

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

JOSEPH S. GILBERT, ESQ.,

Petitioner,

vs.

Case No. 84113

STATE BAR OF NEVADA,

Respondent.

OPPOSITION TO PETITIONER'S EMERGENCY MOTION  
FOR STAY OF PROCEEDINGS

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## **I. Memorandum of Points and Authorities**

### **A. FACTORS FOR STAY**

NRAP 8(c) states:

Stays in Civil Cases Not Involving Child Custody. In deciding whether to issue a stay or injunction, the Supreme Court or Court of Appeals will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

### **B. OBJECT OF THE WRIT PETITION.**

Petitioner's object or request in filing a Writ Petition was to stay and dismiss disciplinary proceedings against him and to investigate an alleged breach of confidentiality. His emergency motion also asks for a stay of the disciplinary proceedings. The object of his Petition and motion are the same. The object of his Petition will not be defeated if a stay is denied.

Denial of an emergency stay will not defeat a later stay or dismissal of the disciplinary proceeding. If the Northern Nevada Disciplinary Board concludes its hearing, then the matter will go to this Court for review *de*

*novo*.<sup>1</sup> Discipline would not be final until this Court's review. This Court could later stay or dismiss the matter.

Thus, Petitioner's request for a stay or dismissal would not be defeated by a denial of the emergency stay.

#### C. IRREPARABLE OR SERIOUS INJURY

Petitioner will not suffer irreparable or serious injury if the Court denies his emergency motion for stay.

Petitioner argues that he would suffer by paying "substantial legal fees."<sup>2</sup> "Such litigation expenses, while potentially substantial, are neither irreparable nor serious."<sup>3</sup>

#### D. LACK OF IRREPARABLE OR SERIOUS INJURY

The State Bar concedes that it would not suffer irreparable or serious injury if the Court granted a stay.

#### E. LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioner is not likely to succeed on the merits. As addressed in the State Bar's Answer to Writ Petition, Petitioner misrepresents SCR 121. SCR 121(2) requires the State Bar to keep all disciplinary proceedings confidential

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<sup>1</sup> SCR 105(3).

<sup>2</sup> Pet's Mot. at 7.

<sup>3</sup> *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000).

*until it files a formal complaint.* Only if the State Bar files no complaint, for example, where a screening panel dismisses the matter, do records become public at conclusion.

Here, the State Bar filed a complaint against Petitioner on September 28, 2021. On December 8, 2021, when bar counsel confirmed the authenticity of the letter of reprimand, Petitioner's disciplinary records were public. His records had been public for over two months.

Furthermore, this Court *In re Ross (Ross I)*<sup>4</sup> did not hold that a *breach of confidentiality* mandates dismissal but a *lack of impartiality*. Petitioner misrepresents this Court's holding.

Thus, Petitioner is unlikely to succeed on the merits of his Writ Petition. He failed to establish "a clear right" to compel the State Bar to stay or to dismiss charges against him.

#### F. EARLIEST POSSIBLE TIME

NRAP 27(e)(1) states, "If an emergency motion is not filed at the earliest possible time, the court may summarily deny the motion."

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<sup>4</sup> *In re Ross (Ross I)*, 99 Nev. 1, 13, 656 P.2d 832, 839 (1983).

Here, Petitioner reiterates the arguments of his Writ Petition. He could have filed an emergency motion with the Writ Petition or soon thereafter. He provided no reason for his delay.

Thus, the Court should summarily deny the motion.

## **II. CONCLUSION**

The State Bar respectfully asks the Court to deny the emergency motion for stay. A stay of the disciplinary proceeding is unwarranted.

Respectfully submitted this 18th day  
of March 2022.

STATE BAR OF NEVADA

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