional <input type="checkbox"/> 7) Unknown <input type="checkbox"/> 2) Physical Impairment <input type="checkbox"/> 4) Fatigued / Asleep / Fainted <input type="checkbox"/> 6) Illness <input type="checkbox"/> 8) Other _____							
Alcohol / Drug Involvement				Method of Determination (Check up to 2)    Test Results			
<input checked="" type="checkbox"/> 1) Not Involved <input type="checkbox"/> 3) Alcohol <input type="checkbox"/> 5) Unknown <input type="checkbox"/> 2) Suspected Impairment <input type="checkbox"/> 4) Drugs <input type="checkbox"/> 6) Marijuana				<input type="checkbox"/> 1) Field Sobriety Test <input type="checkbox"/> 3) Blood Test <input type="checkbox"/> 5) Urine Test <input type="checkbox"/> 2) Preliminary Breath Test <input type="checkbox"/> 4) Evidentiary Breath Test			
Non-Motorist Action				Non-Motorist Factors			
<input checked="" type="checkbox"/> 1) Entering or Crossing at Location <input type="checkbox"/> 8) Standing <input type="checkbox"/> 2) Walking, Running, Playing, Cycling <input type="checkbox"/> 9) Unknown <input type="checkbox"/> 3) Approaching or Leaving Vehicle <input type="checkbox"/> 10) Going to/from K-12 <input type="checkbox"/> 4) Playing or Working on Vehicle <input type="checkbox"/> 11) Waiting to Cross Roadway <input type="checkbox"/> 6) Pushing Vehicle <input type="checkbox"/> 12) Approaching / Leaving School Bus <input type="checkbox"/> 7) Working in Roadway <input type="checkbox"/> 5) Other _____				<input type="checkbox"/> 1) Improper Crossing <input type="checkbox"/> 6) Wrong Side of Road <input type="checkbox"/> 2) Lying / Illegally in Roadway <input type="checkbox"/> 7) Not Visible <input type="checkbox"/> 3) Fail to Yield Right of Way <input type="checkbox"/> 8) Darting into Roadway <input type="checkbox"/> 4) Fail to Obey Traffic Signs, Signals, or Officer <input type="checkbox"/> 9) Inattentive <input type="checkbox"/> 5) Other _____ <input type="checkbox"/> 10) Unknown			
Location Prior to Impact						Safety Equipment	
<input type="checkbox"/> 1) Marked Crosswalk at Intersection <input type="checkbox"/> 9) On Highway, More than 10' from Travel Lanes <input type="checkbox"/> 2) At Intersection, No Crosswalk <input type="checkbox"/> 10) In Roadway <input type="checkbox"/> 3) Non-Intersection Crosswalk <input type="checkbox"/> 11) Traffic Island <input type="checkbox"/> 4) Driveway Access Crosswalk <input type="checkbox"/> 12) Shoulder <input checked="" type="checkbox"/> 5) Sidewalk <input type="checkbox"/> 13) Unknown <input type="checkbox"/> 6) Median <input type="checkbox"/> 14) Other _____ <input type="checkbox"/> 7) Outside Highway <input type="checkbox"/> 16) Bike Lane <input type="checkbox"/> 8) Shared Use Path or Trail <input type="checkbox"/> 17) Ped Safety Zone						<input checked="" type="checkbox"/> 1) None <input type="checkbox"/> 2) Helmet <input type="checkbox"/> 3) Protective Pads <input type="checkbox"/> 4) Reflective Clothing <input type="checkbox"/> 5) Lighting <input type="checkbox"/> 6) Unknown <input type="checkbox"/> 7) Other _____	
Bike Lane / Path				Vehicle Number(s) Striking Non-Motorist			
<input type="checkbox"/> 1) No Bike Lane Path <input type="checkbox"/> 5) Striped Bicycle Lane - Both Sides <input type="checkbox"/> 2) Bicycle Route (Signed) <input type="checkbox"/> 6) Separate Bicycle Path / Trail <input type="checkbox"/> 3) Striped Bicycle Lane - Right Side Only <input type="checkbox"/> 7) Unknown <input type="checkbox"/> 4) Striped Bicycle Lane - Left Side Only <input type="checkbox"/> 8) Other _____				#: 1    #:    #:			
				Non-Motorist Speed Estimate			
				From:    To:    Limit:			
<input type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC <input type="checkbox"/> 4) Pending (1)		Violation		NOC		Citation Number	
<input checked="" type="checkbox"/> 1) NRS <input type="checkbox"/> 2) CFR <input type="checkbox"/> 3) CC/MC (2)		Violation		NOC		Citation Number	
Investigator(s) rusty scovel		ID Number 412	Date 11/05/2020	Reviewed By erick chavez		Date Reviewed 12/17/2020	Page 5 of 7

Event Number: 55		<b>STATE OF NEVADA</b> <b>TRAFFIC CRASH REPORT</b> NON-MOTORIST INFORMATION SHEET REVISED 12/2018				Path Number: <b>SPPD20-8351</b> Non-Motorist	
Non-Motorist: (Last Name, First Name, Middle Name Suffix)						Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:						Transported To:	
City:		State/Country <input type="checkbox"/> 1) NV		Zip Code:		Person Type:      Seating Position:      Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown   DOB:      /      /      Phone Number:		<input type="checkbox"/> 2) Female		Injury Severity:		Injury Location:	
OLN / ID Card:				State: <input type="checkbox"/> 1) NV		Airbags:      Airbag Switch:      Ejected:      Trapped:	
Non-Motorist: (Last Name, First Name, Middle Name Suffix)						Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other	
Street Address:						Transported To:	
City:		State/Country <input type="checkbox"/> 1) NV		Zip Code:		Person Type:      Seating Position:      Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown   DOB:      /      /      Phone Number:		<input type="checkbox"/> 2) Female		Injury Severity:		Injury Location:	
OLN / ID Card:				State: <input type="checkbox"/> 1) NV		Airbags:      Airbag Switch:      Ejected:      Trapped:	
<b>Non-Motor Vehicle Description</b>							
Make / Manufacturer:				Model:		Type:	
						Color:	
Identification / Serial Number:				Non-Motor Vehicle Removed By:			
Owner Name: <input type="checkbox"/> 1) Same as Non-Motorist				Non-Motor Vehicle Removed To:			
Street Address:				City:		State: <input type="checkbox"/> 1) NV      Zip Code:	
1st Contact Area				Damage to Non-Motor Vehicle			
Pedal Cyclist / Non-Motor Vehicle 			Pedestrian <input type="checkbox"/> 1) Right Side <input checked="" type="checkbox"/> 2) Left Side <input type="checkbox"/> 3) Head / Feet <input type="checkbox"/> 4) Front <input type="checkbox"/> 5) Back		<input type="checkbox"/> 1) Minor <input type="checkbox"/> 2) Moderate <input type="checkbox"/> 3) Major <input type="checkbox"/> 4) Total <input type="checkbox"/> 5) None <input type="checkbox"/> 6) Unknown		
			Non-Motor Vehicle Damaged Area <input type="checkbox"/> 1) Front <input type="checkbox"/> 9) Top <input type="checkbox"/> 2) Rear <input type="checkbox"/> 10) Bottom <input type="checkbox"/> 3) Right Side <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 4) Left Side <input type="checkbox"/> 12) Other <input type="checkbox"/> 5) Right Front <u>310230-20</u> <input type="checkbox"/> 6) Right Rear <input type="checkbox"/> 7) Left Front <input type="checkbox"/> 8) Left Rear				
Sequence Of Events							
Code #		Description		Collision With Fixed Object	Most Harmful Event		
1st	214	MOTOR VEHICLE IN TRANSPORT		<input type="checkbox"/>	<input checked="" type="checkbox"/>		
2nd				<input type="checkbox"/>	<input type="checkbox"/>		
3rd				<input type="checkbox"/>	<input type="checkbox"/>		
4th				<input type="checkbox"/>	<input type="checkbox"/>		
5th				<input type="checkbox"/>	<input type="checkbox"/>		
					Non-Motor Vehicle Action <input type="checkbox"/> 1) Straight <input type="checkbox"/> 7) Passing <input type="checkbox"/> 2) Stopped <input type="checkbox"/> 8) Entering Lane <input type="checkbox"/> 3) Left Turn <input type="checkbox"/> 9) Leaving Lane <input type="checkbox"/> 4) Right Turn <input type="checkbox"/> 10) Lane Change <input type="checkbox"/> 5) U-Turn <input type="checkbox"/> 11) Unknown <input type="checkbox"/> 6) Other		

Event Number 55		Sparks Police Department: <b>STATE OF NEVADA</b> <b>TRAFFIC CRASH REPORT</b> Occupant / Witness Supplement Revised 12/2018				Crash Number <b>SPPD20-8351</b>		Occupant / Witness Supplement	
DO NOT DUPLICATE!									
		Agency Name: Sparks PD							

V#	Name: (Last Name, First Name, Middle Name Suffix) <b>THORESON, TRYSTEN MAY</b>	Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____				
Street Address: <b>2225 LOGAN WAY</b>		Transported To:				
City: <b>SPARKS</b>	State / Country <input checked="" type="checkbox"/> 1) NV	Zip Code: <b>89431</b>	Person Type: <b>3</b>	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown	DOB: <b>05/06/1988</b>	Phone Number: <b>7752473192</b>	Injury Severity:	Injury Location:		
<input checked="" type="checkbox"/> 2) Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:

V#	Name: (Last Name, First Name, Middle Name Suffix) <b>MCAVAY, EILEDON RAEANNA</b>	Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____				
Street Address: <b>49 VISTA RAFAEL PKWY</b>		Transported To:				
City: <b>RENO</b>	State / Country <input checked="" type="checkbox"/> 1) NV	Zip Code: <b>89503</b>	Person Type: <b>3</b>	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown	DOB: <b>10/03/1996</b>	Phone Number: <b>7755014201</b>	Injury Severity:	Injury Location:		
<input checked="" type="checkbox"/> 2) Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:

V#	Name: (Last Name, First Name, Middle Name Suffix)	Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____				
Street Address:		Transported To:				
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:		
<input type="checkbox"/> 2) Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:

V#	Name: (Last Name, First Name, Middle Name Suffix)	Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____				
Street Address:		Transported To:				
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:		
<input type="checkbox"/> 2) Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:

V#	Name: (Last Name, First Name, Middle Name Suffix)	Transported By: <input type="checkbox"/> 1) Not Transported <input type="checkbox"/> 2) EMS <input type="checkbox"/> 3) Police <input type="checkbox"/> 4) Unknown <input type="checkbox"/> 5) Other _____				
Street Address:		Transported To:				
City:	State / Country <input type="checkbox"/> 1) NV	Zip Code:	Person Type:	Seating Position:	Occupant Restraints:	
<input type="checkbox"/> 1) Male <input type="checkbox"/> 3) Unknown	DOB:	Phone Number:	Injury Severity:	Injury Location:		
<input type="checkbox"/> 2) Female						
			Airbags:	Airbag Switch:	Ejected:	Trapped:

Investigator(s) <b>rusty scovel</b>	ID Number <b>412</b>	Date <b>11/05/2020</b>	Reviewed By <b>erick chavez</b>	Date Reviewed <b>12/17/2020</b>	Page <b>7 of 7</b>
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**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 Clements v. SEi [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:20:02 AM  
**Attachments:** [Proof of Service \(1\)-4956.pdf](#)  
[Exhibit 1 -4956-9918.pdf](#)  
[image001.png](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Thursday, January 7, 2021 11:26 AM  
**To:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>; Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Subject:** PA0018907997 Clements v. SEi

Kat and Reed,

Here is the proof of service. I'll send the Complaint in another email.

Please have your insured's personal counsel contact me.

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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\*\*\*\*\*


# EXHIBIT 1

# EXHIBIT 1

AFFIDAVIT OF SERVICE

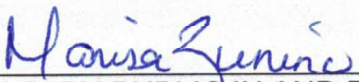
STATE OF NEVADA       )  
                                  ) ss  
COUNTY OF WASHOE    )

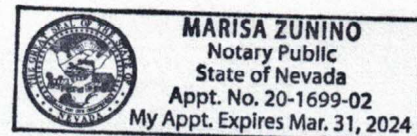
I, Giulia Zunino, being first duly sworn, deposes and says: That Affiant is a citizen of the United States, over eighteen years of age, employed by Elite Investigations Northern Nevada, Nevada Private Investigator's License Number 1447, and not a party to, nor interested in the proceeding in which this affidavit is made. That Affiant received 1) Complaint; 2) Summons. On January 4, 2021, the Affiant personally served the above-mentioned documents upon Sandra L. Sei at 85 Devere Way in Sparks, Nevada 89431, on behalf of Coulter Harsh Law, located at 403 Hill Street Reno, Nevada 89501.

  
Giulia Zunino

STATE OF NEVADA       )  
                                  ) ss  
COUNTY OF WASHOE    )

Signed and Sworn to before me on  
this 5 day of January 2021 by Giulia Zunino.

  
NOTARY PUBLIC IN AND FOR SAID  
COUNTY AND STATE



1 Brent H. Harsh, Esq.  
State Bar No. 8814  
2 COULTER HARSH LAW  
403 Hill Street  
3 Reno, NV 89501  
(775)324-3380  
4 *Attorneys for Plaintiffs*

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 DAVID CLEMENTS and SHEELA  
CLEMENTS,

CASE NO.: CV20-02081

9 Plaintiffs,

DEPT. NO.: 1

10 v.

11 SANDRA L. SEI and DOES 1-10, inclusive,

12 Defendant.

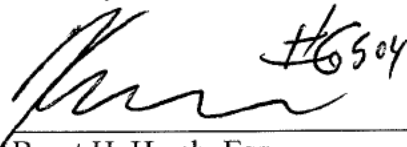
13  
14 **PROOF OF SERVICE – SANDRA L. SEI**

15 Plaintiffs, DAVID CLEMENTS and SHEELA CLEMENTS, by and through their  
16 attorneys at COULTER HARSH LAW, hereby files proof of service of the Summons and  
17 Complaint upon the Defendant, SANDRA L. SEI. See Exhibit 1.

18 **AFFIRMATION**  
19 **Pursuant to NRS 239B.030**

20 The undersigned does hereby affirm that the preceding document, filed in the above  
21 case number, **DOES NOT** contain the social security number of any person.

22 DATED: January 5, 2021

23 

24 Brent H. Harsh, Esq.  
Attorney for Plaintiff

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**List of Exhibits**

1. Affidavit of Service- SANDRA L. SEI

Page 1



**From:** [Werner, Reed J \(Claims Solutions and Analytics\)](#)  
**To:** [Kait Flocchini](#)  
**Subject:** FW: PA0018907997 Re: Clements, David/Sheela [CONFIDENTIAL] (Encrypted Delivery)  
**Date:** Tuesday, July 27, 2021 10:19:38 AM  
**Attachments:** [image001.png](#)  
[PLT.COMPLAINT-4891.pdf](#)

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**From:** Brent Harsh <brent@coulterharshlaw.com>  
**Sent:** Thursday, January 7, 2021 11:26 AM  
**To:** Baarson, Kat (Liability Claims) <Katherine.Baarson@thehartford.com>; Werner, Reed J (Claims Solutions and Analytics) <Reed.Werner@thehartford.com>  
**Subject:** PA0018907997 Re: Clements, David/Sheela

For your records

Brent H. Harsh  
Trial Attorney  
COULTER HARSH LAW  
403 Hill Street  
Reno, Nevada 89501  
Tel: 775-324-3380  
Fax: 775-324-3381



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\*\*\*\*\*

1 **1425**  
2 BRENT HARSH, ESQ.  
3 Coulter Harsh Law  
4 State Bar No. 8814  
5 403 Hill Street  
6 Reno, NV 89501  
7 (775)324-3380  
8 Attorney for Plaintiff

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 \* \* \* \* \*

12 DAVID CLEMENTS, SHEELA  
13 CLEMENTS,

CASE NO. CV20-02081

DEPT. NO. 1

14 Plaintiffs,

15 vs.

16 SANDRA L. SEI and  
17 DOES 1-10, Inclusive,

18 Defendants.

19 **COMPLAINT**

20 COME NOW, Plaintiffs, DAVID CLEMENTS and SHEELA CLEMENTS, by and  
21 through their attorneys at COULTER HARSH LAW, and for their cause of action  
22 against the Defendants above named, hereby complain and allege as follows:

23 1. Plaintiff DAVID CLEMENTS is and was at all times mentioned herein a  
24 resident of the City of Sparks, County of Washoe, State of Nevada.

25 2. Plaintiff SHEELA CLEMENTS is and was at all times herein mentioned, a  
26 resident of the City of Sparks, County of Washoe, State of Nevada.

27 3. Defendant SANDRA L. SEI is and was at all times herein mentioned, a  
28 resident of the County of Washoe, State of Nevada.

4. That the true names and capacities of Defendants named herein as  
DOES 1-10, inclusive, are unknown to Plaintiffs who, therefore, sue these Defendants

1 by such fictitious names. Plaintiffs are informed and believe, and therefore allege,  
2 that each of the Defendants designated as DOES are responsible in some manner for  
3 the offense and happenings referred to in this action and proximately caused  
4 damages to Plaintiffs as herein alleged. The legal responsibility of said DOES 1-10  
5 arises out of, but is not limited to, their status as owners and their maintenance  
6 and/or entrustment of the vehicle which Defendant SANDRA L. SEI was operating at  
7 the time of the accident referred to in this Complaint, and/or their agency,  
8 master/servant or joint venture relationship with Defendant SANDRA L. SEI.  
9 Plaintiffs request leave of this Court to amend the Complaint to insert the true names  
10 and capacities of said Defendants, when the same have been ascertained to join  
11 such Defendants in this action and assert the appropriate charging allegations.  
12

13 **FIRST CLAIM OF ACTION**  
14 **(Negligence)**

15 5. Plaintiffs hereby incorporates paragraphs 1-4 of this Complaint as fully  
16 set forth herein.

17 6. That on or about November 5, 2020, Defendants SANDRA L. SEI and  
18 DOES 1-10, owned and operated a certain 2008 White Toyota Highlander, with a  
19 Nevada license plate, in a manner wherein they failed to exercise due care thereby  
20 resulting in an impact with Plaintiff DAVID CLEMENTS.

21 7. That on or about November 5, 2020, Defendant SANDRA L. SEI,  
22 operated the above-referenced vehicle in an unsafe and careless manner, when she  
23 failed to yield the right of way to the Plaintiff, DAVID CLEMENTS, who was lawfully  
24 crossing Pyramid Way in Sparks, Nevada, in a marked crosswalk.

1           8.     The Defendant, SANDRA L. SEI, struck the Plaintiff DAVID CLEMENTS  
2 with her vehicle while he was walking in a marked crosswalk, knocking him to the  
3 ground and causing him serious physical injury.

4           9.     The Defendant SANDRA L. SEI was driving the above-mentioned  
5 vehicle with the permission, express or implied, or at the direction of the DOE  
6 Defendants.

7           10.    The above said vehicle is governed by the laws and regulations of the  
8 State of Nevada.

9           11.    The Defendant SANDRA L. SEI had a duty to follow the laws and  
10 regulations of the State of Nevada, and failed to properly follow those laws and  
11 regulations.

12           12.    Defendants were negligent in causing the collision.

13           13.    Defendants were negligent and were the proximate cause of the  
14 collision referred above.

15           14.    As a direct and proximate result of Defendants' negligence, Plaintiff  
16 DAVID CLEMENTS was injured.

17           15.    That as a further proximate result of the aforementioned negligence,  
18 Plaintiff DAVID CLEMENTS has been required to obtain the services of an attorney,  
19 incurred costs and is entitled to recover interest.

20           16.    As a further and direct result of Defendants' wrongful and negligent  
21 conduct, Plaintiff DAVID CLEMENTS has past and future special damages; past and  
22 future general damages; suffered mental and emotional distress, aggravation and  
23 worry, all to his substantial and additional damages in excess of \$15,000.00.  
24

**SECOND CLAIM OF ACTION  
(Negligence Per Se)**

17. Plaintiffs hereby incorporate paragraphs 1-16 of this Complaint as fully set forth herein.

18. Plaintiff DAVID CLEMENTS is informed and believes, and based thereon, alleges that the Defendants, and each of them, owed Plaintiff DAVID CLEMENTS the duties of care, as set forth above.

19. Plaintiff DAVID CLEMENTS is informed and believes, and based thereon, alleges that Defendants were subject to laws and regulations pertaining to vehicle safety, including yielding to a pedestrian in a crosswalk, and further, that such laws and regulations were intended to preserve life and prevent bodily injury to persons traveling on public Nevada roadways by ensuring the laws and regulations are adhered to while traveling on those public Nevada roadways.

20. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that he is a member of a class for whose benefit those laws and safety regulations were passed.

21. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that Defendants violated one or more laws and regulations, including but not limited to NRS 484B.283 and NRS 484B.653, and breached their duties of care that were owed to the Plaintiff DAVID CLEMENTS, as set forth above.

22. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that the Plaintiff DAVID CLEMENTS suffered the same type of harm that the laws and regulations were intended to prevent, resulting in, without limitation, physical, emotional, and financial harm, as set forth above, from the conduct of Defendants, which was a substantial factor in causing that harm.

1           23. Defendants' wrongful conduct as alleged herein, was malicious,  
2           oppressive and fraudulent justifying an award of punitive damages against  
3           Defendants.

4           24. That as a further proximate result of the aforementioned negligence,  
5           Plaintiff DAVID CLEMENTS has been required to obtain the services of an attorney,  
6           incurred costs and is entitled to recover interest.

7           25. As a further and direct result of Defendants' intentional, wrongful and  
8           negligent conduct, Plaintiff DAVID CLEMENTS has past and future special damages;  
9           past and future general damages; suffered mental and emotional distress,  
10          aggravation and worry, all to his substantial and additional damages in excess of  
11          \$15,000.00.

12  
13                                   **THIRD CLAIM OF ACTION**  
14                                   **(Intentional Infliction of Emotional Distress)**

15          26. Plaintiffs hereby incorporate paragraphs 1-25 of this Complaint as fully  
16          set forth herein.

17          27. Plaintiffs are informed and believe and, based thereon, allege that  
18          Defendants, and each of them, acted with oppression, malice and/or conscious  
19          disregard for the safety and well-being of the class of person the statutes and/or  
20          regulations were designed to protect, including Plaintiff DAVID CLEMENTS.

21          28. Plaintiffs are informed and believe and, based thereon, allege that  
22          Defendants, and each of them, acted with conscious disregard for the laws and  
23          regulations of the State of Nevada which govern vehicles and driving, and the failure  
24          to properly adhere to the laws and regulations outlined above, caused the injuries  
25          associated with the Plaintiff DAVID CLEMENTS and SHEELA CLEMENTS.

1           29. That as a further proximate result of the aforementioned conduct,  
2 Plaintiffs have been required to obtain the services of an attorney, incurred costs and  
3 is entitled to recover interest.

4           30. Defendants' wrongful and negligent conduct as alleged herein, was  
5 malicious, oppressive and fraudulent justifying an award of punitive damages against  
6 Defendants.

7           31. As a further and direct result of Defendants' intentional and wrongful  
8 conduct, Plaintiff DAVID CLEMENTS has past and future special damages; past and  
9 future general damages; suffered mental and emotional distress, aggravation and  
10 worry, all to his substantial and additional damages in excess of \$15,000.00.

11  
12                           **FOURTH CLAIM OF ACTION**  
13                           **(Gross Negligence)**

14           32. Plaintiffs hereby incorporates paragraphs 1-31 of this Complaint as fully  
15 set forth herein.

16           33. Defendant SANDRA L. SEI owed Plaintiffs and all others, the duty to use  
17 reasonable care under the circumstances to avoid injury to Plaintiffs and all others.

18           34. Defendant SANDRA L. SEI breached her duty of care to the Plaintiffs when  
19 she failed to exercise even the slightest degree of care in operating her motor vehicle on  
20 or about November 5, 2020, causing the accident and causing injury to Plaintiffs, DAVID  
21 CLEMENTS and SHEELA CLEMENTS.

22           35. Defendant SANDRA L. SEI'S wanton and willful conduct as alleged  
23 herein, was malicious, oppressive and fraudulent justifying an award of punitive  
24 damages against Defendants.

25           36. Defendant SANDRA L. SEI was grossly negligent in causing the accident  
26 and was the proximate cause of the accident referred to above.

1           37. As a direct and proximate result of Defendant SANDRA L. SEI'S gross  
2 negligence, Plaintiffs were injured.

3           38. That as a further proximate result of the aforementioned impact,  
4 Plaintiffs have each been required to obtain the services of an attorney, incurred  
5 costs and are entitled to recover interest.

6           39. As a further and direct result of Defendant's intentional and wrongful  
7 conduct, Plaintiffs have past and future special damages; past and future general  
8 damages; suffered mental and emotional distress, aggravation and worry, all to their  
9 substantial and additional damage in excess of \$15,000.00.

10  
11                           **FIFTH CLAIM OF ACTION**  
12                           **(Negligent Infliction of Emotional Distress)**

13           40. Plaintiffs hereby incorporate paragraphs 1-39 of this Complaint as fully  
14 set forth herein.

15           41. Defendants' negligence as alleged herein caused Plaintiffs DAVID  
16 CLEMENTS and SHEELA CLEMENTS, each, to suffer emotional distress.

17           42. Plaintiff SHEELA CLEMENTS is the wife of Plaintiff DAVID CLEMENTS.

18           43. Plaintiff SHEELA CLEMENTS saw her husband, Plaintiff DAVID  
19 CLEMENTS, in the crosswalk, sprawled on the ground, unable to move.

20           44. As a result of seeing her husband, Plaintiff DAVID CLEMENTS, sprawled  
21 on the ground, unable to move, Plaintiff SHEELA CLEMENTS, suffered a shock and a  
22 direct emotional impact, causing her to sustain emotional injury.

23           45. As a direct and proximate result of the Defendants' conduct Plaintiff  
24 DAVID CLEMENTS and Plaintiff SHEELA CLEMENTS have each sustained emotional  
25 injury and have been damaged in an amount to be proved at trial.



**SIXTH CLAIM FOR RELIEF  
(Loss of Consortium)**

46. Plaintiffs hereby incorporate paragraphs 1-45 of this Complaint herein as though fully set forth herein.

47. At all times herein mentioned Plaintiff DAVID CLEMENTS was and is the spouse of Plaintiff SHEELA CLEMENTS.

48. Before being struck by the Defendant on 11/05/20, Plaintiff, DAVID CLEMENTS was able to and did perform all the duties of a spouse, including assisting in maintaining the home, providing love, companionship, affection, society, moral support, conjugal relations and solace to Plaintiff, SHEELA CLEMENTS.

49. As a direct and proximate result of the negligence and/or conscious disregard for the right and safety of others by Defendant, SANDRA L. SEI, Plaintiff DAVID CLEMENTS' ability to perform the duties of a spouse described above have been impaired and Plaintiff SHEELA CLEMENTS has been damaged and is entitled to past and future compensatory damages for such damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs DAVID CLEMENTS and SHEELA CLEMENTS, while expressly reserving their right to amend this Complaint at the time of trial of this action herein to include all items of damage not yet ascertained, requests judgment against Defendants, and each of them, as follows:

1. For past and future general damages in a just and reasonable amount in excess of \$15,000, each;
2. For past and future special damages, each, according to proof;
3. For attorney's fees, prejudgment interest, court and other costs and disbursements incurred, and to be incurred in connection with this action;

- 1           4.     For punitive damages;
- 2           5.     For such other and further relief as this Court may deem just and
- 3 proper.

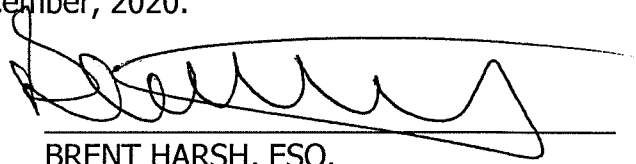
4                               **AFFIRMATION**

5                               **Pursuant to NRS 239B.030**

6           The undersigned does hereby affirm that the preceding document, filed in the

7 above case number, **DOES NOT** contain the social security number of any person.

8           DATED this 22 day of December, 2020.

9 

10 BRENT HARSH, ESQ.  
11 Coulter Harsh Law  
12 403 Hill Street  
13 Reno, Nevada 89509  
14 (775) 324-3380  
15 Attorney for Plaintiff

# Exhibit D

# Exhibit D

TIME RECEIVED  
January 5, 2021 1:29:47 AM EST

REMOTE CSID  
+17753319428

DURATION  
530


PAGES  
13

STATUS  
Received


2021-01-05 00:22 CST Sandi Sei

+17753319428 PAGE 1/13


# Fax Cover Page


 **Recipient:** +1 (866) 809-1955  
Katherine Baarson

 **Date Sent:** 01/05/2021

 **Number of Pages:** 13 (including cover page)


 **Sender:** Sandi Sei -

 **Reply-to Email:** devere85@yahoo.cm

 **Reply-to Phone:** +1 (775) 331-9428

 **Reply-to Fax:**

 **Subject:** My Summons

 **Message:** Please let me know what you think and advise. Thanks for your help.

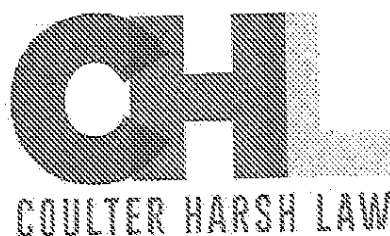


Sent with Mobile Fax

Harsh ROA 96

Page 2 of 13

CURTIS B. COULTER  
BRENT H. HARSH



PAIGE F. TAYLOR  
KARL H. SMITH

403 Hill Street  
Reno, Nevada 89501  
[www.coulterharshlaw.com](http://www.coulterharshlaw.com)

Tel: 775-324-3380  
Fax: 775-324-3381

Saturday, January 2, 2021

Sent VIA Hand Delivery

Ms. Sandra L. Sei  
85 Devere Way  
Sparks, NV 89431

RE: Clements, et.al v. Sei  
My Client: David and Sheela Clements  
DOL: November 5, 2020

Dear Ms. Sei:

I represent David and Sheela Clements. David is the person who was struck in the cross walk on November 5, 2020 and Sheela is his wife. I have tried on several attempts to resolve this case within your policy limits with your insurance carrier, THE HARTFORD. Unfortunately, THE HARTFORD has decided not to tender \$200,000 to both David and Sheela, which has forced me to file the attached *Complaint*. Please be advised that David is now paralyzed, and I will be seeking a judgment more than your insurance coverage. I would recommend that you seek personal counsel, and below is a list of attorneys that specialize in protecting parties whose interests might be averse to their insurance carriers:

1. David Zaniel—775-786-4441
2. Leah Ronhaar—775-335-9999
3. Matthew Sharp—775-324-1500
4. Patrick Leverty—775-322-6636

Please also feel free to do some research on your own. Lastly, please contact THE HARTFORD immediately and forward them a copy of the enclosed *Complaint* and *Summons*. Please reference the Claim Number PA0018907997.

I look forward to discussing this matter with your own personal counsel to try to resolve this case quickly.

Sincerely,

Brent Harsh

Enc: Complaint and Summons  
BHH/

Harsh ROA 98

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

David Clements, Sheila Clements

Plaintiff / Petitioner / Joint Petitioner,

Case No. CV20-03081

vs.

Dept. No. 1Sandra L. Sei

Defendant / Respondent / Joint Petitioner.

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 21 DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action.

The object of this action is: motor vehicle negligence

1. If you intend to defend this lawsuit, you must do the following within 21 days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, a formal written answer to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this 22nd day of DECEMBER, 20 20

Issued on behalf of Plaintiff(s):

JACQUELINE BRYANT  
CLERK OF THE COURTName: Brent H. Harsh, Esq.By: /s/ CHERYL SULEZICHAddress: Cowder Harsh Law

Deputy Clerk

403 Hill Street, Reno, NV 89501

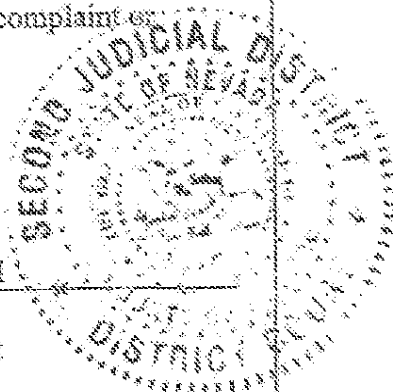
Second Judicial District Court

Phone Number: 775-224-3380

75 Court Street

Email: brent@cowherharshlaw.com

Reno, Nevada 89501



FILED  
Electronically  
CV20-02081  
2020-12-22 03:54:13 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8216587 : yvlloria

1425  
BRENT HARSH, ESQ.  
Coulter Harsh Law  
State Bar No. 8814  
403 Hill Street  
Reno, NV 89501  
(775)324-3380  
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

DAVID CLEMENTS, SHEELA  
CLEMENTS,

CASE NO. CV20-02081

DEPT. NO. 1

Plaintiffs,

VS.

SANDRA L. SEI and  
DOES 1-10, Inclusive,

Defendants.

COMPLAINT

COME NOW, Plaintiffs, DAVID CLEMENTS and SHEELA CLEMENTS, by and through their attorneys at COULTER HARSH LAW, and for their cause of action against the Defendants above named, hereby complain and allege as follows:

1. Plaintiff DAVID CLEMENTS is and was at all times mentioned herein a resident of the City of Sparks, County of Washoe, State of Nevada.
2. Plaintiff SHEELA CLEMENTS is and was at all times herein mentioned, a resident of the City of Sparks, County of Washoe, State of Nevada.
3. Defendant SANDRA L. SEI is and was at all times herein mentioned, a resident of the County of Washoe, State of Nevada.
4. That the true names and capacities of Defendants named herein as DOES 1-10, inclusive, are unknown to Plaintiffs who, therefore, sue these Defendants

Coulter Harsh Law  
403 Hill Street  
Reno, Nevada 89501  
(775) 324-3380  
FAX (775) 324-3381



1 by such fictitious names. Plaintiffs are informed and believe, and therefore allege,  
2 that each of the Defendants designated as DOES are responsible in some manner for  
3 the offense and happenings referred to in this action and proximately caused  
4 damages to Plaintiffs as herein alleged. The legal responsibility of said DOES 1-10  
5 arises out of, but is not limited to, their status as owners and their maintenance  
6 and/or entrustment of the vehicle which Defendant SANDRA L. SEI was operating at  
7 the time of the accident referred to in this Complaint, and/or their agency,  
8 master/servant or joint venture relationship with Defendant SANDRA L. SEI.  
9 Plaintiffs request leave of this Court to amend the Complaint to insert the true names  
10 and capacities of said Defendants, when the same have been ascertained to join  
11 such Defendants in this action and assert the appropriate charging allegations.  
12

13 **FIRST CLAIM OF ACTION**  
14 **(Negligence)**

15 5. Plaintiffs hereby incorporates paragraphs 1-4 of this Complaint as fully  
16 set forth herein.

17 6. That on or about November 5, 2020, Defendants SANDRA L. SEI and  
18 DOES 1-10, owned and operated a certain 2008 White Toyota Highlander, with a  
19 Nevada license plate, in a manner wherein they failed to exercise due care thereby  
20 resulting in an impact with Plaintiff DAVID CLEMENTS.

21 7. That on or about November 5, 2020, Defendant SANDRA L. SEI,  
22 operated the above-referenced vehicle in an unsafe and careless manner, when she  
23 failed to yield the right of way to the Plaintiff, DAVID CLEMENTS, who was lawfully  
24 crossing Pyramid Way in Sparks, Nevada, in a marked crosswalk.

1           8.     The Defendant, SANDRA L. SEI, struck the Plaintiff DAVID CLEMENTS  
2 with her vehicle while he was walking in a marked crosswalk, knocking him to the  
3 ground and causing him serious physical injury.

4           9.     The Defendant SANDRA L. SEI was driving the above-mentioned  
5 vehicle with the permission, express or implied, or at the direction of the DOE  
6 Defendants.

7           10.    The above said vehicle is governed by the laws and regulations of the  
8 State of Nevada.

9           11.    The Defendant SANDRA L. SEI had a duty to follow the laws and  
10 regulations of the State of Nevada, and failed to properly follow those laws and  
11 regulations.

12           12.    Defendants were negligent in causing the collision.

13           13.    Defendants were negligent and were the proximate cause of the  
14 collision referred above.

15           14.    As a direct and proximate result of Defendants' negligence, Plaintiff  
16 DAVID CLEMENTS was injured.

17           15.    That as a further proximate result of the aforementioned negligence,  
18 Plaintiff DAVID CLEMENTS has been required to obtain the services of an attorney,  
19 incurred costs and is entitled to recover interest.

20           16.    As a further and direct result of Defendants' wrongful and negligent  
21 conduct, Plaintiff DAVID CLEMENTS has past and future special damages; past and  
22 future general damages; suffered mental and emotional distress, aggravation and  
23 worry, all to his substantial and additional damages in excess of \$15,000.00.  
24

25     Coulter Harsh Law  
26     483 Hill Street  
27     Reno, Nevada 89501  
      (775) 324-3380  
      FAX (775) 324-3381

**SECOND CLAIM OF ACTION**  
**(Negligence Per Se)**

17. Plaintiffs hereby incorporate paragraphs 1-16 of this Complaint as fully set forth herein.

18. Plaintiff DAVID CLEMENTS is informed and believes, and based thereon, alleges that the Defendants, and each of them, owed Plaintiff DAVID CLEMENTS the duties of care, as set forth above.

19. Plaintiff DAVID CLEMENTS is informed and believes, and based thereon, alleges that Defendants were subject to laws and regulations pertaining to vehicle safety, including yielding to a pedestrian in a crosswalk, and further, that such laws and regulations were intended to preserve life and prevent bodily injury to persons traveling on public Nevada roadways by ensuring the laws and regulations are adhered to while traveling on those public Nevada roadways.

20. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that he is a member of a class for whose benefit those laws and safety regulations were passed.

21. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that Defendants violated one or more laws and regulations, including but not limited to NRS 484B.283 and NRS 484B.653, and breached their duties of care that were owed to the Plaintiff DAVID CLEMENTS, as set forth above.

22. Plaintiff DAVID CLEMENTS is informed and believes and, based thereon, alleges that the Plaintiff DAVID CLEMENTS suffered the same type of harm that the laws and regulations were intended to prevent, resulting in, without limitation, physical, emotional, and financial harm, as set forth above, from the conduct of Defendants, which was a substantial factor in causing that harm.

1       23. Defendants' wrongful conduct as alleged herein, was malicious,  
2       oppressive and fraudulent justifying an award of punitive damages against  
3       Defendants.

4       24. That as a further proximate result of the aforementioned negligence,  
5       Plaintiff DAVID CLEMENTS has been required to obtain the services of an attorney,  
6       incurred costs and is entitled to recover interest.

7       25. As a further and direct result of Defendants' intentional, wrongful and  
8       negligent conduct, Plaintiff DAVID CLEMENTS has past and future special damages;  
9       past and future general damages; suffered mental and emotional distress,  
10      aggravation and worry, all to his substantial and additional damages in excess of  
11      \$15,000.00.

12  
13                   **THIRD CLAIM OF ACTION**  
14                   **(Intentional Infliction of Emotional Distress)**

15      26. Plaintiffs hereby incorporate paragraphs 1-25 of this Complaint as fully  
16      set forth herein.

17      27. Plaintiffs are informed and believe and, based thereon, allege that  
18      Defendants, and each of them, acted with oppression, malice and/or conscious  
19      disregard for the safety and well-being of the class of person the statutes and/or  
20      regulations were designed to protect, including Plaintiff DAVID CLEMENTS.

21      28. Plaintiffs are informed and believe and, based thereon, allege that  
22      Defendants, and each of them, acted with conscious disregard for the laws and  
23      regulations of the State of Nevada which govern vehicles and driving, and the failure  
24      to properly adhere to the laws and regulations outlined above, caused the injuries  
25      associated with the Plaintiff DAVID CLEMENTS and SHEELA CLEMENTS.

1           29. That as a further proximate result of the aforementioned conduct,  
2 Plaintiffs have been required to obtain the services of an attorney, incurred costs and  
3 is entitled to recover interest.

4           30. Defendants' wrongful and negligent conduct as alleged herein, was  
5 malicious, oppressive and fraudulent justifying an award of punitive damages against  
6 Defendants.

7           31. As a further and direct result of Defendants' intentional and wrongful  
8 conduct, Plaintiff DAVID CLEMENTS has past and future special damages; past and  
9 future general damages; suffered mental and emotional distress, aggravation and  
10 worry, all to his substantial and additional damages in excess of \$15,000.00.

11  
12                           **FOURTH CLAIM OF ACTION**  
                                  **(Gross Negligence)**

13           32. Plaintiffs hereby incorporates paragraphs 1-31 of this Complaint as fully  
14 set forth herein.

15           33. Defendant SANDRA L. SEI owed Plaintiffs and all others, the duty to use  
16 reasonable care under the circumstances to avoid injury to Plaintiffs and all others.

17           34. Defendant SANDRA L. SEI breached her duty of care to the Plaintiffs when  
18 she failed to exercise even the slightest degree of care in operating her motor vehicle on  
19 or about November 5, 2020, causing the accident and causing injury to Plaintiffs, DAVID  
20 CLEMENTS and SHEELA CLEMENTS.

21           35. Defendant SANDRA L. SEI'S wanton and willful conduct as alleged  
22 herein, was malicious, oppressive and fraudulent justifying an award of punitive  
23 damages against Defendants.

24           36. Defendant SANDRA L. SEI was grossly negligent in causing the accident  
25 and was the proximate cause of the accident referred to above.  
26  
27

1 37. As a direct and proximate result of Defendant SANDRA L. SEI'S gross  
2 negligence, Plaintiffs were injured.

3 38. That as a further proximate result of the aforementioned impact,  
4 Plaintiffs have each been required to obtain the services of an attorney, incurred  
5 costs and are entitled to recover interest.

6 39. As a further and direct result of Defendant's intentional and wrongful  
7 conduct, Plaintiffs have past and future special damages; past and future general  
8 damages; suffered mental and emotional distress, aggravation and worry, all to their  
9 substantial and additional damage in excess of \$15,000.00.

10  
11 **FIFTH CLAIM OF ACTION**  
**(Negligent Infliction of Emotional Distress)**

12 40. Plaintiffs hereby incorporate paragraphs 1-39 of this Complaint as fully  
13 set forth herein.

14 41. Defendants' negligence as alleged herein caused Plaintiffs DAVID  
15 CLEMENTS and SHEELA CLEMENTS, each, to suffer emotional distress.

16 42. Plaintiff SHEELA CLEMENTS is the wife of Plaintiff DAVID CLEMENTS.

17 43. Plaintiff SHEELA CLEMENTS saw her husband, Plaintiff DAVID  
18 CLEMENTS, in the crosswalk, sprawled on the ground, unable to move.

19 44. As a result of seeing her husband, Plaintiff DAVID CLEMENTS, sprawled  
20 on the ground, unable to move, Plaintiff SHEELA CLEMENTS, suffered a shock and a  
21 direct emotional impact, causing her to sustain emotional injury.

22 45. As a direct and proximate result of the Defendants' conduct Plaintiff  
23 DAVID CLEMENTS and Plaintiff SHEELA CLEMENTS have each sustained emotional  
24 injury and have been damaged in an amount to be proved at trial.

**SIXTH CLAIM FOR RELIEF  
(Loss of Consortium)**

46. Plaintiffs hereby incorporate paragraphs 1-45 of this Complaint herein as though fully set forth herein.

47. At all times herein mentioned Plaintiff DAVID CLEMENTS was and is the spouse of Plaintiff SHEELA CLEMENTS.

48. Before being struck by the Defendant on 11/05/20, Plaintiff, DAVID CLEMENTS was able to and did perform all the duties of a spouse, including assisting in maintaining the home, providing love, companionship, affection, society, moral support, conjugal relations and solace to Plaintiff, SHEELA CLEMENTS.

49. As a direct and proximate result of the negligence and/or conscious disregard for the right and safety of others by Defendant, SANDRA L. SEI, Plaintiff DAVID CLEMENTS' ability to perform the duties of a spouse described above have been impaired and Plaintiff SHEELA CLEMENTS has been damaged and is entitled to past and future compensatory damages for such damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs DAVID CLEMENTS and SHEELA CLEMENTS, while expressly reserving their right to amend this Complaint at the time of trial of this action herein to include all items of damage not yet ascertained, requests judgment against Defendants, and each of them, as follows:

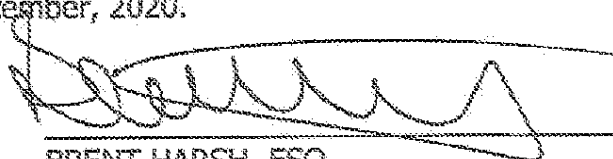
1. For past and future general damages in a just and reasonable amount in excess of \$15,000, each;
2. For past and future special damages, each, according to proof;
3. For attorney's fees, prejudgment interest, court and other costs and disbursements incurred, and to be incurred in connection with this action;

1           4.     For punitive damages;  
2           5.     For such other and further relief as this Court may deem just and  
3 proper.

4                                   **AFFIRMATION**  
5                                   **Pursuant to NRS 239B.030**

6           The undersigned does hereby affirm that the preceding document, filed in the  
7 above case number, **DOES NOT** contain the social security number of any person.

8           DATED this 22 day of December, 2020.



BRENT HARSH, ESQ.  
Coulter Harsh Law  
403 Hill Street  
Reno, Nevada 89509  
(775) 324-3380  
Attorney for Plaintiff





FILED

AUG 31 2021

STATE BAR OF NEVADA

BY [Signature]

OFFICE OF BAR COUNSEL

Case No: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
 )  
 Complainant, )  
 vs. )  
 )  
 BRENT HARSH, ESQ., )  
 BAR NO. 8814 )  
 )  
 Respondent. )

NOTICE OF HEARING

TO: Brent Harsh, Esq.  
 c/o Christian Moore, Esq.  
 Lemons, Grundy & Eisenberg  
 6005 Plumas Street, Third Floor  
 Reno, Nevada 89519

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action is scheduled for **Wednesday, September 29, 2021, beginning at the hour of 9:00 a.m.** The hearing will be conducted via Zoom (meeting # 85020672451). You are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

DATED this 31st day of August 2021.

STATE BAR OF NEVADA  
 DANIEL M. HOOGE, Bar Counsel

By: [Signature: Kait Flocchini]  
 R. Kait Flocchini, Assistant Bar Counsel  
 Nevada Bar No. 9861  
 9456 Double R Boulevard  
 Reno, Nevada 89521  
 (775) 329-4100

Case No: OBC21-0067



**FILED**

**AUG 31 2021**

**STATE BAR OF NEVADA**  
**BY** \_\_\_\_\_  
**OFFICE OF BAR COUNSEL**

**STATE BAR OF NEVADA**  
**NORTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
)  
Respondent. )

**STATE BAR OF NEVADA'S**  
**FINAL DISCLOSURES**

PLEASE TAKE NOTICE that the following is a list of witnesses and a summary of evidence which may be offered against Respondent at the time of the Formal Hearing, in the above-entitled complaint.

**A. Documentary Evidence**

1. Any and all documentation contained in the State Bar of Nevada's Initial Disclosure of Documents and Witnesses and filed July 27, 2021, and the State Bar of Nevada's First Supplemental Disclosure of Documents filed on August 23, 2021, as well as Respondent's Disclosures served August 6, 2021.

///

**B. Witnesses and Brief Statement of Facts**

1. Respondent Brent Harsh, Esq. may offer testimony regarding his representation of David and Sheela Clements and communication with attorney Reed Werner and Werner's client Sandra Sei related thereto.

2. Grievant Reed Werner, Esq., may offer testimony about his representation of Sandra Sei, and/or her insurance provider The Hartford, related to the David and Sheela Clements matter. Mr. Werner's contact information is:

The Law Office of Eric R. Larsen  
9275 W. Russell Road, Suite 205  
Las Vegas, NV 89148  
(702) 387-8080  
Reed.Werner@thehartford.com

3. Christopher Turtzo, Esq., may offer testimony about his representation of Sandra Sei, and/or her insurance provider The Hartford, related to the David and Sheela Clements matter. Mr. Turtzo's contact information is:

Morris, Sullivan and Lemkul, LLP.  
3960 Howard Hughes Parkway, Suite 420  
Las Vegas, NV 89169  
(702) 405-8100  
turtzo@morrisullivanlaw.com

4. Katherine Baarson may offer testimony regarding her communications with Mr. Harsh, Mr. Werner and Ms. Sei. Ms. Baarson's contact information is:

The Hartford Insurance Group  
P.O. Box 14265  
Lexington, KY 40512-4264  
(460) 629-9051  
katherine.Baarson@thehartford.com

///


///

///

5. A custodian of records from the Office of Bar Counsel may be called to testify about Respondent's licensure and discipline history with the State Bar of Nevada.

Dated this 31st day of August 2021.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, BAR COUNSEL


By:   
R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Blvd., Ste. B  
Reno, NV 89521  
(775) 329-4100

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **Notice of Hearing; State Bar of Nevada's Final Disclosures** was served by regular and certified first-class mail upon:

Brent D. Harsh, Esq.  
c/o Christian Moore, Esq.  
Lemons Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519

Dated this 31 day of August 2021.

  
\_\_\_\_\_  
Laura Peters, an employee of  
the State Bar of Nevada



FILED

SEP 03 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Christian L. Moore, Esq., SBN #3777  
Todd R. Alexander, Esq., SBN #10846  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
Telephone: (775) 786-6868  
Fax: (775) 786-9716  
clm@lge.net; tra@lge.net  
*Attorneys for Respondent*

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

CASE NO.: OBC21-0067

vs.

**RESPONDENT'S REPLY IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

BRENT HARSH, ESQ.,  
BAR NO. 8814,

Respondent.

Respondent, BRENT HARSH, ESQ. ("Harsh"), hereby replies in support of his motion for summary judgment of the Complaint filed against him in this disciplinary proceeding. This reply brief is made and based on the following memorandum of points and authorities and any further information this Disciplinary Board deems it appropriate to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The premise underlying Harsh's motion is that, to prevail in this State Bar of Nevada (SBN) disciplinary proceeding, SBN must prove by clear and convincing evidence that Harsh knew Sandra Sei was represented by The Hartford attorney Reed Werner in an underlying personal injury case. SBN cannot meet this burden as a matter of law because the evidence demonstrates that Harsh was given every indication that Werner represented The Hartford in an insurance coverage analysis arising out of the same case. As such, Harsh reasonably

1 believed Werner could not have legally or ethically also represent Sei. In short, Harsh did not  
2 know Sei was represented by counsel in the personal injury litigation. To the contrary, he had  
3 been given every reason to believe otherwise.

4 In response to Harsh's motion, SBN argues that Harsh had only formed "assumptions"  
5 and beliefs about Werner's handling of the coverage issue—assumptions and beliefs that SBN  
6 now contends were inaccurate. This misses the point of Harsh's motion. It does not matter  
7 whether Harsh's assumptions and beliefs ultimately turned out to be incorrect. What matters is  
8 whether those assumptions and beliefs were reasonably formed based on the information Harsh  
9 was provided.

10 Interestingly and tellingly, SBN completely ignores the clear and convincing evidence  
11 standard, and that it is SBN's burden to prove SBN's allegations by that standard. SBN's  
12 opposition offers no evidence of Harsh's knowledge. Instead, the opposition attempts to  
13 improperly shift the burden of proof, arguing that Harsh must present "personal explanations"  
14 of the facts that caused him to form his beliefs.

15 The question is not whether Reed Werner actually represented The Hartford or Ms. Sei.  
16 The question is whether it was reasonable for Brent Harsh to have believed Werner represented  
17 The Hartford, and not Ms. Sei, based on an objective review of the evidence, viewed through the  
18 prism of the substantive evidentiary burden. Stated differently, the question is whether SBN has  
19 presented clear and convincing evidence that Harsh knew Werner represented Sei, despite all the  
20 evidence giving Harsh every reason to believe otherwise. SBN has fallen far short of meeting  
21 that evidentiary burden.

## 22 II. THE SUBSTANTIVE EVIDENTIARY BURDEN CANNOT BE IGNORED

23 SBN's opposition completely ignores the applicable evidentiary standard in this  
24 proceeding. On summary judgment, the evidence must be viewed through the prism of the  
25 substantive evidentiary burden. *Ferguson v. LVMPD*, 131 Nev. 939, 944, 364 P.3d 592, 595  
26 (2015). The substantive evidentiary burden is important in this case because "[i]n bar  
27 disciplinary matters, a higher degree of proof is required than in ordinary civil proceedings.  
28 Clear and convincing evidence must support any findings of misconduct." *In re Discipline of*

1 *Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (emphasis added). “Clear and  
2 convincing evidence” is defined as “evidence [which] must be so clear as to leave no substantial  
3 doubt.” *Id.*

4 III. LEGAL ARGUMENT

5 SBN’s Complaint alleges a violation of Rule 4.2 of the Nevada Rules of Professional  
6 Conduct. NRPC 4.2 states as follows:

7 In representing a client, a lawyer shall not communicate about the subject of the  
8 representation with a person **the lawyer knows** to be represented by another  
9 lawyer in the matter, unless the lawyer has the consent of the other lawyer or is  
authorized to do so by law or a court order.

10 NRPC 4.2 (emphasis added). The Rule requires the element of knowledge on the part of the  
11 accused lawyer. Thus, to withstand summary judgment, SBN must present clear and convincing  
12 evidence that Harsh knew Werner represented Sei in the personal injury litigation. This is a very  
13 demanding burden, and one of which SBN has fallen drastically short.

14 SBN’s opposition hinges almost entirely on one subject heading in Reed Werner’s  
15 December 18, 2020 letter, which read “Our Client: Sandra Sei.” SBN implies that the subject  
16 heading in that one letter constitutes clear and convincing evidence of Harsh’s knowledge, never  
17 mind that it is taken completely out of the context of what had already taken place between Harsh  
18 and The Hartford representative Katherine Baarson.

19 SBN would have this Board forget that Harsh had already been dealing with Baarson,  
20 and that Baarson had already determined that The Hartford was willing to pay its insured’s  
21 single, per-person policy limit of \$100,000 to settle David Clements’ bodily injury claims. SBN  
22 also disregards the fact that the only remaining dispute in the case was a coverage decision of  
23 whether an additional per-person limit was available to cover Sheela Clements’ NIED claim. As  
24 to whether there was an additional per-person policy limit available, Baarson informed Harsh  
25 that the question was being referred to “our legal.” SBN does not even attempt to dispute Harsh’s  
26 Declaration, in which he declares under penalty of perjury that Baarson affirmatively told him  
27 that attorney Reed Werner was handling the coverage issue. As stated in Harsh’s motion, based  
28 on this evidence alone, it was reasonable for Harsh to believe from the outset that Werner

1 represented The Hartford and could not, therefore, also represent Ms. Sei.

2 Further, Harsh clarified in his Declaration that he does not recall reading the heading of  
3 Werner's letter containing the words "Our client," as he was already familiar with the subject  
4 matter of the letter and believes he skipped over the subject heading. SBN presents no evidence  
5 to dispute Harsh's Declaration.

6 SBN's list of "undisputed material facts" contains even further support for Harsh's  
7 reasonable belief that Werner was The Hartford's coverage counsel. Undisputed material fact  
8 No. 14 is that "No other counsel contacted Respondent on Sei's behalf between December 22,  
9 2020 and January 4, 2021." In other words, at the time when Harsh was expecting to hear from  
10 The Hartford's legal department regarding the coverage dispute, Werner is the only attorney  
11 from The Hartford who reached out to Harsh.

12 SBN contends that it is "undisputed that Werner never stated to Respondent that he was  
13 engaging in a coverage analysis." (Opposition, p. 5, lines 2-3). It is equally undisputed that,  
14 aside from a single subject heading, none of Werner's emails or letters to Respondent specifically  
15 stated that he or his firm represented Sandra Sei. Although it is common and even customary  
16 that an attorney's initial letter to opposing counsel will state something along the line of "This  
17 law firm has been engaged to represent ...," Werner never made that clarifying statement.

18 Instead of clarifying his role in more than just a subject heading in a letter, Werner held  
19 himself out as one of the "Employees of a Subsidiary of The Hartford Financial Services Group."  
20 Making it even more evident that he was engaging in a coverage analysis, all of Werner's  
21 requests for information from Harsh appeared to be geared toward determining whether Sheela  
22 Clements had suffered anything that could be considered a separate "bodily injury," so as to  
23 trigger the separate per-person limit of Sei's Hartford insurance policy. SBN now contends that  
24 there is a "lack of the term 'coverage' or 'opinion' in any of the email communication," as though  
25 an attorney must use those specific words if he or she is engaged to conduct a coverage analysis.  
26 Rather than presenting clear and convincing evidence, SBN appears to be grasping for subtleties  
27 that have absolutely no import.

28 ///



1 Indeed, SBN is silent on the fundamental fact that Baarson, as she specifically disagreed  
2 with Harsh's coverage position, had sent an email on November 11, 2020, stating that she "will  
3 check with our legal." (Exhibit 2, SBN 30). This was followed by the uncontradicted fact, as  
4 noted on page 3 of Respondent's motion, that on December 21, 2020, Baarson informed Harsh  
5 by telephone that attorney Werner was dealing with the insurance coverage issue on behalf of The  
6 Hartford. (Exhibit 4, para. 7).

7 Based on Baarson's affirmative statement that Werner was engaged to handle the  
8 coverage dispute, and then all of Werner's actions that bolstered that statement, Harsh was  
9 always under the impression that Werner represented The Hartford, not Sandra Sei. It was  
10 reasonable for Harsh to have formed this belief, and there is no evidence that Harsh had not, in  
11 fact, formed this belief.

12 The only other "evidence" on which SBN hinges its argument is that Harsh continued to  
13 copy Baarson on his email communications with Werner. Once again, the import of this  
14 purported evidence is favorable to Respondent when one realizes that Respondent would of  
15 course continue to communicate with the claims professional handling the liability claim after  
16 the coverage portion of the claim was handed off to Werner who Respondent was told would be  
17 coverage counsel. Further, both Harsh and Werner continued to copy Baarson on their  
18 communications to each other without any objection from Werner. It is even possible that both  
19 attorneys, when responding to each other, simply hit "reply all."

20 Werner's December 1, 2020, letter to Sei, attached as Exhibit B to SBN's opposition, is  
21 his initial letter sent only to Sei (not Harsh) stating that his office had been engaged in the matter.  
22 This letter has no bearing on this proceeding whatsoever because it is not addressed to Harsh  
23 who, until SBN filed its opposition to the instant motion, was never informed of the letter.  
24 Moreover, the notion that Werner was hired to defend Sei in the underlying lawsuit is belied by  
25 the fact that, less than two months after Werner's letter, an entirely different law firm appeared  
26 and answered the complaint on Sei's behalf. Finally, as discussed in Respondent's motion, Sei  
27 later testified that she had never even heard of Reed Werner.

28 ///

1 IV. CONCLUSION

2 SBN has failed to present clear and convincing evidence that Harsh knew Sandra Sei was  
3 represented by Werner. To the contrary, the evidence demonstrates that Harsh reasonably and  
4 in fact believed Werner was The Hartford's coverage counsel. The evidence contradicts the  
5 notion that Harsh knew Werner represented Sei, and, as such, causes SBN to fall far short of the  
6 required clear and convincing proof SBN needs to provide to withstand summary judgment.

7 Based on all the evidence, SBN has not, as a matter of law, met its burden to withstand  
8 summary judgment in this case. It is respectfully requested that summary judgment be entered  
9 in favor of attorney Brent Harsh.

10 DATED this 3rd day of September 2021.

11 LEMONS, GRUNDY & EISENBERG

12  
13 By: 

14 CHRISTIAN L. MOORE, ESQ. (SBN # 3777)  
15 TODD R. ALEXANDER, ESQ. (SBN #10846)  
16 6005 Plumas St., Third Floor  
17 Reno, Nevada 89519  
18 *Attorneys for Respondent*  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a party to the within action; that on September 3, 2021, I served a copy of the foregoing **RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**, via Electronic Filing to the following recipients:

laurap@nvbar.org

R. Kait Flocchini, Assistant Bar Counsel, SBN #9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
kaitf@nvbar.org

Eric Stovall, Esq., Hearing Chair, SBN #3167  
200 Ridge St. Ste. 222  
Reno, NV 89501  
eric@ericstovalllaw.com  
Diane@ericstovalllaw.com

  
Sierra Sage, Assistant to  
Christian L. Moore, Esq.



FILED

SEP 07 2021

STATE BAR OF NEVADA  
BY Xunke  
OFFICE OF BAR COUNSEL

ERIC A. STOVALL, LTD.  
Eric A. Stovall, Esq.  
Nevada Bar #3167  
200 Ridge Street, Suite 222  
Reno, Nevada 89501  
Telephone: (775) 337-1444  
Arbitrator

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

\*\*\*

STATE BAR OF NEVADA

CASE NO.: OBC21-0067

Complainant,

vs.

BRENT HARSH, ESQ.,  
BAR NO. 8814

Respondent.

ORDER DENYING MOTION FOR SUMMARY JUDGEMENT

The Motion for Summary Judgment and Reply filed by the Respondent, Brent Harsh, along with the Opposition filed by the State Bar of Nevada have come on regularly to the Chair of the Northern Nevada Disciplinary Board for decision.

The *gravamen* of the complaint brought against Respondent is his alleged violation of Nevada Rules of Professional Conduct when he directly contacted an adverse party who was represented by counsel. NRPC 4.2 provides:

**Rule 4.2 Communication With Person Represented by Counsel.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

ERIC A. STOVALL, LTD  
--Attorney at Law--

200 Ridge Street, Ste. 222  
Reno, Nevada 89501  
(775) 337-1444  
Fax (775) 337-1442

1 Respondent maintains that the State Bar of Nevada must prove  
2 by clear and convincing evidence that he had actual knowledge that  
3 the party he contacted was indeed represented by counsel in order  
4 find him in violation of NRPC 4.2. Despite having received a  
5 letter from the attorney of the represented person indicating said  
6 representation, Respondent claims that he overlooked that part of  
7 the letter. Therefore, since he did not read it, Harsh insists  
8 that he did not have actual knowledge of the representation which  
9 requires the granting of Summary Judgment in his favor.

10 Selective reading of a letter from an attorney, especially  
11 the part that states who that attorney is representing, does not  
12 create a shield which allows the other attorney to freely contact  
13 the represented party. Indeed, notations on NRPC 4.2 provide that  
14 "an attorney who innocently, mistakenly or negligently conducts ex  
15 parte communications with a party represented by counsel will  
16 still violate the former S.C.R. 182 (cf. RPC 4.2). Breach of the  
17 rule does not have to be intentional to be the subject of  
18 disciplinary action. Neither negligence nor ignorance of the  
19 former S.C.R. 182 (cf. RPC 4.2) justifies communication with the  
20 adverse party represented by counsel. (N.B., case decided before  
21 the provisions of the former S.C.R. 150 to 203.5, inclusive, were  
22 repealed and reorganized effective May 1, 2006, as RPC 1.0 to 8.5,  
23 inclusive.) *Faison v. Thornton*, 863 F. Supp. 1204 (D. Nev. 1993)."

24 ///

25 ///

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28

ERIC A. STOVALL, LTD  
--Attorney at Law--

200 Ridge Street, Ste 222  
Reno, Nevada 89501  
(775) 337-1444

Fax (775) 337-1442

Accordingly, Respondent's Motion for Summary Judgment is denied.

DATED this 7<sup>th</sup> day of September, 2021

By

Eric A. Stovall, Esq.

ERIC A. STOVALL, LTD  
--Attorney at Law--

200 Ridge Street, Ste 222  
Reno, Nevada 89501  
(775) 337-1444  
Fax (775) 337-1442

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of  
3 ERIC A. STOVALL, LTD., and that on the 7<sup>th</sup> September, 2021, I am  
4 serving the foregoing document(s) on the party(s) set forth  
5 below by Electronic Filing addressed as follows:

6 R. Kait Flocchini, Assistant Bar Counsel  
7 9456 Double R Boulevard  
8 Reno, NV 89521  
[kaitf@nvbar.org](mailto:kaitf@nvbar.org)

9 Brent Harsh, Esq.  
10 C/o Christian L. Moore, Esq.  
11 6005 Plumas Street, Third Floor  
12 Reno, NV 89519  
[clm@lge.net](mailto:clm@lge.net)

13 **Affirmation-Pursuant to NRS 239B.030**

14 The undersigned does hereby affirm that the preceding  
15 document **does not** contain the social security number of any  
16 person.

17 /s/Diane Davis

18 Diane Davis

19  
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21  
22  
23  
24  
25 ERIC A. STOVALL, LTD  
--Attorney at Law--

26 200 Ridge Street, Ste 222  
27 Reno, Nevada 89501  
28 (775) 337-1444  
Fax (775) 337-1442



FILED

SEP 15 2021

STATE BAR OF NEVADA  
BY: *[Signature]*  
OFFICE OF BAR COUNSEL

Case Nos.: OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,	)
	)
Complainant,	)
vs.	)
	)
BRENT HARSH, ESQ.,	)
BAR NO. 8814	)
	)
Respondent.	)

**ORDER AFTER  
PRE-HEARING CONFERENCE**

Pursuant to Rule 23 of the Disciplinary Rules of Procedure, the Hearing Panel Chair Eric Stovall, Esq., met via simultaneous audio/visual transmission (Zoom) with Kait Flocchini, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Christian Moore, Esq. of Lemons Grundy and Eisenberg, on behalf of Respondent Brent Harsh, Esq. ("Respondent"), on September 9, 2021 at 9:00 a.m. and to conduct the Pre-hearing Conference in this matter. Exhibits, potential witnesses, and issuance of trial subpoenas were addressed.

DETAILS OF PRE-HEARING CONFERENCE

Based on oral representations and arguments made during the Pre-hearing conference, the following was decided:

1. By stipulation, the State Bar's exhibits 1-3 and 5-11 are admitted and may be distributed to the Panel prior to the hearing.



2. Respondent's objections of relevancy and foundation to State Bar exhibit 4 is  
OVERRULED. State Bar exhibit 4 is admitted and may be distributed to the Panel prior to the hearing.

3. By stipulation, Respondent's exhibits B, D-J, L-M, and O are admitted and may be  
distributed to the Panel prior to the hearing. Respondent reserved exhibits L and M from distribution.

4. The State Bar's objections of relevancy to Respondent's exhibits A, C, and K are  
OVERRULED. Respondent's exhibits A, C, and K are admitted and may be distributed to the Panel  
prior to the hearing.

5. The State Bar's objection of hearsay without any exception to Respondent's exhibit N  
(the transcript of Ms. Sei's May 20, 2021 deposition testimony) is SUSTAINED without prejudice.  
Respondent may seek admission of Exhibit N during the hearing if Ms. Sei is unavailable to testify or  
for impeachment purposes.

6. The parties stipulate that the Nevada Supreme Court's holdings in *Hansen* mean that,  
outside of issuance of a reservation of rights letter, an attorney retained by an insurer to opine on  
whether an insurer is obligated to provide insurance coverage for its insured on a particular claim is  
ethically prohibited from also representing the insured for a related matter due to a conflict of interest  
that would exist between the attorney's clients if there was such dual representation.

7. Based on the parties' above stipulation, the State Bar's request to exclude Scott  
Glogovac, Esq. from testifying in the Formal Hearing as an expert is GRANTED. Respondent is  
permitted to make a proffer of proof to the Panel Chair prior to the hearing in order to preserve the  
record.

8. The State Bar requested to exclude Karl Smith, Esq. from testifying in the Formal  
Hearing (i) as an expert because it would not be relevant to the proceeding based on the finite nature  
of the alleged misconduct and (ii) as a percipient witness because such testimony would be cumulative  
to testimony offered by Respondent. The State Bar's request is GRANTED. Respondent is permitted  
to make a proffer of proof to the Panel Chair prior to the hearing in order to preserve the record.

9. Respondent notified the Panel Chair and the State Bar of the recent receipt of redacted documents from The Hartford pertaining to the underlying matter, in which the circumstances surrounding grievant attorney Reed Werner's reported engagement to represent Ms. Sei may be discussed. The Panel Chair instructed Respondent to follow up with serving document subpoenas on The Hartford representatives.

10. The State Bar objected to Respondent's subpoena duces tecum to Christopher Turtzo, Esq. requesting unredacted copies of documents identified as SS000091-SS000092 in the underlying matter as unduly burdensome. Respondent argued that the redacted information is likely related to which attorney was retained by The Hartford and the purpose for the retainer, and therefore, is relevant to this matter. The State Bar's objection is **OVERRULED**.

11. The Panel Chair and State Bar agree that Respondent can proceed with serving subpoenas for disclosed witnesses to testify at the hearing in this matter.

Good cause appearing, IT IS SO ORDERED.

Dated this 14 day of September, 2021.

## NORTHERN NEVADA DISCIPLINARY BOARD


By:   
Eric Stovall, Esq.  
Hearing Panel Chair

**CERTIFICATE OF SERVICE BY E-MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **ORDER**  
**AFTER PRE-HEARING CONFERENCE** was served electronically upon:

1. Christian L. Moore, Esq. - [clm@lge.net](mailto:clm@lge.net)
2. Kait Flocchini, Esq. - [kaitf@nvbar.org](mailto:kaitf@nvbar.org)
3. Eric Stovall, Esq. - [eric@ericstovalllaw.com](mailto:eric@ericstovalllaw.com); [diane@ericstovalllaw.com](mailto:diane@ericstovalllaw.com):

Dated this 15th day of September 2021.

By:   
Tiffany Bradley, an employee of  
the State Bar of Nevada



FILED

SEP 22 2021

STATE BAR OF NEVADA  
BY *[Signature]*  
OFFICE OF BAR COUNSEL

Christian L. Moore, Esq., SBN #3777  
Todd R. Alexander, Esq., SBN #10846  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Third Floor  
Reno, NV 89519  
Telephone: (775) 786-6868  
Fax: (775) 786-9716  
clm@lge.net; tra@lge.net  
*Attorneys for Respondent*

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

BRENT HARSH, ESQ.,  
BAR NO. 8814,

Respondent.

CASE NO.: OBC21-0067

RESPONDENT'S TRIAL BRIEF;  
DRP 24

Respondent, BRENT HARSH, ESQ., hereby provides his Trial Brief as permitted by  
DRP 24.

I. STATEMENT OF FACTS

Respondent Bent Harsh, an attorney who has been admitted to practice law in Nevada since October 4, 2001, with no prior incidents of discipline, represents in the underlying matter David Clements and Sheela Clements to recover damages they incurred when Sandra Sei negligently drove her vehicle into a crosswalk occupied by David Clements who is now paralyzed. (Traffic Accident Report, Exhibit C.) Representing his clients whose damages clearly exceed the applicable liability insurance policy limits available from Ms. Sei's insurer The Hartford, Mr. Harsh offered in November 2020 that The Hartford pay its applicable policy limits of \$200,000 for all claims presented in exchange for a release of all claims against its insured Ms. Sei. (Exhibit 3.)

1           Instead of agreeing to resolve this case for a sum that would clearly protect its insured  
2 Ms. Sei from excess exposure, The Hartford contended that its applicable policy limit was only  
3 \$100,000 based on The Hartford failing to appreciate that the claim of Sheela Clements was not  
4 a claim derived from David Clements' bodily injury. (Exhibit D.) Mr. Harsh contradicted The  
5 Hartford's coverage position by pointing out that Sheela Clements' claim is a separate claim for  
6 Negligent Infliction of Emotional Distress. Rather than disputing the value of Ms. Clements'  
7 claim, The Hartford focus remained on its contention that only one \$100,000 policy limit applied.

8           The Hartford representative Katherine Baarson, after voicing her disagreement with Mr.  
9 Harsh's coverage position, stated she "will check with our legal," and informed Mr. Harsh that  
10 this coverage matter was referred to The Hartford in-house attorney Reed Werner. (Exhibit D  
11 and testimony of Brent Harsh.) Mr. Werner's written communications identify him as a Senior  
12 Staff Attorney with the "Law Offices of Eric Larsen, Employees of a Subsidiary of The Hartford  
13 Financial Services Group." (Exhibit 9.) During subsequent communications with Mr. Werner  
14 in December 2020, it was obvious to Mr. Harsh that (1) Mr. Werner was still reporting to Ms.  
15 Baarson who was the claims professional handling the coverage issue rather than a separate  
16 claims professional engaged to defend the insured Ms. Sei, and (2) Mr. Werner was asking  
17 questions pertaining to insurance coverage because Mr. Werner's requests for information were  
18 geared toward determining whether Sheela Clements had suffered anything that could be  
19 considered a separate "bodily injury," so as to trigger the separate per-person limit of Ms. Sei's  
20 Hartford insurance policy. (Exhibits 7, 8, 9, and O.) Mr. Harsh even referred to Ms. Sei as "my  
21 insured" and never told Mr. Harsh in any phone conversation or in any email conversation that  
22 Ms. Sei was his client. (Exhibits 7, 8, 9, and O.) Mr. Harsh did not notice that in a single form  
23 letter dated December 18, 2021, there was a single line in the subject heading that reads "Our  
24 Client: Sandra Sei." (Exhibit 5.)

25           Instead, Mr. Harsh knew that if Mr. Werner was advising The Hartford, and specifically  
26 Ms. Baarson, on coverage issues, Mr. Werner was ethically prohibited from representing at the  
27 same time Ms. Sei. Indeed, Mr. Harsh had previously asked Ms. Baarson to identify for him Ms.  
28 Sei's personal counsel, if any. (Exhibit 3.) With no attorney having been identified as

1 representing Ms. Sei, Mr. Harsh accompanied his client's summons and complaint that was  
2 served on Ms. Sei in January 2021 with a letter informing Ms. Sei of his prior offer to settle for  
3 policy limits and recommending that she seek personal counsel who "specialize in protecting  
4 parties whose interests might be averse to their insurance carriers" and asking that Ms. Sei follow  
5 up with her insurer The Hartford. (Exhibit 10.)

6       Upon receipt, Ms. Sei first sent the summons and complaint with Mr. Harsh's letter to  
7 The Hartford's Ms. Baarson. Once Mr. Werner was informed of Mr. Harsh's letter, nobody  
8 contacted Mr. Harsh to tell him or in any way clarify that Mr. Werner was representing Ms. Sei.  
9 Instead, the information Mr. Harsh received that caused him to know who was representing Ms.  
10 Sei was when attorneys Will Lemkul and Christopher Turtzo of Morris, Sullivan & Lemkul, LLP  
11 (not attorney Reed Werner) appeared and answered the Complaint on behalf of Sandra Sei on  
12 January 26, 2021. (Exhibit K.) Upon being informed who was representing Ms. Sei, Mr. Harsh  
13 made no further effort to directly contact Ms. Sei.

14       Unknown to Mr. Harsh at the time, Mr. Werner filed on January 14, 2021, a grievance  
15 with the State Bar of Nevada accusing Mr. Harsh of violating Rule of Professional Conduct 8.4  
16 (Misconduct). Mr. Harsh has not been charged with violating Rule 8.4. Instead, he has been  
17 charged by the State Bar of violating Rule of Professional Conduct 4.2. (Communication with  
18 Person Represented by Counsel.)

19       To be clear, there is no evidence that Ms. Sei was in any way harmed by Mr. Harsh's  
20 letter recommending that she seek the advice of independent counsel on coverage issues. Further,  
21 Mr. Harsh obtained no information from Ms. Sei because of the letter he sent to her. In contrast,  
22 Mr. Harsh's clients are harmed if a potential source of obtaining payment for their damages is  
23 ignored. As such, not knowing that Ms. Sei was supposedly represented by an attorney, Mr.  
24 Harsh diligently sought to encourage Ms. Sei to find additional insurance coverage. As discussed  
25 in further detail below, Mr. Harsh has not violated Rule of Professional Conduct 4.2 by his  
26 sending the single letter to Ms. Sei on a coverage issue because he in fact did not know at the  
27 time that she was purportedly represented by an attorney for her defense.

28 ///

1           II.     ISSUES OF LAW APPLIED TO THE FACTS

2           The substantive evidentiary burden is important in this case because “[i]n bar disciplinary  
3 matters, a higher degree of proof is required than in ordinary civil proceedings. Clear and  
4 convincing evidence must support any findings of misconduct.” *In re Discipline of Drakulich*,  
5 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (emphasis added). “Clear and convincing  
6 evidence” is defined as “evidence [which] must be so clear as to leave no substantial doubt.” *Id.*

7           The Nevada State Bar’s Complaint alleges a violation of Rule 4.2 of the Nevada Rules  
8 of Professional Conduct. NRPC 4.2 states as follows:

9           In representing a client, a lawyer shall not communicate about the subject of the  
10 representation with a person the lawyer *knows* to be represented by another  
11 lawyer in the matter, unless the lawyer has the consent of the other lawyer or is  
authorized to do so by law or a court order. (Emphasis added.)

12          The Rule requires the element of knowledge on the part of the accused lawyer. Thus,  
13 Mr. Harsh can only be found to have violated NRPC 4.2 if there is clear and convincing evidence,  
14 which is evidence so clear as to leave no substantial doubt, of Mr. Harsh’s state of mind—that  
15 Mr. Harsh knew Mr. Werner represented Ms. Sei.

16          This necessary element of actual knowledge is clearly stated in the plain language of the  
17 rule. Moreover, the American Bar Association comment number 8 on Model Rule of  
18 Professional Conduct 4.2, on which the NRPC 4.2 is based and contains the exact same language,  
19 notes: “The prohibition on communications with a represented person only applies in  
20 circumstances where the lawyer knows that the person is in fact represented in the matter to be  
21 discussed. This means that the lawyer has actual knowledge of the fact of the representation; but  
22 such actual knowledge may be inferred from the circumstances. See Rule 1.0(f).” Turning to  
23 Rule 1.0(f), the identical language in both the Nevada Rules of Professional Conduct 1.0(f) as  
24 well as the American Bar Association Model Rule 1.0(f) states: ““Knowingly,” “known,” or  
25 “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred  
26 from circumstances.”

27          The evidence demonstrates that Mr. Harsh did not know that Mr. Werner represented  
28 Ms. Sei. Indeed, when the context is understood, it makes perfect sense that Mr. Harsh believed

1 that Mr. Werner was ethically prohibited from representing Ms. Sei. The parties have stipulated  
2 that “the Nevada Supreme Court’s holdings in *Hansen* mean that, outside of issuance of a  
3 reservation of rights letter, an attorney retained by an insurer to opine on whether an insurer is  
4 obligated to provide insurance coverage for its insured on a particular claim is ethically  
5 prohibited from also representing the insured for a related matter due to a conflict of interest that  
6 would exist between the attorney’s clients if there was such dual representation.” (Order after  
7 Pre-Hearing Conference, ¶ 6. See also *State Farm Mutual Automobile Insurance Company v.*  
8 *Hansen*, 131 Nev. 743, 748, 357 P.3d 338, 341 (2015).) Given that the focus of the dispute  
9 between Mr. Harsh’s clients and The Hartford was which policy limit applied rather than the  
10 value of the claims, in conjunction with Ms. Baarson’s statements to Mr. Harsh that she disagreed  
11 with Mr. Harsh’s coverage analysis and was sending this to legal counsel, it is understandable  
12 why Mr. Harsh thought Mr. Werner, who even referred to Ms. Sei as “my insured” was acting  
13 as coverage counsel for The Hartford rather than representing Ms. Sei.

14 Even if one can somehow conclude that Complainant Mr. Werner was able to ethically  
15 represent Ms. Sei while he was still reporting directly to The Hartford claims representative who  
16 was disputing coverage for The Hartford’s insured Ms. Sei, the fact remains that Mr. Werner’s  
17 representation of Ms. Sei was not known to Mr. Harsh. The State Bar cannot properly argue that  
18 Mr. Harsh is strictly liable or was negligent or “should have known” because that simply is not  
19 the legal standard. While no Nevada case has been found that directly applies Rule of  
20 Professional Conduct 4.2 in a bar disciplinary setting where actual knowledge is an issue, there  
21 is persuasive case authority from another jurisdiction that correctly demonstrates the obvious  
22 point that for an attorney to be convicted of violating Rule 4.2 there must be a showing of actual  
23 knowledge by the attorney that a party is represented by an attorney in the matter. *State ex rel.*  
24 *Oklahoma Bar Association v. Harper*, 995 P.2d 1143 (2000). In *Harper*, the Supreme Court of  
25 Oklahoma expressly rejected a Complainant’s request to ignore the fundamental requirement  
26 that a lawyer must actually know that a party is represented by an attorney: “We reject  
27 Complainant’s request to rewrite rule 4.2 to abrogate the requirement that a lawyer’s knowledge  
28 of representation must be actual.” *Id.* at 1147. Like the instant case where there is no question



1 that a communication was sent, the *Harper* court properly stated that “The inquiry then is (1)  
2 whether Respondent’s communication with Tenequer was about the subject of the matter on  
3 which Jean represented Tenequer, and (2) whether Respondent had actual knowledge that Jean  
4 represented Tenequer on the matter.” *Id.* at 1147.

5 In the instant case, the evidence will show that Mr. Harsh’s letter to Ms. Sei was on the  
6 subject matter of insurance coverage available to Ms. Sei (recommending that she seek personal  
7 counsel who “specialize in protecting parties whose interests might be averse to their insurance  
8 carriers”) rather than discussing her defense against the claims asserted by Mr. and Mrs.  
9 Clements. Thus, while the State Bar is unable to demonstrate in the first instance by clear and  
10 convincing evidence that Mr. Harsh actually knew Mr. Werner represented Ms. Sei, it should  
11 also be recognized that the communication at issue in this case was not about the subject on the  
12 matter where Mr. Werner purportedly represented Ms. Sei. Simply stated, the matter of insurance  
13 coverage is different than the matter of defending against a claim. This concept that a violation  
14 of Rule 4.2 requires that the communication at issue must be “about the *subject of the*  
15 *representation* with a person the lawyer knows to be represented by another lawyer *in the matter*”  
16 is not unique to the *Harper* opinion, as has been carefully examined and acknowledged in other  
17 case authority such as *In re Disciplinary Proceedings Regarding Doe*, 876 F.Supp. 265 (1993).

18 The Hearing Panel must be careful not to conflate references in old non-binding case  
19 authority discussing Supreme Court Rule 182, which is the predecessor to NRPC 4.2, in  
20 analyzing the proper elements of Rule 4.2 for the instant bar discipline case. Specifically, in  
21 *Faison v. Thornton*, 863 F. Supp. 1204 (1993) (overruled recognized by *Stevens v. Wal-Mart*  
22 *Stores, Inc.*, D. Nev., June 2018, 863 F.Supp. 1204) then Chief Judge George for the Federal  
23 District Court in Nevada makes a legally incorrect statement that an attorney who innocently,  
24 mistakenly, or negligently communicates with a party represented by counsel will still violate  
25 SCR 182. Judge George’s mistaken statement of law is certainly not binding legal authority as,  
26 in addition to ignoring the plain language of Rule 4.2 that contains the previously discussed  
27 knowledge requirement, the *Faison* case is not a state bar disciplinary case and predates the  
28 Nevada Supreme Court’s pronouncement in the *Drakulich* case cited above. Judge George’s

1 incorrect ruling in *Faison* appears to be based on his reference to an earlier Nevada Supreme  
2 Court case *Cronin v. Eighth Judicial Dist. Court*, 105 Nev. 635, 781 P.2d 1150, 1153 (Nev.  
3 1989) where the Nevada Supreme Court disqualified an attorney from continuing to represent  
4 his clients in a case in which the attorney had interviewed on several occasions employees of a  
5 party the attorney knew was represented by counsel. The *Cronin* court wrote that “Although we  
6 do not believe that Cronin intentionally violated SCR 182 when he met with the employees of  
7 the Imperial Palance, neither Cronin’s negligence nor his ignorance of the **rule** can justify his  
8 conduct.” *Id.* at 641, 1154 (emphasis added). Contrary to Judge George’s interpretation, the  
9 *Cronin* court did not toss out the important element that an attorney can only violate Rule 4.2 if  
10 the attorney knows a party is represented by counsel. All that the *Cronin* court states is that  
11 neither an attorney’s negligence nor his ignorance of the **rule** itself cannot be used as an excuse  
12 to prevent his disqualification from a case. Like *Faison*, the *Cronin* opinion is not a state bar  
13 discipline case. Further, like *Faison*, the *Cronin* opinion predates the Nevada Supreme Court’s  
14 pronouncement in the *Drakulich* case requiring clear and convincing evidence of a rule violation.

15       The *Faison* and *Cronin* cases are further distinguished from the instant case because they  
16 involved cases where the attorneys’ *ex parte* communications with an opposing party represented  
17 by counsel provided the attorneys with information they would otherwise not have obtained,  
18 thereby unfairly obtaining information so that disqualifying the attorneys was a necessary  
19 remedy. In the instant matter, there is no evidence that Mr. Harsh’s single letter to Ms. Sei  
20 referencing coverage issues rather than her defense of claims has resulted in Mr. Harsh unfairly  
21 obtaining any information.

22       There is no evidence, let alone clear and convincing evidence, that Mr. Harsh in fact  
23 knew Ms. Sei was represented by defense counsel in the personal injury litigation. This is  
24 especially so because Mr. Harsh was given every indication, from Ms. Baarson, and from Mr.  
25 Werner himself, that Mr. Werner was handling the coverage dispute for The Hartford and could  
26 not, therefore, legally or ethically represent Ms. Sei in the personal injury litigation. Certainly  
27 both Ms. Baarson and Mr. Werner now have strong motivations to contend that Mr. Werner was  
28 initially engaged by Ms. Baarson only to defend Ms. Sei without opining on any coverage matter.

1 If in fact Mr. Werner was providing coverage advice to Ms. Baarson, Mr. Werner could  
2 not have ethically represented Ms. Sei in which instance Mr. Harsh did not violate the prohibition  
3 in Rule 4.2 (of knowingly communicating with a person represented by counsel about the subject  
4 of the representation) because Ms. Sei was not represented by counsel. If in fact Mr. Werner was  
5 ethically representing Ms. Sei, Mr. Harsh still did not violate the prohibition in Rule 4.2 (of  
6 knowingly communicating with a person represented by counsel about the subject of the  
7 representation) because Mr. Harsh did not know Mr. Werner represented Ms. Sei. Finally,  
8 regardless of whether Mr. Werner represented Ms. Sei, Mr. Harsh did not violate the prohibition  
9 in Rule 4.2 (of knowingly communicating with a person represented by counsel about the subject  
10 of the representation) because the matter of insurance coverage is different than the matter of  
11 defending against a claim.

12  
13 III. WITNESSES AND EXHIBITS

14 Respondent anticipates testimony from the following witnesses, most of whom will  
15 likely already be called by the State Bar in its case in chief:

- 16 1. Grievant Reed Werner, Esq.
- 17 2. Katherine Baarson
- 18 3. Christopher Turtzo
- 19 4. Sandra Sei
- 20 5. Brent Harsh, Esq.

21 The parties have previously marked exhibits, most of which have been preadmitted into  
22 evidence. Respondent reserves the right to show witnesses documents to refresh their  
23 recollection and, if necessary for impeachment, introduce additional exhibits into evidence.

24 ///

25 ///

26 ///

27 ///

28 ///

1       IV.     CONCLUSION

2           Respondent Brent Harsh can only be found to have violated Nevada Rule of Professional  
3 Conduct 4.2 if the State Bar satisfies its burden of proof to demonstrate by clear and convincing  
4 evidence that Mr. Harsh actually knew when he sent his January 2, 2021, letter to Ms. Sei that  
5 she was represented by counsel on the same subject matter. The hearing will demonstrate that  
6 such clear and convincing evidence does not exist such that the Complaint against Mr. Harsh  
7 must be dismissed.

8  
9                   DATED this 22<sup>nd</sup> day of September 2021.

10                                   LEMONS, GRUNDY & EISENBERG

11  
12                   By: 

13                                   CHRISTIAN L. MOORE, ESQ. (SBN # 3777)  
14                                   TODD R. ALEXANDER, ESQ. (SBN #10846)  
15                                   6005 Plumas St., Third Floor  
16                                   Reno, Nevada 89519  
17                                   Attorneys for Respondent

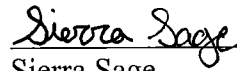
CERTIFICATE OF SERVICE

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG, 6005 Plumas Street, Third Floor, Reno, Nevada 89519; over the age of 18 years, and not a party to the within action; that on September 22, 2021, I served a copy of the foregoing **RESPONDENT'S TRIAL STATEMENT**, via Electronic Filing to the following recipients:

laurap@nvbar.org

R. Kait Flocchini, Assistant Bar Counsel, SBN #9861  
9456 Double R Boulevard  
Reno, Nevada 89521  
kaitf@nvbar.org

Eric Stovall, Esq., Hearing Chair, SBN #3167  
200 Ridge St. Ste. 222  
Reno, NV 89501  
eric@ericstovalllaw.com  
Diane@ericstovalllaw.com

  
Sierra Sage



FILED

SEP 22 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
)  
Respondent. )

STATE BAR'S HEARING BRIEF

**Introduction.**

This disciplinary matter is about whether opposing counsel can unilaterally decide that a lawyer does not represent a party in a dispute. It is a finite issue that should not be complicated by the nuances of the tripartite relationship between a lawyer, a client, and an insurance company that is paying the lawyer's bills.

Respondent Brent Harsh, Esq. ("Respondent") knew a lawyer identified himself as representing the opposing party in the personal injury case. He disregarded the lawyer and the protection of the lawyer/client relationship afforded by RPC 4.2 when he sent the opposing party a letter advising her to seek out additional counsel. This conduct was a clear violation of RPC 4.2 which warrants the imposition of discipline.

**STATE BAR OF NEVADA**  
**NORTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,	)	
	)	
Complainant,	)	
vs.	)	
	)	<b><u>STATE BAR'S HEARING BRIEF</u></b>
BRENT HARSH, ESQ.,	)	
BAR NO. 8814	)	
	)	
Respondent.	)	

---

**Introduction.**

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Respondent Brent Harsh, Esq. ("Respondent") knew a lawyer identified himself as representing the opposing party in the personal injury case. He disregarded the lawyer and the protection of the lawyer/client relationship afforded by RPC 4.2 when he sent the opposing party a letter advising her to seek out additional counsel. This conduct was a clear violation of RPC 4.2 which warrants the imposition of discipline.

## **Summary of Facts.**

Respondent represents David and Sheela Clements in a personal injury dispute against Sandra Sei (“Ms. Sei”). *See* Demand letter dated November 16, 2020, admitted as **Exhibit 3** in the Formal Hearing.<sup>1</sup> Ms. Sei was insured by The Hartford and had turned in the claim to the insurance company.

Reed Werner, Esq. (“Werner”) is a lawyer at the Law Office of Eric Larson who almost exclusively defends The Hartford’s insureds against claims. His position is commonly referred to as “staff counsel” or “captive counsel.”

On December 18, 2020, Werner notified Respondent that he represented Sandra Sei in the dispute. **Exhibit H.** On December 21, 2020, Werner responded to an email from Respondent by attaching another copy of the letter. **Exhibit 5 and Exhibit 7.** Both documents stated “Our Client: Sandra Sei.” There was nothing ambiguous about Werner’s statement of representation.

Between December 21, 2020 and December 22, 2020, Respondent and Werner engaged in a discussion regarding potential settlement of Respondent’s clients’ claims pre-litigation. **Exhibit 6-9.** The correspondence ended with Respondent indicating that he would file a Complaint on behalf of his clients and against Werner’s client. **Exhibit 9.**

On December 22, 2020, Respondent filed the referenced Complaint. **Exhibit A.** Respondent did not ask Werner if he would accept service of the Summons and Complaint. Werner never indicated to Respondent that he no longer represented Ms. Sei regarding the Clements’ claims.

On January 2, 2020, Respondent executed a letter addressed directly to Ms. Sei advising her that she should seek personal counsel that specialized in “protecting parties

<sup>1</sup> All references to Exhibits are for the admitted Exhibits to the Formal Hearing distributed separately to the Panel.



whose interests might be averse [sic] to their insurance carriers.” **Exhibit 10.** That letter was hand-delivered to Ms. Sei with a copy of the filed Summons and Complaint.

On January 7, 2021, Respondent emailed the Proof of Service of the Complaint and the filed Complaint to Werner and The Hartford claims adjuster Katherine Baarson.

**Exhibit 11.** Respondent did not forward the letter that he addressed to Ms. Sei.

#### **RPC 4.2 Prohibits Contact with a Represented Person.**

RPC 4.2 (Communication with Person Represented by Counsel) states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment [1] to Rule 4.2 of the Model Rules of Professional Conduct promulgated by the American Bar Association states:

This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounselled [sic] disclosure of information relating to the representation.

Comment [8] further clarifies that

The prohibition on communications with a represented person only applies in circumstance where the lawyer knows that the person is in that represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

*Citation omitted.* ABA Formal Opinion 472 (November 30, 2015)<sup>2</sup> references Comment [8] and extrapolates that the prohibition on contact with represented parties may require a

<sup>2</sup> ABA Formal Opinion 472 is included as **Hearing Brief Exhibit A** for easy reference.

lawyer to inquire if a party is represented if the circumstances indicate that there *may* be representation. Thus, RPC 4.2 has been interpreted to require a lawyer to err on the side of caution and protect the sanctity of the client-lawyer relationship.

**Respondent's Letter to Ms. Sei Violated RPC 4.2.**

Respondent was told in no uncertain terms that Ms. Sei was Werner's client. Respondent acknowledged receipt of Werner's communication. Werner, on behalf of Ms. Sei, engaged with Respondent to try to negotiate a resolution of the claims. Not only did the circumstances infer that Werner was representing Ms. Sei in the dispute, but it was directly communicated. Respondent cannot 'close his eyes' to Werner's direct statements or conduct regardless of how Respondent would like to interpret Werner's position in the litigation.

Respondent's understanding of conflicts of interest for counsel retained by insurance companies to represent their insureds is irrelevant to this Panel's analysis of the alleged RPC 4.2 violation. There are other methods to question whether a lawyer's representation of a client is appropriate. For example, a Motion for Disqualification could be filed or a mediator could be engaged to convey the concerns of one side to the other. It is not appropriate to unilaterally decide that an assertion of representation is invalid. To find otherwise would completely undermine the express purpose of RPC 4.2.

**Appropriate Sanctions for a Violation of RPC 4.2.**

The Nevada Supreme Court has directed that four factors, as identified in The Annotated Standards for Imposing Lawyer Sanctions, (the "Standards") are relevant to determining what sanctions are appropriate for particular misconduct. *See Lerner, supra*, at 1246. Those four factors are (i) the duty violated, (ii) the lawyer's mental state, (iii) the potential or actual injury caused by the lawyer's misconduct and (iv) the existence of aggravating or mitigating circumstances. *See id.*

An attorney may violate a duty to client, the public, the profession and/or the legal system. *See* The Annotated Standards for Imposing Lawyer Sanctions, Section 3.0 (pg. 117).

The Standards provide that an attorney's mental state can be categorized as intentional, knowing, or negligent. *See id.* at 120. "Intentional" is defined as acting "with a conscious objective or purpose to accomplish a particular result." *See id.* at 121. "Knowing" is defined as acting "with conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result." *See id.* at 122 (citations omitted). Finally, "negligent" is defined as when "a lawyer lacks awareness of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *See id.* at 124 (citations omitted). Mental state is distinguished from motivation, which is evaluated as an aggravating or mitigating factor. *See id.*

Finally, the Standards discuss that an injury may be actual or potential and that injury can be inflicted on the client or others, the public, the legal system, or the profession. *See id.* at 126-127.

Standards 6.31 through 6.34 in the Standards address the appropriate sanction for improperly communicating with individuals in the legal system. *See* Standards 6.31-6.34 attached hereto as **Hearing Brief Exhibit B**. The different sections address when the sanction of disbarment, suspension, reprimand, and admonition are warranted.

Particularly, Standard 6.32 provides that suspension is appropriate when a lawyer knows that the communication is improper and causes interference or potential information with the outcome of the legal proceeding. In this instance, Respondent was specifically told of Werner's position as counsel; he knew the communication was improper. Further, Respondent's intent in directly communicating with Ms. Sei was to interfere in her

relationship with her counsel, who was hired pursuant to her contract with her insurance company.

Standard 6.33 provides that reprimand is appropriate when a lawyer lacks awareness that he should determine if it is proper to engage in communication with an individual in the legal system and causes potential interference with the outcome of the legal proceeding.

For example, in *in re Smith*, 739 A.2d 11919(Vt. 1999), the Vermont Court found that an unsupported and incorrect assumption that a party was unrepresented warranted the imposition of a public sanction and a probationary period.<sup>3</sup> In that matter, Smith represented a husband seeking to gain control of his wife's assets that were protected by a Trust. The wife had counsel defend against a petition for guardianship. Five months later, the parties appeared at Smith's office and sought his help to work around the Trust. Smith believed the parties to be compatible and felt that RPC 4.2, therefore, did not apply to his communications with the wife. The Court opined that Smith should have protected the client-lawyer relationship by obtaining independent verification from the wife's counsel before proceeding. *Id.* at 1193. The Court found that Smith acted deliberately in contacting the represented party and reckless in assuming the party was no longer represented. *Id.* at 1194. The Court also recognized that the potential injury from his conduct was averted when the wife's counsel learned of Smith's actions and voided them.

Thus, even if the Panel finds that Respondent's direct contact with Ms. Sei was 'reckless' it is appropriate to issue a reprimand.

///

///

<sup>3</sup> *In re Smith* is included as **Hearing Brief Exhibit C** for easy reference.

**Conclusion.**

Respondent violated RPC 4.2 by sending an advisory letter directly to the represented, opposing party in a personal injury dispute when he knew that a lawyer represented that party. Respondent's conduct warrants a sanction and imposition of SCR 120 costs.

DATED this 22nd day of September 2021.

STATE BAR OF NEVADA  
DANIEL M. HOOGE, BAR COUNSEL

A handwritten signature in black ink, appearing to read "Kait Flocchini", written over a horizontal line.

R. Kait Flocchini  
Assistant Bar Counsel  
9456 Double R. Blvd, Suite B  
Reno, Nevada 89123

# Hearing Brief Exhibit A

# Hearing Brief Exhibit A

# AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

**Formal Opinion 472**

**November 30, 2015**

## **Communication with Person Receiving Limited-Scope Legal Services**

*Under Model Rule 1.2(c), lawyers are authorized to provide limited-scope legal representation. Although not required by Rule 1.2(c), the Committee recommends that lawyers providing limited-scope representation confirm the scope of the representation in writing provided to the client.*

*Although Rule 4.2 does not require a lawyer to ask a person if he or she is represented by counsel before communicating with that person about the subject of the representation, a lawyer's knowledge that the person has obtained assistance from another lawyer may be inferred from circumstances. If the lawyer has reason to believe that an unrepresented person on the opposing side has received limited-scope legal services, the Committee recommends that the lawyer begin the communication with that person by asking whether that person is or was represented by counsel for any portion of the matter so that the lawyer knows whether to proceed under ABA Model Rule 4.2 or 4.3. When a lawyer has knowledge that a person is represented on the matter to be discussed, the lawyer must obtain the consent of counsel prior to speaking with the person.*

*If the person states that he or she is or was represented by counsel in any part of a matter, and does not articulate either that the representation has concluded or that the issue to be discussed is clearly outside the scope of the limited-scope representation, the lawyer requesting information should contact the lawyer providing limited-scope services to identify the issues on which the inquiring lawyer may not communicate directly with the person receiving limited-scope services.*

*The lawyer must comply with Rule 4.2 and communicate with the person's counsel when the communication concerns an issue, decision, or action for which the person is represented. Under Rule 4.3, however, the lawyer may communicate directly with the person on aspects of the matter for which no representation exists. On aspects of the matter for which representation has been completed and the lawyer providing limited-scope services is not expected to reemerge to represent the client, a lawyer may communicate directly with the other person. Communication with a person who received limited-scope legal services about an issue for which representation has concluded should not include inquiries about protected communications between the person and the lawyer providing limited-scope services.*

In this opinion the Committee addresses the obligations of a lawyer under ABA Model Rule of Professional Conduct 4.2, *Communication with Person Represented by Counsel*, commonly called the "no contact" rule, and ABA Model Rule of Professional Conduct 4.3,

*Dealing with Unrepresented Person*, when communicating with a person who is receiving or has received limited-scope representation under ABA Model Rule of Professional Conduct 1.2, *Scope of Representation and Allocation of Authority Between Client and Lawyer*.<sup>1</sup> We also provide recommendations for lawyers providing limited-scope representation.

Like all the Model Rules of Professional Conduct, Rules 1.2, 4.2, and 4.3 are intended to be rules of reason and must be construed and applied “with reference to the purposes of legal representation and the law itself.”<sup>2</sup> In a limited-scope representation, the Model Rules in general, and Model Rule 4.2 specifically, must be interpreted accordingly because limited-scope representations do not naturally fit into either the traditional full-matter representation contemplated by Model Rule 4.2 or the wholly pro se representation contemplated by Model Rule 4.3.

### **Rule 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer**

Model Rule 1.2(c) reads: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”<sup>3</sup> Today lawyers increasingly represent clients on a limited-scope basis.

Limited-scope representation may include assisting a litigant who is appearing before a tribunal pro se, by drafting or reviewing one or more documents to be submitted in the proceeding. “This is a form of ‘unbundling’ of legal services, whereby a lawyer performs only specific, limited tasks instead of handling all aspects of a matter.” *See* ABA Formal Ethics Opinion 07-446 (2007).<sup>4</sup>

Although limited-scope representation is not restricted to low-income clients or small claims matters, the ABA Ethics 2000 Commission explained that the proposed amendments to Model Rule 1.2(c) and its Comments regarding limited-scope representations were in part “intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low- or moderate-income persons who otherwise would be unable to obtain counsel.”<sup>5</sup>

Rule 1.2(c) requires a lawyer to secure the informed consent of a client when providing limited-scope services. Informed consent is defined as: “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and

1. This opinion is based on the Model Rules of Professional Conduct as amended by the American Bar Association House of Delegates through February 2013. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in the individual jurisdiction are controlling.

2. MODEL RULES OF PROF'L CONDUCT, Preamble & Scope [14].

3. MODEL RULES OF PROF'L CONDUCT R. 1.2(c).

4. ABA Formal Op. 07-447 (2007) addressed the scope of representation of a client in a collaborative law setting. In that Opinion, the Committee determined that “[A] lawyer may provide legal assistance to litigants appearing before tribunals ‘pro se’ and help them prepare written submissions without disclosing or ensuring the disclosure of the nature or extent of such assistance.” The Committee rejected the argument that courts are deceived by lawyers who “ghostwrite” legal documents for pro se litigants or that such conduct is “dishonest,” noting that the conduct does not mislead the court or any party.

5. A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2013, at 59 (Art Garwin ed., 2013).



explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”<sup>6</sup> The Colorado Bar Association advised in Formal Ethics Opinion 101 that a lawyer providing limited-scope services to a client should “clearly explain the limitations of the representation, including the types of services which are not being provided and the probable effect of limited representation on the client’s rights and interests.”<sup>7</sup> The D.C. Bar Legal Ethics Committee advised in its Opinion 330 (2005) that the “client’s understanding of the scope of the services” is fundamental to a limited-scope representation.<sup>8</sup> Opinion 330 recommended that lawyers reduce such agreements to writing:

Because the tasks excluded from a limited services agreement will typically fall to the client to perform or not get done at all, it is essential that clients clearly understand the division of responsibilities under a limited representation agreement . . . . Particularly in the context of limited-representation agreements, however, a writing clearly explaining what is and is not encompassed within the agreement to provide services will be helpful in ensuring the parties’ mutual understanding.<sup>9</sup>

Similarly, the Ethics 2000 Commission recommended adding a formal Comment to Rule 1.2 that a “specification of the scope of representation will normally be a necessary part of the lawyer’s written communication of the rate or basis of the lawyer’s fee as required by Rule 1.5(b).” However, because the House of Delegates rejected the Commission’s parallel proposal to amend Rule 1.5(b) — which would have required written fee agreements that included an explanation of the scope of the representation, the basis or rate of the fee, and the expenses for which the client will be responsible — this proposed Rule 1.2 Comment language was not advanced.<sup>10</sup>

Therefore, although not required by Rule 1.2(c), the Committee nevertheless recommends that when lawyers provide limited-scope representation to a client, they confirm with the client the scope of the representation — including the tasks the lawyer will perform and not perform — in writing that the client can read, understand, and refer to later. This guidance is in accord with Model Rule 1.5(b) which explains:

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the

6. MODEL RULES OF PROF’L CONDUCT R. 1.0(e).

7. Colorado Bar Ass’n Formal Op. 101 (1998, rev. by addendum 2006).

8. D.C. Bar Op. 330 (2005).

9. *Id.*

10. A LEGISLATIVE HISTORY, *supra* note 5, at 61-62.

same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

The Committee notes that some state rules of professional conduct require a written agreement when a lawyer provides limited-scope services. *See, e.g.,* Maryland Lawyers' Rules of Professional Conduct, Rule 1.2(c)(3); Missouri Rule of Professional Conduct 1.2(c); Montana Rule of Professional Conduct 1.2(c)(2); and New Hampshire Rule of Professional Conduct 1.2(c) and 1.2(g). Other states explain that a written agreement is preferred. *See* Ohio Rule of Professional Conduct 1.2(c) and Tennessee Rule of Professional Conduct 1.2(c). Additionally, some state rules of civil procedure require a limited-scope appearance filing with the court identifying each aspect of the proceeding to which the limited-scope appearance pertains. *See, e.g.,* Illinois Supreme Court Rule 13(c)(6). Therefore, lawyers providing limited-scope representation are advised to review their state rules to determine whether a written agreement is required for their limited-scope representation.<sup>11</sup>

If a lawyer who is providing limited-scope services is contacted by opposing counsel in the matter, the lawyer should identify the issues on which the inquiring lawyer may not communicate directly with the person receiving limited-scope services. A lawyer providing limited-scope legal services to a client generally has no basis to object to communications between the opposing counsel and the client receiving those services on any matter outside the scope of the limited representation.

These issues would best be resolved at the inception of the client-lawyer relationship by the client giving the lawyer providing limited-scope representation informed consent to reveal to opposing counsel what issues should be discussed with counsel and what issues can be discussed with the client directly.

#### **Model Rule 4.2, Communication with Person Represented by Counsel: Is there a duty to ask?**

The ABA ethics rules have included a “no-contact” rule since the 1908 adoption of the ABA Canons of Professional Ethics.<sup>12</sup> Current Model Rule 4.2 reads:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be

11. Because a tribunal may require disclosure of the scope of the services performed by the lawyer, and because a client receiving limited-scope services may desire to disclose to opposing counsel the scope of services performed by the lawyer, the Committee cautions lawyers providing limited-scope services to draft their limited-scope legal service agreement so that the agreement does not reveal information beyond that necessary for the client, opposing counsel, or the tribunal to determine the scope of the representation. For an example of a limited-scope agreement that lists services to be performed, see Reporter's Notes to Maine Rule of Professional Conduct 1.2 Limited Representation Agreement. The agreement lists 20 categories of legal services.

12. ABA Canon 9: “Negotiations with Opposite Party. A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.” Canon 9 is available at: [http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/Canons\\_Ethics.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/mrpc/Canons_Ethics.authcheckdam.pdf).

represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Model Rule 4.2 protects clients who have chosen to be represented by a lawyer from having another lawyer interfere with the client-lawyer relationship by, for example, seeking uncounseled disclosure of information and/or uncounseled concessions and admissions related to the representation.<sup>13</sup> A lawyer directly communicating with an individual, however, will only violate Rule 4.2 if the lawyer *knows* that the person is represented by another lawyer in the matter to be discussed.<sup>14</sup> “Knows” is defined by the Model Rules as “actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.”<sup>15</sup>

ABA Model Rule 4.3 reads:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Lawyers confronted with a person who appears to be managing a matter *pro se* but may be receiving or have received legal assistance, often are left in a quandary. May the lawyer assume that such persons are proceeding without the aid of counsel and, therefore, speak directly to them about the matter under Model Rule 4.3, or should the lawyer first ask whether they are represented in the matter and then proceed accordingly under either Rule 4.2 or 4.3?

Interpreting Model Rule 4.2 in July 1995, ABA Formal Ethics Opinion 95-396, noted:

It would not, from such a practical point of view, be reasonable to require a lawyer *in all circumstances* where the lawyer wishes to speak to a third person in the course of his representation of a client first to inquire whether the person is represented by counsel: among other things, such a routine inquiry would unnecessarily complicate perfectly routine fact-finding, and might well

13. MODEL RULES OF PROF’L CONDUCT R. 4.2, cmt. [1].

14. *See, e.g., Okla. Bar Ass’n v. Harper*, 995 P.2d 1143 (Okla. 2000) (lawyer did not violate Rule 4.2 without actual knowledge of the representation. “Ascribing actual knowledge to a lawyer based on the facts is not the same as applying the rule under circumstances where the lawyer should have known.”).

15. MODEL RULES OF PROF’L CONDUCT R. 1.0(f).

unnecessarily obstruct such fact-finding by conveying a suggestion that there was a need for counsel in circumstances where there was none, thus discouraging witnesses from talking.<sup>16</sup> (Emphasis added.)

Thus, while the black letter of Model Rule 4.2 does not include a duty to ask whether a person is represented by counsel, this Committee reiterates the warning of Comment [8] to Rule 4.2 that a lawyer cannot evade the requirement of obtaining the consent of counsel before speaking with a represented person by “closing eyes to the obvious.”<sup>17</sup>

In circumstances involving what appears to be an unrepresented person, but in fact may be a person represented by a lawyer under a limited-scope agreement, a lawyer’s knowledge that the person has obtained some degree of legal representation may be inferred from the facts.<sup>18</sup> Such circumstances include, for example: when a lawyer representing a client faces what appears to be a pro se opposing party who has filed a pleading that appears to have been prepared by a lawyer or when a lawyer representing a client in a transaction is negotiating an agreement with what appears to be a pro se person who presents an agreement or a counteroffer that appears to have been prepared by a lawyer.<sup>19</sup>

Therefore, the Committee recommends that, in the circumstances where it appears that a person on the opposing side has received limited-scope legal services, the lawyer begin the communication by asking whether the person is represented by counsel for any portion of the matter so that the lawyer knows whether to proceed under ABA Model Rule 4.2 or 4.3. This may assist a lawyer in avoiding potential disciplinary complaints, motions to disqualify, motions to exclude testimony, and monetary sanctions, all of which could impede a client’s matter.<sup>20</sup> It is not a violation of the Model Rules of Professional Conduct for the lawyer to make initial contact with a person to determine whether legal representation, limited or otherwise, exists.

16. ABA Formal Op. 95-396, fn. 39 (1995). Immediately after the release of Formal Opinion 95-396, Rule 4.2, Comment [5] was amended to read: “The prohibition on communications with a represented person only applies, however, in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Terminology. Such an inference may arise in circumstances where there is a substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.” However, the Ethics 2000 Commission recommended to the ABA House of Delegates that the sentence explaining “inference” be deleted, and the House adopted this recommendation in 2002. According to the “Reporter’s Observations” document submitted to the House with the Ethics 2000 Commission resolution, this description of the knowledge requirement was “inconsistent with the definition of ‘knows’ in Rule 1.0(f), which requires actual knowledge and involves no duty to inquire.” See A LEGISLATIVE HISTORY, *supra* note 5, at 566, citing ABA House of Delegates Report 401 (Feb. 2002).

17. MODEL RULES OF PROF’L CONDUCT R. 4.2, cmt. [8].

18. MODEL RULES OF PROF’L CONDUCT R. 1.0(f) (defining “knows”).

19. See generally State Bar of Arizona Op. 05-06 (2005) (filing of documents prepared by lawyer but signed by client receiving limited-scope representation is not misleading because “. . . a court or tribunal can generally determine whether that document was written with a lawyer’s help.”).

20. See, e.g., *Weeks v. Independent School Dist. No. 1-89*, 230 F.3d 1201 (10<sup>th</sup> Cir. 2000) (affirming district court’s disqualification of lawyer who interviewed members of control group in violation of Rule 4.2).

If the person discloses representation under a limited-scope agreement and does not articulate either that the representation has concluded (as would be the case if the person indicates that yes, a lawyer drafted documents, but is not providing any other representation), or that the issue to be discussed is clearly outside the scope of the limited-scope representation, then the lawyer should contact opposing counsel to determine the issues on which the inquiring lawyer may not communicate directly with the client receiving limited-scope services.<sup>21</sup>

When the communication concerns an issue, decision, or action for which the person is represented, the lawyer must comply with Rule 4.2 and communicate with the person's counsel.

The lawyer may communicate directly with the person on aspects of the matter for which there is no representation.<sup>22</sup> For these communications, the lawyer must comply with Rule 4.3. On aspects of the matter for which representation has been completed and the lawyer providing limited-scope services is not expected to reemerge to represent the client, a lawyer may communicate directly with the other person. We note that Rule 1.6 and the confidentiality of communications between a lawyer and the lawyer's client does not end when the limited representation concludes. Therefore, any communication with a person who received limited-scope legal services about an issue for which representation has concluded should not include inquiries about communications between the person and the lawyer providing limited-scope services.

If at any point in the matter the person — or the lawyer providing the limited-scope representation to that person — notifies the communicating lawyer that the scope of the representation was expanded, the communicating lawyer must act in accordance with Rule 4.2 as to any issues, decisions, or actions implicated by the expansion of the scope of services.

## **Conclusion**

Under Model Rule 1.2(c), lawyers are authorized to provide limited-scope legal representation. Although not required by Rule 1.2(c), the Committee recommends that lawyers providing limited-scope representation confirm the scope of the representation in writing provided to the client.

Although Rule 4.2 does not require a lawyer to ask a person if he or she is represented by counsel before communicating with that person about the subject of the representation, a lawyer's knowledge that the person has obtained assistance from another lawyer may be inferred from circumstances. If the lawyer has reason to believe that an unrepresented person on the opposing side has received limited-scope legal services, the Committee recommends that the

21. MODEL RULES OF PROF'L CONDUCT R. 4.2, cmt. [3] ("A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.").

22. MODEL RULES OF PROF'L CONDUCT R. 4.2, cmt. [4] ("This Rule does not prohibit communication with a represented person ... concerning matters outside the representation.").

lawyer begin the communication with that person by asking whether that person is or was represented by counsel for any portion of the matter so that the lawyer knows whether to proceed under ABA Model Rule 4.2 or 4.3. When a lawyer has knowledge that a person is represented on the matter to be discussed, the lawyer must obtain the consent of counsel prior to speaking with the person.

If the person states that he or she is or was represented by counsel in any part of a matter, and does not articulate either that the representation has concluded or that the issue to be discussed is clearly outside the scope of the limited-scope representation, the lawyer requesting information should contact the lawyer providing limited-scope services to identify the issues on which the inquiring lawyer may not communicate directly with the person receiving limited-scope services.

The lawyer must comply with Rule 4.2 and communicate with the person's counsel when the communication concerns an issue, decision, or action for which the person is represented. Under Rule 4.3, however, the lawyer may communicate directly with the person on aspects of the matter for which no representation exists. On aspects of the matter for which representation has been completed and the lawyer providing limited-scope services is not expected to reemerge to represent the client, a lawyer may communicate directly with the other person. Communication with a person who received limited-scope legal services about an issue for which representation has concluded should not include inquiries about protected communications between the person and the lawyer providing limited-scope services.

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**AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY**

321 N. Clark Street, Chicago, Illinois 60654-4714 Telephone (312) 988-5328

CHAIR: Myles V. Lynk, Tempe, AZ ■ John M. Barkett, Miami, FL ■ Arthur D. Burger, Washington, DC ■ Robert A. Creamer, Cambridge, MA ■ Barbara S. Gillers, New York, NY ■ Amanda Jones, Chicago, IL ■ J. Charles Mokriski, New York, NY ■ Ellen A. Pansky, South Pasadena, CA ■ Jennifer A. Paradise, New York, NY ■ Hope Cahill Todd, Washington, DC

**CENTER FOR PROFESSIONAL RESPONSIBILITY:** Dennis A. Rendleman, Ethics Counsel, Mary McDermott, Associate Ethics Counsel

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# Hearing Brief Exhibit B

# Hearing Brief Exhibit B

### **6.3 Improper Communications with Individuals in the Legal System**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law:

#### **6.31**

Disbarment is generally appropriate when a lawyer:

- a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
- c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding and causes significant or potentially significant interference with the outcome of the legal proceeding.

#### **6.32**

Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

#### **6.33**

Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

#### **6.34**

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.



# Hearing Brief Exhibit C

# Hearing Brief Exhibit C

## In re Smith

Supreme Court of Vermont

July 21, 1999, Filed

SUPREME COURT DOCKET NO. 99-169

### Reporter

169 Vt. 617 \*; 739 A.2d 1191 \*\*; 1999 Vt. LEXIS 224 \*\*\*

In re Jeffrey T. Smith, Esq.

**Prior History:** [\*\*\*1] Original Jurisdiction. Professional Conduct Board. DOCKET NOS. 96.44.

### Core Terms

power of attorney, recommendation, reprimand

### Case Summary

#### Procedural Posture

The Professional Conduct Board (Vermont) recommended that respondent attorney be reprimanded for improper contact with an individual who was represented by counsel.

#### Overview

The Professional Conduct Board recommended that respondent attorney be reprimanded for improper contact with an individual who was represented by counsel. Respondent had previously represented a husband against his wife in an involuntary guardianship proceeding, in which the wife was represented by counsel. Some time later, at the husband's request respondent prepared a document for the wife revoking a trust and any powers of attorney. The husband told him falsely that the wife was no longer represented. Respondent also prepared for the wife's signature a general power of attorney, which by its terms gave the husband complete control over her assets. Respondent met with the wife and explained to her that the purpose of the power of attorney was to allow her husband to obtain information from the bank. He also told her that the power of attorney allowed her husband to do only what she directed him to do. This, by the very terms of the document, was not true, although respondent seemed to have believed that the power of attorney was so limited. The court held that respondent clearly violated DR 7-104(A) and in these circumstances a

public sanction was appropriate.

#### Outcome

The court adopted the recommendations for a reprimand below, and ordered that the reprimand be public. The court also ordered respondent placed on probation for a period of six months. During this probationary period, respondent would be required to complete five hours of continuing legal education in ethics, particularly in the area of conflicts, and another five hours of continuing legal education in the area of trusts and estates.

### LexisNexis® Headnotes

Legal Ethics > Client Relations > Conflicts of Interest

#### [HN1](#) [📄] Client Relations, Conflicts of Interest

During the course of his representation of a client a lawyer shall not communicate or cause another to communicate on the subject matter of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Legal Ethics > Client Relations > Conflicts of Interest

#### [HN2](#) [📄] Client Relations, Conflicts of Interest

An attorney shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the

interests of his client.

Legal Ethics > Sanctions > Reprimands

### **HN3** **Sanctions, Reprimands**

Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

**Judges:** Jeffrey L. Amestoy, Chief Justice. John A. Dooley, Associate Justice, James L. Morse, Associate Justice, Denise R. Johnson, Associate Justice, Marilyn S. Skoglund, Associate Justice.

**Opinion by:** JEFFREY L. AMESTOY

## **Opinion**

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### **[\*617] [\*\*1192] ENTRY ORDER**

Pursuant to the recommendation of the Professional Conduct Board filed April 8, 1999, and approval thereof, it is hereby ordered that Jeffrey T. Smith, Esq. be publicly reprimanded for the reasons set forth in the Board's report attached hereto for publication as part of the order of this Court. A.O. 9, Rule 8E.

Attorney Smith shall also be placed on probation for 6 months with the conditions set forth in the attached report. The period of probation shall begin on August 1, 1999.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

REPORT TO THE SUPREME COURT

### Facts

Respondent has been a member of the Vermont bar for over 25 years. He is a solo practitioner in the town of Brandon.

In 1995, respondent represented one Clifton Alexander, who was married to Margaret Alexander. The Alexanders had a sometimes difficult relationship, which often had issues relevant to an imbalance of power between them. One source of discord was Mrs. Alexander's money which was held in a trust established by Margaret Alexander to protect her assets. The trustee was her nephew, Richard Dubois.

Mr. Alexander brought an involuntary guardianship petition against his wife in 1995. Respondent was appointed to represent him on a *pro bono* basis.

Mrs. Alexander was represented by Carolyn Tonelli, Esq. who had represented Mrs. Alexander since at least 1992. Her response to the petition was that while Mrs. Alexander was [\*\*\*2] frail, had a poor memory, and was susceptible to her husband's pressures, she was legally competent. On behalf of Mr. Alexander, respondent withdrew the guardianship petition in March of 1995.

Less than six months later, Mr. Alexander told respondent that he and his wife had been to the banks in Randolph in an attempt to get information about Mrs. Alexander's assets. They were denied the information and told they would have to obtain that information from the trustee, Mr. Dubois. Mr. Alexander felt that Mr. Dubois was not cooperative with his requests for information.

At Mr. Alexander's request, respondent prepared a document for Mrs. Alexander's signature whereby she revoked the trust and any power of attorney that Mr. Dubois or anyone else may have held. At the time he did this, respondent was aware of DR 7-104(A), the disciplinary rule prohibiting him from direct contact with an adverse party who was represented by counsel. Respondent felt that the rule did not apply because the couple seemed to be compatible. Further, Mr. Alexander told him that Attorney Tonelli was no longer Mrs. Alexander's counsel. This was not true.

**[\*618] [\*\*1193]** Mrs. Alexander signed the document in respondent's office [\*\*\*3] on August 18, 1995, although respondent was not personally present.

Respondent also prepared for Mrs. Alexander's signature a power of attorney, which by its terms gave Mr. Alexander complete control over Mrs. Alexander's assets.

It is a general power of attorney which states that it "shall not be affected by disability or death of the principal(s)."

In preparing this document, respondent was mindful of his client's claim that he needed assets from the trust not for his own benefit, but for the benefit of his wife, and that the trustee was not providing his wife with sufficient funds. Respondent was concerned as to whether Mrs. Alexander was competent to sign a new power of attorney.

On August 25, 1995, respondent met with Mrs. Alexander and explained to her that the purpose of the power of attorney was to allow her husband to obtain information from the bank. He also told her that the power of attorney allowed her husband to do only what she directed him to do. This, by the very terms of the document, was not true, although respondent seemed to have believed that the power of attorney was so limited. Respondent appeared to the Board to misapprehend the effect of the document he [\*\*\*4] had prepared. In any event, respondent concluded that Mrs. Alexander seemed to know what she was doing. He witnessed her signature.

Attorney Tonelli learned of these documents. She notified respondent that she was still counsel of record and that her client had signed them only due to undue pressure by her husband. Attorney Tonelli notified all relevant parties that the documents signed by Mrs. Alexander without benefit of independent counsel were null and void. No actual injury resulted to Mrs. Alexander.

### Conclusions of Law

Respondent clearly violated DR 7-104(A). \* Respondent knew that Mrs. Alexander had retained independent counsel to assist her in resisting her husband's attempt to have her declared incompetent in March of 1995. When Mr. Alexander sought respondent's assistance only five months later in obtaining Mrs. Alexander's power of attorney over her assets, respondent had the

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\* [HN1](#)<sup>[↑]</sup> DR 7-104(A) states: "During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject matter of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

duty to contact Attorney Tonelli and request permission to contact her client. It was insufficient to rely upon his own client's claim that Attorney Tonelli had been discharged, a claim which proved to be untrue. It was insufficient to rely upon his client's claim that they were no longer in [\*\*\*5] an adverse relationship vis a vis Mrs. Alexander's assets, a claim which also proved to be untrue.

Even if we were to assume that respondent was correct in his belief that Mrs. Alexander was not represented by counsel, he would have violated the Code of Professional Responsibility by advising Mrs. Alexander as to the meaning of the power of attorney which he prepared for her to sign. [HN2](#)<sup>[↑]</sup> DR 7-104(A)(2) provides that an attorney shall not "give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of [\*\*\*6] his client." Obviously, Mr. Alexander's interest in obtaining access to Mrs. Alexander's assets conflicted with Mrs. Alexander's desire to protect those assets as evidenced by her [\*\*\*619] having placed those assets in trust. It is particularly distressing that the advice which respondent proffered to Mrs. Alexander, i.e., that the general power of attorney was [\*\*\*1194] really a limited power of attorney, was erroneous.

### Sanction

It is obvious to every member of the Board that respondent is a well-meaning and gracious person who acted without malice or any bad intent. It is also clear to the Board, however, that respondent fails to appreciate the seriousness of the misconduct. But for Attorney Tonelli's intervention, it is quite possible that Mrs. Alexander could have suffered a significant monetary loss. It is also quite clear that respondent does not understand the broad scope of the power of attorney which he drafted for Mrs. Alexander.

Despite the parties' joint recommendation that a private admonition be imposed here, we are guided by our actions in many prior cases of improper contact as well as by the ABA Standards for Imposition of Lawyer Discipline in recommending a public sanction here.

[\*\*\*7] This was not an isolated instance of improper contact which arose by accident or chance meeting. See, e.g., Decision No. 23, PCB Docket No. 91.38, (December 6, 1991)(private admonition imposed on lawyer who accompanied her client to pick up the

client's children and became involved in a discussion with the represented ex-spouse). To the contrary, respondent deliberately planned this contact with the represented party not once, but twice.

and another five hours of continuing legal education in the area of trusts and estates. Respondent should be required to report his progress to bar counsel for monitoring purposes.

While respondent did not intend to violate the disciplinary rule, he was certainly negligent in failing to determine Attorney Tonelli's status in light of his knowledge that she had represented Mrs. Alexander only five months earlier. Even if Mrs. Alexander had told respondent that she had discharged Attorney Tonelli, it would have been prudent to check directly with opposing counsel. But to simply rely upon the claim of his client that the adverse party was no longer represented, particularly given this couple's history, was reckless. A mere negligent contact in such circumstances warrants public reprimand. See [\*In re McCaffrey\*, 275 Ore. 23, 549 P.2d 666 \(Or. 1976\)](#) (attorney who knew adverse party in domestic relations matter was [\*\*\*8] represented six months earlier was publicly reprimanded for direct contact, even though the attorney did not know the adverse party was still represented), cited with approval in [\*In re Illuzzi\*, 160 Vt. 474, 490, 632 A.2d 346, 354 \(1993\)](#).

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We are guided by [\*In re Illuzzi\*](#) concluding that Standard 6.33 of the ABA Standards for Imposition of Lawyer Discipline controls this case. [HN3](#)<sup>↑</sup> That Standard provides:

Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.

In aggravation, we note that respondent has substantial experience in the practice of law and that the victim of this misconduct, Mrs. Alexander, was vulnerable. In mitigation, we note an absence of a dishonest or selfish motive and a full and free disclosure to the disciplinary board. These factors do not tilt the balance away from our recommendation that a public reprimand be imposed.

In order to protect the public and insure that respondent receives sufficient [\*\*\*9] training in the areas of ethics and the substantive law pertinent to trusts and powers of attorney, we also recommend that respondent be placed on probation for a period of six months. During this probationary period, respondent should [\*620] be required to complete five hours of continuing legal education in ethics, particularly in the area of conflicts,



FILED

NOV 01 2021

STATE BAR OF NEVADA

BY

STATE BAR OF NEVADA  
OFFICE OF BAR COUNSEL

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
BRENT HARSH, ESQ., )  
BAR NO. 8814 )  
)  
Respondent. )

**STATE BAR OF NEVADA'S**  
**MEMORADUM OF COSTS**

Description	Amount
Sunshine Litigation – transcript cost from 9/29/21 Formal Hearing	1,645.00
Certified Mailing Costs	7.33
SCR 120 Costs	1,500.00
<b>TOTAL</b>	<b>\$ 3,152.33</b>

The costs set forth above are true and correct to the best of my knowledge and belief and were necessary and reasonably incurred and paid in connection with this matter. True and correct copies of invoices supporting these costs are attached to this Memorandum of Costs.

Dated this 1st day of November 2021

STATE BAR OF NEVADA  
DAN M. HOOGE, BAR COUNSEL

By: Kait Flocchini

R. Kait Flocchini, Assistant Bar Counsel  
Nevada Bar No. 9861  
9456 Double R Blvd., Ste. B  
Reno, NV 89521  
(775) 329-4100

1                                    **CERTIFICATE OF SERVICE BY MAIL**

2            The undersigned hereby certifies that a true and correct copy of the foregoing  
3 **State Bar of Nevada's Memorandum of Costs** was served by electronic mail to:  
4 Christian L. Moore, Esq. – clm@lge.net

5            DATED this 1st day of November 2021

6                                    *Laura Peters*

7                                    \_\_\_\_\_  
8                                    Laura Peters, an employee of  
9                                    the State Bar of Nevada.






# 2021.10.18.MOC

Final Audit Report

2021-11-01

Created:	2021-11-01
By:	Laura Peters (laurap@nvbar.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPR01ZItUGB2odLo6ZAa5QSnsU9TaUbf-

## "2021.10.18.MOC" History

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# INVOICE

1 of 1



151 Country Estates Circle  
Reno, NV 89511  
Phone: 800-330-1112  
litigationservices.com

R. Kait Flocchini, Esq.  
State Bar of Nevada  
9456 Double R Blvd, Suite B  
Reno, NV 89521

Invoice No.	Invoice Date	Job No.
1495403	10/6/2021	798924
Job Date	Case No.	
9/29/2021	OBC21-0067	
Case Name		
State Bar of NV vs. Brent Harsh, Esq.		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Hearing

1,645.00

**TOTAL DUE >>>**

**\$1,645.00**

Location of Job : Zoom  
Reno, NV

Please note, disputes or refunds will not be honored or issued after 30 days

OK to Pay *Laura Peters*

**Tax ID:** 20-3835523

*Please detach bottom portion and return with payment.*

R. Kait Flocchini, Esq.  
State Bar of Nevada  
9456 Double R Blvd, Suite B  
Reno, NV 89521

Invoice No. : 1495403  
Invoice Date : 10/6/2021  
**Total Due : \$1,645.00**

Remit To: **Sunshine Reporting and Litigation Services,  
LLC  
P.O. Box 98813  
Las Vegas, NV 89193-8813**

Job No. : 798924  
BU ID : RN-CR  
Case No. : OBC21-0067  
Case Name : State Bar of NV vs. Brent Harsh, Esq.

Harsh ROA 165

**CERTIFIED MAILING CHARGES**

Notice of Hearing, Final Disclosures Mailed 8/31/21	7019 2970 0001 3885 5184 \$7.33
<b>TOTAL</b>	<b>\$ 7.33</b>



FILED

NOV 17 2021

STATE BAR OF NEVADA  
BY [Signature]  
OFFICE OF BAR COUNSEL

Case No. OBC21-0067

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
BRENT HARSH, ESQ. )  
STATE BAR NO. 8814 )  
 )  
Respondent. )

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION  
AFTER FORMAL HEARING**

This matter involving attorney Brent Harsh, Esq. ("Respondent"), Bar No. 8814, initially came before a designated Formal Hearing Panel of the Matter.PracticeArea Nevada Disciplinary Board ("Panel") at 9:00 a.m. on September 29, 2021, via remote audio/visual appearance using Zoom hosted from Reno, Nevada. The Panel consisted of Chair Eric Stovall, Esq.; Lucas Foletta, Esq.; and Mike LaBadie, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the State Bar of Nevada ("State Bar"). Respondent was present and represented by Christian L. Moore, Esq.

The State Bar presented materials which were admitted into evidence as Exhibits 1 through 11. Respondent presented materials which were admitted into evidence as Exhibits A through M and O, although Exhibits L and M were not distributed to the Panel.

The Panel also heard statements from both parties and testimony from Respondent.

1 Based upon the evidence presented and testimony received, the Panel unanimously  
2 issues the following Findings of Fact, Conclusions of Law, and Recommendation:

### 3 FINDINGS OF FACT

4 1. Respondent was admitted to the State Bar of Nevada on October 4, 2001 and  
5 is an actively licensed attorney. Transcript of Hearing, dated September 29, 2021, (the  
6 "Transcript"), Exhibit 2.

7 2. During the period in question, Respondent maintained a law practice in  
8 Washoe County, Nevada.

9 3. Respondent was retained to represent David and Sheela Clements (the  
10 "Clements") to pursue their claims related to a November 5, 2020, vehicle-pedestrian  
11 accident. Transcript, Exhibit 1 (Complaint at ¶ 2 and Answer at ¶ 2).

12 4. Sandra L. Sei ("Sei") was the driver in the accident and David was the  
13 pedestrian. *Id.* (Complaint at ¶ 3 and Answer at ¶ 3).

14 5. Sei was insured by The Hartford. *Id.* (Complaint at ¶ 4 and Answer at ¶ 4).

15 6. Reed Werner is a Senior Staff Attorney with the Law Offices of Eric R. Larsen,  
16 Employees of a Subsidiary of The Hartford Financial Services Group. *Id.* (Complaint at ¶ 5  
17 and Answer at ¶ 5).

18 7. Werner was retained by The Hartford to represent Sei against the Clements'  
19 claims. Transcript at 17:25-18:4, Exhibit 4, and Exhibit 5.

20 8. Werner sent a letter to Sei identifying that his office had been retained to  
21 represent her in the dispute with the Clements. Transcript at 38:25-39:8, Exhibit 4.

22 9. On November 16, 2020, Respondent sent a demand letter to one of The  
23 Hartford's Claim Consultants, Katherine Baarson, seeking additional coverage for Sheela  
24 Clements' claimed injuries related to the accident. Respondent's letter also requested that  
25 Baarson identify Sei's personal counsel. Transcript at 85:6-86:10 and Exhibit 3.

1           10.   Baarson did not respond to Respondent's November 16 letter, and instead,  
2 forwarded it to Werner for consideration. Transcript at 19:16-20:1 and Exhibit 6.

3           11.   Werner sent a letter to Respondent on December 18, 2020, containing in the  
4 subject heading the words "Our Client : Sandra Sei," thereby identifying Sei as his client,  
5 and requesting additional information without stating in the body of the letter that Sei was  
6 his client. Transcript at 22:6- 24:13, 52:15 – 53:7 and Exhibit 5.

7           12.   Respondent received Werner's December 18, 2020 letter. Transcript at  
8 90:23-91:7.

9           13.   Between December 18, 2020 and December 22, 2020, Respondent and  
10 Werner emailed regarding the Clements' claims against Sei. Transcript at Exhibit 6, 7, 8,  
11 9, and O.

12           14.   In the email correspondence, Werner sought additional information to  
13 evaluate the potential viability of Ms. Clements' separate claim and her related damages.  
14 Transcript 23:13-25:13.

15           15.   Although no one told Respondent that Werner was evaluating whether the  
16 claim was covered by Sei's insurance policy, Respondent interpreted that Werner's  
17 questions were intended to evaluate coverage of the claim by the insurance policy.  
18 Transcript 24:19-22 and 129:8-16.

19           16.   Respondent did not clarify whether Werner represented Sei or The Hartford  
20 even though his interpretation that Werner's communications were as a representative of  
21 The Hartford contradicted Werner's December 18, 2020 direct identification of whom he  
22 represented. Transcript at 143:22-144:24.

23           17.   Respondent was never told that Werner no longer represented Sei.  
24 Transcript at 91:8-14.

25

18. On December 22, 2020, Respondent filed a Complaint in the Second Judicial District Court on behalf of the Clements and against Sei. Transcript at Exhibit A.

13. On or about January 2, 2021, Respondent served the Summons and Complaint personally on Sei. Transcript at Exhibit 10.

19. With the Summons and Complaint Respondent included a letter addressed directly to Sei communicating that he would be seeking a judgment that was more than her insurance policy limits and recommending that she seek personal counsel. Respondent provided the names of four lawyers in Reno who specialize in protecting parties whose interests might be adverse to their insurance carriers. Transcript at 89:14-90:22 and Exhibit 10.

20. Werner did not give Respondent consent to communicate directly with Sei. See Transcript at Exhibit 1 (Complaint at ¶ 15 and Answer at ¶15) and Exhibit I.

21. Respondent did not provide Werner, or The Hartford, with a copy of the letter to Sei, but he did forward them a copy of the Summons and Complaint. Transcript at 26:15-28:16 and Exhibit 11.

22. The Hartford retained Christopher Turtzo, Esq. to represent Sei in the litigation and Werner did not appear on Sei's behalf in the litigation. Transcript at 72:21-73:2 and 105:6-10.

23. Respondent did not attempt to communicate with Sei directly after Turtzo appeared in the litigation as her counsel. Transcript at 106:5-11.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Panel hereby issues the following Conclusions of Law:

1. The Northern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

1           2.     Venue is proper in Washoe County.

2           3.     The State Bar must prove by clear and convincing evidence that Respondent  
3 violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*,  
4 108 Nev. 629, 633-634, 837 P.2d 853, 856; *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d  
5 386, 387 (1990).

6           4.     RPC 4.2 (Communicating with Represented Parties) states

7           In representing a client, a lawyer shall not communicate about the subject of  
8 the representation with a person the lawyer knows to be represented by  
9 another lawyer in the matter, unless the lawyer has the consent of the other  
10 lawyer or is authorized to do so by law or a court order.

11           5.     Rule 4.2 of the Nevada Rules of Civil Procedure ("NRCP") provides that a  
12 Summons and Complaint be personally served on a defendant or a defendant's authorized  
13 agent, such as counsel.

14           6.     The Panel unanimously finds that the foregoing findings of fact prove by clear  
15 and convincing evidence that:

16           a.     Respondent knew that RPC 4.2 prohibits a lawyer from  
17 communicating with a party that the lawyer knows is represented by counsel.

18           b.     On or about December 18, 2020, Respondent was informed that  
19 Werner represented Sei in the underlying litigation and such representation had not  
20 been revoked as of January 2, 2021.

21           c.     Werner had not given Respondent permission to communicate  
22 directly with Sei.

23           d.     Respondent did not attempt to clarify his interpretation that Werner  
24 was representing The Hartford and not Sei in the underlying dispute.

25           e.     Respondent intentionally directly communicated with a represented  
party when he had a letter personally delivered to Sei on or about January 2, 2021.

1 f. Respondent's violation of RPC 4.2 had the potential to cause injury,  
2 but did not actually cause injury in the underlying matter.

3 See Transcript, 175:21-179:3.

4 7. The appropriate level of discipline must be determined considering "all  
5 relevant factors and mitigating circumstances on a case-by-case basis." *State Bar of*  
6 *Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate the American  
7 Bar Association Standards for Imposing Lawyer Sanctions' four factors to be considered in  
8 determining the appropriate disciplinary sanction: "the duty violated, the lawyer's mental  
9 state, the potential or actual injury caused by the lawyer's misconduct, and the existence of  
10 aggravating or mitigating factors." See *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197  
11 P.3d 1067, 1078 (2008).

12 8. Pursuant to Standard 6.33 of the ABA Standard for Imposing Lawyer  
13 Sanctions, the appropriate baseline sanction for Respondent's violation of RPC 4.2 is a  
14 reprimand.

15 9. Pursuant to SCR 102.5, the Panel unanimously finds that Respondent's  
16 substantial experience in the practice of law (SCR 102.5(i)) is an aggravating factor.  
17 Transcript at 176:24-177:3.

18 10. The Panel unanimously rejects the State Bar's argument that Respondent's  
19 conduct exhibited a selfish motive. See Transcript at 176:5-10.

20 11. Pursuant to SCR 102.5, the Panel unanimously finds that Respondent's  
21 absence of prior discipline (SCR 102.5(2)(a)) is a mitigating factor. Transcript at 177:3-7.

22 12. The Panel unanimously finds that, although the misconduct was intentional  
23 and might warrant suspension, Respondent is not a threat to the public or in need of  
24 suspension and, thus, issuance of a reprimand is appropriate. Transcript at 177:14-19.



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# Proposed Findings Conclusions Recommendation -final

Final Audit Report

2021-11-18

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## "Proposed Findings Conclusions Recommendation -final" History

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**CERTIFICATE OF SERVICE BY E-MAIL**

The undersigned hereby certifies that a true and correct copy of the foregoing **Findings of Fact, Conclusions of Law and Recommendation after Formal Hearing** was served electronically upon:

1. Christian Moore, Esq. – clm@lge.net
2. Kait Flocchini, Esq. – kaitf@nvbar.org
3. Eric Stovall, Esq. - eric@ericstovalllaw.com

Dated this 17<sup>th</sup> day of November 2021.

*Laura Peters*  
By: \_\_\_\_\_  
Laura Peters, an employee of  
the State Bar of Nevada

**In the Matter Of:**

State Bar of NV vs Brent Harsh, Esq.

**HEARING**

*September 29, 2021*

*Job Number: 798924*

1 STATE BAR OF NEVADA  
2  
3 NORTHERN NEVADA DISCIPLINARY BOARD  
4  
5  
6 STATE BAR OF NEVADA, )Case No.  
7 )OBC21-0067  
8 Complainant, )  
9 vs. )  
10 BRENT HARSH, ESQ. )  
11 BAR NO. 8814 )  
12 Respondent. )  
13 )

14  
15  
16 REMOTE ZOOM VIDEOCONFERENCING HEARING  
17

18  
19  
20 Wednesday, September 29, 2021  
21  
22  
23 9:00 a.m.

24  
25 REPORTED BY:  
NICOLE J. HANSEN  
NV. CCR NO. 446  
CAL. CSR 13909  
RPR, CRR, RMR  
(Appearing from Reno, Nevada)  
Job No.: 798924

1 APPEARANCES:

2

3 For the State Bar of Nevada:

4

5 R. KAIT FLOCCHINI, Assistant Bar Counsel  
6 9456 Double R Boulevard  
7 Reno, NV 89521

8

9

10

11 For the Respondent:

12

13 CHRISTIAN MOORE, ESQ.  
14 Lemons, Grundy & Eisenberg  
15 6005 Plumas Street  
16 Reno, Nevada 89519

17

18

19 The Chair:

20

21 ERIC STOVALL, ESQ.  
22 200 Ridge Street #22  
23 Reno, Nevada 89501

24

25 Panel Members:

26

27 MIKE LABADIE  
28 LUCAS FLOETTA

29

30

31 Also Present:

32

33 LAURA PETERS, Paralegal

34

35

1	I N D E X	
2		
3	THE WITNESS:	PAGE
4	REED WERNER	
5	Direct examination by Ms. Flocchini	13
6	Cross-examination by Mr. Moore	30
7	Redirect examination by Ms. Flocchini	59
8	THE WITNESS:	
9	KATHARINE BAARSON	
10	Direct examination by Ms. Flocchini	62
11	Cross-examination by Mr. Moore	70
12	THE WITNESS:	
13	BRENT HARSH	
14	Direct examination by Ms. Flocchini	78
15	Cross-examination by Mr. Moore	96, 101, 112
16	Redirect examination by Ms. Flocchini	140
17	By Chief Stovall	147
18	THE WITNESS:	
19	CHRIS TURTZO	
20	Direct examination by Mr. Moore	104
21	THE WITNESS:	
22	SANDRA MARIE SEI	
23	Direct examination by Mr. Moore	109
24		
25		

1 CHAIR STOVALL: I'll call the case of State  
2 Bar of Nevada versus Brent Harsh, Esquire.

3 (Meeting recording.)

4 Mr. STOVALL: Again, the State Bar of Nevada  
5 versus Brent Harsh, Esquire, Bar Number 8814. This is  
6 the time and place set for the disciplinary hearing. It  
7 is being recorded.

8 Counsel, may have I appearances?

9 MS. FLOCCHINI: Yes. Thank you. Good  
10 morning. This is Kait Flocchini, on behalf of the State  
11 Bar, and also present is Laura Peters, our hearing  
12 paralegal.

13 MR. MOORE: Good morning. This is Christian  
14 Moore with Lemons, Grundy & Eisenberg, and I represent  
15 respondent, who is here with me, Brent Harsh.

16 THE COURT: Great. Before we proceed, is  
17 there any preliminary matters for us to deal with,  
18 Counsel?

19 MS. FLOCCHINI: I have none.

20 MR. MOORE: Your Honor, I just have a  
21 housekeeping matter. I note that not everyone's video is  
22 on. I think that if the panel members are participants,  
23 if someone is observing, I don't think their video needs  
24 to be on, but we would appreciate having video for all  
25 panel members.



1 MR. FLOETTA: So I do appreciate that. This  
2 is Lucas Floetta. For some reason, my camera is on, but  
3 it's showing up as black. I'm trying to work it out  
4 right now. I don't usually have that problem, but  
5 anyway, I do apologize. I'll try and get it working as  
6 soon as I can. If you want to take a break, I can work  
7 on it more, but I can keep doing it as we proceed if  
8 you'd like as well.

9 MR. MOORE: And I'm not trying to delay. And  
10 I respect the fact that there's technological issues, and  
11 I'm actually very empathetic to that. I have no problem  
12 if we just try and proceed and hopefully the video will  
13 be resolved.

14 CHAIR STOVALL: Okay. With that, I agree  
15 that everybody who is participating should have their  
16 video on, but I appreciate, Counsel, your willingness to  
17 proceed with this technical issue. And hopefully, we'll  
18 have it resolved. And I would just say if you can't get  
19 the issue resolved, don't go crazy trying to make it  
20 happen. Just we'll just play along and see if it does  
21 happen, but I'd rather have your attention focused on the  
22 matters at hand as opposed to the technological issue.

23 So with that, Ms. Flocchini.

24 MS. FLOCCHINI: May I suggest --

25 THE COURT: Yes.

1 MS. FLOCCHINI: -- as with many technological  
2 issues, sometimes it's solved by restarting, so maybe if  
3 we take 30 seconds and let Mr. Floetta leave and come  
4 back in, that might solve it. I don't want him to miss  
5 anything trying to do that particular --

6 CHAIR STOVALL: Let's go ahead and take a  
7 couple of minutes.

8 And, sir, go ahead and why don't you just  
9 leave and reboot the thing and come back in.

10 MR. FLOETTA: Sure. I'll do that right now.

11 MS. FLOCCHINI: Thank you.

12 THE COURT: That's great. Now that we're all  
13 here and ready, Ms. Flocchini, go ahead and proceed.

14 MS. FLOCCHINI: Yes. And thank you for your  
15 time here today as volunteers on our disciplinary panel.  
16 This is an important issue, and we will do our best to  
17 use your time wisely.

18 There are three different types of duties  
19 that a lawyer has, and there's a lot of rules going all  
20 the way from, you know, one Rule of Professional Conduct  
21 1.1 through 8.4, but they can be categorized into these  
22 three different types. One is to the client. Lawyers  
23 have duties to their clients.

24 The second is that a lawyer has a duty to the  
25 public as a professional. And then third, the lawyers

1 have a duty to the legal system. There's a duty to  
2 follow the rules that we have agreed are going to be the  
3 system by which we process legal disputes, and Rule of  
4 Professional Conduct 4.2 embodies one of those duties: A  
5 duty to the legal system.

6 Specifically, Rule of Professional Conduct  
7 4.2 requires that an attorney refrain from communicating  
8 with representative opposing parties about the dispute.  
9 We agree that this is one of the ways in which we will  
10 manage legal disputes. So that's the issue that you're  
11 here to decide today: Whether or not Mr. Harsh violated  
12 Rule of Professional Conduct 4.2, and if so, what an  
13 appropriate consequence is for that violation.

14 You will hear evidence today that establishes  
15 that Mr. Harsh did communicate with a representative  
16 opposing party about the dispute that they were involved  
17 in. The Bar is going to present testimony from Reed  
18 Werner regarding his representation of Ms. Sandra Sei in  
19 a particular personal injury dispute.

20 Mr. Werner will testify that he is in-house  
21 counsel at the Hartford, and in that position, works to  
22 defend various insureds or various people who are insured  
23 by the Hartford in their respective legal disputes that  
24 when they're sued for, typically, personal injury  
25 matters.

1           You will also hear testimony from Mr. Harsh  
2   himself regarding his communication with Mr. Werner's  
3   clients, that person that was represented in this  
4   particular underlying matter, and then the Bar will  
5   present you with testimony from Ms. Baarson.

6           Ms. Baarson is the Hartford claims  
7   representative that was assigned to this particular  
8   underlying matter, this personal injury case where  
9   Mr. Harsh represented some parties and Mr. Werner was  
10   representing the Hartford's insured and Ms. Baarson was  
11   the claims representative to handle that insured's  
12   matter.

13           So the testimony of those three people plus  
14   all of the exhibits that you have already received and  
15   are already admitted, specifically those being Exhibit 1  
16   through 11 from the State Bar and then, in fact,  
17   respondent's exhibits, which were marked A through O,  
18   most of which you have received, those -- the corpus of  
19   all of that evidence will establish, by clear and  
20   convincing evidence, that there was this violation of  
21   Rule of Professional Conduct 4.2, and the Bar is going to  
22   ask this panel, after hearing all of the evidence and the  
23   testimony, to apply the ABA standard for imposing  
24   sanctions; specifically Standards 6.32 or 6.33 and impose  
25   or recommend the imposition of a sanction to Mr. Harsh

1 for his violation of that Rule of Professional Conduct.

2 So again, thank you for your time, and we will use it  
3 wisely.

4 THE COURT: Thank you, Ms. Flocchini.

5 Mr. Moore?

6 MR. MOORE: Thank you. Panel share, is it  
7 okay, given the camera angle and the Zoom, if I address  
8 the panel while I'm sitting here?

9 CHAIR STOVALL: That's quite all right.  
10 Thank you.

11 MR. MOORE: Thank you. Respondent is here  
12 today, although the respondent did receive a letter of --  
13 a private letter reprimand which in fact was not really  
14 private because people can find out that there's a  
15 reprimand, but he's here today because that finding made  
16 by a screen panel was done in a context where Mr. Harsh  
17 did not have an opportunity to be heard in person so  
18 people can directly look at him and frankly judge his  
19 credibility.

20 We are here for only one rule, and that is  
21 Rule of Professional Conduct 4.2. Respectfully, Bar  
22 counsel talks about part of the rule, which is a general  
23 prohibition for an attorney to communicate with an  
24 opposing party who the attorney knows is represented by  
25 counsel and there's an actual knowledge requirement.

1 And that's one of the key things that will be  
2 discussed here today, is whether or not given the context  
3 of what was going and the subject of what Mr. Harsh was  
4 communicating to Ms. Sei in a single letter; if that is a  
5 violation of Rule of Professional Conduct 4.2.

6 Bar counsel is correct that we will of course  
7 all be hearing from witnesses. And Mr. Werner, who is  
8 the grievant, in other words, the person who reported  
9 Mr. Harsh to the Bar, and has perhaps his own motivations  
10 to do so, the evidence will show that Mr. Werner's  
11 communications as to who he was representing and what he  
12 was doing in the capacity of what he was doing is far  
13 from clear, was far from clear at the time to Mr. Harsh.

14 In fact, Mr. Harsh thought, as the evidence  
15 will show, that Mr. Werner was functioning as what's  
16 known as coverage counsel where the attorney representing  
17 the Hartford not the attorney representing Ms. Sei.

18 Another witness who the Bar we expect is  
19 calling is the Hartford claims professional handling this  
20 matter: Ms. Baarson, who herself may have her own  
21 motivations for how she may choose to characterize things  
22 because an insurance company should not be having the  
23 same lawyer both opining on coverage issues and  
24 affirmatively representing the insurance company while at  
25 the same time purportedly providing a defense. That's

1 ethically not permitted. And that's important when one  
2 considers what the viewpoint was of Mr. Harsh.

3 Another witness that you'll hear from, of  
4 course, is Mr. Harsh himself. And again, this is  
5 Mr. Harsh's opportunity to be heard, for all of the panel  
6 members to look at him and understand the context and  
7 determine the credibility.

8 Other witnesses who the Bar has elected not  
9 to call and who we are seeking to call are Ms. Sei  
10 herself and whether or not she even thought Mr. Werner  
11 was representing her.

12 Another witness that we are seeking to call  
13 and we expect to call -- and by the way, we subpoenaed  
14 these witnesses just for the record -- is Mr. Chris  
15 Turtzo because Mr. Chris Turtzo was the defense lawyer  
16 who in fact was engaged by the Hartford once a complaint  
17 was filed to defend Ms. Sei. Mr. Turtzo can help provide  
18 additional context.

19 And indeed, we think that at the end of this  
20 matter, what the panel will see when we see the context  
21 of what was occurring is that Mr. Harsh did not know that  
22 Ms. Sei was represented by Mr. Werner if in fact she ever  
23 was.

24 And if the panel is looking to see that there  
25 should be anything done, there's also Rule 6.34 which can

1 apply to having an admonition. In other words, the Bar's  
2 suggested remedy, if you will, and it's not really a  
3 remedy. It's a punishment. This discipline that's  
4 suggested is not appropriate under the facts as will be  
5 demonstrated. Instead, if there is not just a simple  
6 dismissal, then 6.34, which we'll discuss later on, which  
7 essentially is a letter of caution, would be appropriate.  
8 So obviously, everyone participating appreciates the time  
9 and effort that's being expended in this matter, and we  
10 look forward to presenting our case.

11 CHAIR STOVALL: Thank you very much,  
12 Mr. Moore.

13 Ms. Flocchini, call your first witness.

14 MS. FLOCCHINI: Thank you, Chair. The Bar  
15 calls Reed Werner to testify.

16 Good morning, Mr. Werner. Can you hear us?

17 MR. WERNER: I can now. Yes.

18 MS. FLOCCHINI: Okay. Great.

19 CHAIR STOVALL: Excellent, Mr. Werner. My  
20 name is Eric Stovall. I'm the panel chair. Would you  
21 please raise your right hand to take the oath.

22

23 REED WERNER,  
24 having been first duly sworn, was  
25 examined and testified as follows:



1

2

CHAIR STOVALL: Go ahead.

3

4

DIRECT EXAMINATION

5

BY MS. FLOCCHINI:

6

7

8

9

Q Thank you. Mr. Werner, can you -- I want to give the panel just some basic information about your experience as an attorney. What year were you licensed in?

10

11

12

13

14

A First licensed in 2004.

Q And in what state were you licensed?

A I was first licensed in Nevada in 2004.

Q And are you licensed to practice law in any other states?

15

16

A California. I took the California Bar in 2010.

17

18

19

20

Q And where are you employed?

A I work for the law offices of Eric Larsen, which is a division of the Hartford or in-house counsel for the Hartford.

21

22

Q And how long have you worked at Mr. Larsen's office?

23

24

25

A Since December of 2017.

Q Did you work as in-house counsel anywhere else prior to working for Mr. Larsen's office?

1           A     I worked for about five years for the  
2     Nationwide in-house, Ken Goates' office.

3           Q     Okay. And you've referenced that although  
4     you're officially at Mr. Larsen's office that you're  
5     in-house for an insurance company, the Hartford. Could  
6     you explain to us what it means to be in-house counsel,  
7     please.

8           A     Sure. So in-house counsel for an insurance  
9     company, you defend insureds of the company as in  
10    lawsuits that are filed against them, you're on salary  
11    for the insurance company, so you get paid, you know, I  
12    think twice a month or something like that every month.  
13    You just receive new files from them. You don't have to  
14    go out and market. You don't have to go bill the  
15    clients. You just receive files that come in and you  
16    have to, you know, handle whatever task is assigned to  
17    you. That's basically it.

18          Q     And who do you represent in the matters that  
19    you handle?

20          A     The insureds. So depending on, you know,  
21    what case it is, it could be a company, it could be an  
22    individual. It would just be whoever had a lawsuit filed  
23    against them. That's what I do.

24          Q     Okay. And do you record your time like, you  
25    know, a normal law firm? Do you do billable hours, so to

1 speak?

2 A We do, but it's not the same as a normal law  
3 firm. There's recess detail required, but they do put  
4 time in so that it can be tracked in case of a potential  
5 recovery on an offer of judgment or if there's some other  
6 issue that needs to be addressed with the Court, then you  
7 have something to go back and you're not just guessing.

8 Q And do you do work for -- Are you assigned  
9 work or do you get retained by anyone besides the  
10 insureds that come from the Hartford?

11 A No. I mean, I can do outside work only upon  
12 approval of my supervisor. And generally, that is only  
13 for pro bono work and so that's --

14 Q Okay. So there's been some reference in this  
15 case to another attorney that also represented Ms. Sei.  
16 Mr. Turtzo. And is he in-house counsel also?

17 A No. He works at what we call a panel firm.

18 Q Okay. And explain to me what the difference  
19 is between what you as in-house counsel do for a Hartford  
20 insured and what outside counsel does for Hartford  
21 insured?

22 A It's mostly the same kind of work. You're  
23 defending the insured in the lawsuit. The biggest  
24 difference is there's a separation because the outside  
25 law firm represents them and has a separate business.

1 They're not part of the insurance company, and so there's  
2 a separation there.

3 Usually, an outside law firm like that, you  
4 know, there is a big pressure on attorneys to bill as  
5 many hours as they can to try and generate fees for the  
6 firm and that's how they're compensated. At an inside an  
7 in-house counsel firm, you are trying to represent the  
8 insured, but you don't have that same pressure of trying  
9 to bill as many hours as possible because if I bill 5,000  
10 hours a year or, you know, 1,800 hundred hours a year, it  
11 doesn't matter. I get paid the same. It's the same  
12 salary.

13 Q So the outside counsel tracks their time and  
14 submits bills to be paid, right?

15 A Yes.

16 Q And do you know who pays that bill?

17 A The Hartford. In this case, it would be the  
18 Hartford. But whoever the insurer is.

19 Q Okay. In your work for the Hartford, how  
20 many insureds have you defended as in-house counsel?

21 A I would say hundreds at this point.

22 Q And while working at the Hartford, have you  
23 ever been asked to issue a coverage opinion?

24 A No.

25 Q And let's back up a second. What is your

1 understanding of what a coverage opinion is?

2 A A coverage opinion is when you are asked to  
3 review the insurance policy and determine if -- Well, it  
4 could be a number of things, but obviously, you're trying  
5 to figure out if there is -- if that specific policy A  
6 has been complied with, like I've seen some coverage  
7 disputes where the person either lied on their  
8 application, didn't pay the premiums, or those kind of  
9 issues, or they're lately, there's been a bunch of news  
10 in the chatter about coverage opinions relating to  
11 business interruption and whether COVID-19 claims are  
12 going to be covered in those losses. I've heard stories  
13 about that. I've seen news articles and news stories on  
14 it. But those are coverage-type opinions where someone  
15 is determining whether or not something is covered by the  
16 policy and whether the policy has or the specific terms  
17 of the policy have been complied with.

18 Q Okay. And let me just ask again. Have you  
19 ever been asked by the Hartford to issue a coverage  
20 opinion?

21 A No. No.

22 Q And have you ever offered a coverage opinion  
23 to the Hartford?

24 A No.

25 Q So getting to the more specific facts that

1 apply to this particular matter, you were assigned to  
2 represent Sandra Sei as an insured of the Hartford,  
3 right?

4 A That is correct.

5 Q And when you received the assignment, what  
6 did you do?

7 A So when the assignment came in, I read the  
8 information that I got relating to the assignment. A  
9 letter was sent to Ms. Sei. I don't have a specific  
10 recollection of it, but usually, I call the insured and  
11 say: "Hey, guess what? I'm representing you. What do  
12 you remember about the incident itself so that I can get  
13 some background facts?"

14 I usually call the insurance adjustor and  
15 talk to them about any issues that, you know: "Why is  
16 this coming to me? You know, what's going on? What's  
17 the issue? Are you fighting about liability or are you  
18 fighting about damages? Are you fighting about, you  
19 know, something else? What's the issue? Why is it  
20 coming to me?" Because a lot of claims get resolved  
21 before going to lawyers. They get resolved.

22 Somebody says, "I want you to fix my car" or  
23 they say "Well, here's the auto body shop repair or here  
24 here's the invoice done. It's not that big a deal. No  
25 attorneys are involved in that as far as I understand.

1 But if somebody comes and says, you know, "I injured my  
2 finger, I want a million dollars," that might be a  
3 dispute on amount on value.

4 And so then they, you know, people will  
5 evaluate what's the issue with the finger? Is it like it  
6 was a small paper cut? That's not a million-dollar case  
7 in my estimation. But, you know, if it's a fracture and  
8 like they could never use the finger again, maybe that's  
9 worth more money. It just depends on the facts and  
10 circumstances of the case.

11 Q Okay. So you communicated with Ms. Sei and  
12 then you communicated with the adjustor, right?

13 A Yes.

14 Q And is the adjustor Ms. Baarson?

15 A Yeah. Kat Baarson.

16 Q Okay. And what was the scope of your  
17 assignment in this particular matter?

18 A So when the case came over, it was my  
19 understanding that settlement negotiations had been  
20 ongoing with the plaintiff's office. There were some  
21 letters back and forth that I read that talked about, you  
22 know, like offers of settlement, so it was my  
23 understanding that we needed to see if we could finalize  
24 a settlement, or if not, then I could give an evaluation  
25 on what did I see with this case as far as like what are

1 the issues.

2 In this case, it's my understanding that  
3 Ms. Sei struck the plaintiff in a crosswalk while that  
4 person had the walk signal. I wouldn't be fighting on  
5 liability on that. I don't see any angle for liability.  
6 The question would be what are the damages and what is  
7 related and what's not.

8 It was my understanding that -- at least the  
9 way I understand it, they were trying to settle  
10 Mr. Clements' claim for the \$100,000 policy. It was my  
11 understanding that Mr. Clements had been injured. I was  
12 trying to figure out what extent of injuries he had  
13 because there was sort of conflicting information in the  
14 file, so I wanted to see what was the extent of the  
15 injury. I talked to Mr. Harsh, who informed me that  
16 Mr. Clements had been paralyzed, which raised a huge  
17 concern to me if they weren't going to accept the  
18 \$100,000 policy limit.

19 Q And then there was a second claimant, right?

20 A There was a second claimant that was also  
21 Ms. Clements. She was -- Mr. Harsh communicated to me  
22 she was making a negligent infliction of emotional  
23 distress claim, so I asked Mr. Harsh, you know, some  
24 questions relating to her claim to see, you know, could  
25 she meet the criteria in Nevada for a negligent



1 infliction of emotional distress claim.

2 And there was, you know, I was trying to get  
3 information relating to both of those claims. I was  
4 trying to see if we could settle Mr. Clements' claim for  
5 the policy limit. Mr. Harsh said no, we can't do that  
6 unless you pay policy limit also for Ms. Clements. And  
7 so, you know, at that point, or in very short order, the  
8 negotiations broke down. Mr. Harsh informed me they  
9 would be filing suit and they did so.

10 Q Okay. Let me back us up for a second. You  
11 communicated with Mr. Harsh; correct?

12 A Yes. I talked to him on the phone as well as  
13 on email.

14 MS. FLOCCHINI: Okay. And I'm going to show  
15 you Exhibit 5, I hope. My camera is hiding my menu. I  
16 apologize.

17 CHAIR STOVALL: Does Mr. Werner have Exhibit  
18 5? Are you seeing Exhibit 5?

19 CHAIR STOVALL: The December 18th, 2020  
20 letter? Yes.

21 MS. FLOCCHINI: Okay. And are you seeing  
22 only that or do you see my whole screen?

23 CHAIR STOVALL: Well, I see that and I also  
24 see a screen and I also see faces along the sidebar.

25 Q (BY MS. FLOCCHINI:) Okay. The reason why I

1 ask is that I have one of those split screens, so I can't  
2 tell what the screen is showing you. But as long as  
3 everyone can see a copy of the December 18th letter,  
4 which has been marked as Exhibit 5, then I think we're  
5 good. Thank you.

6 Mr. Werner, I'm showing you what's been  
7 marked as Exhibit 5. Do you recognize it?

8 A It looks like a letter that would have been  
9 sent by my office by me.

10 Q Okay. This is a letter that -- it has just  
11 an S slash signature, but it's a letter that you  
12 prepared; correct?

13 A Yes.

14 Q And to whom is the letter sent?

15 A To Brent Harsh.

16 Q Okay. And what is the subject matter of the  
17 letter?

18 A This was a letter I sent to him relating to  
19 the Sandra Sei claim. His clients are David Clements and  
20 Sheila Clements, and we are -- I basically was talking  
21 about the demand letter and trying to resolve the claim.

22 Q Okay. And so you identify that his clients  
23 are or the plaintiffs are David and Sheela Clements;  
24 correct?

25 A Yes.

1 Q And who do you identify as your client on  
2 whose behalf you're communicating?

3 A Sandra Sei.

4 Q Okay. You sent this letter by -- Did you  
5 send this one by U.S. mail or by email? Do you know?

6 A I know that my office sent him a letter by  
7 mail, and then Mr. Harsh also emailed me and said he  
8 wanted to talk about the case, and so I pulled a version  
9 of the letter off the Internet and emailed it to him.

10 Q Okay. Did the document that you see on your  
11 screen change?

12 A Yeah. You're now showing an email from me to  
13 Brent saying Brent, here's the letter I sent you on  
14 Friday. I need information on the claim.

15 Q Okay. And this -- just for the record  
16 purposes, this email that you were just reading to us has  
17 been marked as Exhibit 7 to the hearing. And so you told  
18 us this is the email that you sent attaching that  
19 particular letter identifying Ms. Sei as your client,  
20 right?

21 A Yes.

22 Q Okay. And I'm just going to pull Exhibit 5  
23 back up. In this letter, you ask particular questions;  
24 correct?

25 A Yes.

1 Q Okay. And why did you ask the questions that  
2 are in the letter that is marked as Exhibit 5?

3 A I was asking questions relating to the claims  
4 being made, specifically the claims being made by Sheela  
5 Clements.

6 Q Okay. And what were you trying to figure out  
7 by asking those questions?

8 A I was trying to figure out what evidence  
9 there was to support a claim for negligent infliction of  
10 emotional distress.

11 Q Okay. Is it fair to say you were evaluating  
12 liability and/or damages related to Ms. Clements' claim?

13 A Yes.

14 Q I will stop the sharing. Mr. Werner, during  
15 the time that you were representing Ms. Sei on this  
16 claim, did you ever look at her insurance policy that the  
17 Hartford issued?

18 A No.

19 Q Did you ever tell Mr. Harsh that you thought  
20 Ms. Clements' claims weren't covered by Ms. Sei's  
21 insurance policy?

22 A No.

23 Q You had indicated that there was some  
24 correspondence back and forth about trying to resolve  
25 Mr. Clements' claim and maybe Ms. Sei's claim and/or

1 evaluate that claim. Did you ever make an offer of  
2 settlement for Ms. Clements' claim?

3 A I don't believe I ever offered it on her  
4 claim. I was still trying to reach an evaluation on  
5 that.

6 Q Okay. Did you ever tell Mr. Harsh that you  
7 were not going to be offering something to try to settle  
8 Ms. Clements' claim?

9 A No, I don't believe we had that conversation.  
10 We were just talking about I was trying to gather  
11 information about her claim to see what was there to  
12 support it. And then I was also trying, if I could, to  
13 resolve Mr. Clements' claim.

14 Q Okay. Were you asked to opine on whether or  
15 not Ms. Sei had coverage for the Clements' claims?

16 A No.

17 Q What effect -- if you had been asked to opine  
18 about such coverage -- what effect would that have had on  
19 your representation of Ms. Sei?

20 A So the adjustors are trained not to try and  
21 ask staff counsel for coverage opinions. If they ever  
22 were to ask me for a coverage opinion, I would decline to  
23 offer such an opinion because it would create a conflict  
24 of interest. It just does. You can't represent someone  
25 that you're now saying well, maybe I shouldn't cover your

1 claim. That just doesn't work.

2 Q Okay. So you and Mr. Harsh had discussions  
3 about the claims. And how did those discussions end?

4 A Mr. Harsh said we're going to file suit, and  
5 he sent me an emailed copy of a complaint that he was  
6 filing on behalf of the Clements against Ms. Sei. And he  
7 said we're going to proceed with the lawsuit.

8 Q Okay. And did you receive a copy of the  
9 filed complaint?

10 A I can't remember if the copy that Brent sent  
11 me was filed or not. I think it was not, but it might  
12 have been. But then I also got a copy from Ms. Sei. She  
13 sent me a copy of the complaint that had been filed and  
14 served on her.

15 Q Okay. I'm going to try to pull up an  
16 exhibit. I am sharing what's been marked as admitted  
17 Exhibit 11. It's two pages, so it's currently showing  
18 the first of the two pages. Do you recognize the email  
19 that's in the center here from Mr. Harsh?

20 A Yeah. It looks like an email that he sent to  
21 me. Yes.

22 Q And what was he providing to you through this  
23 email?

24 A It says he's sending me a proof of service  
25 that the complaint had been served, and he says I'll send

1 a complaint later in another email.

2 Q And I'm going to scroll down. This is the  
3 second page of Exhibit 11. Is this another email that  
4 you recognize?

5 A It looks like an email that he sent to me.  
6 It just says: "For your records," so I don't know.

7 Q Do you see any attachments referenced in the  
8 email?

9 A Oh, it looks like it says -- it's hard to  
10 read, but it looks like it says "Plaintiff's complaint"  
11 and something else, image. I'm not sure if the other  
12 image would be something like his logo or something. I  
13 don't know. But it looks like it says there's something  
14 that's attached.

15 Q Could this have been an email by which he  
16 provided the complaint to you?

17 A Yeah. I mean, like I said, he definitely  
18 sent me a copy of the complaint. I don't remember if it  
19 was the file-stamped copy or not. I just don't. Sorry.

20 Q Okay. And the reason why we're all here is  
21 because there was an extra letter that was attached to  
22 the complaint that was served on Ms. Sei. Did Mr. Harsh  
23 provide you a copy of that letter?

24 A No.

25 Q How did you receive a copy of that letter?

1           A     When Ms. Sei sent me a copy of the complaint  
2     that she received. If I remember correctly, she faxed it  
3     to me and she attached to that a letter from Mr. Harsh to  
4     Ms. Sei recommending that she hire counsel and pursue a  
5     claim against the Hartford specifically.

6           Q     Okay. And I'm going to share what's been  
7     marked as Exhibit 10 and already admitted into the  
8     hearing. Do you recognize this letter?

9           A     Yeah. This is the letter that he attached to  
10    the complaint when it was served recommending that she  
11    contact these attorneys to bring a claim against the  
12    Hartford, I believe.

13          Q     Okay. And you only received this letter from  
14    Ms. Sei not from Miss Harsh -- Mr. Harsh, right?

15          A     Yeah. Mr. Harsh did not send this letter to  
16    me. I received it from Ms. Sei, and I was kind of  
17    surprised because generally, I understand the rule to be  
18    you do not contact represented parties. So I was  
19    surprised that he would have sent a letter to my client  
20    saying hey, you should consider suing somebody.

21          Q     Okay. And then so after the complaint was  
22    filed, you didn't file the answer to the complaint,  
23    right?

24          A     I did not.

25          Q     Another lawyer did?



1           A     Yes, Mr. Turtzo filed an answer to the  
2     complaint as far as I understand.

3           Q     Okay. And why didn't you continue  
4     representing Ms. Sei in the claim?

5           A     So when we received the complaint and it was  
6     going to go forward, I contacted Ms. Baarson and I said  
7     to her there has been information provided to me that  
8     showed Mr. Clements is paralyzed as a result of this  
9     claim.

10                     In my personal evaluation, that is going to  
11     exceed the \$100,000 policy limit that this insured has,  
12     and that presents a conflict of interest for staff  
13     counsel continuing to represent the claim, and so this  
14     needs to be sent out to panel counsel to defend.

15           Q     Okay. So it was the potential damages  
16     related to Mr. Clements' claim that led you to recommend  
17     that the matter be handled by panel counsel?

18           A     Yeah. Whether Ms. Clements' claims were  
19     legitimate or illegitimate didn't matter to me because  
20     Mr. Clements' claims alone would have exceeded the policy  
21     limit in my evaluation.

22                     MS. FLOCCHINI: Okay. Mr. Werner, those are  
23     all of the questions that I have for you. I thank you  
24     for taking the time to participate in the hearing. I  
25     know Mr. Moore may have questions for you on behalf of

1 Mr. Harsh, and of course our panel members may have  
2 questions also, so I pass.

3 CHAIR STOVALL: Your witness, Mr. Moore.

4

5 CROSS-EXAMINATION

6 BY MR. MOORE:

7 Q Thank you. Mr. Werner, have you, in your  
8 career, having worked for a few different insurance  
9 companies, ever conducted an examination under oath?

10 A Did you say examination under oath?

11 Q Yes.

12 A And the answer is yes, I have.

13 Q All right. And for those people who might  
14 not understand what an examination under oath is, is it  
15 an examination of an insured in order to obtain facts  
16 regarding a claim?

17 A It is exactly that. Yes. You're trying to  
18 -- it's like a deposition where you're swearing the  
19 witness to take, you know, tell the truth and you're  
20 asking them about facts about their specific claim.

21 Q And you've done that for the Hartford;  
22 correct?

23 A I have.

24 Q And is it therefore true that there are  
25 instances where you have represented the Hartford

1 directly; correct?

2 A I have represented the Hartford directly in a  
3 couple of or several instances, some of which are  
4 subrogation and some of them are UIM or UM claims that  
5 are being made. And for the panel, UM is or UIM is  
6 underinsured motorists and UM uninsured motorists.

7 Q And of course the purpose of that kind of  
8 claim does deal with coverage; correct?

9 A I wouldn't ever offer a coverage opinion.  
10 What I would -- I'm hired to do in those instances or  
11 tasked to do is to provide a value for the claim. So  
12 oftentimes, the insured is making a claim, and those  
13 claims, the issue is value. What is the value of that  
14 claim?

15 Q Would you agree that if you're talking about  
16 the value of a claim, you are talking about the amount of  
17 money that the insured should receive?

18 A Yes. You're talking about the money or value  
19 that the insured's claim is worth. Yes.

20 Q So there are times when you do in fact  
21 represent the Hartford and the purpose of your  
22 representing the Hartford has to do with how much money  
23 Hartford has to pay; correct?

24 A I would say in almost every case, it's about  
25 the amount of money that has to be paid.

1 Q Precisely. And did you ever communicate to  
2 Mr. Harsh that you never ever do any coverage work for  
3 the Hartford?

4 A I did not communicate that to Mr. Harsh. He  
5 never asked me that. Mr. Harsh, in my experience, used  
6 to be panel counsel or in-house counsel for Farmers for  
7 many years. That has been -- that was my understanding,  
8 and so I know he knew that coverage work is not done by  
9 in-house counsel or some people call it captive counsel.  
10 It's just not done.

11 Q And when you say that it's not done, are you  
12 proffering yourself as an expert who knows what the  
13 experience is across the Bar in all insurance companies?

14 A I have not been asked to offer such an  
15 opinion, but I can tell you in my experience that  
16 coverage opinions are not offered by panel or by in-house  
17 captive firms. And I know that it was not done at  
18 Nationwide. It was not done at the Hartford. And my  
19 understanding is that other insurers don't have that  
20 policy or have the same policy because it violates the  
21 ethical rules that govern attorneys, and so it's not done  
22 as a general rule.

23 Q So you just used a qualifier, didn't you.  
24 You said it's not done as a general rule. Are you saying  
25 that unequivocally, there never is a situation where

1 in-house counsel opines on coverage? Is that your  
2 thought?

3 A What I am saying -- and I said this at the  
4 beginning of your question -- is I do not have knowledge  
5 of every insurer and every policy in every insurance  
6 company across the land.

7 It has been my experience in every insurance  
8 company that I have dealt with and for which I have been  
9 retained, there are separate attorneys that do coverage  
10 opinions and that in-house captive counsel that does  
11 defense insureds are not tasked with that activity. And  
12 the reason for that is because it would violate the  
13 ethical rules and it would be a problem for them to offer  
14 opinions that something is not covered and then be  
15 defending that specific insured.

16 MR. MOORE: Okay.

17 CHAIR STOVALL: I'm going to stop this at  
18 this point. As I understand it -- and correct me,  
19 Counsel, if I'm wrong -- Mr. Werner has not been tendered  
20 as an expert witness. He's a percipient witness only.  
21 Let's just ask percipient witness questions.

22 Q (BY MR. MOORE:) Precisely. And what I'm  
23 doing is I'm finding out what Mr. Werner's experience has  
24 been so we understand what the communication was like  
25 with Mr. Harsh.

1                   Therefore, to be clear, Mr. Werner, you never  
2   communicated to Mr. Harsh that you never do coverage  
3   work. Is that accurate?

4                   A     Mr. Harsh never asked me if I was offering a  
5   coverage opinion. He never asked me anything like that.  
6   He asked me like will I pay ex number of dollars.

7                   CHAIR STOVALL: I'm going to interrupt you  
8   there, Mr. Werner. I don't want you to give the answer  
9   that you want to give. I want you to answer the question  
10   that counsel's asking. Okay? Just answer the questions  
11   that you were asked.

12                   Now, Mr. Moore, go ahead and ask your next  
13   question.

14                   MR. MOORE: Your Honor, I don't think I got a  
15   yes-or-no answer on that.

16                   CHAIR STOVALL: I don't think you did either.  
17   You can ask the same question again if you wish.

18                   Q     (BY MR. MOORE:) Mr. Werner, is it true that  
19   you never told Mr. Harsh that you never do coverage work?

20                   A     Is that true? I never told him that. Yes,  
21   that is true. I never told him that I don't do coverage  
22   work.

23                   Q     We're going to take a look at what's been  
24   admitted into evidence. It's an Exhibit 4. And so I'm  
25   going to see if I can have technology work. I'm going to

1 stop the video that I have and I'm going to go to Exhibit  
2 4.

3 And, Mr. Werner, do you have exhibits there  
4 in front of you or do we have to rely on what you see on  
5 the screen?

6 A I don't have any exhibits here, but I could  
7 probably find them on my computer if I need to.

8 Q I don't think that's necessary. I'm just  
9 trying to find out what's the most efficient for everyone  
10 here. Is Exhibit 4 a document that you recall?

11 A Yeah, I've seen this document before. Yes.

12 Q And would it be accurate to characterize  
13 Exhibit 4 as a letter that you will often send to someone  
14 who you have been asked to work with by the Hartford?

15 A Yeah. I would call it a letter of  
16 representation or a communication to the client that we  
17 have been retained to defend them or represent them in a  
18 claim or a lawsuit.

19 Q Looking at that letter, are the words letter  
20 of representation anywhere on the letter?

21 A I don't remember, but I don't necessarily see  
22 them. I don't see the whole letter, but I don't know.

23 Q All right. Panel members have the ability to  
24 study correspondence here and exhibits, so we can  
25 continue.

1 Mr. Werner, let me take a step back. This  
2 letter that is marked as Exhibit 4 and the Bar has  
3 previously introduced into evidence for the purposes of  
4 this hearing, is that a letter? Do you know how that got  
5 to the Bar?

6 A How the Bar obtained this letter?

7 Q Yes.

8 A I believe they asked me if there was a letter  
9 of representation sent to the client and I gave it to  
10 them.

11 Q When you gave that letter of representation  
12 to what you're calling your client, did you ask your  
13 client for permission to do so?

14 A Did I ask my client for permission to do  
15 what? Send her a letter?

16 Q Did you ask your client -- Well, let's take a  
17 step back. Would you consider this letter ordinarily a  
18 privileged communication?

19 A Yes.

20 Q All right. And to be clear, you would  
21 consider it a privileged communication because it is a  
22 communication between you as an attorney and the person  
23 who you're contending here is your client, Ms. Sei. Is  
24 that correct? That's why there's a privilege?

25 A Yes.



1 Q And who holds that privilege? Do you hold  
2 the privilege or does Ms. Sei hold the privilege?

3 A Ms. Sei holds the privilege.

4 Q And if the privilege is going to be waived,  
5 therefore, can you waive the privilege by yourself or  
6 does Ms. Sei have to waive the privilege?

7 A Generally, Ms. Sei would have to waive the  
8 privilege.

9 Q Correct. And if Ms. Sei has not given you  
10 permission to send a letter to a third party, how is that  
11 not a violation by you of her privilege?

12 A There is nothing confidential or secret in  
13 this letter. There's nothing in here that reveals any  
14 specific facts about the case other than the date in  
15 which it occurred, and so --

16 Q Mr. Werner?

17 A Yes. Yes, sir.

18 Q Are you basically saying no harm no foul?

19 A What I'm saying is I raised this specific  
20 issue with the Bar and asked them: Am I allowed to  
21 actually produce it to you in this case absent a  
22 subpoena? And they said it doesn't appear to have any  
23 confidential information or it doesn't -- unless it has  
24 confidential information in it, you can produce it.

25 Q So your testimony is that when you send a

1 letter to someone who you say is a client, that does not  
2 contain confidential information. Is that what you're  
3 saying?

4 MS. FLOCCHINI: Objection. Beyond the scope  
5 of prior testimony.

6 CHAIR STOVALL: Well, look. This is not the  
7 time or place to try to determine whether or not  
8 Mr. Werner violated client confidence, so I am not seeing  
9 the relevance.

10 MR. MOORE: Your Honor, the relevance has to  
11 do with this. If Mr. Werner is contending that Ms. Sei  
12 was his client and we are entitled to find out how he was  
13 communicating with her and how he's treating her even to  
14 this day, and when we have a letter that is privileged  
15 that is being disseminated without the person who upholds  
16 the privilege, ostensibly Ms. Sei, that is relevant.

17 MS. FLOCCHINI: The Bar would also --  
18 continues the objection to the argument that it's  
19 irrelevant to the issue in this disciplinary proceeding.

20 CHAIR STOVALL: Okay. I'm going to rule that  
21 it's irrelevant. Move on.

22 Q (BY MR. MOORE:) Okay. I can certainly move  
23 on, Your Honor. In this letter, do you ever say to  
24 Ms. Sei that you represent her?

25 A Let me look at the letter. I believe that

1 would be the communication. I don't know that it  
2 specifically says that, but it says that we have -- that  
3 we were -- that we are defending her or will defend her  
4 in a lawsuit if one is filed. So I think the  
5 communication -- I don't know if those specific words are  
6 used, but I believe that we are communicating to her that  
7 we would be representing her or defending her interests  
8 in this claim.

9 Q And I appreciate Mr. Werner talking about  
10 what you believe. What we're trying to do is find out  
11 how you use language and how that --

12 CHAIR STOVALL: Counsel, this is beyond the  
13 scope of the charges against Mr. Harsh. It doesn't  
14 matter how Mr. Werner uses language. What matters is  
15 whether or not he represents Ms. Sei. He said he did.  
16 He sent a letter and the letter speaks for itself.

17 It looks to me like he's saying he's  
18 representing her. He's just testified he represented  
19 her. It doesn't matter what other -- beyond that, I  
20 don't see any relevance.

21 MR. MOORE: Your Honor, what we're doing is  
22 we're talking about the choice of words that Mr. Werner  
23 uses when he's communicating, and those choice of words  
24 have an impact on the recipient. And this is an example  
25 of our being able to show that in the context of when

1 he's communicating when we would think that a  
2 communication should be clear, even in a letter that's  
3 being sent to the purported client, there is ambiguity  
4 even in that.

5 And we will then continue when we talk about  
6 the communication between Mr. Werner and Mr. Harsh how  
7 there's those ambiguities. So respectfully, that is the  
8 relevance there. I can certainly move on, Your Honor.

9 CHAIR STOVALL: Okay. I appreciate your  
10 response, Mr. Moore. I understand what you're saying,  
11 but this isn't whether -- this hearing is not about  
12 whether Mr. Werner is a good communicator or not, whether  
13 his letters are ambiguous or not. He's stated he  
14 represented her. This letter was sent, he says, to let  
15 her know he represented her. And that's as far as we  
16 need to go as far as relevance. And thank you.

17 Go ahead and move on.

18 MR. MOORE: And for the record, if I may,  
19 Your Honor, when you say "move on," there are other  
20 portions of the letter where we think that there are  
21 inaccuracies. Is the instruction to move on I cannot  
22 discuss those inaccuracies?

23 CHAIR STOVALL: Well, if the letter is --  
24 like I said, this case is not about whether or not  
25 Mr. Werner's letter is accurate or not. This is about

1 whether or not Mr. Werner was representing Ms. Sei. He  
2 was either her counsel or not. And I've been very  
3 sympathetic to the idea that if he really didn't  
4 represent Ms. Sei, this case has a whole different  
5 complexion.

6 He's testified he does. Whether or not his  
7 letter is ambiguous or whether or not it is accurate, he  
8 says he represented her. He sent her this letter that he  
9 says was to communicate that fact to him to Ms. Sei, and  
10 that's as far as I think we need to go into this letter.  
11 So right. I don't think any further -- trying to find  
12 inaccuracies in the letter -- unless it goes to the heart  
13 of whether or not he's representing her or not or  
14 communicated his representation to her or not, I'm going  
15 to rule it as irrelevant.

16 MR. MOORE: And I appreciate that, and I'm  
17 going to focus on what the Chair just said.  
18 Communicated. And respectfully, I think that's the issue  
19 in this case: What was communicated.

20 CHAIR STOVALL: It's not just what was  
21 communicated. It's whether or not his representation was  
22 communicated. And maybe he didn't say things that you  
23 think are accurate or not, but it has to go to the heart  
24 of the matter is representation. Anything else of you is  
25 irrelevant, so if you have questions about whether or not

1 this letter communicated representation, go ahead.

2 Q (BY MR. MOORE:) And that's respectfully what  
3 I was trying to do.

4 CHAIR STOVALL: Okay.

5 Q (BY MR. MOORE:) And right now, when we talk  
6 about your communication and your word choice -- and,  
7 Mr. Werner, generally speaking, as an attorney, you agree  
8 that word choice is important. Words have meaning?

9 A Yes, I agree word choice has meaning. Words  
10 have meaning. Yes.

11 Q And you can appreciate how clarity of  
12 communication can be important; is that right?

13 A I do agree that clarity is important.

14 Q All right. And the letter that you sent out,  
15 is this basically a form letter, by the way?

16 A It sure is.

17 Q Okay. And in fact, there are portions in the  
18 letter you agree where it's referring to quote, "your  
19 company," closed quote, but this wasn't a matter  
20 involving the company, was it?

21 A No. I don't believe there was any company  
22 involved. It's a form letter. It goes out to every  
23 single client on every single case.

24 Q All right. And when you sent the letter out,  
25 did you know there was a question of which insurance

1 policy limit would apply in this case?

2 MS. FLOCCHINI: Objection. Relevancy.

3 MR. MOORE: May I be heard?

4 CHAIR STOVALL: Go ahead and answer the  
5 question. I think it's relevant.

6 THE WITNESS: Say the question again so I  
7 remember. Sorry.

8 Q (BY MR. MOORE:) When you sent this letter,  
9 you knew that there was a question of what insurance  
10 policy limit would apply in this case. Is that right?

11 A No. Well, I didn't look at whether the  
12 insurance policy would apply or not apply. What I was  
13 looking at was this was a person that was referred to my  
14 office to represent, so I was looking at, you know, what  
15 is the situation with liability and what is the situation  
16 with damages. If a case gets sent to me, there's some  
17 fight about one or the other or both.

18 Q And to be clear, you never sent Exhibit 4 to  
19 Mr. Harsh, right? Just to make sure we all know that.

20 A I didn't send my letter of representation to  
21 Mr. Harsh. He didn't ask for it. It would be -- he's  
22 not my client. He didn't have any reason to get it. So  
23 no, I didn't send it to him.

24 Q Well, if you would have asked for it, would  
25 you have provided it to him?

1 A I don't know why he would need it.

2 Q If he had asked for this letter of  
3 representation, as you call it, to Ms. Sei, would you  
4 have provided it to Mr. Harsh?

5 A I don't know. He never asked for it. I  
6 didn't even think about it. I haven't thought about it.  
7 I don't know that I would send it to him because like I  
8 said, it's a letter to my client, but I've never in my,  
9 you know, 17 years of practice ever had anyone ask me can  
10 I get a copy of your letter of representation until the  
11 State Bar asked me for it in this hearing.

12 Q All right. So it would be very unusual for  
13 an opposing attorney to ask for the letter of  
14 representation. Do you agree with that?

15 A I would say it would be extremely unusual and  
16 I don't know what purpose it could ever serve.

17 Q Now there comes a point in time when you do,  
18 according to your testimony -- well, let's take a step  
19 back. Did you earlier testify in this hearing that you  
20 did not recall speaking to Ms. Sei?

21 A I don't have a specific recollection of  
22 speaking to Ms. Sei. I believe I probably did because  
23 that is my general practice, but I don't have a specific  
24 recollection of that.

25 Q And when you say you don't have a specific



1 recollection, are we talking about not speaking to  
2 Ms. Sei at any time? You don't have any memory of  
3 speaking to her at any time?

4 A I don't remember speaking to her. I am  
5 fairly certain that I did because that is my general  
6 practice, but I don't recall it. And so, you know, I've  
7 been sworn to tell the truth. I've got to tell the  
8 truth. I don't remember it.

9 Q You testified earlier that you never offered  
10 any amount of money for Ms. Clements' claim; correct?

11 A I don't recall offering any money for  
12 Ms. Clements' claim. That is correct.

13 Q When you sent what's Exhibit 4 that we still  
14 have on the screen to Ms. Sei, you copied Ms. Baarson.  
15 Is that correct?

16 A If you could go down to the last page, I can  
17 see that. I don't know.

18 Q Sure.

19 A It looks like it was copied to her. Yes.

20 Q All right. And you copied Ms. Baarson  
21 because she's the claims professional who is handling the  
22 claim; correct?

23 A Yeah. She's the claims handler or claims  
24 representative that is handling the claim. Yes.

25 Q And was there ever a point in time when you

1 understood from Ms. Baarson that there was a question as  
2 to what policy limit would apply?

3 A If there was a question as to what policy  
4 limit would apply?

5 Q Yes.

6 A She had informed me that she had offered the  
7 \$100,000 policy limit to Mr. Clements and that Mr. Harsh  
8 had asked for a \$100,000 policy limit for Ms. Clements.  
9 And so it wasn't -- I don't know what you're trying to  
10 ask. She communicated to me that those were the  
11 requests. She asked me to look at liability and damages  
12 in the case. I did.

13 Q All right. So you've testified that damages  
14 was an important thing that you were to trying to sort  
15 out because that was a big part of your job; correct?

16 A Trying to figure out what the damages was in  
17 this case was something that was part of my job. Yeah.

18 Q Okay. So yes. So when we're looking at  
19 Exhibit 3 that I've now brought up on the screen, is that  
20 a document you recognize?

21 A It appears to be -- what you've got on the  
22 screen anyway is the first page of a letter, a demand  
23 letter from Mr. Harsh. Yes.

24 Q And I'm going to move the pages, if that  
25 helps refresh your memory. I'm not trying to go too

1 fast. You can tell me if I need to slow down. But does  
2 that confirm your understanding that it is a letter from  
3 Mr. Harsh?

4 A Yeah, it's a letter from Mr. Harsh.

5 Q And did you understand that it was a demand  
6 letter?

7 A It says so, so yeah.

8 Q All right. And so in that demand letter, do  
9 you recall what Mr. Harsh's demand was?

10 A I don't specifically recall it, but I would  
11 assume based on past experience or now you showed me the  
12 page that he was demanding \$100,000 for each of his  
13 clients.

14 Q And when you received that demand letter and  
15 that demand letter, it was fine for you for Ms. Baarson  
16 to also receive it; is that correct?

17 A I believe I received it not from Mr. Harsh,  
18 but from Ms. Baarson.

19 Q All right. And --

20 A I believe it's -- I believe it looks like  
21 it's dated in November, and I don't believe I even had  
22 the case assigned to me in November.

23 Q When you became aware of the letter, the  
24 demand letter, did you communicate the amount of the  
25 demand to Ms. Sei who you say is your client?

1 A Ms. Sei was informed of this demand letter --

2 MS. FLOCCHINI: I apologize. Objection.

3 Relevancy.

4 MR. MOORE: Respectfully, it does have to do  
5 with how he is treating Ms. Sei if that's really his  
6 client.

7 MS. FLOCCHINI: Again, I'm not --

8 CHAIR STOVALL: I disagree, Counsel. This  
9 isn't about whether Mr. Werner is an effective advocate  
10 for his client. It's about whether or not he represented  
11 Ms. Sei.

12 MR. MOORE: Agreed, Your Honor. Agreed.

13 CHAIR STOVALL: So I'm going to sustain the  
14 objection.

15 Q (BY MR. MOORE:) You were asked questions  
16 earlier, and I'm going to navigate to another document  
17 you looked at earlier, Mr. Werner, pertaining to Exhibit  
18 11. And I'll just refresh. And you see the letter  
19 there, right?

20 A Yeah.

21 Q And there's a portion in Exhibit 11 --  
22 whoops. Sorry. It shows you that I can't make this  
23 technology work perfectly all the time myself. Is there  
24 a portion in Exhibit 11 where there's a request by  
25 Mr. Harsh to you that you do something?

1           A     The document says: "Please have your  
2     insured's personal counsel contact me." Yes.

3           Q     And when you saw that request, what did you  
4     do as a result of that, if anything?

5           A     That request.

6           Q     Yes.

7           A     There wasn't anything for me to do about  
8     that. At that point, the case had already been discussed  
9     that it was going to go out to a panel firm and so there  
10    wasn't anything for me to do to follow up on that.

11          Q     I think --

12          A     Mr. Turtzo I believe had already -- I don't  
13    know if he had officially been retained yet, but I  
14    believe he was being retained at that moment, and so he  
15    would be now representing Ms. Sei and not me.

16          Q     And when the phrase is being used by  
17    Mr. Harsh, your insureds, did you correct him by saying  
18    you're referring to my client here? Did you do anything  
19    to correct that phrase?

20          A     I don't make it a personal habit of trying to  
21    correct every inaccuracy or inappropriate reference in  
22    every email that's sent to me. That's just -- it would  
23    be obnoxious to do that. I try to treat people with  
24    respect, and I would find it obnoxious if anybody wanted  
25    to correct every single email that I sent. I just don't

1 think that's how you practice law. Sorry.

2 Q Do you see any value in trying to be very  
3 clear at communicating who is representing who?

4 A In a general case, everybody knows who is  
5 representing who. My letter specifically referenced my  
6 client being Sandra Sei, so to me, that's already  
7 communicated to Mr. Harsh. He knows who I represent.  
8 That's why it's included in the letter so that he knows  
9 that's who I'm representing. I'm not representing  
10 someone else. I'm representing Ms. Sei. And I know he  
11 represents the plaintiffs. And so, you know --

12 Q So let's do this. Since you referred to --  
13 you're referring to what we've marked as Exhibit 5, and I  
14 also have a page because from your prior testimony, you  
15 indicated that there was an initial draft letter that was  
16 part of an email that you were trying to demonstrate to  
17 Mr. Harsh, but what happened was you also sent a letter  
18 through the mail. And the letter is the same language in  
19 large part, but they are different; correct?

20 A The two letters you have up on the screen is  
21 slightly different. Not substantially different, but  
22 they are slightly different. Yes.

23 Q Okay. And you agree that anyone looking at  
24 the letters would have seen that you had copied  
25 Ms. Baarson; correct? You see that there?

1 A There is a cc to Kat Baarson on both letters.

2 Yes.

3 Q And do you see in the very first sentence you  
4 -- and this, by the way, is your formal written  
5 communication to Mr. Harsh; correct?

6 A It is a letter I sent to Ms. Harsh and  
7 Mr. Harsh.

8 Q And so it's yes, right?

9 A Yeah. This is the letter that I sent to him.  
10 Yes.

11 Q And you see that the first sentence, it says:  
12 "I am in receipt of your demand letter wherein you  
13 confirm that David Clements' claims are resolved for the  
14 \$100,000 policy offer." Is that an accurate statement?

15 MS. FLOCCHINI: Objection. Relevancy.

16 CHAIR STOVALL: Counsel?

17 MR. MOORE: It's relevant because it has to  
18 do with what is being communicated between Mr. Harsh and  
19 Mr. Werner and what Mr. Harsh's understanding is of what  
20 Mr. Werner's role is in this matter.

21 CHAIR STOVALL: That was not your question  
22 though, Counsel. Your question was about this particular  
23 fact whether or not this hundred-dollar tender was  
24 accurate or not. So with respect to the objection, it's  
25 sustained.

1 Q (BY MR. MOORE:) You've testified earlier that  
2 it's important to try to be accurate, correct,  
3 Mr. Werner?

4 A Yeah, it is important to be accurate.

5 Q And by the way, is this letter -- Is this  
6 first created as part of a template form?

7 MS. FLOCCHINI: Objection. Relevancy.

8 MR. MOORE: It has to do with how Mr. Werner  
9 is communicating to Mr. Harsh because there are certain  
10 things that are missing in the letter.

11 CHAIR STOVALL: You know, this case is not  
12 about whether or not Mr. Werner is using a template or  
13 not, so I'm going to rule in favor of the objection. I  
14 sustain it. Go ahead.

15 Q (BY MR. MOORE:) In the body of the letter,  
16 do you agree that you do not state Ms. Sei is your  
17 client?

18 A It says it at the top of the letter, so I  
19 don't think it needed to say it a second time in the  
20 letter.

21 Q We are hearing what you think, but my  
22 question is different. Do you agree that if one reads  
23 the body of the letter, does it not state that Ms. Sei is  
24 your client?

25 A I don't read letters in isolation or try and



1 piecemeal them out, so what do you want me to say? It  
2 doesn't say in the body of the --

3 CHAIR STOVALL: Mr. Werner, what I would like  
4 you to say is this a correct answer to the question to  
5 the question you were asked. Do you see, in the body of  
6 either of these two letters, that you represent Ms. Sei?

7 THE WITNESS: No.

8 CHAIR STOVALL: Thank you. Next question.

9 Q (BY MR. MOORE:) When you look at what you're  
10 asking about in the body of the letter, do you agree that  
11 the questions you're asking could impact the amount of  
12 insurance coverage available to Ms. Sei?

13 A No.

14 Q You don't see that? Okay.

15 A It has nothing to do with coverage. It has  
16 everything to do with what is the liability situation and  
17 what is the amount of damages.

18 Q Can I ask the panel chair to please remind  
19 the witness he's not an advocate and to please just  
20 answer the questions?

21 CHAIR STOVALL: Yeah. I want direct answers  
22 to the questions asked. No editorial, no additional. If  
23 Ms. Flocchini wants to delve into some of those matters,  
24 I'm sure she'll do it. Next question.

25 Q (BY MR. MOORE:) We're going to shift on over

1 to another exhibit, and I'm going to show you what's been  
2 already admitted into evidence as Exhibit O. And Exhibit  
3 O, I'm just going to go through some of the pages  
4 generally, Mr. Werner, because apparently, you don't have  
5 the exhibits there in front of you.

6 Just to see generally if you recognize this  
7 as an email string between you and Mr. Harsh. And I  
8 don't mean to be going fast, but hopefully, this gives  
9 you an idea of what we're representing is accurate.

10 A It appears to be the emails between Mr. Harsh  
11 and myself.

12 Q And to set the -- to have us understand, you  
13 were communicating with Mr. Harsh on or about -- and by  
14 the way, let's not be misled by the from and to because  
15 that's what happens because you actually sent this email  
16 string to Bar counsel through this earlier this year;  
17 correct?

18 A Yes. Bar counsel asked for all  
19 communications between Mr. Harsh and myself and I  
20 provided them.

21 Q And so when we want to look at what the date  
22 was of the actual email, and I'm trying to Zoom in on  
23 that, you agree we're talking about December 22 for at  
24 least an email that I've blown up here; correct?

25 A The one that -- yeah. That says December 22,

1 2020.

2 Q All right. And so what you had done is  
3 provided Bar counsel an email string from that date. Is  
4 that correct?

5 A Yeah, as far as I know. I provided the  
6 emails that I was able to locate between Mr. Harsh and  
7 myself.

8 Q All right. And so you established that  
9 emails between Mr. Harsh and yourself -- and if we take a  
10 look at what for the record is Exhibit O, marked as State  
11 Bar number 210 for the page number, do you see how on  
12 Tuesday December 22nd as part of the communications, how  
13 you refer to Ms. Sei?

14 A I referred to her as my insured in that first  
15 one.

16 Q Precisely. And of course that's a word that  
17 you used, right?

18 A It is the word I used in that email. Yes.

19 Q And do you agree that the meanings of the  
20 words "my insured" and "my client" are different?

21 A In this case, they're not, but yes, they  
22 could be.

23 Q Looking at -- Let me see if I can clear this  
24 here. And I'm going back to Exhibit O. I was just  
25 clearing what I had marked here. You send -- again,

1 Exhibit O, we're on page 208, and I'll see if I can blow  
2 that up so it's a little easier. You send an email to  
3 Mr. Harsh where you say "Brent" and you used the pronoun  
4 "we." Correct?

5 A It appears that I used the pronoun we. Yes.

6 Q Okay. And do you agree that when you're  
7 using the pronoun "we," we're referring to -- who you're  
8 referring to is you and the Hartford?

9 A I believe I'm referring to we as my office,  
10 but --

11 Q Well, in the context when you say: We can  
12 arrange an examination under oath but you indicated that  
13 you instead planned to file tomorrow. If your client  
14 decides to accept the hundred thousand dollars offer let  
15 me know, and I'll send over a release. You're talking  
16 about authority that's extended by the Hartford not  
17 Ms. Sei. Is that correct?

18 A Ms. Sei is not offering personally any money.  
19 The money would be coming from the Hartford.

20 Q Correct. Mr. Werner, did you in any email  
21 exchange with Mr. Harsh use the word "client" to refer to  
22 Ms. Sandra Sei?

23 A The email of the letter that I sent to him  
24 that said my client is Ms. Sei? I don't know. I haven't  
25 looked at every single email, so I don't know if I used

1 it any other way, but that's the one I can recall.

2 Q That's not my question. You just said in the  
3 email that I quoted that says: My client is Ms. Sei. Is  
4 there ever a sentence that says that?

5 MS. FLOCCHINI: Objection. Asked and  
6 answered.

7 CHAIR STOVALL: He's answered it. Well, he  
8 says he wasn't sure. So the documents are going to speak  
9 for themselves. I'm sure he probably didn't unless  
10 Ms. Flocchini is going to ask some questions and point it  
11 out to her, so whatever the documents say or don't say is  
12 what they say or don't say.

13 Q (BY MR. MOORE:) All right. We're going to  
14 take a look at another document here, which is Exhibit J.  
15 And, Mr. Werner, are you able to see Exhibit J there?

16 A I see it.

17 Q And is that a document that you've seen  
18 before?

19 A I believe so.

20 Q And is it true that when Ms. Sei sends  
21 Mr. Harsh's letter with the summons and complaint, she  
22 sends it to the Katharine Baarson not you?

23 A It appears that way from this fax coverage  
24 sheet. I know I got it right away.

25 Q But earlier, you testified that Ms. Sei sent

1 it directly to you, didn't you?

2 A I testified that we got it from Ms. Sei. I  
3 may have said she sent it directly to me. Maybe I  
4 thought that's what happened. I don't recall all of the  
5 specific details. I know I got it right away.

6 Q Do you see any inconsistency with Ms. Sei  
7 sending the correspondence to Ms. Baarson instead of you  
8 as her purported attorney?

9 MS. FLOCCHINI: Objection. Relevancy. Calls  
10 for speculation.

11 CHAIR STOVALL: I don't think it matters what  
12 Mr. Werner thinks about it, so I'm going to agree with  
13 the objection. Sustained.

14 Q (BY MR. MOORE:) All right. I think you made  
15 it clear, Mr. Werner, that under no circumstance would  
16 you think it's appropriate for you to have been opining  
17 on coverage. That would adversely impact your client.  
18 We agree on that. Do we agree on that?

19 A That I wouldn't opine on coverage? Yeah, I  
20 didn't offer an opinion coverage in this case.

21 Q My question was different. That it would be  
22 inappropriate for you to opine on coverage. Do you agree  
23 on that?

24 A Yeah.

25 MR. MOORE: That's all the questions I have.

1 Thank you.

2 CHAIR STOVALL: Redirect?

3

4 REDIRECT EXAMINATION

5 BY MS. FLOCCHINI:

6 Q Thank you. I'm just looking for a particular  
7 email so I can pull it up for everyone. Mr. Werner, I've  
8 pulled up what's been marked as Exhibit 5. This is the  
9 original letter, again, the original letter that you sent  
10 to Mr. Harsh when you started communicating about  
11 potential resolution of the Clements' claims. Correct?

12 A I believe so.

13 Q And you were asking questions about the facts  
14 surrounding Ms. Clements' claims; correct?

15 A Yes.

16 Q Locating another one. The beauty of double  
17 screens is I lose my mouse. I am sharing the email  
18 string that's been marked as Exhibit O with you. I'm  
19 scrolling down a bit to the email that you sent on  
20 Tuesday, December 22nd, at 2:53 p.m. Do you see that  
21 email?

22 A Yes.

23 Q Are you referencing similar content in this  
24 email as you referenced in your original letter?

25 A I believe so. Yes.

1 Q And specifically, what information were you  
2 continuing to look for?

3 A Claims relating to Ms. Clements' claim.  
4 Issue or facts relating to Ms. Clements' claim.

5 Q Okay. And so between when you sent your  
6 first letter and when you sent this email, you had not  
7 received sufficient information, you thought, for your  
8 evaluation; correct?

9 A Right. I was asking for more information.  
10 Yes.

11 MS. FLOCCHINI: Those are all of the  
12 follow-up questions I had. Thank you.

13 CHAIR STOVALL: Mr. Werner, are you done with  
14 Mr. Werner then?

15 MR. MOORE: We are. I have no questions  
16 within the scope of that redirect.

17 CHAIR STOVALL: Thank you. We've been going  
18 for, looks like about an hour and a half. Let's take  
19 about -- I've got to get -- it's 10:34 right now. Let's  
20 take about six minutes, and we'll resume back at 10:40.

21 THE WITNESS: Am I released as a witness?

22 CHAIR STOVALL: Yes, you are, Mr. Werner.  
23 Thank you very much for your time.

24 THE WITNESS: Okay. Thank you.

25 (Recess.)



1 CHAIR STOVALL: Looks like everybody is back.

2 So call your next witness, Ms. Flocchini.

3 MS. FLOCCHINI: Thank you, Chair. The Bar  
4 calls Ms. Katharine Baarson to testify.

5 MS. FLOCCHINI: Thank you. Ms. Baarson, can  
6 you hear us?

7 THE WITNESS: Yes, I can.

8 MS. FLOCCHINI: Do you have video associated  
9 with your device?

10 THE WITNESS: It's playing. I see the video.

11 MS. FLOCCHINI: Okay. We weren't seeing you,  
12 but now we do.

13 THE WITNESS: You may see little cats running  
14 in the background. My cats like to join me for meetings.

15 CHAIR STOVALL: Ms. Baarson, we can put up  
16 with cats, I'm sure. My name is Eric Stovall. I'm the  
17 panel chair. Would you please raise your right hand to  
18 be sworn.

19

20 KATHARINE BAARSON,  
21 having been first duly sworn, was  
22 examined and testified as follows:

23

24 CHAIR STOVALL: Go ahead, Counsel.

25

1 DIRECT EXAMINATION

2 BY MS. FLOCCHINI:

3 Q Good morning, Ms. Baarson. Thank you for  
4 appearing in this disciplinary proceeding. I wanted to  
5 give the panel a bit of background about you. What is  
6 your occupation?

7 A My title is claim consultant for the  
8 Hartford.

9 Q Okay. And how long have you done work as a  
10 claim consultant or similar title/profession?

11 A Forty-one years.

12 Q And how long have you been a claim consultant  
13 for the Hartford?

14 A I returned to the Hartford in 2009. I began  
15 my career with the Hartford and I left over 40 years ago.

16 Q Okay. But so this current stint, you've been  
17 with the Hartford for approximately 12 years?

18 A You're taxing my brain right here. Yes.

19 Q Okay. And are you assigned to a particular  
20 state as a claims consultant for the Hartford?

21 A I have multiple states.

22 Q How many states do you handle?

23 A Quite a few. I could list them all or I  
24 generally don't handle -- although I'm licensed for cases  
25 on the East Coast, but probably from the Mississippi

1 west. I also handle Georgia, Louisiana. I haven't had  
2 any Alabama cases recently, but I'm also licensed in  
3 Florida and Georgia.

4 Q Okay. Are there differences between the  
5 states what kinds of claims are allowed by law?

6 A Yes.

7 Q And I don't mean like according to the  
8 different policies but, you know, I mean, just as an  
9 example, some states have negligence and some states have  
10 negligence per se. Are there differences like that  
11 between the states?

12 A Every state has their own little innuendos.  
13 They have different statutes, different case law that  
14 gives rise to certain things.

15 Q Okay. And as a claims consultant, in your  
16 work, do you assess the coverage for the insureds?

17 A Yes, I do.

18 Q And do you assess the liability of an insured  
19 or exposure damages for an insured?

20 A Yes, I do.

21 Q Okay. And can you tell us what the  
22 difference is between those assessments?

23 A Well, you can have coverage for a loss of any  
24 type, whether it's auto or general liability, whatever,  
25 but you may not have liability. Coverage means that

1 you've entered into a contract that says we will defend  
2 and indemnify you for certain things that are in the  
3 contract, whether it's -- and the policies tells you what  
4 those things are, and those are defined within the  
5 policy. Liability is did that insured or anybody acting  
6 on their behalf breach any duty to another party.

7 Q Okay. So could there be a situation where  
8 there's coverage for your insured but you evaluate that  
9 there are no damages associated with a particular claim  
10 being asserted against the insured?

11 A Let's split that up. I may have coverage for  
12 the insured, but there's no liability. You always get  
13 damages presented, and that's the economic or  
14 non-economic damages by the other party. So let's just  
15 think that out.

16 Q So there could be coverage but not liability,  
17 is what you're saying?

18 A Correct.

19 Q Now specifically, this case has to do with a  
20 particular claim that you were handling for the  
21 Hartford's insured, Ms. Sei. Right?

22 A Correct.

23 Q Okay. And so you were assigned to handle  
24 Ms. Sei's matter as a claim consultant, right?

25 A Correct.