

**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. OBC21-0116

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**PETITIONER JOSEPH GILBERT'S LIMITED NON-OPPOSITION TO  
STATE BAR OF NEVADA'S MOTION TO SEAL PARTS OF THE  
RECORD**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. PROCEDURAL HISTORY**

On January 21, 2022, Petitioner JOSEPH S. GILBERT, ESQ. (alternatively “Mr. Gilbert” or “Petitioner”), filed his *Writ of Mandamus, or Alternatively Prohibition and Request for Stay of Disciplinary Proceedings*. Thereafter on March 9, 2022, Petitioner filed his *Emergency Motion for Stay of Proceedings Pending Appeal under NRAP 27(E)*.<sup>1</sup> Respondent STATE BAR OF NEVADA (alternatively “Respondent” or “State Bar”) opposed the Motion to Stay on March 18, 2022. Thereafter on March 23, 2022, the Court Granted Petitioner’s request and Stayed all further proceedings before the State Bar in the related disciplinary proceedings in case OBC21-0136.

In the interim, on March 18, 2022, the State Bar filed a *Motion to Seal Parts of the Record* before this Court. In its March 23, 2022, Stay Order, the Court granted the State Bar’s request for an extension of time to oppose Mr. Gilbert’s stay motion (which opposition was nonetheless filed on March 18), and as pertinent to this instant opposition, *also deferred ruling on the State Bar’s motion to seal parts of this record*. Whereas the Court did not stay Petitioner’s time to

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<sup>1</sup> Both the aforementioned *Writ* and *Emergency Motion for Stay* are fully incorporated by reference as though fully stated herein.

oppose or otherwise respond to the State Bar's pending motion to seal, Mr. Gilbert respectfully files his instant **limited** non-opposition as fully described below.

## **II. RELEVANT FACTS**

The facts germane to the instant motion are summarized as follows.<sup>2</sup>

### **A. The State Bar Investigation**

In the now-stayed underlying disciplinary proceedings, Mr. Gilbert is the subject of a grievance filed by a prior client (and his wife) who retained Mr. Gilbert's firm in late 2020 to review whether that client was eligible for relief from the requirement to register as a sex offender related to a 1998 criminal conviction. Once the client provided a copy of his criminal file necessary to begin work (about a month after retention), Mr. Gilbert and the team he assigned<sup>3</sup> commenced work on the case. While the team did complete a draft proposed document, which assisted in analyzing its ultimate legal viability, Mr. Gilbert determined the client was likely not eligible for the relief requested and elected to end the representation. Despite a strong argument the retainer was earned *in quantum meruit*, Mr. Gilbert advised the clients he would be refunding the retainer *en toto* and returning the file. However, a few weeks later and just a handful of

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<sup>2</sup> Please refer to Mr. Gilbert's Writ filed January 21, 2022, and Motion filed March 9, 2022, for a complete statement of the global relevant facts.

<sup>3</sup> The team comprised Petitioner, an associate supervising lawyer, a law student/summer intern certified for limited practice under SCR 49.3/level 2, and a paralegal.

days before the clients received and cashed the full refund check they were promised, they decided to file a bar complaint on January 29, 2021. In response, the State Bar elected to open two separate grievance files against Petitioner and his associate lawyer involved with this file. To that end, the State Bar sent identical investigation letters to each of them respectively, with pointed questions requesting status of the refund and prove-ups for the billing (even though a *complete* refund issued). The investigation letters' language clearly read primarily like a fee dispute and thorough responses were provided to the questions asked by both Mr. Gilbert and his associate lawyer. No other investigation was undertaken by the State Bar.

In or around June 2021, Mr. Gilbert first publicly announced his intention to run for Nevada Governor on the Republican ticket.<sup>4</sup> Shortly thereafter in approximately July 2021, an ex-parte Screening Panel of the Northern Nevada Disciplinary Board reviewed the grievances based on the State Bar's summation of facts (as is the standard procedure). Based on the singular grievance, identical facts, and identical responses to the grievance, the Panel dismissed as to Petitioner's associate--who was the first line supervisor of the limited-practice

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<sup>4</sup> See e.g. [https://www.2news.com/ap-local-lawyer-and-former-contender-participant-joe-gilbert-announces-bid-for-governor/article\\_21b6c1e6-5736-5713-863f-01d581637c82.html](https://www.2news.com/ap-local-lawyer-and-former-contender-participant-joe-gilbert-announces-bid-for-governor/article_21b6c1e6-5736-5713-863f-01d581637c82.html); <https://www.reviewjournal.com/news/politics-and-government/nevada/reno-attorney-trump-supporter-gilbert-enters-2022-race-for-governor-2379651/>

law clerk and the paralegal in this matter--but inexplicably recommended a letter of reprimand as to Mr. Gilbert. The Panel came to the wholly unsupported conclusions based on the State Bar's erroneous statement of facts that in the approximate four months Gilbert Law was retained in this matter, Mr. Gilbert, *inter alia*, failed to supervise the law clerk and paralegal (neither of whom the State Bar ever contacted), lacked diligence in preparing the draft petition, and failed to timely communicate the decision to terminate representation once that decision was made.<sup>5</sup> The Bar then provided the *recommended* letter of reprimand to Mr. Gilbert in fully executed form, signed by the panel chair and dated August 27, 2021, along with instructions to appeal.

In turn, Mr. Gilbert timely filed his appeal with substantive objections in accordance with Disciplinary Rules of Procedure 9-11, 15 and 16 effective at that time (prior to stealthily amending the Disciplinary Rules of Procedure effective November 2021).

## **B. The Formal Complaint**

Consequent to Mr. Gilbert's timely appeal of the proposed reprimand, the State Bar filed its Formal Complaint against Mr. Gilbert on September 28, 2021. It is undisputed the State Bar included the grievant's name in the Complaint and

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<sup>5</sup> The Panel found violations of SCR 49.5, RPC 1.3, 5.3, 5.5, and 1.16.

initial documents. These formal State Bar proceedings are the subject of this Court's Stay order.

### **C. State Bar and Northern Nevada Disciplinary Board Actions**

As fully argued in the Writ, in December 2021 the *proposed* reprimand was leaked to the press in its executed format. The Respondent failed to protect the proposed letter's confidentiality and chose to authenticate the letter to the press even though the reprimand had never issued pursuant to its appeal in August. Indeed, the formal complaint was already filed months prior to the press inquiry. Mr. Gilbert's campaign for governor was the clear hook for the press attention. *See e.g.* Writ, p. 3.

## **III. ARGUMENT**

The instant motion seeks to redact/seal the grievant's name from "the record." While the State Bar itself included the grievant's name in its charging documents, its instant Motion to Seal Parts of the Record is made and based upon the contention that the "...continued publication of the Grievant's full name may jeopardize his, and his family's, safety." Motion, 2:2-4.<sup>6</sup>

The standard of review is applied differently as to the discipline proceedings versus the instant Writ. The analysis for redaction of the grievant's name in these

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<sup>6</sup> NB: Respondent did not page number its Motion. Petitioner's page citations to that Motion herein include the first page as "1" continuing consecutively thereafter through the end of the document.

Writ proceedings, which is initiated by Mr. Gilbert and seeks relief from the misconduct of the State Bar and its agents in investigating and prosecuting him, is distinguishable from the analysis applicable to the disciplinary proceedings, which are initiated by the grievant and serve to evaluate Mr. Gilbert's conduct in exercising his professional responsibilities as to that grievant. Indeed, the State Bar filed a Motion to Seal the Name of the Grievant in the State Bar proceedings, which Mr. Gilbert Opposed and the Panel Chair denied without prejudice on January 31, 2022.

**It is undisputed the Nevada Supreme Court Rules do not provide for anonymity of a grievant in bar proceedings.** SCR 104. The State Bar's briefing in the underlying discipline matter is essentially identical to its Motion to Seal here, citing to the standard for sealing (applied here to mean the disclosure of the grievant's name) being rooted in a balancing test of privacy or safety interests which outweigh the public interest in open court records. To support this position, the State Bar cites include SCR 3(4) and *Clark Cty, Sch. Dist. v. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018). The State Bar goes on to argue in pertinent part:

...grievant understood that there was a potential for his name to be part of the disciplinary record, but prior to the media's report of Respondent's pending disciplinary matter, he did not understand the potential breadth of that publication...this is no small part because Gilbert had not publicly declared his intent to run for public office when Grievant [sic] submitted his grievance... in January 2021.

Motion, 5. However, this completely ignores the fact that Mr. Gilbert had publicly announced his intent to run for governor months before the State Bar filed the Formal Complaint, which made no effort to redact the grievant's identity whatsoever, in the charging document or otherwise.

The State Bar's Motion to Seal seeks to apply to all proceedings before this Court related to the disciplinary case, which would contemplate potential future filings resulting from that disciplinary case as well as these Writ proceedings.

However, the *application* of the standard for sealing records (in whole or in part) is actually quite different based on the parties and the claims for relief. In applying the balancing test discussed above to *disciplinary proceedings*, and more specifically the name of the grievant, the conduct of the responding attorney is evaluated along with many other factors including his reputation and standing in the community weighed against the credibility of the complaining witness and the evidence. Here, the underlying disciplinary review is based entirely on the grievance letter and an ex parte review of the State Bar's incorrect summation of the case. The Panel discounted Mr. Gilbert's word, and did not consider or even attempt to take any other independent testimony from critical witnesses such as the law clerk who was allegedly not supervised properly by Mr. Gilbert. In that context, the circumstances are such that it is objectively reasonable for the Respondent to disclose the grievant's full name and in this particular fact pattern



his criminal history as a necessary, essential and indispensable factor to establish a claim or defense to that client's allegations in the bar proceedings. *See e.g.* RPC 1.6(b)(5); *In re Conduct of Conry*, 368 Ore. 349, 491 P.3d 42, 54 (Or. 2021).

Petitioner strongly opposes and rejects the State Bar's contention that "the Grievant's full identity is irrelevant to whether he received fair and ethical representation." Motion, p. 7. The grievant's identity and credibility are wholly probative and relevant to evaluating his grievance, and potential future testimony, before the Bar particularly where it is the sole evidence of his fair and ethical representation by Mr. Gilbert.

However, Petitioner concedes that in the context of the instant Writ, **it is the conduct of the State Bar and its disciplinary board at issue**, not that of Mr. Gilbert or the grievant. Whereas the grievant's name is not essential or indispensable to Mr. Gilbert's claims against this Respondent, the State Bar, Mr. Gilbert does not oppose the request to redact the grievant's full name in these Writ proceedings only.

Nothing in this limited non-opposition shall be construed to apply to the sealing of records or redactions of the grievant's full name in the context of the disciplinary proceedings, and if applicable, any future filings before this Court flowing therefrom.

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#### IV. CONCLUSION

Based upon the foregoing, Petitioner does not oppose the State Bar's limited request to the extent it requests that the grievant (and his family's) full name be redacted and/or sealed from public filings in this *Writ* action.

Respectfully Submitted the 25<sup>th</sup> day of March 2022.

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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 25<sup>th</sup> 9th, 2022, I mailed the foregoing **PETITIONER JOSEPH GILBERT'S LIMITED NON-OPPOSITION TO STATE BAR OF NEVADA'S MOTION TO SEAL PARTS OF THE RECORD** 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  
State Bar of Nevada  
3100 W. Charleston, Suite 100  
Las Vegas Nevada 89102

/s/ Michele Stones  
Employee of LIPSON NEILSON, PC