

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH S. GILBERT, ESQ.,

Petitioner,

vs.

STATE BAR OF NEVADA,

Respondent.

Case No. 84113

OBC No. OBC21-0136

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Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER JOSEPH GILBERT'S EMERGENCY MOTION FOR STAY
OF PROCEEDINGS PENDING APPEAL UNDER NRAP 27(E)**

(Pursuant to NRAP 27(e)(2), March 24, 2022 by 5:00 p.m. PST is the date and time by which action is necessary – One week prior to Motion deadlines)

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NRAP 27(e) Certificate

Dominic P. Gentile, Esq., counsel for Joseph S. Gilbert, Esq., hereby certifies as follows:

1. I am a member of the law firm of Clark Hill PLLC and am counsel of record for Petitioner, Joseph S. Gilbert, Esq. I submit this declaration in support of Joseph Gilbert's Emergency Motion for Stay of Proceedings Pending Appeal. I have personal knowledge of the facts stated in this declaration, and I can testify competently to them if called upon to do so.

2. On February 11, 2022, the parties attended a mediation in this matter. Subsequently, a Stipulation and Order to Continue Formal Hearing was filed on or about March 8, 2022, to continue the formal hearing in this matter to May 19, 2022 and May 20, 2022. The hearing-related deadlines are as follows:

- a. Motion Deadline: March 31, 2022
- b. Opposition Deadline: April 14, 2022
- c. Reply Deadline: April 21, 2022
- d. Exhibit Exchange: May 2, 2022
- e. Written Objections to Exhibits: May 3, 2022
- f. Pre-Hearing Conference: May 5, 2022

3. While the State Bar has agreed to continue the case to these dates, it is unwilling to continue the case further to allow for briefing and decision with respect

to Mr. Gilbert's pending Petition for Writ of Mandamus, or Alternatively Prohibition and Request for Stay of Disciplinary Proceedings *Pendente Lite*.

4. This Court filed an Order Directing Answer by Respondent on February 18, 2022.

5. Pursuant to NRAP 27(e)(4), the relief sought in this motion was discussed at the administrative hearing level and the parties would not agree to a stay of the proceedings. Thus, the Motion at the administrative level would be impracticable.

6. Absent a stay, Joseph Gilbert will be subject to expending substantial legal fees for prehearing and hearing preparation, all of which may be unnecessary should this Court grant Petitioner's requested relief of an Order directing Respondent to dismiss Complaint #OBC 21-0136 currently pending before the State Bar of Nevada.

7. Mr. Gilbert's motion to stay is being electronically filed and served.

8. Upon information and belief, the telephone numbers and office addresses for the attorneys for all parties are as follows:

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Counsel for Respondents

Dated and signed on the 9th day of March, 2022.

/s/ Dominic P. Gentile, Esq.
DOMINIC P. GENTILE
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*Attorney for Petitioner,
Joseph S. Gilbert, Esq.*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This motion seeks an immediate stay of the proceedings naming Joseph S. Gilbert, Esq. currently pending before the State Bar of Nevada, Northern Nevada Disciplinary Board, #OBC 21-0136, until this Court decides the issues set forth in Mr. Gilbert's Petition for Writ of Mandamus, or Alternatively Prohibition and Request for Stay of Disciplinary Proceedings *Pendente Lite* pursuant to NRAP 8.

As part of Petitioner Gilbert's Petition for Writ of Mandamus, the relief sought includes, among other things, an Order directing Respondent to dismiss Complaint #OBC 21-0136, currently pending before the State Bar of Nevada, Northern Nevada

Disciplinary Board. As the relief sought contemplates dismissal of the case in totality, Petitioner should not be forced to expend additional legal fees before the issues regarding the misconduct of the State Bar of Nevada can be resolved by this Court.

II.

STATEMENT OF LAW AND ARGUMENT

In deciding whether to issue a stay, courts generally consider the following factors:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

See NRAP 8(c); *Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

The Court has not indicated that any one factor carries more weight than the others, however “if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (quoting *Fritz Hansen A/S v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000)). When the above factors are applied, it is evident the proceedings should be stayed in this matter pending a formal hearing by the State Bar of Nevada.

A. Object of the Appeal

First, the object of the appeal will be defeated if a stay is denied. The object of the appeal is to review the actions of the State Bar of Nevada when it failed to preserve the confidentiality of an action taken by a screening panel of its Northern Nevada Disciplinary Board. In direct violation of Supreme Court Rules 105 and 121, the Respondent allowed the release of and authenticated a proposed letter of reprimand to which Petitioner had objected, and regarding which he was proceeding to a formal hearing. Because of Respondent's breach of confidentiality, that letter of reprimand has received international media attention and has had a damaging impact on the Petitioner's professional reputation, law practice and personal family life.

As a result of Respondent's conduct, Petitioner maintains that his due process rights were violated. This Court has recognized that breaches of confidentiality in lawyer disciplinary proceedings mandate dismissal. *See e.g. In re Matter of Ross* (Ross II), 99 Nev. 657, 668 P.2d 1089 (1983). Indeed, Petitioner seeks relief in the form of dismissal due to the Respondent's breach of its duty to maintain confidentiality of pre-disciplinary proceedings. However, unless this Court grants a stay of the administrative proceedings, Petitioner will be forced to go forward and defend himself against the allegations, rendering the relief sought in his Writ of Mandamus of no value as a remedy.

Public policy favors adjudication on the merits whenever possible. *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 316, 810 P.2d 785, 789 (1991) (citing *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963)). Without a stay of the proceedings, the policy of favoring adjudication on the merits will not be furthered in this case and the imposed discipline and sanctions will eliminate the object of the proceedings in this Court. Therefore, if the administrative proceedings continue, any victory on appeal will be hollow as the irreparable harm will have already occurred regardless of whether sanctions are or are not imposed against Petitioner.

B. Petitioner's Irreparable or Serious Injury

Second, Petitioner will suffer irreparable or serious harm if the stay is denied. The Respondent has engaged in misconduct in breaching the confidentiality of the alleged ethical violations of the Petitioner which has violated the Petitioner's constitutional rights. Absent a stay of the administrative proceedings, should the Nevada Supreme Court grant the Petitioner's requested relief, up to and including a complete dismissal of the administrative action, Petitioner will have already incurred substantial legal fees that may well not be reimbursed to him by the Respondent State Bar of Nevada, either voluntarily or by an award thereof by this Court. Petitioner would be forced to expend fees and costs for legal research, motions,

exhibit and witness preparation and a formal hearing which may not ultimately be necessary pending this Court's determination on the merits.

C. Lack of Irreparable or Serious Injury to the State Bar of Nevada

Third, the State Bar of Nevada will not suffer irreparable or serious injury if a stay is granted. Neither is a danger to the public present. To the contrary, absent a stay of proceedings, the participants on the hearing panel will suffer irreparable harm, as they will have to expend their volunteered and uncompensated time on a matter that could be a nullity should this Court grant the remedy of dismissal.

D. Likelihood of Success on the Merits

Fourth, Petitioner is likely to succeed on the merits on his Writ of Mandamus. This Court has recognized that breaches of confidentiality in lawyer disciplinary proceedings mandate dismissal. *In re Matter of Ross* (Ross II), 99 Nev. 657, 668 P.2d 1089 (1983). In terms of dealing with a breach of confidentiality, This Court has recognized the maxim that one cannot “unring a bell.” *Ivy v. State*, 131 Nev. 1303, 2015 WL 7420992, *7 (Nev. Ct. App. 2015)(unreported)(citing *Zana v. State*, 125 Nev. 541, 545-46, 216 P.3d 244 (2009)). As a matter of course, confidentiality in lawyer and judicial discipline proceedings addresses the need to encourage persons to come forward to report possible misconduct while balancing the interest to protect its lawyers and judges from unfair reputational damage. The release of the letter of caution, guised as a finalized letter of reprimand, disseminated and caused

to be published by the Respondent violates Petitioner's constitutional right to due process requiring the dismissal of the instant action. Therefore, Petitioner's is likely to succeed on the merits.

E. Nominal Bond

Pursuant to NRCP 62(d), a party may obtain a stay by posting a bond. The expressed purpose of posting a security bond is to protect a party from damages incurred. A court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant. *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983).

The State Bar of Nevada does not have a judgment for damages against Petitioner and no monetary amount is involved in the disciplinary proceeding. Respondent will not lose any money or be harmed in any monetary way if the Court issues a stay. Petitioner submits that this is the type of case that presents unusual circumstances and warrants a waiver of the bond requirement or a nominal bond in the amount of \$100.00.

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III.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue an Order granting a stay of proceedings, pursuant to NRAP 27(e), pending resolution of appeal.

Respectfully Submitted the 9th day of March 2022.

CLARK HILL, PLLC

/s/ Dominic P. Gentile, Esq.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in this action. On March 9th, 2022, I mailed the foregoing **MOTION TO STAY PROCEEDINGS**, by U.S.

Mail and by Certified Mail to the following address listed below:

Daniel M. Hooge, Esq., Bar Counsel
R. Kait Flocchini, Assistant Bar Counsel
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/s/ Tanya Bain
Employee of Clark Hill, PLLC