IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF
DERRICK S. PENNEY, ESQ.
NEVADA BAR NO. 8606

Case No.

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Feb 08 2022 11:15 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

VOLUME I

RECORD OF DISCIPLINARY PROCEEDINGS, PLEADINGS AND TRANSCRIPT OF HEARING

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State Bar of Nevada
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Counsel for the State Bar of Nevada

Derrick S. Penney, Esq.
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Las Vegas, NV 89101
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Docket 84201 Document 2022-04262

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF DERRICK S. PENNEY, ESQ., Bar No. 8606	)))))	**CASE SUMMARY FOR RECORD ON APPEAL**

1. Nature of the Case

DERRICK STEPHEN PENNEY ("Respondent") appeared before a Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board on November 22, 2021, via "Zoom" by stipulation of the parties. The Panel consisted of Chair Kenneth Hogan, Esq., Jarrod Rickard, Esq., and William Holland, lay member. Assistant Bar Counsel Bruce Hahn, Esq., represented the State Bar of Nevada ("State Bar"). Respondent was present and represented by Emily Strand, Esq.

The underlying grievance involved Estela Montoya ("Montoya") who retained Respondent in July, 2016 to probate her father's estate. In October 2018, the Respondent placed the $153,863.44 estate proceeds in trust but did not complete the probate thereafter. Montoya experienced great difficulty in contacting Respondent thereafter. In December 2020, Montoya filed a grievance with the State Bar. By February 2021, Respondent had depleted his trust account to $15,061.44 without any

Montoya proceeds being disbursed. Respondent was not responsive to repeated State Bar inquiries thereafter. In June, 2021, the State Bar filed a complaint.

2. Number of Grievances

This case arose from a single grievance.

3. Rules of Professional Conduct

The Panel found that Respondent violated RPC 1.3 (Diligence), RPC 1.4(a) (Communication), RPC 1.15(a) & (d) (Safekeeping Property), RPC 3.2 (Expediting Litigation), RPC 8.1 (Disciplinary Matters) and RPC 8.4(c) & (d) (Misconduct).

4. Mental State

The Panel found that Respondent's mental state in committing six professional rule violations was knowing, intentional and for a self-interested motive.

5. Injury

The Panel found that Respondent's conduct caused minor actual harm, and little potential harm to the client.

6. Discipline Baseline

The Panel considered ABA Annotated Standards for Imposing Lawyer Sanctions (2nd Ed. 2019) ("Standards") to arrive at a baseline sanction for Respondent's misconduct. It considered the State Bar's argument for application of baseline Standards 4.11 and 5.11 for RPC 1.15(a),(d), Standards 4.41(b), (c) for RPC 1.3, 1.4(a) and 3.2(a), and Standards 7.1 and 7.2 for RPC 8.1 and 8.4(c),(d). The Panel considered Respondent's argument for overall application of Standard 4.12. The Panel found the baseline to be Suspension.

7. Aggravation and Mitigation

Pursuant to SCR 102.5(1), the Panel found the following aggravating factors in considering the discipline to be imposed:

(b) dishonest or selfish motive;

(d) multiple offenses;

(i) substantial experience in the practice of law; and

(k) illegal conduct.

Pursuant to SCR 102.5(2), the Panel found the following mitigating factors.

/ / /

(a) absence of a prior disciplinary record; and

(*) substantial recent personal life changes.

8. Summary of the Recommended Discipline

The Panel recommended the Court suspend Respondent from the practice of law for 36 months, all but six months stayed. The Panel recommended the following conditions for Respondent during the stay of the suspension: i) full cooperation with a legal practice mentor, ii) no contact with client trust accounts and iii) completion of 9 additional Continuing Legal Education hours in client trust account handling. The Panel recommended that the Court order the SCR 120(3) costs of $2,500 and the SCR 120(1) hearing costs against Respondent.

DATED this 3rd day of February 2022.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

Bruce C. Hahn

By: Bruce C. Hahn (Feb 3, 2022 09:16 PST)

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd. Suite 101
Las Vegas, Nevada 89102
(702) 382-2200

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Case No: OBC21-0148

FILED
JUN - 9 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, Esq. Nevada Bar No. 8606 Respondent.	**COMPLAINT**

TO: Derrick Stephen Penney, Esq.
50 W. Fifth St. Winnemucca, NV 89445
(*SCR 79 Permanent Mailing address*)

Derrick Stephen Penney, Esq.
Derrick.Penney@humboldtcountynv.gov
(*SCR 79 Current Email Address*)

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, 3100 W. Charleston Blvd., Ste. 100, Las Vegas, Nevada, 89102, 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 Bruce C. Hahn, is informed and believes as follows:

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1. Respondent Attorney Joseph Derrick S. Penny, Esq., ("Respondent") is currently an active member of the State Bar of Nevada and has been licensed to practice law in Nevada since 2003.

2. At all times pertinent to this complaint Respondent had his principal place of business for the practice of law located in Clark County and thereafter Humboldt County, Nevada. At pertinent times prior to or during March 2021, the Respondent reported to the State Bar pursuant to SCR 79 that his mailing address was: 2800 W. Sahara Ave., Ste 7C, Las Vegas, NV 89102. Sometime during or after March 2021, Respondent reported to the State Bar pursuant to SCR 79 that his mailing address was: 50 W. Fifth Street, Winnemucca, NV 89445.

3. On or about July 13, 2016, Estela Montoya ("Montoya") retained the Respondent to probate the estate of her father, Jesus Sierra Monje ("Monje"). Respondent requested a "flat fee" of $3,150, plus a 2% fee contingent on the estate value over $100,000, and payment of all costs. Montoya was to serve as the Executrix.

4. Montoya paid Respondent about $3,600 plus a $288 filing fee.

5. On or about August 2, 2017, the Respondent filed a Petition for Probate of Will in P-17-092531-E. On July 5, 2019, the Respondent filed a Notice to Creditors. Respondent made no further filings to further the probate action. Respondent filed no motion to withdraw as counsel.

6. On or before August 27, 2018, the Monje residence sold.

7. On or about August 31, 2018, the Respondent received $153,863.44 from the Monje residence proceeds to hold in trust pending finalization of the estate matter. The proceeds check was issued by Stewart Title Company Escrow Account entitled: "Estate of Jesus Sierra Monje." Montoya and Respondent both signed the proceeds check.

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8. The last in-person meeting between Respondent and Montoya was about December 4, 2019.

9. About the beginning of January 2020, Montoya tried to contact the Respondent. Respondent replied on this occasion. He repeated a claim made during late 2019 that he was "waiting for the judge to sign off on the paperwork [to approve funds distribution]."

10. During summer and fall of 2020, Montoya placed a series of phone calls, text messages and emails to the Respondent. Respondent replied on few occasions to those inquiries. Of the responses he gave, he provided limited and misleading responses.

11. During 2020, Montoya attempted unsuccessfully to schedule several appointments with Respondent. Respondent replied sporadically and unmeaningfully to Montoya's case status queries.

12. On or about November 6, 2020, Montoya notified Respondent that she wanted to gather her client file and withdraw the Monje residence proceeds. Respondent replied that he would meet with Montoya on November 27, 2020 at 10 am. Respondent did not appear at the time and place agreed upon.

13. On or about November 8, 2020, Montoya requested Respondent provide an accounting from the client ledger of the Monje residence proceeds. Respondent did not provide Montoya with an accounting of the funds.

14. On the evening of November 27, 2020, Respondent left the client file on Montoya's doorstep and thereafter sent Montoya a text. The text stated he left her the paperwork and could not meet in person due to quarantine restrictions. The text stated he would contact her the following week with payment instructions. Respondent did not contact Montoya the following week or the month thereafter.

15. On or about February 8, 2021, Montoya filed a grievance with the State Bar.

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16. On or about February 12, 2021, the State Bar emailed a Letter of Investigation to the Respondent's SCR 79 email address of penneylawfirm@gmail.com. The Letter sought his response to the Montoya grievance and requested he provide a series of documents relating to the Montoya matter by February 26, 2021. The Letter stated that a failure to respond to the lawful request may be considered a separate violation of the Rules of Professional Conduct ("RPC").

17. The State Bar received no reply from Respondent.

18. On or about February 17, 2021, the State Bar left a voice mail message at Respondent's SCR 79 phone number of 702.497.7545 requesting a return call. The State Bar received no reply.

19. On or about March 2, 2021, the State Bar sent a second Letter of Investigation via Regular and Certified Mail to Respondent's SCR 79 permanent mailing address of 2800 W. Sahara Avenue, Suite 7C, Las Vegas, NV 89102. This second Letter requested his response by March 16, 2021 and referenced the first Letter of February 12, 2021. The State Bar received no reply.

20. On or about March 19, 2021, the State Bar send a third Letter of Investigation via Regular and Certified Mail to an alternate address listed by the Post Office return label from prior communication effort(s). This third Letter requested Respondent's response by April 2, 2021. The State Bar received no timely reply. The mail return receipt identified that a "D. Penney" received this third Letter on March 20, 2021.

21. On or about March 29, 2021, Respondent requested an SCR 79 contact information change. His new permanent mailing address was to reflect his new employment address with the Alternate Public Defender's Office in Humboldt County, Nevada.

22. On or about April 2, 2021, the State Bar left a voice mail message at Respondent's newly changed SCR 79 phone number of 775.375.3157, requesting a return call. The State Bar

received no return call from Respondent.

23. Meanwhile, the State Bar commenced a formal investigation into Respondent's business, trust, checking and personal bank accounts based upon Montoya's grievance.

24. Records obtained from Nevada State Bank showed a $153,863.44 check deposited into Respondent's client trust account on or about October 29, 2018, consistent with the Monje estate proceeds check.

25. Respondent's trust account balance was about $66,724.81 immediately prior to the deposit of the Monje residence proceeds.

26. the Nevada State Bank account records showed that on or about May 8, 2019, the client trust account balance above fell below the Montoya proceeds deposit sum – about $148,254.96.

27. The records showed unidentified withdrawals that significantly depleted the client trust account balance over time. By February 26, 2021, the client trust account only had $15,061.44.

28. The records showed no disbursement to Montoya of the Monje residence proceeds.

29. Respondent's Nevada State Bank client trust account records during 2019 and 2020 reflect that these unidentified withdrawals went into Respondent's business account for personal and business expenses, such as utilities, rent and school tuition.

30. In early April 2021, Montoya or her representative filed a report with the Las Vegas Metro Police Department against Respondent for possible theft of the Monje estate proceeds.

31. Shortly thereafter, on or about April 14, 2021, Respondent wired an appropriate amount to Montoya for the Monje proceeds. However, the wired amount did not originate from Respondent's client trust account.

COUNT ONE: RPC 1.3 (Diligence)

32. RPC 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

33. On or after October 29, 2018, Respondent failed to act with reasonable diligence and promptness in the Montoya representation by not promptly seeking conclusion of the probate matter following his acceptance of the Monje estate proceeds and/or not promptly seeking an order for distribution of the Monje estate proceeds and/or conclusion of the matter following Respondent's last court filing of July 5, 2019.

34. Based on the foregoing paragraphs, Respondent has violated RPC 1.3.

COUNT TWO: RPC 1.4(a) (Communication)

35. RPC 1.4(a) states in relevant part: "(a) A lawyer shall: (3) Keep the client reasonably informed about the status of the matter; (4) Promptly comply with reasonable requests for information;"

36. During the summer and fall months of 2020, Respondent failed to keep Montoya reasonably informed about the probate matter and/or failed to promptly comply with reasonable requests for information by:

a) Providing Montoya with misleading information that he was "waiting on the judge to sign-off on case paperwork [to approve distribution]" and/or,

b) Not timely responding to Montoya's status requests on the probate matter and/or,

c) Declining to reasonably meet with Montoya at her request, and/or,

d) Failing to meet with Montoya on November 27, 2020 as scheduled to provide her the Monje estate proceeds, and/or,

e) Failing to contact Montoya in the week following to provide her the Monje estate proceeds as he claimed he would.

37. Based on the foregoing paragraphs, Respondent violated RPC 1.4.

COUNT THREE: RPC 1.5(a) (Fees)

38. RPC 1.5(a) states in relevant part: "A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses."

39. While representing Montoya, Respondent charged or collected an unreasonable fee by Montoya by having her pay $3,600 in fees:

a) for the bargained-for legal service he did not perform to wit: A Petition for Summary Administration and/or,

b) Montoya not receiving substantial benefit for Respondent's work performed, and/or,

c) Respondent not timely returning unearned fees for services.

40. Based on the foregoing paragraphs, Respondent violated RPC 1.5(a).

COUNT FOUR: RPC 1.15(a), (d) (Safekeeping Property)

41. RPC 1.15(a) states in relevant part: "A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." RPC 1.15(d) states in relevant part: "Except as stated in this Rule or otherwise permitted by law or agreement, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding such property."

42. On or after May 8, 2019, Respondent failed to hold the Monje estate proceeds property separate from his own property, by transferring those funds from his trust account to his business account.

43. On or after August 31, 2018, Respondent failed to promptly deliver to Montoya the Monje estate proceeds that she was entitled to, until his delivery over two years later.

44. On or about November 8, 2020, Respondent failed to promptly render a full accounting of the Monje estate proceeds to Montoya requested.

45. Based on the foregoing paragraphs, Respondent violated RPC 1.15.

COUNT FIVE: RPC 3.2 (Expediting Litigation)

46. RPC 3.2(a) states: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

47. Respondent failed to make reasonable efforts to expedite litigation by:

a) On or after August 2, 2017, filing only a Petition for Probate of Will with no other filings for 23 months, and/or,

b) On or after July 5, 2019, filing only a Notice to Creditors without any further filings to close out the probate matter or withdraw from representation.

48. Based on the foregoing paragraphs, Respondent violated RPC 3.2.

COUNT SIX: RPC 8.1 (Bar Admission and Disciplinary Matters)

49. RPC 8.1 states in relevant part: "...a lawyer in connection with...a disciplinary matter, shall not: (b) "... knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority; ..."

50. On or after February 12, 2021, the State Bar opened a disciplinary file and investigation into Respondent's professional conduct based upon the Montoya grievance. The State Bar sought to communicate with Respondent in the ensuing months by letter and email, making a lawful demand for information.

51. Respondent failed to:

a) Respond to the State Bar's letter of investigation and request for information of February 12, 2021, directed to Respondent's SCR 79 current email address, and/or,

b) Respond to the State Bar's phone voice mail message and request for information of February 17, 2021, directed to Respondent's SCR 79 permanent telephone number, and/or,

c) Respond to the State Bar's letter of investigation of March 2, 2021, directed to Respondent's SCR 79 permanent mailing address, and/or,

d) Substantively respond to the State Bar's letter of investigation of March 19, 2021, directed to Respondent's alternative address provided by the post office and which Respondent received, and/or,

e) Respond to the State Bar's phone voice mail message and request for information of April 2, 2021, directed to Respondent's newly changed SCR 79 permanent telephone number at his new place of employment in Humboldt County, Nevada.

52. Based on the foregoing paragraphs, Respondent violated RPC 8.1.

COUNT SEVEN: RPC 8.4(c), (d) (Misconduct)

53. RPC 8.4 states in relevant part: "It is professional misconduct for a lawyer to: (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice[.]"

54. Respondent engaged in conduct involving deceit or misrepresentation or that was prejudicial to the administration of justice by:

a) During 2019 and January 2020, telling Montoya on more than one occasion that he was "waiting on the judge to sign-off on the paperwork [to approve distribution]" and/or,

b) On or about May 9, 2018, transferring the Monje estate proceeds from his client trust account to his business account and misappropriating and/or converting the proceeds to his own use.

c) Failing to move the probate matter forward in the Eighth Judicial District Court after July 5, 2019.

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55. Based on the foregoing paragraphs, Respondent violated RPC 8.4.

WHEREFORE, Complainant seeks for relief 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 Southern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

Dated this 9th day of June 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: _____ for
Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd., Ste. 100
Las Vegas, Nevada, 89102

Case No.: OBC21-0148

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, ESQ., NEVADA BAR No. 8606 Respondent.	**DESIGNATION OF HEARING PANEL MEMBERS**

TO: Derrick Stephen Penney, Esq,
50 W. Fifth St., Winnemucca, NV 89445
Derrick.penney@humboldtcountynv.gov

The following are members of the Disciplinary Board for the Southern 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. Russell E. Marsh, Esq., Chair
2. Dana Palmer Oswalt, Esq., Vice Chair
3. Christopher J. Lalli, Esq., Vice Chair

4. Annette L. Bradley, Esq.
5. John E. Bragonje, Esq.
6. Shemilly A. Briscoe, Esq.
7. Robert J. Caldwell, Esq.
8. Jacqueline B. Carman, Esq.
9. Andrew A. Chiu, Esq.
10. James P. Chrisman, Esq.
11. Nell E. Christensen, Esq.
12. Marc P. Cook, Esq.
13. Ira W. David, Esq.
14. Damon Dias, Esq.
15. Sandra K. DiGiacomo, Esq.
16. F. Thomas Edwards, Esq.
17. Matthew S. Fox, Esq.
18. Alan Freer, Esq.
19. Adam Garth, Esq.
20. Kelly Giordani, Esq.
21. Robert G. Giunta, Esq.
22. Angela Guingcangco, Esq.
23. Parish D. Heshmati, Esq.
24. Kenneth E. Hogan, Esq.
25. Jennifer K. Hostetler, Esq.
26. Franklin J. Katschke, Esq.
27. James T. Leavitt, Esq.
28. Michael B. Lee, Esq.

29. Anat R. Levy, Esq.
30. Jennifer R. Lloyd, Esq.
31. Donald Lowrey, Esq.
32. Dawn M. Lozano, Esq.
33. Jason R. Maier, Esq.
34. Farhan Naqvi, Esq.
35. Michael J. Oh, Esq.
36. Brian J. Pezzillo, Esq.
37. Gary A. Pulliam, Esq.
38. Paul “Luke” Puschnig, Esq.
39. Michael D. Rawlins, Esq.
40. Jericho L. Remitio, Esq.
41. Jarrod L. Rickard, Esq.
42. Miriam E. Rodriguez, Esq.
43. Vincent J. Romeo, Esq.
44. Daniel F. Royal, Esq.
45. Africa A. Sanchez, Esq.
46. Jen J. Sarafina, Esq.
47. Jay A. Shafer, Esq.
48. Thomas R. Sheets, Esq.
49. Jeffrey G. Sloane, Esq.
50. Sarah E. Smith, Esq.
51. James R. Sweetin, Esq.
52. Stephen L. Titzer Esq.
53. Jacob J. Villani, Esq.

54. Marni Watkins, Esq.

55. Joseph Went, Esq.

56. Reed J. Werner, Esq.

57. Natalie Ann Allred, Laymember

58. Afeni Banks, Laymember

59. Brian Catlett, Laymember

60. Kathy Dalvey, Laymember

61. Alexander Falconi, Laymember

62. Brittany Falconi, Laymember

63. Joelyne Gold, Laymember

64. Elizabeth A. Hanson, Laymember

65. Jack S. Hegeduis, Laymember

66. Julia D. Hesmati, Laymember

67. William M. Holland, Laymember

68. Nicholas Kho, Laymember

69. Annette Kingsley, Laymember

70. Benjamin S. Lurie, Laymember

71. Jo Kent McBeath, Laymember

72. Steve Moore, Laymember

73. Grace Ossowski, Laymember

74. Peter Ossowski, Laymember

75. Kellie C. Rubin, Laymember

76. Vikki L. Seelig, Laymember

77. Danny Lee Snyder, Jr., Laymember

78. Harvey Weatherford, Laymember

DATED this 9th day of June 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Kait Flocchini (Jun 9, 2021 11:52 PDT)

R. Kait Flocchini, Assistant Bar Counsel
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

Case No.: OBC21-0148

FILED
JUN - 9 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, ESQ., BAR NO. 8606 Respondent.	)))))))))	**DECLARATION OF MAILING**

Sonia Del Rio, under penalty of perjury, being first and duly sworn, deposes and says as follows:

1. That Declarant is employed with the State Bar of Nevada and, 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, FIRST DESIGNATION OF HEARING PANEL MEMBERS, and STATE BAR OF NEVADA'S PEREMPTORY CHALLENGES** in the matter of the *State Bar of Nevada vs. Derrick S. Penney, Esq.*, Case No. OBC21-0148

3. That pursuant to Supreme Court Rule 109, the Complaint, First Designation of Hearing Panel Members, and State Bar of Nevada's Peremptory Challenges were served on the following placing copies in an envelope which was then sealed and postage fully prepaid for regular and certified mail, and deposited in the United States mail at Las Vegas, Nevada on **June 9, 2021**, to:

Derrick S. Penney, Esq.
50 West Fifth Street
Winnemucca, NV 89445
CERTIFIED MAIL RECEIPT: 7020 0640 0002 2671 3239

And via electronic mail on June 9, 2021 to:

Derrick S. Penney, Esq.: Derrick.Penney@humboldtcountynv.gov
(SCR 79 email)

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of June 2021.

Sonia Del Rio

Sonia Del Rio, an employee
of the State Bar of Nevada

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Derrick Stephen Penney, Esq.
50 W. Fifth St.
Winnemucca, NV 89445

Case No.: OBC21-0148

FILED
JUL - 8 2021
STATE BAR OF NEVADA
BY: _____
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, ESQ., Nevada Bar No. 8606 Respondent.	)))))))))	**NOTICE OF INTENT TO PROCEED ON A DEFAULT BASIS**

PLEASE TAKE NOTICE THAT unless the State Bar receives a responsive pleading in the above-captioned matter by July 28, 2021, it will proceed on a default basis and ***the charges against you in the Complaint shall be deemed admitted.*** Supreme Court Rule 105 (2) states in relevant part:

> A copy of the complaint shall be served on the attorney and it shall direct that a verified response or answer be served on bar counsel within 20 days of service . . . In the event the attorney fails to plead, **the charges shall be deemed admitted**; provided, however, that an attorney who fails to respond within the time provided may thereafter obtain permission of the appropriate disciplinary board chair to do so, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect. (Emphasis added.)

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Additional copies of the Complaint previously served upon you, and the First Designation of Hearing Panel Members, accompanies this Notice.

Dated this 8th day of July 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, BAR COUNSEL

Bruce Hahn
By: _____
Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies a true and correct copy of the foregoing **NOTICE OF INTENT TO PROCEED ON A DEFAULT BASIS AND COMPLAINT** was deposited in the United States Mail at Las Vegas, Nevada, postage fully pre-paid thereon for first-class regular mail and certified mail, return receipt requested, addressed to:

Derrick Stephen Penney, Esq.
50 W. Fifth St.
Winnemucca, NV 89445
CERTIFIED MAIL RECEIPT NO. 7021 0350 0001 7810 2982
SCR 79 Address

And via email to:

1. Derrick Stephen Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
2. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 8th day of July 2021.

Sonia Del Rio

Sonia Del Rio, an employee of
the State Bar of Nevada.

Case No: OBC21-0148

FILED
JUN - 9 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, Esq. Nevada Bar No. 8606 Respondent.	**COMPLAINT**

TO: Derrick Stephen Penney, Esq.
50 W. Fifth St. Winnemucca, NV 89445
(*SCR 79 Permanent Mailing address*)

Derrick Stephen Penney, Esq.
Derrick.Penney@humboldtcountynv.gov
(*SCR 79 Current Email Address*)

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, 3100 W. Charleston Blvd., Ste. 100, Las Vegas, Nevada, 89102, 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 Bruce C. Hahn, is informed and believes as follows:

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1. Respondent Attorney Joseph Derrick S. Penny, Esq., ("Respondent") is currently an active member of the State Bar of Nevada and has been licensed to practice law in Nevada since 2003.

2. At all times pertinent to this complaint Respondent had his principal place of business for the practice of law located in Clark County and thereafter Humboldt County, Nevada. At pertinent times prior to or during March 2021, the Respondent reported to the State Bar pursuant to SCR 79 that his mailing address was: 2800 W. Sahara Ave., Ste 7C, Las Vegas, NV 89102. Sometime during or after March 2021, Respondent reported to the State Bar pursuant to SCR 79 that his mailing address was: 50 W. Fifth Street, Winnemucca, NV 89445.

3. On or about July 13, 2016, Estela Montoya ("Montoya") retained the Respondent to probate the estate of her father, Jesus Sierra Monje ("Monje"). Respondent requested a "flat fee" of $3,150, plus a 2% fee contingent on the estate value over $100,000, and payment of all costs. Montoya was to serve as the Executrix.

4. Montoya paid Respondent about $3,600 plus a $288 filing fee.

5. On or about August 2, 2017, the Respondent filed a Petition for Probate of Will in P-17-092531-E. On July 5, 2019, the Respondent filed a Notice to Creditors. Respondent made no further filings to further the probate action. Respondent filed no motion to withdraw as counsel.

6. On or before August 27, 2018, the Monje residence sold.

7. On or about August 31, 2018, the Respondent received $153,863.44 from the Monje residence proceeds to hold in trust pending finalization of the estate matter. The proceeds check was issued by Stewart Title Company Escrow Account entitled: "Estate of Jesus Sierra Monje." Montoya and Respondent both signed the proceeds check.

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8. The last in-person meeting between Respondent and Montoya was about December 4, 2019.

9. About the beginning of January 2020, Montoya tried to contact the Respondent. Respondent replied on this occasion. He repeated a claim made during late 2019 that he was "waiting for the judge to sign off on the paperwork [to approve funds distribution]."

10. During summer and fall of 2020, Montoya placed a series of phone calls, text messages and emails to the Respondent. Respondent replied on few occasions to those inquiries. Of the responses he gave, he provided limited and misleading responses.

11. During 2020, Montoya attempted unsuccessfully to schedule several appointments with Respondent. Respondent replied sporadically and unmeaningfully to Montoya's case status queries.

12. On or about November 6, 2020, Montoya notified Respondent that she wanted to gather her client file and withdraw the Monje residence proceeds. Respondent replied that he would meet with Montoya on November 27, 2020 at 10 am. Respondent did not appear at the time and place agreed upon.

13. On or about November 8, 2020, Montoya requested Respondent provide an accounting from the client ledger of the Monje residence proceeds. Respondent did not provide Montoya with an accounting of the funds.

14. On the evening of November 27, 2020, Respondent left the client file on Montoya's doorstep and thereafter sent Montoya a text. The text stated he left her the paperwork and could not meet in person due to quarantine restrictions. The text stated he would contact her the following week with payment instructions. Respondent did not contact Montoya the following week or the month thereafter.

15. On or about February 8, 2021, Montoya filed a grievance with the State Bar.

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16. On or about February 12, 2021, the State Bar emailed a Letter of Investigation to the Respondent's SCR 79 email address of penneylawfirm@gmail.com. The Letter sought his response to the Montoya grievance and requested he provide a series of documents relating to the Montoya matter by February 26, 2021. The Letter stated that a failure to respond to the lawful request may be considered a separate violation of the Rules of Professional Conduct ("RPC").

17. The State Bar received no reply from Respondent.

18. On or about February 17, 2021, the State Bar left a voice mail message at Respondent's SCR 79 phone number of 702.497.7545 requesting a return call. The State Bar received no reply.

19. On or about March 2, 2021, the State Bar sent a second Letter of Investigation via Regular and Certified Mail to Respondent's SCR 79 permanent mailing address of 2800 W. Sahara Avenue, Suite 7C, Las Vegas, NV 89102. This second Letter requested his response by March 16, 2021 and referenced the first Letter of February 12, 2021. The State Bar received no reply.

20. On or about March 19, 2021, the State Bar send a third Letter of Investigation via Regular and Certified Mail to an alternate address listed by the Post Office return label from prior communication effort(s). This third Letter requested Respondent's response by April 2, 2021. The State Bar received no timely reply. The mail return receipt identified that a "D. Penney" received this third Letter on March 20, 2021.

21. On or about March 29, 2021, Respondent requested an SCR 79 contact information change. His new permanent mailing address was to reflect his new employment address with the Alternate Public Defender's Office in Humboldt County, Nevada.

22. On or about April 2, 2021, the State Bar left a voice mail message at Respondent's newly changed SCR 79 phone number of 775.375.3157, requesting a return call. The State Bar

received no return call from Respondent.

23. Meanwhile, the State Bar commenced a formal investigation into Respondent's business, trust, checking and personal bank accounts based upon Montoya's grievance.

24. Records obtained from Nevada State Bank showed a $153,863.44 check deposited into Respondent's client trust account on or about October 29, 2018, consistent with the Monje estate proceeds check.

25. Respondent's trust account balance was about $66,724.81 immediately prior to the deposit of the Monje residence proceeds.

26. the Nevada State Bank account records showed that on or about May 8, 2019, the client trust account balance above fell below the Montoya proceeds deposit sum – about $148,254.96.

27. The records showed unidentified withdrawals that significantly depleted the client trust account balance over time. By February 26, 2021, the client trust account only had $15,061.44.

28. The records showed no disbursement to Montoya of the Monje residence proceeds.

29. Respondent's Nevada State Bank client trust account records during 2019 and 2020 reflect that these unidentified withdrawals went into Respondent's business account for personal and business expenses, such as utilities, rent and school tuition.

30. In early April 2021, Montoya or her representative filed a report with the Las Vegas Metro Police Department against Respondent for possible theft of the Monje estate proceeds.

31. Shortly thereafter, on or about April 14, 2021, Respondent wired an appropriate amount to Montoya for the Monje proceeds. However, the wired amount did not originate from Respondent's client trust account.

COUNT ONE: RPC 1.3 (Diligence)

32. RPC 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

33. On or after October 29, 2018, Respondent failed to act with reasonable diligence and promptness in the Montoya representation by not promptly seeking conclusion of the probate matter following his acceptance of the Monje estate proceeds and/or not promptly seeking an order for distribution of the Monje estate proceeds and/or conclusion of the matter following Respondent's last court filing of July 5, 2019.

34. Based on the foregoing paragraphs, Respondent has violated RPC 1.3.

COUNT TWO: RPC 1.4(a) (Communication)

35. RPC 1.4(a) states in relevant part: "(a) A lawyer shall: (3) Keep the client reasonably informed about the status of the matter; (4) Promptly comply with reasonable requests for information;"

36. During the summer and fall months of 2020, Respondent failed to keep Montoya reasonably informed about the probate matter and/or failed to promptly comply with reasonable requests for information by:

a) Providing Montoya with misleading information that he was "waiting on the judge to sign-off on case paperwork [to approve distribution]" and/or,

b) Not timely responding to Montoya's status requests on the probate matter and/or,

c) Declining to reasonably meet with Montoya at her request, and/or,

d) Failing to meet with Montoya on November 27, 2020 as scheduled to provide her the Monje estate proceeds, and/or,

e) Failing to contact Montoya in the week following to provide her the Monje estate proceeds as he claimed he would.

37. Based on the foregoing paragraphs, Respondent violated RPC 1.4.

COUNT THREE: RPC 1.5(a) (Fees)

38. RPC 1.5(a) states in relevant part: "A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses."

39. While representing Montoya, Respondent charged or collected an unreasonable fee by Montoya by having her pay $3,600 in fees:

a) for the bargained-for legal service he did not perform to wit: A Petition for Summary Administration and/or,

b) Montoya not receiving substantial benefit for Respondent's work performed, and/or,

c) Respondent not timely returning unearned fees for services.

40. Based on the foregoing paragraphs, Respondent violated RPC 1.5(a).

COUNT FOUR: RPC 1.15(a), (d) (Safekeeping Property)

41. RPC 1.15(a) states in relevant part: "A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." RPC 1.15(d) states in relevant part: "Except as stated in this Rule or otherwise permitted by law or agreement, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding such property."

42. On or after May 8, 2019, Respondent failed to hold the Monje estate proceeds property separate from his own property, by transferring those funds from his trust account to his business account.

43. On or after August 31, 2018, Respondent failed to promptly deliver to Montoya the Monje estate proceeds that she was entitled to, until his delivery over two years later.

44. On or about November 8, 2020, Respondent failed to promptly render a full accounting of the Monje estate proceeds to Montoya requested.

45. Based on the foregoing paragraphs, Respondent violated RPC 1.15.

COUNT FIVE: RPC 3.2 (Expediting Litigation)

46. RPC 3.2(a) states: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

47. Respondent failed to make reasonable efforts to expedite litigation by:

a) On or after August 2, 2017, filing only a Petition for Probate of Will with no other filings for 23 months, and/or,

b) On or after July 5, 2019, filing only a Notice to Creditors without any further filings to close out the probate matter or withdraw from representation.

48. Based on the foregoing paragraphs, Respondent violated RPC 3.2.

COUNT SIX: RPC 8.1 (Bar Admission and Disciplinary Matters)

49. RPC 8.1 states in relevant part: "...a lawyer in connection with...a disciplinary matter, shall not: (b) "... knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority; ..."

50. On or after February 12, 2021, the State Bar opened a disciplinary file and investigation into Respondent's professional conduct based upon the Montoya grievance. The State Bar sought to communicate with Respondent in the ensuing months by letter and email, making a lawful demand for information.

51. Respondent failed to:

a) Respond to the State Bar's letter of investigation and request for information of February 12, 2021, directed to Respondent's SCR 79 current email address, and/or,

b) Respond to the State Bar's phone voice mail message and request for information of February 17, 2021, directed to Respondent's SCR 79 permanent telephone number, and/or,

c) Respond to the State Bar's letter of investigation of March 2, 2021, directed to Respondent's SCR 79 permanent mailing address, and/or,

d) Substantively respond to the State Bar's letter of investigation of March 19, 2021, directed to Respondent's alternative address provided by the post office and which Respondent received, and/or,

e) Respond to the State Bar's phone voice mail message and request for information of April 2, 2021, directed to Respondent's newly changed SCR 79 permanent telephone number at his new place of employment in Humboldt County, Nevada.

52. Based on the foregoing paragraphs, Respondent violated RPC 8.1.

COUNT SEVEN: RPC 8.4(c), (d) (Misconduct)

53. RPC 8.4 states in relevant part: "It is professional misconduct for a lawyer to: (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice[.]"

54. Respondent engaged in conduct involving deceit or misrepresentation or that was prejudicial to the administration of justice by:

a) During 2019 and January 2020, telling Montoya on more than one occasion that he was "waiting on the judge to sign-off on the paperwork [to approve distribution]" and/or,

b) On or about May 9, 2018, transferring the Monje estate proceeds from his client trust account to his business account and misappropriating and/or converting the proceeds to his own use.

c) Failing to move the probate matter forward in the Eighth Judicial District Court after July 5, 2019.

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55. Based on the foregoing paragraphs, Respondent violated RPC 8.4.

WHEREFORE, Complainant seeks for relief 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 Southern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

Dated this 9th day of June 2021.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: _____ for
Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd., Ste. 100
Las Vegas, Nevada, 89102

FILED
JUL 28 2021
STATE BAR OF NEVADA
BY: _____
OFFICE OF BAR COUNSEL

Case No: OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK STEPHEN PENNEY, Esq. Nevada Bar No. 8606 Respondent.	**ANSWER**

DERRICK STEPHEN PENNEY, ("Respondent"), in answer to the Complaint on file herein, admits, denies, avers as follows:

1. In response to Paragraph 1, Respondent's last name is "Penney" not "Penny." Respondent otherwise admits the other allegations in Paragraph 1.

2. In response to Paragraph 2, Respondent admits the allegations in Paragraph 2.

3. In response to Paragraph 3, Respondent admits that Montoya retained Respondent to probate her father's estate and that Montoya was to serve as the Executrix. Respondent denies the other allegations in Paragraph 3.

4. In response to Paragraph 4, Respondent recalls Montoya paying approximately $3,000 in fees and $300.00 in costs. Respondent denies the other allegations in Paragraph 4.

5. In response to Paragraph 5, Respondent admits filing a Petition for Probate on August 2, 2017, filing a Notice to Creditors on July 5, 2019, and not filing a motion to withdraw as counsel. Respondent also filed Jesus Monje's will in W-17-012562 on August 1, 2017. Monje's will had been drafted by a paralegal and was not self-proving so additional work was performed to prove up the will. Respondent also filed five ("5") Waivers of Notice of Proposed Action on February 28, 2018. Respondent additionally prepared the Order Admitting Will to Probate, For Issuance of Letters Testamentary & Authorizing Personal Representative to Administer Estate Under the Independent Administration of Estates Act which was filed on May 4, 2018. Respondent denies the other allegations in Paragraph 5.

6. Respondent admits the Monje residence was sold however is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 6 and, therefore, denies same.

7. Respondent admits the allegations in Paragraph 7.

8. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 8 and, therefore, denies same.

9. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 9 and, therefore, denies same.

10. Respondent denies the allegations in Paragraph 10.

11. The COVID-19 pandemic and Respondent commencing his employment as the Humboldt County Alternate Public Defender on October 26, 2020, in Winnemucca made it very difficult to schedule in-person appointments in 2020. Respondent denies the other allegations in Paragraph 11.

12. Respondent denies the allegations in Paragraph 12.

13. Respondent denies the allegations in Paragraph 13.

14. Respondent admits that Montoya's client file was delivered to her residence on or about November 27, 2020, and that an in-person meeting was not possible due to COVID-19 restrictions. Respondent denies the other allegations in Paragraph 14.

15. Respondent admits the allegations in Paragraph 15.

16. Respondent is now aware of the State Bar's Letter of Investigation however Respondent was not aware of said letter back in February 2021. Respondent is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 16, and, therefore, denies same.

17. Respondent replied after becoming aware of the grievance. Respondent denies the other allegations in Paragraph 17.

18. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 18 and, therefore, denies same.

19. Prior to March 2, 2021, Respondent's office formerly located at 2800 W. Sahara Ave., Ste. 7C, Las Vegas, NV 89102, was closed and Respondent was no longer receiving mail at that address. Respondent is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 19, and, therefore, denies same.

20. At the time the State Bar's third letter was sent, Respondent was working in Winnemucca, NV, and would only return to Las Vegas sporadically to check his mail. Respondent replied to the third letter after actually receiving it. Respondent is without knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph 20, and, therefore, denies same.

21. Respondent admits the allegations in Paragraph 21.

22. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 22 and, therefore, denies same.

23. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 23 and, therefore, denies same.

24. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 24 and, therefore, denies same.

25. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 25 and, therefore, denies same.

26. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 26 and, therefore, denies same.

27. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 27 and, therefore, denies same.

28. Respondent denies the allegations in Paragraph 28.

29. Respondent denies the allegations in Paragraph 29.

30. Respondent is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 30 and, therefore, denies same.

31. Respondent admits wiring $153,863.44 to Montoya on or about April 14, 2021, for the

Monje residence sale proceeds. Respondent denies the other allegations in Paragraph 31.

32. Respondent admits the allegations in Paragraph 32.

33. Respondent denies the allegations in Paragraph 33.

34. Respondent denies the allegations in Paragraph 34.

35. Respondent admits the allegations in Paragraph 35.

36. Respondent denies the allegations in Paragraph 36.

37. Respondent denies the allegations in Paragraph 37.

38. Respondent admits the allegations in Paragraph 38.

39. Respondent denies the allegations in Paragraph 39.

40. Respondent denies the allegations in Paragraph 40.

41. Respondent admits the allegations in Paragraph 41.

42. Respondent denies the allegations in Paragraph 42.

43. Respondent admits delivering the Monje estate proceeds to Montoya. Respondent denies the other allegations in Paragraph 43.

44. Respondent denies the allegations in Paragraph 44.

45. Respondent denies the allegations in Paragraph 45.

46. Respondent admits the allegations in Paragraph 46.

47. Respondent admits filing a Petition for Probate of Will on August 2, 2017, and filing a Notice of Creditors on July 5, 2019. Respondent denies the other allegations in Paragraph 47.

48. Respondent denies the allegations in Paragraph 48.

49. Respondent admits the allegations in Paragraph 49.

50. Respondent admits the allegations in Paragraph 50.

51. Respondent denies the allegations in Paragraph 51.

52. Respondent denies the allegations in Paragraph 52.

53. Respondent admits the allegations in Paragraph 53.

54. Respondent denies the allegations in Paragraph 54.

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55. Respondent denies the allegations in Paragraph 55.

AFFIRMATIVE DEFENSES

I.

That Respondent has at all times complied with all applicable laws and Rules of Professional Conduct.

DATED this 27th day of July, 2021.

By:_____
DERRICK S. PENNEY, ESQ.

CERTIFICATE OF SERVICE

On the 27th day of July, 2021, the undersigned filed the foregoing ANSWER electronically to: sbnnotices@nvbar.org

DERRICK STEPHEN PENNEY

VERIFICATION

Under penalty of perjury, I, **DERRICK STEPHEN PENNEY**, being first duly sworn according to law, deposes and says: That the undersigned is the Respondent in the above entitled action; that Defendant has read the above and foregoing Answer, and knows the contents thereof; that the same is true of Defendant's own knowledge, except for any matters therein stated upon information and belief, and as to those matters therein stated, Defendant believes them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED: this 27h day of July, 2021.

DERRICK STEPHEN PENNEY

FILED
AUG 16 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

Case Nos: OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ. NV BAR No. 8606 Respondent.	**ORDER APPOINTING HEARING PANEL CHAIR**

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

1. Ken Hogan, Esq., Chair

DATED this 13 day of August, 2021.

STATE BAR OF NEVADA

By: Russell E. Marsh
Russell E. Marsh (Aug 13, 2021 13:07 PDT)
Russell E. Marsh, Esq.
Nevada Bar No. 11198
Chair, Southern Nevada Disciplinary Board

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **ORDER APPOINTING PANEL CHAIR** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com
2. Derrick S. Penney, Esq. (Respondent): old80@hotmail.com and Derrick.penney@humboldcountynv.gov
3. Bruce C. Hah, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 18th day of August, 2021.

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

Case No.: OBC21-0148

FILED
AUG 26 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., Nevada Bar No. 8606, Respondent.	**NOTICE OF TELEPHONIC INITIAL CASE CONFERENCE**

PLEASE TAKE NOTICE, the telephonic Initial Case Conference in the above-entitled matter is set for **August 30, 2021, at 9 a.m.** The State Bar conference call number is 1-877-594-8353, participant passcode is 46855068#.

Dated this 26th day of August, 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

Bruce Hahn

By: _____
Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **NOTICE OF INITIAL CASE CONFERENCE** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 26th day of August, 2021.

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

Case No.: OBC21-0148

FILED
SEP - 1 2021
STATE BAR OF NEVADA
BY:
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., Nevada Bar No. 8606 Respondent.	)	SCHEDULING ORDER

Pursuant to Rule 17 of the Disciplinary Rules of Procedure ("DRP"), on Monday, August 30, 2021, at 9 a.m., Ken E. Hogan, Esq., the Formal Hearing Panel Chair, met telephonically with Bruce C. Hahn, Esq., Assistant Bar Counsel, on behalf of the State Bar of Nevada, and Respondent *pro se* to conduct the Initial Conference in this matter.

During the Case Conference the parties discussed disclosures, discovery issues, the potential for resolution of this matter prior to the hearing, a status conference, and the hearing date.

The parties agreed to the following:

1. The parties consent to service by electronic means of all documents pursuant to SCR 109(2), NRCP 5, and DRP 11(b)(3) with the understanding that **all documents need to be submitted by 5:00 p.m. to be file stamped timely.**

2. The parties stipulate that venue is proper in Clark County, Nevada.

3. The Formal Hearing for this matter is hereby set for **one (1) day starting at 9:00 a.m. on Friday, November 5, 2021,** and shall take place virtually via Zoom Conferencing until further notice.

4. On or before **September 7, 2021, at 5:00 p.m.,** the State Bar of Nevada's initial disclosures shall be served on all parties. The documents provided by the State Bar shall be bates stamped with numerical designations. *See* DRP 17 (a).

5. On or before **September 14, 2021, at 5:00 p.m.,** Respondent's initial disclosures shall be served on all parties. Such disclosures will include all documents that Respondent believes will reasonably lead to the discovery of all admissible evidence in this matter and the name and contact information of all witnesses Respondent believes will have information relevant to this disciplinary matter.

The documents provided by the Respondent shall be bates stamped with alphabetical exhibit designations. *See* DRP 17 (a).

6. On or before **September 20, 2021, at 4:00 p.m., via Zoom,** the parties have agreed to meet and discuss a possible resolution to this matter.

7. On or before **September 28, 2021, at 5:00 p.m.,** the parties shall file and serve any Motions.

8. On or before **October 12, 2021, at 5:00 p.m.,** all oppositions to the Motions, if any, shall be filed and served on the parties.

9. On or before **October 19, 2021, at 5:00 p.m.,** all replies to any opposition, if any, shall be filed and served on the parties.

10. On or before **October 8, 2021, at 5:00 p.m.,** the parties shall serve a Final Designation of witnesses expected to testify and exhibits expected to be presented at the Formal Hearing in this matter, pursuant to SCR 105(2)(d), DRP 17(a) and DRP 21.

All documents disclosed shall be bates stamped, the State Bar will use numerical exhibit designations and Respondent will use alphabetical exhibit designations, pursuant to DRP 17.

11. On **Monday, October 25, 2021, at 9 a.m,** the parties shall meet telephonically with Ken E. Hogan, Esq., for the Pre-hearing Conference. Any pending issues, including pending Motions, will

be addressed at the Pre-hearing Conference. The parties shall use the State Bar conference bridge (877) 594-8353 and the passcode is 46855068#.

Pursuant to DRP 23, at the Pre-hearing conference (i) the parties shall discuss all matters needing attention prior to the hearing date, (ii) the Chair may rule on any motions or disputes including motions to exclude evidence, witnesses, or other pretrial evidentiary matter, and (iii) the parties shall discuss and determine stipulated exhibits proffered by either the State Bar or Respondent as well as a stipulated statement of facts, if any.

12. The parties stipulate to waive SCR 105(2)(d) to allow for the formal appointment of the remaining hearing panel members on a date that is greater 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 Sep 1, 2021 day of September, 2021.

SOUTHERN NEVADA DISCIPLINARY BOARD

Kenneth E Hogan

By: Kenneth E Hogan (Sep 1, 2021 12:37 PDT)

Kenneth E. Hogan, Esq.
Formal Hearing Panel Chair

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **SCHEDULING ORDER** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com:
2. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 2nd day of September, 2021.

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

FILED
SEP - 7 2021
STATE BAR OF NEVADA
BY: Rita
OFFICE OF BAR COUNSEL

Case No.: OBC21-0148

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., NEVADA BAR No. 8606 Respondent.	)))))))))	**STATE BAR'S INITIAL SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING**

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

A. Documentary Evidence

The documents identified below are enclosed with this Disclosure and marked with Bates Numbers, SBN Exhibit 1 – SBN Exhibit 15b.

1. Any and all documentation contained in the State Bar of Nevada's files including but not limited to, correspondence, emails, memorandums, text messages, notes, payments, invoices, bank records, receipts, billing entries and pleadings regarding grievance file number OBC21-0148.

2. Any and all documentation contained in records of the State Bar of Nevada regarding Respondent's licensure, compliance with reporting requirements, and disciplinary history.

The State Bar reserves the right to supplement this list, as necessary.

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Exhibit #	Document	Bates No.
1.	State Bar Hearing Packet – to be produced prior to hearing.	n/a
2.	Affidavit of Prior Discipline, if any – to be produced at the hearing.	n/a
3.	Initial Grievance dated February 8, 2021.	SBN001-014
4.	Retainer Agreement dated July 13, 2016.	SBN001-003
5.	Stewart Title check no. xx4096 dated 8/27/18 for $153,863.44	SBN001
6.	Correspondence to Respondent from State Bar.	SBN001-020
7.	Clark County Assessor Record re: parcel no. 137-34-618-003	SBN001-002
8.	Docket re: *In the Matter of Jesus Monje, Deceased*. Case No. P-17-092531-E	SBN001-002
9.	Trust Account Journal re: account no. xx4783	SBN001-004
10.	Checking Account Journal re: account no. xx4775	SBN001-014
11.	Client Ledgers	SBN001
12.	Check dated April 9, 2021, in the amount of $140,000.	SBN001-002
13.	Pasty A. Olivas online grievance to SBN dated April 12, 2021.	SBN001-002
14a.	Nevada State Bank Records dated 3/02/21 re: account no. xx4775.	SBN001-239
14b.	Nevada State Bank Records dated 3/02/21 re: account no. xx4783.	SBN001-133
14c.	Nevada State Bank Records dated 3/02/21 re: account no. xx3840.	SBN001-232
15a.	Nevada State Bank Records dated 5/26/21 re: account no. xx4775.	SBN001-043
15b.	Nevada State Bank Records dated 5/26/21 re: account no. xx4783.	SBN001-008

The State Bar incorporates by reference all documents identified by Respondent in this matter.

B. <u>Witnesses</u>

1. The State Bar expects to call Respondent Derrick S. Penney, Esq. ("Respondent") to testify about the facts and circumstances alleged in the complaint. Such testimony will include, but not be limited to, the retention of, and the legal services provided to his clients as set forth in the disciplinary complaint. Respondent will offer testimony regarding his bank account records, client ledger entries and his office practices and procedures. Respondent will offer testimony regarding communication attempts/efforts to or from the State Bar to include his permanent mailing address, permanent phone

number and current email address(es) as relates to SCR 79. To the extent Respondent makes representations about his good character, the State Bar reserves the right to present information to rebut those representations with relevant facts and circumstances regarding his representation of other clients.

2. Estela Montoya and/or Daniel Montoya is expected to offer testimony including but not limited to, their retention of Respondent, the handling of the case, and their communication attempted and completed with Respondent along with Respondent's representations and/or replies.

3. Patsy Olivas is expected to offer testimony including but not limited to her retention of Respondent, the handling of the case, and her communication attempted and completed with Respondent along with Respondent's representations and/or replies.

4. Person most knowledgeable from Nevada State Bank is expected to testify regarding Respondent's bank accounts and records, should such foundation be required by the Panel Chair.

5. Louise Watson, Investigator with the State Bar of Nevada Office of Bar Counsel is expected to provide testimony regarding her investigation efforts of the Office of Bar Counsel matter referenced above, including but not limited to, communications attempted and completed with Respondent, investigation efforts, documentation or bank records obtained, and Respondent's SCR 79 information, licensure and disciplinary history.

The State Bar reserves the right to supplement this witness list, as necessary.

DATED this Sep 7, 2021 day of September, 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Bruce Hahn

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S INITIAL SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 7th day of September, 2021.

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

FILED
SEP 13 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

Case No: OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ. Nevada Bar No. 8606 Respondent.	**RESPONDENT'S INITIAL SUMMARY OF EVIDENCE & DISCLOSURE OF WITNESSES FOR FORMAL HEARING**

PLEASE TAKE NOTICE that the following is an initial list of witnesses and initial summary of evidence which may offered at the time of the Formal Hearing in the above-entitled action:

A. Documentary Evidence

1. Respondent Exhibit 1; Bates No. RES 001-006.

Respondent reserves the right to supplement this list, as necessary.

Respondent incorporates by reference all documents identified by Complainant in its Initial Disclosure

B. **Witnesses**

Respondent reserves the right to supplement this list, as necessary.

Respondent incorporates by reference all witnesses identified by Complainant in its Initial Disclosure.

DATED this 13th day of September, 2021.

By: _____
DERRICK S. PENNEY, ESQ.

CERTIFICATE OF SERVICE

On the 13th day of September, 2021, the undersigned hereby certifies a true and correct copy of the foregoing RESPONDENT'S INITIAL SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING was served electronically via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Bruce C. Hahn, Esq. (Assistant Bar Counsel); bruceh@nvbar.org.

DERRICK S. PENNEY

PFDS
DERRICK S. PENNEY, ESQ.
Nevada Bar No. 8606
PENNEY LAW FIRM
2800 West Sahara Ave,, Suite 7C
Las Vegas, NV 89102
(702) 497-7545 Telephone
pennleglaw.firm@gmail.com
Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of: **JESUS SIERRA MONJE,** Deceased.	CASE NO.: P-17-092531-E DEPT. NO.:

PETITION FOR FIRST AND FINAL ACCOUNT AND DECREE OF DISTRIBUTION, ALLOWANCE OF ATTORNEY'S FEES AND COSTS

DATE OF HEARING: _____, 20___.

TIME OF HEARING: 9:30 a.m.

1. ESTELA MONTOYA, ("Petitioner"), Personal Representative of the Estate of JESUS SIERRA MONJE, Deceased, hereby renders to the Court her first and Final Account and Distribution, Allowance of Attorney's Fees and Costs. (Summary of Account and Schedules is attached as Exhibit "A").

2. The total Estate presently consists of $163,223.95, consisting entirely of cash.

3. No receipts have been received by the Estate. There have been distributions to beneficiaries as outlined in Exhibit "A."

4. That JESUS SIERRA MONJE died on or about the 8th day of August, 2015, in Clark County, Nevada, and was, at the time of his death, a Nevada resident, and died testate.

5. On August 2, 2017, Petitioner filed a Petition for Probate of Will and Issuance of

Letters Testamentary and Authorization to Administer the Estate Under the Independent Administration of Estates Act.

6. On April 11, 2018, the will of Decedent dated April 6, 2005, was proved to be a legal and valid will and Petitioner was appointed by this Court as Personal Representative with authority to administer the Estate under the Independent Administration of Estates Act.

7. On May 18, 2018, Petitioner was issued Letters Testamentary.

8. Thereafter, on July 5, 2019, Petitioner filed a Sixty ("60") Day Notice to Creditors; that more than sixty ("60") days have elapsed since serving and filing the Notice to Creditors; and Petitioner is now in a position to file a First and Final Account.

9. The following Creditor's Claims were filed against said Estate and not paid except for...

10. That Petitioner has performed all duties required of a personal representative.

11. That Petitioner requests statutory fees as personal representative based on $203,795.71 pursuant to NRS 150.020 as follows:

4 % of the first $15,000.00:	$ 600.00;
3% of the next $85,000.00:	$2,550.00; and
2% for all above $100,000.00:	$2,075.91
For a total of:	$5,225.91.

12. That Petitioner seeks the authority to pay personal representative all necessary expenses incurred in the settlement of the estate pursuant to NRS 150.010.

13. That the law firm of PENNEY LAW FIRM agreed to perform all ordinary duties as attorneys for the Estate based on $203,795.91 pursuant to NRS 150.060 as follows:

4% of the first $100,000.00:	$4,000.00;
3% of the next $100,000.00:	$3,000.00; and

2% of the next $800,000.00: $ 75.91

For a total of: $7,075.91.

14. The testate heirs are: ESTELA MONTOYA, PATSY OLIVAS, SAM MONJE, JESSE MONJE, ANNA PEREZ and ROBERT MONJE. The Estate shall be distributed in its entirety to: ESTELA MONTOYA, PATSY OLIVAS, SAM MONJE, JESSE MONJE, ANNA PEREZ and ROBERT MONJE.

15. That the heirs assume any and all tax liabilities which ultimately may be determined to be owed by the decedent or his estate, which are known or which may be hereafter discovered, releasing and holding the Estate and personal representative harmless from any and all liabilities associated therewith.

16. Any assets of the Estate hereinafter found shall be distributed in accordance with the Final Order distributing this Estate.

17. That the names, ages and addresses of the next of kin, devisees and legatees of the decedent, so far as known to the Petitioner, are as set forth below:

NAME	RELATIONSHIP	AGE
ESTELA MONTOYA 7170 Deer Springs Way Las Vegas, NV 89131	Daughter	Over 21
PATSY OLIVAS 6025 W. Flamingo Rd., #240 Las Vegas, NV 89103	Daughter	Over 21
SAM MONJE 876 Palmerston St. Las Vegas, NV 89110	Son	Over 21
JESSE MONJE 4854 Sail Point St. Las Vegas, NV 89147	Son	Over 21

ANNA PEREZ 4617 Fireside Ln. Las Vegas, NV 89110	Daughter	Over 21
ROBERT MONJE 4244 Las Vegas Blvd., N., #189 Las Vegas, NV 89115	Son	Over 21

SPECIAL NOTICE TO:
MEDICAID ESTATE RECOVERY
1100 E. William St., #109
Carson City, NV 89701

WHEREFORE, Petitioner prays:

1. That this Account be approved, allowed and settled by this Court.

2. That Attorney's Fees in the amount of $7,075.91 be paid to PENNEY LAW FIRM.

3. That Administrator's Fees in the amount of $5,225.91 be paid to ESTELA MONTOYA.

4. That Petitioner seeks the authority to pay ESTELA MONTOYA all necessary expenses incurred in the settlement of the Estate pursuant to NRS 150.010 including the payment of all Creditors Claims which have not been paid.

5. That the decedent's Estate be distributed in its entirety as follows:

ESTELA MONTOYA	1/6
PATSY OLIVAS	1/6
SAM MONJE	1/6
JESSE MONJE	1/6
ANNA PEREZ	1/6
ROBERT MONJE	1/6

6. That the heirs assume any and all tax liabilities which ultimately may be determined

to be owed by the decedent or his estate, which are known or which may be hereafter discovered, releasing and holding the Estate and the personal representative harmless from any and all liabilities associated therewith.

7. Any assets hereinafter found shall be distributed in accordance with the Final Order distributing this Estate.

8. That the administration of the above-entitled Estate be brought to a close and Petitioner shall be discharged as personal representative of the Estate upon the filing of receipts.

DATED this _____ day of December 2019.

DERRICK S. PENNEY, ESQ.
Nevada Bar No. 8606
PENNEY LAW FIRM
2800 W. Sahara Ave., #7C
Las Vegas, NV 89102
(702) 497-7545 Telephone
penneylawfirm@gmail.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the **PETITION FOR FIRST AND FINAL ACCOUNT AND DECREE OF DISTRIBUTION, ALLOWANCE OF ATTORNEY'S FEES AND COSTS** was made this _____ day of December 2019, by depositing a true and correct copy of same in the U.S. Mail, postage prepaid, regular mail addressed to:

1. STATE OF NEVADA, Department of Health and Human Services, Medicaid Estate Recovery, 1100 East William Street, #109, Carson City, NV 89701.
2. ESTELA MONTOYA, 7170 Deer Springs Way, Las Vegas, NV 89131.
3. PATSY OLIVAS, 6025 W. Flamingo Rd., #240, Las Vegas, NV 89103.
4. SAM MONJE, 876 Palmerston St., Las Vegas, NV 89110.
5. JESSE MONJE, 4854 Sail Point St., Las Vegas, NV 89147.
6. ANNA PEREZ, 4617 Fireside Ln., Las Vegas, NV 89110.
7. ROBERT MONJE, 4244 Las Vegas Blvd., N., #189, Las Vegas, NV 89115.

_____

An Employee of PENNEY LAW FIRM

Case No.: OBC21-0148

FILED
OCT - 4 2021
STATE BAR OF NEVADA
BY: _____
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., NEVADA BAR No. 8606 Respondent.	)))))))))	**NOTICE OF FORMAL HEARING**

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action has been scheduled for **one day on November 5, 2021, at the hour of 9:00 a.m.** The hearing will be conducted via Zoom. The parties have stipulated to the hearing date set forth above.

Please be further advised that you are entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

DATED this Oct 4, 2021 day of October, 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Bruce Hahn

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **NOTICE OF FORMAL HEARING** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Jarrod L. Rickard, Esq. (Panel Member): jlr@skrlawyers.com;
3. Dr. Ben Lurie, Esq. (Laymember): drlurie@theneckandbackclinics.com; nexnbaxdoc@gmail.com
4. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov;
5. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org;

DATED this 5th day of October 2021.

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

Case Nos: OBC21-0148

FILED
OCT - 4 2021
STATE BAR OF NEVADA
BY: _____
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ. NV BAR No. 8606 Respondent.	**ORDER APPOINTING FORMAL HEARING PANEL**

IT IS HEREBY ORDERED that the following members of the Southern 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 5th day of November, 2021 starting at 9:00 a.m. via Zoom Video Conferencing.

1. Ken Hogan, Esq., Chair;
2. Jarrod Rickard, Esq.
3. Dr. Ben Lurie, Laymember

DATED this 4th day of October, 2021

STATE BAR OF NEVADA

By: Russell E. Marsh
Russell E. Marsh (Oct 4, 2021 11:18 PDT)
Russell Marsh, Esq.
Nevada Bar No. 11198
Chair, Southern Nevada Disciplinary Board

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **ORDER APPOINTING FORMAL HEARING PANEL** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Jarrod L. Rickard, Esq. (Panel Member): jlr@skrlawyers.com;
3. Dr. Ben Lurie, Esq. (Laymember): drlurie@theneckandbackclinics.com; nexnbaxdoc@gmail.com
4. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov;
5. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org;

DATED this 4th day of October 2021.

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

Case No.: OBC21-0148

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., NEVADA BAR No. 8606 Respondent.	)))))))))	**STATE BAR'S FINAL SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING**

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

A. Documentary Evidence

The documents identified below are enclosed with this Disclosure and marked with Bates Numbers, SBN Exhibit 1 – SBN Exhibit 15b.

1. Any and all documentation contained in the State Bar of Nevada's files including but not limited to, correspondence, emails, memorandums, text messages, notes, payments, invoices, bank records, receipts, billing entries and pleadings regarding grievance file number OBC21-0148.

2. Any and all documentation contained in records of the State Bar of Nevada regarding Respondent's licensure, compliance with reporting requirements, and disciplinary history.

The State Bar reserves the right to supplement this list, as necessary.

/ / /

/ / /

Exhibit #	Document	Bates No.
1.	State Bar Hearing Packet – to be produced prior to hearing.	n/a
2.	Affidavit of Prior Discipline, if any – to be produced at the hearing.	n/a
3.	Initial Grievance dated February 8, 2021.	SBN001-014
4.	Retainer Agreement dated July 13, 2016.	SBN001-003
5.	Stewart Title check no. xx4096 dated 8/27/18 for $153,863.44	SBN001
6.	Correspondence to Respondent from State Bar.	SBN001-020
7.	Clark County Assessor Record re: parcel no. 137-34-618-003	SBN001-002
8.	Docket re: *In the Matter of Jesus Monje, Deceased*. Case No. P-17-092531-E	SBN001-002
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11.	Client Ledgers	SBN001
12.	Check dated April 9, 2021, in the amount of $140,000.	SBN001-002
13.	Pasty A. Olivas online grievance to SBN dated April 12, 2021.	SBN001-002
14a.	Nevada State Bank Records dated 3/02/21 re: account no. xx4775.	SBN001-239
14b.	Nevada State Bank Records dated 3/02/21 re: account no. xx4783.	SBN001-133
14c.	Nevada State Bank Records dated 3/02/21 re: account no. xx3840.	SBN001-232
15a.	Nevada State Bank Records dated 5/26/21 re: account no. xx4775.	SBN001-043
15b.	Nevada State Bank Records dated 5/26/21 re: account no. xx4783.	SBN001-008

The State Bar incorporates by reference all documents identified by Respondent in this matter.

B. <u>Witnesses</u>

1. The State Bar expects to call Respondent Derrick S. Penney, Esq. ("Respondent") to testify about the facts and circumstances alleged in the complaint. Such testimony will include, but not be limited to, the retention of, and the legal services provided to his clients as set forth in the disciplinary complaint. Respondent will offer testimony regarding his bank account records, client ledger entries and his office practices and procedures. Respondent will offer testimony regarding communication attempts/efforts to or from the State Bar to include his permanent mailing address, permanent phone

number and current email address(es) as relates to SCR 79. To the extent Respondent makes representations about his good character, the State Bar reserves the right to present information to rebut those representations with relevant facts and circumstances regarding his representation of other clients.

2. Estela Montoya and/or Daniel Montoya is expected to offer testimony including but not limited to, their retention of Respondent, the handling of the case, and their communication attempted and completed with Respondent along with Respondent's representations and/or replies.

3. Patsy Olivas is expected to offer testimony including but not limited to her retention of Respondent, the handling of the case, and her communication attempted and completed with Respondent along with Respondent's representations and/or replies.

4. Person most knowledgeable from Nevada State Bank is expected to testify regarding Respondent's bank accounts and records, should such foundation be required by the Panel Chair.

5. Louise Watson, Investigator with the State Bar of Nevada Office of Bar Counsel is expected to provide testimony regarding her investigation efforts of the Office of Bar Counsel matter referenced above, including but not limited to, communications attempted and completed with Respondent, investigation efforts, documentation or bank records obtained, and Respondent's SCR 79 information, licensure and disciplinary history.

The State Bar reserves the right to supplement this witness list, as necessary.

DATED this 8th day of October, 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Bruce Hahn

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **STATE BAR OF NEVADA'S FINAL SUMMARY OF EVIDENCE AND DISCLOSURE OF WITNESSES FOR FORMAL HEARING** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 8th day of October, 2021.

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

FILED
OCT 20 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

Case No: OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ. Nevada Bar No. 8606 Respondent.	**RESPONDENT'S MOTION TO CONTINUE FORMAL HEARING**

COMES NOW, DERRICK S. PENNEY, ESQ., Respondent, pursuant to SCR 105(2)(d), and hereby moves for an order continuing the formal hearing currently set for November 5, 2021, at 9:00 a.m. for the following reasons: Respondent is unavailable for the November 5, 2021, formal hearing as he is co-defense counsel in a murder trial (*State of Nevada v. August Peters* CR2007179) commencing in the Sixth Judicial District Court, Humboldt County, Nevada, on November 1, 2021, and anticipated to last for at least two ("2") weeks thereafter. (Copy of District Court Calendar attached as Exhibit "A").

Additionally, Respondent will need additional time to seek legal counsel to assist in the defense of this matter as settlement negotiations broke down just yesterday.

Good cause having been shown, Respondent respectfully requests that additional time of ninety ("90") days beyond November 5, 2021, be allowed to conduct the formal hearing.

DATED this 19th day of October, 2021.

By: _____
DERRICK S. PENNEY, ESQ.

DECLARATION OF RESPONDENT

Derrick Penney is the Respondent.

Respondent is unavailable for the November 5, 2021, formal hearing as he is co-defense counsel in a murder trial (*State of Nevada v. August Peters* CR2007179) commencing in the Sixth

Judicial District Court, Humboldt County, Nevada, on November 1, 2021, and anticipated to last for at least two ("2") weeks thereafter.

Additionally, Respondent will need additional time to seek legal counsel to assist in the defense of this matter as settlement negotiations broke down just yesterday.

I declare under penalty of perjury that the foregoing factual assertions are true and correct [1]

DERRICK S. PENNEY, ESQ. Date: 10.19.2021

[1] See NRS 53.045 which provides in pertinent part as follows;

Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form:

1. If executed in this state: "I declare under penalty of perjury that the foregoing is true and correct".

Executed on _____ (date) _____ (signed)

CERTIFICATE OF SERVICE

On the 19th day of October, 2021, the undersigned hereby certifies a true and correct copy of the foregoing RESPONDENT'S MOTION TO CONTINUE FORMAL HEARING was served electronically via email to:

1. sbnnotices@nvbar.org
2. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel); bruceh@nvbar.org.

DERRICK S. PENNEY

"A"

Court Calendar

!!

UPCOMING EVENTS

District Court Juvenile Court

District Court Calendar

Wednesday, 27th Oct	
all day	**JCT - Jury Trial, Richardson**
8:00 AM 10:00 AM	**Juvenile Court**
Monday, 1st Nov	
to Friday, 12th Nov (2021-11-12T00:00:00-08:00) all day	**State of Nevada vs. August Peters, CR 20-7179, Jury Trial (10 days), DA/MS/DP**
9:00 AM 10:00 AM	**Track II Drug Court**
10:00 AM 12:00 PM	**Drug Court**
1:00 PM 2:00 PM	**Staffing**
2:00 PM 3:00 PM	**Family Treatment Court**
3:00 PM 3:30 PM	**Mental Health Court**
4:00 PM 5:00 PM	**DUI Court**
4:30 PM 5:00 PM	**Afternoon Court**

SIXTH JUDICIAL DISTRICT COURT

Welcome to the new Sixth Judicial District website! We're still adding content, but feel free to look around! x

25 West 5th St. #212
Winnemucca, NV 89445

Telephone

District Court Chambers:
(775) 623-6371 (tel:7756236371)
District Court Clerk:
(775) 623-6343 (tel:7756236343)

E-Mail

elisha.formby@hcdcnv.com (mailto:elisha.formby@hcdcnv.com)
julia.dendary@hcdcnv.com (mailto:julia.dendary@hcdcnv.com)

Office Hours

Monday - Friday:
08:00 - 5:00
Saturday: **Closed**
Sunday: **Closed**

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Welcome to the new Sixth Judicial District website! We're still adding content, but feel free to look around! x

Case No. OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., Bar No. 8606, Respondent.	)	**OPPOSITION TO MOTION TO CONTINUE FORMAL HEARING**

COMES NOW, the State Bar of Nevada by and through Bar Counsel Daniel Hooge, Esq., and Assistant Bar Counsel, Bruce Hahn, Esq., and hereby offers its opposition to Respondent's motion to continue Formal Hearing, provided by email on Tuesday, October 19, 2021 at 6:53 pm. The State Bar's basis for opposition is Respondent failing to demonstrate the basis for his good cause, his lack of waiver and finally, the late filing.

The State Bar recognizes that "good cause" – may exist for a continuance here, where the Respondent is representing a client in a matter of the client's liberty, contrasted with a hearing on an administrative matter involving himself. The Bar's concern is that the Respondent has not offered evidence or representation that he did not waive this potential issue by nonetheless stipulating to the November 5 formal hearing date a scant two months ago.

On August 30, 2021, the Respondent orally stipulated to the Formal Hearing date of November 5 at the Initial Case Conference During the Initial Conference. See Scheduling Order filed September 1, 2021. How is it that the Respondent-represented August Peters murder trial date of November 1 was unknown to Respondent at the ICC?

It appears the reason for the continuance request is the Respondent's desire for counsel, his secondary basis - citing "broken down" negotiations occurring on or about Monday, October 18. See Respondent's Motion to Continue. Hasn't his long delay waived a basis to object now? The possibility of a contested hearing was a possibility known to the Respondent at the time the State Bar filed it's complaint on June 9, 2021, and its Notice of Intent to Seek Default, filed July 8, 2021 for lack of Respondent's timely participation in the process. Four months have since passed. The State Bar's allegations of client trust money conversion are serious and with knowledge charged to the Respondent as occurring in May 2019. Respondent was on notice long ago that successful negotiations are not always a guarantee and that he was free to engage counsel early on.

Disciplinary Rule of Procedure 16(a) directed that his continuance motion should have been filed five weeks ago. The Panel's Scheduling Order directed that any motion should have been filed over three weeks ago. See Scheduling Order, page two, para 7.

Because the Respondent has not demonstrated that his conduct did not 'create' his "good cause" basis here, his unexplained delay in seeking counsel, and because he failed to timely seek continuance relief in accord with the DRPs and the Chair's order, his motion should be denied.

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///

///

Dated this 22nd day of October, 2021.

By: Bruce Hahn

Bruce C. Hahn, Assistant Bar Counsel, #5011
STATE BAR OF NEVADA
3100 W. Charleston Blvd., #100
Las Vegas, NV 89102

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **OPPOSITION TO MOTION TO CONTINUE FORMAL HEARING** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Derrick S. Penney, Esq. (Respondent): derrick.penney@humboldtcountynv.gov
3. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org

DATED this 22nd day of October, 2021.

By: _____

Louise Watson, an employee of
the State Bar of Nevada.

NOA
EMILY K. STRAND, ESQ.
Nevada Bar No. 15339
OSVALDO E. FUMO, ESQ.
Nevada Bar No. 5956
PITARO & FUMO, CHTD.
601 Las Vegas Boulevard
Las Vegas, NV 89101
Phone (702) 474-7554
Fax (702) 474-4210
emily@fumolaw.com
Attorneys for Respondent

FILED
NOV - 1 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, v. DERRICK PENNEY, ESQ., Respondent.	Case No:

NOTICE OF APPEARANCE

TO: BRUCE HAHN
State Bar of Nevada
3100 West Charleston, Suite 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

KENNETH HOGAN
Hearing Panel Chair
Phone: (702) 800-5482
Fax: (702) 800-5482
ken@h2legal.com

YOU WILL PLEASE TAKE NOTICE that the undersigned hereby notifies the Hearing Panel and the State Bar of Nevada that, EMILY K. STRAND, ESQ. and OSVALDO E. FUMO, ESQ. of PITARO & FUMO, CHTD., have been retained as counsel for the above-referenced matter.

DATED this 28th day of October, 2021.

/s/ Osvaldo E. Fumo
Osvaldo E. Fumo, Esq.
Nevada Bar No. 5956

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

CERTIFICATE OF SERVICE

The undersigned hereby declares that on October 28, 2021 a copy of the foregoing NOTICE OF APPEARANCE was delivered via email to the following people:

BRUCE HAHN
State Bar of Nevada
3100 West Charleston, Suite 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

KENNETH HOGAN
Hearing Panel Chair
Phone: (702) 800-5482
Fax: (702) 800-5482
ken@h2legal.com

SONIAL DEL RIO
State Bar of Nevada
3100 West Charleston, Suite 100
Las Vegas, Nevada 89102
soniad@nvbar.org

Respectfully submitted,

/s/ Osvaldo E. Fumo
Osvaldo E. Fumo, Esq.
Nevada Bar No. 5956

/s/ Emily K. Strand
Emily K. Strand, Esq.
Nevada Bar No. 15339

Case No.: OBC21-0148

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., Nevada Bar No. 8606, Respondent.	**NOTICE OF CONTINUED FORMAL HEARING**

PLEASE TAKE NOTICE that the formal hearing in the above-entitled action scheduled for one day on **November 5, 2021,** at the hour of 9:00 a.m., has been **vacated** and continued to **November 22, 2021**, at 9:00 a.m. The hearing will be conducted via audio/visual simultaneous transmission (using Zoom) hosted from Las Vegas Nevada. The State Bar of Nevada will email an access link.

Please be further advised that you are entitled to be represented by counsel, to cross-examine witnesses and to present evidence.

Dated this 2 day of November 2021.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

Bruce Hahn

By: _____

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **NOTICE OF CONTINUED FORMAL HEARING** was served via email to:

1. Ken E. Hogan, Esq. (Hearing Panel Chair): ken@h2legal.com;
2. Jarrod L. Rickard, Esq. (Panel Member): jlr@skrlawyers.com;
3. Dr. Ben Lurie, Esq. (Laymember): drlurie@theneckandbackclinics.com; nexnbaxdoc@gmail.com
4. Emily Strand, Esq. (Respondent's Counsel): emily@fumolaw.com
5. Osvaldo Fumo, Esq. (Respondent's Counsel): ozzie@fumolaw.com
6. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org;

DATED this 2nd day of November 2021.

By: Sonia Del Rio
Sonia Del Rio, an employee of
the State Bar of Nevada.

Case No.: OBC21-0148

FILED
NOV - 5 2021
STATE BAR OF NEVADA
BY: OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ. NV BAR No. 8606 Respondent.	**AD HOC ORDER**

IT IS HEREBY ORDERED that the following member of the Southern Nevada Disciplinary Board, DR. BEN LURIE has been released as panel member, and will be replaced by panel member WILLIAM HOLLAND. The hearing will be convened on the 22nd day of November, 2021 at 9:00 a.m. via Zoom Video Conferencing.

DATED this 3 day of November, 2021.

STATE BAR OF NEVADA

By: Christopher Lalli
Christopher Lalli (Nov 3, 2021 18:25 PDT)
Christopher Lalli, Esq.
Nevada Bar No.5398
Vice-Chair, Southern Nevada Disciplinary Board

Case No. OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., Bar No. 8606, Respondent.	)	**ORDER AFTER PRE-HEARING CONFERENCE**

Pursuant to Rule 23 of the Disciplinary Rules of Procedure, the Hearing Panel Chair Kenneth Hogan, Esq., met via telephone conference with Bruce Hahn, Esq., Assistant Bar Counsel on behalf of the State Bar of Nevada ("SBN"), Sonia Del Rio, SBN Hearing Paralegal, Emily Strand, Esq. on behalf of Respondent Derrick Penney, Esq., and the Respondent on November 1, 2021 at 8:30 am to conduct the Pre-hearing Conference ("PHC") in this matter. This setting had been continued from October 25, 2021 by order of the Chair due to Respondent's *pro se* written Motion to continue the Formal Hearing, emailed to the Chair and Bar after business hours on October 19, 2021. The SBN filed a written opposition on October 22, 2021.

PRE-HEARING CONFERENCE SUMMARY

The following points were offered and addressed as follows:

1. The SBN confirmed its readiness for the scheduled Formal Hearing for November 5, 2021 and affirmed its opposition to Respondent's Motion to Continue Formal Hearing, noting that the calendar conflict Respondent cited in his Motion had resolved.

2. Defense counsel Emily Strand, Esq., affirmed Respondent's request to continue the instant Formal Hearing date based upon Respondent retaining her office on October 29, 2021. Counsel affirmed her need for discovery and time to consult with Respondent.

3. Chair Hogan orally granted Respondent's motion to continue Formal Hearing in favor of a hearing date continuance of about two weeks' time. Parties were directed to confer for a mutually suitable hearing date. The parties and Chair have since agreed upon a new Formal Hearing date of November 22, 2021, to commence at 9:00 am for a full-day setting.

Based on the arguments of counsel, Chair order and subsequent agreement upon a Formal Hearing date, and good cause appearing, **IT IS SO ORDERED.**

Dated this 4 day of November 2021.

Kenneth Hogan
Kenneth Hogan (Nov 4, 2021 14:31 PDT)

Kenneth E. Hogan, Esq.
Formal Hearing Panel Chair
SOUTHERN NEVADA DISCIPLINARY BOARD

Submitted By:
STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Bruce Hahn
Bruce Hahn, Assistant Bar Counsel (5011)
3100 W. Charleston Boulevard, Suite 100
Las Vegas, Nevada 89102
(702) 382-2200
Attorney for State Bar of Nevada

Case No: OBC21-0148

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant DERRICK S. PENNEY, ESQ., Bar No. 8606 Respondent.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION AFTER FORMAL HEARING**

This matter came before a Formal Hearing Panel of the Southern Nevada Disciplinary Board ("Panel") on November 22, 2021 at 9:00 am conducted by simultaneous audio-visual transmission platform "Zoom." The Panel consisted of Chair Kenneth Hogan, Esq., Jarrod Rickard, Esq., and lay member William Holland. Assistant Bar Counsel, Bruce Hahn, Esq., represented the State Bar of Nevada ("State Bar" or "SBN"). The Respondent appeared and was represented by Emily Strand, Esq.

The Panel submits the following Findings of Fact, Conclusions of Law and Recommendation in a unanimous decision,[1] based upon the pleadings, testimony, documentary evidence presented and argument of counsel.

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[1] Transcript of Proceedings of November 22, 2021 ("TOP") 223:10 – 227:14.

FINDINGS OF FACT

The Panel finds the following:

1. The Panel proceeded in a contested matter involving the State Bar's Complaint filed June 9, 2020, alleging seven violations of Nevada Rules of Professional Conduct ("NRPC") to wit: Count I – 1.3 (Diligence), Count II – 1.4(a) (Communication), Count III – 1.5(a) (Fees), Count IV – 1.15(a), (d) (Safekeeping Property), Count V – 3.2(a) (Expediting Litigation), Count VI – 8.1 (Bar Disciplinary Matters), and Count VII - 8.4(c), (d) (Misconduct). SBN Exhibit 1 (SBN 001-010), TOP 5:22 – 6:10. Respondent's Answer of July 28, 2021 denied material elements of each of the seven violations charged.

2. The Panel considered sworn testimony proffered by the State Bar from: i) Louise Watson - Legal Administrator for the SBN, TOP 20 - 96, ii) Patsy Olivas[2] – Grievant's older sister, TOP 97 - 121, iii) Estela Montoya – Grievant, TOP 121 - 149, and iv) Respondent, TOP 150 - 204. The Panel found portions of Ms. Olivas's testimony particularly credible as to Count II. TOP 223:13-24. The Panel considered sworn testimony proffered by the Respondent himself in his case-in-chief. TOP 205 – 208.

3. The Panel considered documentary evidence admitted along with argument of counsel. The State Bar offered exhibits 1 [3], 2, 4-12, 14(a), 14(b), 14(c), and 15(a) without objection. TOP 5:24 – 7:6, 203:23 – 204:4. Respondent offered no exhibits.

4. The State Bar proved all the elements of Counts I - NRPC 1.3 (Diligence), II -

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[2] Respondent's objection to her audio-only testimony was considered and overruled.

[3] Exhibit 1 containing the case pleadings in the "Hearing Packet" (SBN 001-051) consisted of: i) The Complaint, Panel Designation, and Declaration of Mailing of June 9, 2021 (001-019); ii) Notice of Intent to Proceed on a Default Basis (020-025); iii) Answer (026-032); iv) Order Appointing Hearing Panel Chair (033-034); v) Notice of Telephonic Initial Case Conference (035-036); vi) Scheduling Order (037-040); vii) Order Appointing Hearing Panel (041-042); viii) Notice of Formal Hearing (043-044); ix) Notice of Appearance (045-046); x) Notice of Continued Formal Hearing (047-048); xi) Ad Hoc Panel Member Order (049); xii) Order after Pre-Hearing Conference of November 5, 2021 (050-051). TOP 5:24 – 6:12.

NRPC 1.4(a) (Communication), IV - NRPC 1.15(a), (d) (Safekeeping Property), V - NRPC 3.2 (Expediting Litigation), VI - NRPC 8.1 (Bar Disciplinary Matters) & VII - NRPC 8.4(c), (d) (Misconduct)) by the standard of clear and convincing evidence at Formal Hearing. Count III - NRPC 1.5(a) (Fees) was not proven to the clear and convincing standard. TOP 223:3 – 227:14.

6. The Respondent's mental state in committing the six professional rule violations found was Knowing and Intentional and for a self-interested motive. TOP 227:20 – 228:20.

7. The Respondent's conduct in committing the professional rule violations here caused minor actual harm, and little potential harm to the client. TOP 266:15 – 267:9, 274:5-16.

8. The Panel considered ABA Annotated Standards for Imposing Lawyer Sanctions (2nd Ed. 2019) ("Standards") with the application of: i) Section 4.1 - Failure to Preserve Client's property and 5.1 – Failure to maintain Personal Integrity for Count IV, ii) Section 4.4 - Lack of Diligence for Counts I, II, & V, and iii) Section 7.0 – Duties owed as a Professional for Counts VI and VII. The State Bar argued application of baseline Standards 4.11 and 5.11 for Count IV, Standards 4.41(b)(c) for Counts I, II & V, and Standards 7.1 and 7.2 for Counts VI and VII. The Respondent argued application of baseline Standard 4.12. TOP 245:10-15, 255:1-6.

9. Four aggravating circumstances found under SCR 102.5(1) were: dishonest or selfish motive (b), multiple offenses (d), substantial experience in the practice of law (i), and illegal conduct (k). TOP 267:15 – 268:20.

10. Two mitigating circumstances found under SCR 102.5(2) were: absence of a prior disciplinary record (a), and substantial recent personal life changes (cf. SCR 102.5(i)). TOP 268:21 – 269:21.

11. A weighing of the aggravating and mitigating circumstances did not warrant a deviation from the Suspension baseline. TOP 269:22 – 270:1.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Panel hereby issues the following Conclusions of Law:

1. The Southern Nevada Disciplinary Board has jurisdiction over Petitioner and the subject matter of these proceedings. SCR 99.

2. Venue is proper in Clark County, Nevada. Parties' stipulation.

3. Respondent was practicing law in the State of Nevada from 2003 to present. Respondent has been practicing law continuously since 1994 in other states. Exhibit 2. TOP 269:2-6.

4. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. SCR 105(2)(f). *In re Stuhff*, 108 Nev. 629, 633-634, 837 P.2d 853, 856 (1992); *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d 386, 387 (1990).

5. Excepting Count III, six of the remaining seven charged rule violations were proved to the standard of clear and convincing evidence. TOP 223:3 – 227:14.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel unanimously hereby recommends that:

1. Respondent be suspended from the practice of law for 36 months, all but six months stayed. TOP 270:2-7. The probationary period will be monitored by the State Bar. TOP 270:17-273:8. The material probationary terms include the Respondent successfully completing the following:

a. Obtain and fully cooperate with a legal practice mentor, approved by the State Bar and the responsibilities outlined in a mentor-mentee agreement prepared by the State Bar. The agreement would provide for regular mentor-mentee contact (in-person or A/V) and provide quarterly reports to the State Bar, counter-signed by the mentor. TOP 270:17 – 273:10.

b. No contact with client trust accounts during his probationary period. TOP 270:13-15.

c. Complete an additional 9 CLE hours in client trust account handling. TOP 270:15-16.

2. Respondent to pay administrative costs of $2,500. SCR 120(3). TOP 273:17-20.

3. Respondent to pay $3,100 to the Client Security Fund of the State Bar of Nevada. SCR 120(1). TOP 273:20-24.

4. Respondent to pay costs of the Formal Hearing proceedings including the reporter's appearance and transcript expense to the State Bar of Nevada, within 30 days of the Supreme Court's order approving the Formal Hearing Panel's recommendation. SCR 120(1). TOP 273:25 – 274:4

DATED this 18th day of January 2022.

Kenneth Hogan
Kenneth Hogan (Jan 18, 2022 14:23 PST)

KENNETH E. HOGAN, Esq.
Hearing Panel Chair
Southern Nevada Disciplinary Panel

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION AFTER FORMAL HEARING** was served via email to:

1. Emily Strand, Esq. (Respondent's Counsel): emily@fumolaw.com
2. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org;

DATED this 20th day of January 2022.

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

FILED
JAN 25 2022
STATE BAR OF NEVADA
BY: _____
OFFICE OF BAR COUNSEL

Case No.: OBC21-0148

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, Complainant, vs. DERRICK S. PENNEY, ESQ., NEVADA BAR No. 8606 Respondent.	)))))))))	**STATE BAR OF NEVADA'S MEMORANDUM OF COSTS**

Description	Amount
Court Reporter Fee & Transcript Fee Hearing Held November 22, 2021	$2,070.00
Certified Mailing Receipt xx3013 - $7.36 Receipt xx2395 - $6.86 Receipt xx3037 - $6.86 Receipt xx2982 - $6.86 Receipt xx3229 - $6.86	$34.80
SCR 120 costs	$2,500.00
Total:	$4,604.80

1. I am Assistant Bar Counsel with the State Bar of Nevada.

2. 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.

3. As stated in the Findings of Fact, Conclusions of Law and Recommendation, Respondent shall be ordered to pay the fees and costs of these proceedings within thirty (30) days of the Issuance of the Nevada Supreme Court Order matter pursuant to Supreme Court Rule 120(1).

DATED this 25th day of January 2022.

STATE BAR OF NEVADA
Daniel M. Hooge, Bar Counsel

By: Bruce Hahn

Bruce C. Hahn, Assistant Bar Counsel
Nevada Bar No. 5011
3100 W. Charleston Blvd, Ste. 100
Las Vegas, Nevada 89102
Phone: (702) 382-2200

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the **STATE BAR OF NEVADA'S MEMORANDUM OF COSTS** was served via email to:

1. Emily Strand, Esq. (Respondent's Counsel): emily@fumolaw.com
2. Bruce C. Hahn, Esq. (Assistant Bar Counsel): bruceh@nvbar.org;

DATED this 25th day of January 2022.

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

Integrity Court Reporting
7835 S. Rainbow Boulevard
Suite 4-25
Las Vegas, NV 89139
(702)509-3121

Invoice

Number: 1872
Date: 12/24/2021

Bill To:

Louise Watson
State Bar of Nevada
3100 W. Charleston Boulevard
Suite 100
Las Vegas, NV, 89102

PAYMENT DUE UPON RECEIPT

Job Date	Witness Name	Case Name	Case No.
11-22-21	Derrick Penney	State Bar v Penney	OBC21-0148

Description	Amount
Full Day Appearance Fee	$200.00
Transcript - 276 Pages @ 7.50	$2,070.00

Tax I.D. No. 01-0974768

Total $2,270.00

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OFFICE OF BAR COUNSEL

Derrick S. Penney, Esq.
2800 W. Sahara Ave., Ste. 7C
Las Vegas, NV 89102

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Derrick S. Penney, Esq.
2800 W. Sahara Ave., Ste. 7C
Las Vegas, NV 89102

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2. Article Number *(Transfer from service label)*

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A. Signature

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B. Received by *(Printed Name)*

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Las Vegas, NV 89102

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[illegible] Nevad State Bank
1875 Redwood Road
Mailstop UTSC 0929
Salt Lake City, UT 84104

9590 9402 6111 0209 5139 86

2. Article Number *(Transfer from service label)*

7019 2280 0001 8733 2395

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X [illegible] ☐ Agent ☐ Addressee

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Derrick S. Penney, Esq.
547 Los Dolces Street
Las Vegas, NV 89138

9590 9402 6111 0209 5142 97

2. Article Number *(Transfer from service label)*

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X D PENNEY

☐ Agent
☐ Addressee

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D PENNEY

C. Date of Delivery

03/20/21

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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State Bar of Nevada
Attn: Breanna M.
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102

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Derrick Stephen Penney, Esq.
50 W. Fifth St.
Winnemucca, NV 89445

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **RECORD ON APPEAL** was placed in a sealed envelope and sent by mail in Las Vegas, Nevada, postage fully prepaid thereon for certified mail addressed to:

Derrick S. Penney, Esq.
c/o Emily K. Strand, Esq.
601 Las Vegas Blvd. So.
Las VegasNV89101

DATED this 3rd day of February 2022.

Tiffany Bradley, an Employee
of the State Bar of Nevada

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF DERRICK S. PENNEY, ESQ. NEVADA BAR NO. 8606	))))))	Case No. _____

VOLUME II

RECORD OF DISCIPLINARY PROCEEDINGS, PLEADINGS AND TRANSCRIPT OF HEARING

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Docket 84201 Document 2022-04262

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STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA Complainant, vs. DERRICK S. PENNEY, ESQ., Nevada Bar No. 8606 Respondent.	Case No. OBC21-0148

CERTIFIED TRANSCRIPT

FORMAL HEARING OF DERRICK S. PENNEY, ESQ.

Taken at the State Bar of Nevada Via Zoom Videoconference

3100 W. Charleston Boulevard, Suite 100

Las Vegas, Nevada

On Monday, November 22, 2021

At 9:02 a.m.

Reported by: Deborah Ann Hines, CCR #473, RPR

1 Appearances (via Zoom videoconference):

2 Commission Panel:

3 KENNETH HOGAN, ESQ.
Panel Chairman
4
JARROD L. RICHARD, ESQ.
5 Panel Member

6 WILLIAM HOLLAND
Laymember
7

8 For the Complainant:

9 BRUCE HAHN, ESQ.
Assistant Bar Counsel
10 State Bar of Nevada
3100 W. Charleston Boulevard
11 Suite 100
Las Vegas, NV 89102
12 (702)382-2200

13
For the Respondent:
14
EMILY KATHERINE STRAND, ESQ.
15 Pitaro & Fumo
601 Las Vegas Boulevard
16 Las Vegas, NV 89101
(702)474-7554
17

18 Also Present:

19 DERRICK PENNEY
Respondent
20
TIFFANY BRADLEY
21 Hearing Paralegal

22

23

24

25

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1 CHAIR HOGAN: We are on today for State Bar
2 V Penney, that's file OBC21-0148. Could I get
3 appearances, starting with the Bar please.
4 MR. HAHN: Good morning, ladies and
5 gentleman. Bruce Hahn on behalf of the State Bar.
6 Also present is Tiffany Bradley for the Bar.
7 CHAIR HOGAN: Good morning, Mr. Hahn.
8 PANEL MEMBER HOLLAND: William Holland,
9 layperson.
10 PANEL MEMBER RICKARD: Good morning. Jarrod
11 Rickard, panel member, attorney.
12 MS. STRAND: Good morning. Emily Strand on
13 behalf of Mr. Penney.
14 CHAIR HOGAN: Thank you, everybody. Let me
15 get a feel for whether or not the parties would like
16 opening arguments.
17 Bar?
18 MR. HAHN: Good morning, again. Bruce Hahn
19 for the Bar. Yes, Chair, the State Bar would like to
20 offer an opening statement, and we also have three
21 preliminary matters for you, whenever you're ready.
22 CHAIR HOGAN: Let's take the preliminary
23 matters first. What do we have?
24 MR. HAHN: Very well. Chair Hogan, first of
25 all I'd like the record to reflect the publication of

1 Exhibit 1, consistent with Bar practice. And no
2 objection from the defense, that was the hearing
3 packet for our record that was previously published
4 to the panel. And for our record today that
5 principally consists of the essential pleadings in
6 the case.
7 CHAIR HOGAN: Miss Strand, do you have any
8 objection to those exhibits?
9 MS. STRAND: No, I do not.
10 CHAIR HOGAN: Those will be admitted.
11 (Thereupon Complainant's Exhibit
12 1 was admitted into evidence.)
13 MR. HAHN: Chair, the second matter is is
14 that I'm going to, at the end of my case I simply
15 want to prospectively admit Exhibit 2, again, but
16 that's not appropriate for the panel yet at this
17 time. It's Exhibit 2. That will be an affidavit
18 from Miss Del Rio. I simply want the record to
19 reflect in case I forget that I'm going to be moving
20 to admit that then.
21 CHAIR HOGAN: Understood.
22 MR. HAHN: Very well, Chair. And then the
23 third matter, preliminary matter, is is at this time
24 I'm moving, consistent with the disclosures that the
25 State Bar has made, no objection from the defense,

I'd be moving to admit, pre-admit Exhibits 4 through 12, Exhibit 14A, Exhibit 14B, and Exhibit 15A. These have been previously provided in the course of discovery.

MS. STRAND: That's correct. No objection.

CHAIR HOGAN: Those will be admitted.

MR. HAHN: Very well. That's all --

CHAIR HOGAN: 4 through 12, 14A, 14B and 15A.

(Thereupon Complainant's Exhibits 4 through 12, 14A, 14B & 15A were admitted into evidence.)

MR. HAHN: That's correct, Chair. Thank you. That's the sum of the preliminary matters for the Bar.

CHAIR HOGAN: Miss Strand, do you have anything preliminary we need to deal with?

MS. STRAND: I do not.

CHAIR HOGAN: All right. Bar, proceed with your opening, if you would please.

MR. HAHN: Very well. Good morning, panel. Once again, Bruce Hahn on behalf of the Bar. Just a couple of comments I'd like to offer you, in addition to some mechanics of what I anticipate that we're spending your time this morning. In this particular

1 case, there's 28 grandchildren -- there's 20 -- great
2 grandchildren, there's 20 grandchildren, and then
3 there's six children. This is all from the deceased,
4 which is the subject of the probate matter in this
5 case.
6 He died in the summer of '15, and then in
7 the summer of '16 the youngest daughter of the
8 deceased, she was kind of looked to to reach out to
9 get some help for the family to have the matter
10 probated, the small estate of the father, which was
11 Jesus Monje, and that was a family friend, and the
12 family friend was Mr. Penney. That's the connection
13 here between the parties and Mr. Penney.
14 In this particular case, the key events that
15 I would invite you to consider, if you would picture
16 bookends in your mind, in the summer of '16
17 Mr. Penney was retained, and then of course this
18 matter largely resulted in a Bar matter in February
19 of '21. So that's the timeframe that you're dealing
20 with, and there's a couple of key events that you
21 notetakers may want to consider.
22 From the summer of '16, when Mr. Penney was
23 retained, it was the summer of '17 when Mr. Penney
24 first filed a petition for the probate of the will.
25 So from '17 moving to '18 there was kind of a cluster

1 of events that began to occur that are worthy of your
2 attention.
3 In May of '18 there was an order admitting
4 the will to probate, and then of course the issues of
5 letters testamentary, and then in August of '18
6 that's about when the Monje home sold. So the
7 deceased had a small estate, it was about $150,000
8 that cleared, so in August of '18 Stewart Title cut a
9 check for the proceeds of $153,863.44, and that was
10 tendered to the executrix, which was the youngest
11 daughter, Estela Montoya.
12 Miss Montoya signed it, Mr. Penney took the
13 check, he signed it, and then he put it in his IOLTA
14 account, and that, the actual deposit in the IOLTA
15 wasn't until about October of '18.
16 Then we're moving forward in our timeline of
17 the bookends that I gave you from '16 to '21. In May
18 of '19, after the Bar had obtained some records, the
19 Bar discovered that Mr. Penney's trust account
20 balance had dipped below the Monje estate money that
21 was deposited in there. So, in other words, his
22 trust balance dipped below that $153,863, which of
23 course shouldn't happen, and that first happened on
24 May 8 of '19.
25 Moving forward to about two months later,

1 that's really the next filing of anything in the
2 probate matter, and that was in July of '19. What
3 there was is there was a notice of creditors, and
4 then affidavit of publication to move the probate
5 matter forward and that was it. That's all that's
6 ever happened in this case in the representation by
7 Mr. Penney for the Monje family.
8 In November of '20, after a series of
9 un-responded to or little responded to texts, emails
10 and phone calls from the family to Mr. Penney, there
11 was an in-person planned meeting. Again, the
12 youngest daughter of the family, Miss Estela Montoya,
13 had arranged with Mr. Penney for an in-person meeting
14 where she wanted to get a copy of her client file,
15 and she wanted a copy -- or basically all of the
16 funds, the proceeds.
17 Mr. Penney didn't show. Instead, he dropped
18 off the materials without the money in November of
19 '20 basically on their doorstep. Didn't show.
20 Texted and said, "oh, I'll get back to you," never
21 did, until ultimately we have the Bar complaint that
22 happened in December of '20.
23 And then where we ultimately finish up on
24 our time continuum is February 26, because at
25 basically the first examination of the subpoenaed

1 bank records that the Bar had of Mr. Penney's IOLTA
2 account, his business account, and then his personal
3 account, his trust balance was $15,000, substantially
4 below the $150,000 to the Monje estate. And then as
5 you ultimately will see from the complaint that I
6 offered is that Mr. Penney, in April, came up with
7 $150,000, and you'll discover why after not talking
8 with the family for so long.
9 So in sum and substance, panel, that's what
10 you're going to be hearing. There's seven counts,
11 and then in each of the counts I have multiple
12 theories by which the counts were accomplished. For
13 example, in Count 1 I indicate there wasn't a
14 finishing of the probate and there were no proper
15 distribution of the proceeds, so there's two
16 mechanisms for Count 1.
17 There's four mechanisms for Count 2, which
18 is communication. There's three mechanisms for Count
19 3, there's three mechanisms for Count 4. And, again,
20 all you need to do is agree upon one for these to be
21 satisfied. Count 5, which is the expediting
22 litigation, there's two separate mechanisms by which
23 that was accomplished. Count 6, which is the Bar
24 disciplinary matters, you can choose from any of
25 five, it's your choice, any or all.

1 Count 7, which is a broader charge, which is
2 misconduct, there's three separate theories that I've
3 offered for you to consider in 8.4, and that is
4 either deceit, misrepresentation, or prejudicial
5 behavior, prejudicial to the administration of
6 justice occurred, and I've offered you three
7 mechanisms there.
8 So that is the sum and substance. The
9 number of documents that you've received, Chair Hogan
10 has already admitted those. And essentially what
11 you're going to discover is you'll see a copy of the
12 engagement agreement from July of '16 involving
13 Mr. Penney and the family, you're going to see a copy
14 of the Monje estate proceeds check for the $153,000,
15 you're going to see a series of correspondence that
16 Miss Watson, who will be one of your witnesses, she's
17 going to be offering, and it's going to be all the
18 Bar's attempts: Phone calls, emails, certified
19 letters, finally to which Mr. Penney responded,
20 because he never bothered to change his SCR 79
21 address, but even then he didn't timely respond to
22 the phone calls or the letters or the emails.
23 You'll see a copy of the court register, so
24 for those of you who are familiar with probate,
25 you'll be able to use your best judgment and you

1 determine in your mind if diligence and promptness
2 was exercised in moving this matter forward, because
3 there's not much on that docket register. So you'll
4 see a copy of that.
5 You'll also see some ledger summaries that
6 Miss Watson prepared. The bank records are over 600
7 pages. I'm not going to go through them, it's
8 laborious, but what I will offer is is that
9 Miss Watson prepared a summary of what happened in
10 the trust account and what happened in the business
11 account, because once the money was deposited in the
12 trust account, Mr. Penney began to draw on that, a
13 series -- well over 20 draws on that $150,000 to
14 where he ends up with about $15,000 left when the Bar
15 found out.
16 So you'll see a copy of those ledger
17 summaries, and those are much, much, much shorter
18 than all of the bank records that have been admitted,
19 but they're part of your record if you wish to
20 examine them.
21 You'll also see a checking deposit, and the
22 checking deposit was a check for $140,000. This came
23 in April of '21 to Mr. Penney, and it came from a
24 series of two people who live in Kingman, Arizona,
25 Mr. Stephen Penney and a Ms. Nora Penney. That's how

1 the money was funded ultimately to the Monje estate
2 that Mr. Penney paid several years too late.
3 So, again, in sum and substance, ladies and
4 gentlemen, that's what the evidence is going to show.
5 That's the evidence preview. You're going to hear
6 from Miss Watson. You're going to hear from Estela
7 Montoya. You're going hear from Estela's older
8 sister, which is Patsy Olivas. She's going to add a
9 few other little puzzle pieces together, and we're
10 going to ask you to, based on the evidence, to
11 consider what the baseline standard is and then add
12 any aggravation or mitigation that you wish to apply
13 and we're going to ask you to make a decision. Thank
14 you, Chair.
15 CHAIR HOGAN: Thank you, Mr. Hahn.
16 Miss Strand?
17 MS. STRAND: Good morning. Can everyone
18 hear me okay?
19 CHAIR HOGAN: Yes, ma'am.
20 MS. STRAND: All right. What Mr. Hahn told
21 you guys is ultimately relatively correct. This is a
22 case where Mr. Penney was trying to do a family
23 friend a favor. He took this probate case at a
24 relatively small fee, about 3,000, $3500, and it was
25 not his normal area of practice of law, he wasn't

1 particularly familiar with it, and he made a lot of
2 mistakes.
3 So you're going to hear two different kind
4 of sides to the story. The first part is the
5 mistakes that were made on the trust account, and
6 Mr. Penney is going to testify in front of this
7 panel, he's going to tell you how he wasn't
8 particularly familiar with this area of law and how
9 that led to some problems in terms of actually
10 getting the probate done, the timeliness of things,
11 those sorts of problems.
12 He's also going to come before you and
13 testify and talk about what happened with the trust
14 account. He is not disputing that he commingled
15 funds and that he drew from his trust account. That
16 is not in dispute here today. What is in dispute is
17 the appropriate punishment for that.
18 And he's going to tell you about his, you
19 know, efforts to repay the money, his attempts to
20 make good on, you know, his responsibilities to the
21 family. And we're going to talk about the mitigating
22 and aggravating factors in this case, whether
23 Mr. Penney -- whether there is reason for Mr. Penney
24 to truly be suspended, which is the baseline sanction
25 for commingling of funds.

1 So I'm just going to go through the counts,
2 you know, one at a time here and talk to you a little
3 bit about what you're going to hear today from
4 Mr. Penney and from the other witnesses. Like I
5 said, you're not going to hear that there was a
6 dispute -- or a dispute regarding the IOLTA, but you
7 are going to hear how it happened, why it happened,
8 what was going on in Mr. Penney's life at the time
9 that led him to make those choices, and what he's
10 doing now to make sure that something like that never
11 happens again.
12 You're also going to hear about the counts
13 regarding the diligence and the expediting
14 litigation. As I said before, this is not
15 Mr. Penney's normal area of law. This was something
16 he took at a low cost as a favor to a friend. And so
17 you're going hear about his troubles with getting
18 this will probated, there was some problems with the
19 will the way it was written. You're going to hear
20 about his own attempt to research and try and, you
21 know, figure out what he needs to do.
22 And you're going to hear about the problems
23 that were going on, you know, in his own life and in
24 his own firm at the time that took and affected the
25 speed at which this was done. And you're going to

1 hear, you know, in essence why it took so long and
2 what ultimately happened with the probate.
3 You're also going to hear what happened with
4 the communication with the Bar. One of the counts is
5 that Mr. Penney, you know, failed to respond in a
6 timely manner to letters from the Bar requesting
7 information and responses to the grievance. You're
8 going to hear how he was splitting his time between
9 Northern Nevada and Southern Nevada, how he had taken
10 a new job, and how he did not receive timely
11 notification from the Bar because he failed to update
12 his SCR address. And you're going to hear about, you
13 know, what steps he took to rectify that once he did
14 have notice of the hearing and the Bar complaint and
15 his responses to the Bar.
16 You're also going to hear about his
17 communication. As you said -- or as Mr. Hahn pointed
18 out, this case has like 28 grandkids and kids.
19 Mr. Penney was communicating with several of the
20 decedent's daughters, and you're going to hear about,
21 you know, what was going on.
22 One of the things that came up during this
23 case, right kind of as the questions began to come up
24 with regard to where the funds were, was COVID. And
25 that put a stop to some of the in-person meetings and

1 those sorts of things, so you're going to hear about
2 what efforts he took to, you know, communicate with
3 the family and where he fell short and what he's
4 doing to make sure that, you know, something like
5 that doesn't happen again.
6 One of the other charges in this case has to
7 do with the reasonableness of Mr. Penney's fees.
8 You're going to hear and see the retainer agreement
9 in the packet, the fact that he charged, you know,
10 just over $3500, and you're going to hear about the
11 work that was put in and have to make a decision as
12 to whether or not that $3500 fee was a reasonable fee
13 in light of, you know, everything that happened.
14 And then you're going to hear, you know,
15 about the general misconduct. And the Bar is going
16 to have to prove, you know, one of their three
17 theories, and you're going to hear, you know, and
18 have to make a decision about whether or not
19 Mr. Penney, you know, really fell under one of those
20 three misconduct theories, whether this was, you
21 know, a onetime offense that, you know, was rectified
22 or whether this is something that, you know, leads to
23 a much serious, you know, misconduct charges.
24 And after this you're going to be asked to
25 make a decision on each of those seven counts. Like

1 I said, you're already going to have basically the
2 decision made for you with regards to the fees, but
3 for each of those other counts you're going to have
4 to make a decision, and then once you've made your
5 decision, we're going to, you know, take a break,
6 we're going to come back and we're going to discuss
7 the aggravating and mitigating factors in this case,
8 and you'll hear a little bit more from Mr. Penney and
9 from myself, and then you're going to be asked to
10 make a decision as to what level of, you know,
11 discipline is really appropriate in this case.
12 And so that's what this case is really going
13 to boil down to is what level of discipline is
14 appropriate, and what, you know, steps Mr. Penney
15 took and what his motivation was for doing all these
16 things, and how we're going to make sure that
17 something like this never happens again.
18 And so I ask you to just listen carefully to
19 what each witness says, especially the Bar's
20 witnesses with regard to how Mr. Penney communicated
21 with them, what their relationship was like when this
22 whole case started, and then, you know, listen to
23 Mr. Penney himself, and I'm going to ask you to make
24 a determination with regard to his, you know,
25 credibility and his, you know, truthfulness today,

because that's going to have a big bearing on whether or not, you know, what level of discipline this rises to. Thank you very much.

CHAIR HOGAN: Thank you, Miss Strand.

Bar, let's go ahead and take your case in chief please. First witness.

MR. HAHN: Very well. Very well, Chair Hogan. The State Bar would invite the court reporter and yourself to swear in Louise Watson.

Miss Bradley, if you would show her in.

MS. BRADLEY: Miss Watson, can you hear us okay?

MS. WATSON: Yes.

MS. BRADLEY: Thank you.

MR. HAHN: Miss Hines, would you be kind enough to swear in Miss Watson, with the Chair's permission.

CHAIR HOGAN: Proceed please.

Thereupon--

LOUISE WATSON

was called as a witness by the Complainant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HAHN:

Q. Miss Watson, good morning. Could you spell

your last name for our record please today.
A. W-a-t-s-o-n, Watson.
Q. Your first name spelled please.
A. Louise, L-o-u-i-s-e.
Q. Miss Watson, you know why I've asked you here today; is that true?
A. True. Correct.
Q. Miss Watson, would you tell the panel what you do for the State Bar?
A. I'm currently the legal administrator. I was formerly paralegal investigator with the Office of Bar Counsel.
Q. How long have you worked for the State Bar?
A. In total 13 and a half years.
Q. And when you say you were a former investigator, could you briefly summarize what you did as an investigator during those years?
A. On assignment of cases typically from grievants or otherwise, we would investigate the matter. I'd try to get a response from the respondent, gather other pertinent documents from courts or bank records, analyze those and provide a summary of the file to Bar Counsel.
Q. Very well. Miss Watson, you mentioned paralegal. Are you a certified paralegal?

A. I'm certified, yes, with the -- as a paralegal with the National Organization of Legal Assistants.

Q. And when were you certified?

A. I think first certified in 2007.

Q. So if you were going to summarize for the panel here how many years of investigative experience you've had, what would you say? How many years?

A. I think it's about 12 and a half now total.

Q. Very well. Miss Watson, are you acquainted with, generally speaking, with the Bar's mission in effecting Supreme Court Rule 78 and 217?

A. Yes.

Q. Could you tell the panel what that is?

A. Supreme Court Rule 78, and in conjunction with 217, requires an attorney to maintain a trust account if they hold funds for clients. And Rule 78 requires them to maintain certain documents relative to those trust accounts and the funds in them, and then provide those records to the State Bar upon request.

Q. And is that in connection with the overall mission of the State Bar?

A. Yes, to protect the public.

Q. Very well. Miss Watson, you mentioned that

1 part of what your duties were over the years were to
2 obtain financial records. Is that something that
3 you've done routinely in the course of your role with
4 the State Bar?
5 A. Correct. Yes.
6 Q. You also mentioned that you analyze them.
7 Do you reduce that to writing in some fashion?
8 A. Yes. Typically we'll prepare summaries of
9 the bank records that we receive, that's for
10 analytical purposes. It helps us to analyze the data
11 where we can sort and review them in a spreadsheet
12 format.
13 Q. You prepare these in connection with your
14 responsibilities?
15 A. Correct.
16 Q. And with regard to trust account records and
17 financial records, over the course of your years of
18 investigative experience about how many occasions
19 have you had an opportunity to examine records and
20 then reduce your findings into a summary format?
21 A. I would estimate, it depends on the year,
22 it's usually between 30 and 40 percent of the
23 investigation I was assigned had components of trust
24 account review and analysis to them.
25 Q. So, again, if you were going to put a

1 number, would you say one a month? One every six
2 months? What would you -- how would you characterize
3 that?
4 A. Again it's difficult to ascertain, but maybe
5 one every other month. I mean, it's hard to put a
6 number on it. I know I analyzed it once and got the
7 percentage. Overall it's about 30 to 40 percent.
8 Q. Very well. And have you previously
9 testified to panels with regard to your prepared
10 summaries of financial records?
11 A. I have.
12 Q. Okay. And have you found this to be, the
13 reducing to summary, is a fairly reliable methodology
14 to present your findings to panels and others?
15 A. Yes.
16 Q. Very well. All right. If I can, are you
17 familiar with the investigative file involving a
18 Patsy Olivas and a Ms. Estela Montoya insofar as it
19 involves Mr. Derrick Penney?
20 A. I am.
21 Q. You're acquainted with the file?
22 A. Yes.
23 Q. Did you prepare summary reports in this
24 matter to present to the panel?
25 A. I did.

1 Q. Do you believe it would be helpful for them
2 to understand the investigative evidence that you
3 obtained and that you drew some conclusions from?
4 A. Yes, I think they would help.
5 Q. Okay. And do you believe that you had
6 sufficient data and facts to prepare those summaries?
7 A. Yes.
8 Q. Very well. And if you can, I'd like you to
9 just briefly talk. The raw documents have already
10 been admitted, Miss Watson, so if I may I'd just kind
11 of like to shortcut some things and talk a little bit
12 about the investigative steps. When you were
13 presented with a grievance involving suspected trust
14 account conversion, generally what do you look for
15 when you throw out your investigative net to see what
16 you have?
17 A. Typically, I mean, if it's a grievant that's
18 complaining that they're not receiving funds from an
19 attorney, we'll get -- I'll try and get evidence from
20 them of what they believe that the attorney is
21 holding as far as funds. And if you look at the bank
22 records in conjunction with that, you can often tell
23 if a client believes that the attorney should be
24 holding a hundred thousand for them, and there's
25 only, you know, 15, $20,000 or anything less than

1 that in trust, then you potentially have an issue.
2 And those low balances are kind of things
3 that we look for in bank records, along with, you
4 know, we'll look for and identify transfers out of
5 the trust account as potentially an issue, large cash
6 withdrawals. You know, there are a number of things
7 that we can look for when we analyze those records.
8 Q. And those steps that you typically observe,
9 have you found those to be, you know, reasonably
10 reliable methodology for, you know, the accounting
11 and report principles when you prepare your
12 summaries?
13 A. Yes.
14 Q. Very well. In this particular case how did
15 you identify the accounts involving Mr. Derrick
16 Penney?
17 A. I believe it was either through membership
18 services notifying us, they keep a record of the
19 trust account that respondents have to provide under
20 Supreme Court rules every year, and then I believe
21 Miss Montoya actually provided a copy of the deposit
22 of the funds at issue into the trust account, and I
23 believe that may have had the account number on the
24 back of it as well.
25 Q. Now, in this case did you -- are you

1 acquainted with the term "subpoena duces tecum"?
2 A. Yes.
3 Q. What is it?
4 A. It's a document that we send to the relevant
5 bank to obtain the relevant records of the trust
6 account.
7 Q. And in this case did you attempt to gather
8 records for roughly, roughly almost a three-year
9 period of time involving Mr. Penney's IOLTA account,
10 the interest on lawyer trust account; second, his
11 business account or his operating account; and then
12 lastly, his personal account?
13 A. Correct. We actually subpoenaed for his
14 business and trust account records. I think the bank
15 provided the personal, like, account as well. I
16 don't think we particularly asked for that.
17 Q. So if I understand your testimony, did you
18 obtain those documents from those three accounts?
19 A. I did, yeah.
20 Q. Very well. And did you analyze those
21 individual documents?
22 A. I did.
23 Q. And you prepared summaries in connection
24 with that?
25 A. With the -- for the operating and the

1 business account, yes.
2 Q. Okay. And with regard to the joint account,
3 or the personal account Mr. Penney had, why did you
4 sort of push that off to the side, just to share with
5 the panel for purposes of completeness?
6 A. I believe I reviewed those and there was no
7 evidence that that was being used by Mr. Penney and
8 his business to hold funds for clients, or any other
9 manner, so I didn't have to prepare the summary on
10 those.
11 Q. So if I understand your testimony, you
12 reached out with the net to look at three accounts,
13 and then you paired it down to two and then prepared
14 summaries for those two?
15 A. Correct.
16 Q. All right. I understand. Okay. If we can,
17 I want to just talk with you about some of the other
18 investigative steps you engaged in this case and then
19 I'll go back to the accounts, okay?
20 A. Uh-huh.
21 Q. All right. Now, with regard to your other
22 investigative steps, did you -- were you able to
23 confirm an attorney-client relationship between the
24 grievant and Mr. Penney?
25 A. Yes.

1 Q. Okay. Did you obtain in this particular
2 case the engagement agreement from the summer of
3 2015 -- or 2016?
4 A. I don't recall if I retained or received a
5 copy of the retainer agreement, but I know in
6 speaking with them I confirmed it through speaking
7 with the clients and looking at court records.
8 Q. Okay. All right. If I may, Miss Bradley,
9 can I trouble you, if I can, and ask you to pull up
10 and publish what has been previously admitted as
11 Exhibit 4.
12 I'll just show that to you, Miss Watson, and
13 we'll walk through a couple of documents, if I can.
14 All right. Our record should reflect the publication
15 of page one of Exhibit 4 on share screen. If you
16 can, Miss Bradley, could you scroll through the
17 entirety and I'll just sort of identify for the
18 record. So far we have page one of three. Continue
19 to scroll.
20 That's SBN Exhibit 4. Appears we have page
21 two of three. That's identified as page two. And
22 then page three. If I could stop right there with
23 regard to this document that's been previously
24 admitted, Miss Watson, do you see a -- do you see
25 some names at the bottom of page three of SBN

1 Exhibit 4?
2 A. Yes.
3 Q. What are the names identified there?
4 A. So this is Penney Law Firm and Estela
5 Montoya.
6 Q. Okay. And have you talked with Miss Montoya
7 in connection with this matter?
8 A. I have.
9 Q. What appears to be the date identified by
10 the Penney Law Firm from what you can tell on page
11 three?
12 A. July 13th, 2016.
13 Q. Very well. Okay. If I can, Miss Bradley,
14 would you scroll up to the top of page one. For our
15 record, if you would scroll down just a little bit.
16 Thank you, Miss Bradley.
17 What is identified on the letterhead towards
18 the left-hand margin on the July 13, 2016 engagement
19 agreement?
20 A. It's the Derrick Penney, Esquire, looks like
21 his law firm, and it's addressed to Estela Montoya.
22 Q. And what does the "in re" portion say?
23 A. An agreement for legal services.
24 Q. All right. Very well. If I may, at this
25 particular point in time, could you, if you're

capable right now and comfortable, Miss Watson, can you sort of summarize what this letter is?

A. Yes, I do recall now. It's the retainer agreement that I received from Miss Montoya. It's the retainer agreement when she retained Mr. Penney to represent her in the probate matter.

Q. Very well. Miss Bradley, if you'd be so kind, I'd ask you to now pull up and publish Exhibit 5, which has been previously admitted by the Chair.

Miss Watson, we're looking at what appears to be a printout here on page five.

Miss Bradley, could you scroll down for completeness. The record should reflect this is SBN Exhibit 5, page one. Could you scroll up to the top again.

Miss Watson, are you acquainted with this document?

A. Yes.

Q. Tell the panel what it is.

A. It's a check that was issued by Stewart Title Company to the estate of Jesus Sierra Monje. It represents, I believe, the proceeds from the sale of a house that was signed over to Mr. Penney to hold in trust.

Q. And what was the date on that check? Could you identify that for our record?

A. August 27th, 2018.

Q. And what is the amount that's identified on the check?

A. $153,000 -- $153,863.44.

Q. Okay. Miss Bradley, could you scroll down just a little bit. I'd like to go to the endorsement section.

Do you see some endorsement signatures on that document?

A. I do. It was endorsed by Miss Montoya, and it looks like Mr. Penney, attorney for the estate.

Q. Very well. And towards the lower left-hand portion of that endorsement page, do you see a date there at the bottom?

A. Yes. October 23rd, 2018.

Q. Very well. And in connection with -- in connection with this particular case, you mentioned that there was an IOLTA account that you had examined. Is there a number corresponding with that IOLTA account that you see, if you recall?

A. No, not on this check there isn't.

Q. All right. Very well. So if we could -- thank you, Miss Bradley.

1 If I can, I'd like to discuss another
2 document you collected in connection with your
3 investigative steps in this case.
4 Miss Bradley, could you please pull up and
5 publish for us Exhibit 8, which has been previously
6 admitted in this case. If you could scroll down for
7 completeness please. Our record should reflect this
8 is identified as SBN Exhibit 8, pages one and two.
9 Miss Watson, are you acquainted with this
10 document?
11 A. Yes.
12 Q. Did you personally obtain this document?
13 A. I did.
14 Q. Tell the panel where you got it from.
15 A. This was obtained from the Eighth Judicial
16 District Court's website. It's a summary of the
17 probate case.
18 Q. Is it identified in some fashion at the very
19 top?
20 A. Correct. It represents it's for the estate
21 of Jesus Monje, deceased, Case Number P-17-092531-E.
22 Q. And is this also identified as a Register of
23 Actions, or a docket sheet as we would commonly refer
24 to?
25 A. Correct.

1 Q. If you could, Miss Bradley, would you scroll
2 down.
3 Could you identified the very first date
4 that a document was filed, according to this docket
5 sheet, Miss Watson, for our record?
6 A. Yes, a petition for probate of will was
7 filed on August 2nd, 2017.
8 Q. All right. Very well. And then in terms of
9 an actual, the next filing, what date do you identify
10 there?
11 A. There was a notice of hearing filed the
12 following day, August the 3rd, 2017.
13 Q. Okay. If I can, could I direct your
14 attention to an entry of February 16 of 2018. Do you
15 see an entry there?
16 A. Correct. There's a, looks like a hearing on
17 a petition for probate of will.
18 Q. And is that also for issuance of letters
19 testamentary?
20 A. Correct. An authorization to administer the
21 estate.
22 Q. Very well. Miss Bradley, would you continue
23 to scroll please. If you would stop there,
24 Miss Bradley.
25 Miss Watson, do you see an entry of May 4,

2018 involving an order that was issued from the court?

A. Yes, there was an order admitting the will to probate and for the issuance of the letters testamentary.

Q. Okay. And then if I can, do you see two other filings that occurred on or about July 5 and July 22 of 2019?

A. Correct. July 5th, 2019 there was a notice to creditors, and then on July 22nd, 2019 there was an affidavit of publication filed.

Q. Ms. Bradley, would you scroll down just a click or two. Stop right there. That's perfect.

Ms. Watson, do you see any other filings identified on this docket sheet?

A. I do not.

Q. You obtained this document in 2021; am I correct?

A. Correct.

Q. About what month, if you recall?

A. I believe it was shortly after I was assigned the investigation, so February, mid February.

Q. Very well. Thank you, Miss Bradley.

All right. If I may, Ms. Watson, I'd like

1 to take you back to some discussions of the account
2 and then ultimately the summaries you prepared in
3 connection with this case. Is that okay?
4 A. Okay.
5 Q. All right. If I can, you had described
6 obtaining some bank records from three accounts,
7 which was the IOLTA account, the business operating
8 account, and then the joint personal account
9 involving Mr. Penney; am I correct?
10 A. Correct.
11 Q. Now, the scope of your duces tecum, was that
12 essentially from August of '18 to roughly February of
13 2021?
14 A. Yes.
15 Q. Okay. And then you paired away the personal
16 account, so you were principally dealing just with
17 the IOLTA and then the business operating account; am
18 I correct?
19 A. Correct.
20 Q. All right. Now, in this particular case the
21 bank record for three accounts, were they
22 approximately over 600 pages?
23 A. I believe that was a rough estimate, yes.
24 Q. Okay. All right. Then if I could, to
25 identify for our record the IOLTA account, and I'll

1 just refer to a suffix, a suffix only for purposes of
2 just keeping things in order, do you remember if the
3 IOLTA account had a suffix of approximately 4783? Is
4 that consistent with your memory?
5 A. Correct.
6 Q. And the business account, did that have a
7 suffix of 4775?
8 A. Correct.
9 Q. Very well. And with regard to the bank
10 involved, was this Zion Bank Corp. that was doing
11 business in Nevada as Nevada State Bank?
12 A. Correct.
13 Q. All right. Now, if I can, I'd like to ask
14 you about how you decided to bundle these documents.
15 Are you acquainted with some labels that were used in
16 this case involving those records, which was 14A,
17 14B, 14C, 15A, and 15B?
18 A. Correct.
19 Q. Okay. Could you just share with the panel
20 how you ended up bundling them and, you know, what
21 was the logic or your idea in collecting them under
22 those numbers?
23 A. I think when we subpoenaed the records, I
24 mean banks typically will provide them per account,
25 so you'll have an account, they're provide us the

statements, the deposits and the withdrawals for each account separately. So that's how we bundle them and represent them to the panel.

Q. Okay. If I could, I'd like to just sort of summarize some of these account bundles, and I'm going to ask you if that's consistent with your memory, okay?

A. Okay.

Q. All right. Beginning with 14A that has been admitted and will be provided to the panel, was that about 239 pages?

A. Correct.

Q. Okay. And was this in response to the duces tecum that you issued for Zion Bank Corp. involving account number 4775, which was the business account?

A. Correct.

Q. All right. And does it mostly consist of checks, deposit entries and monthly statements during that window of time? In other words, is that what's really inside 14A?

A. Correct.

Q. Very well. I'd like to move to 14B, if I could. Is it consistent with your memory that it's roughly about 133 pages?

A. Correct.

Q. All right. And was this the bank's return of records in response to your duces tecum on account 4784, which is Mr. Penney's IOLTA account?

A. Correct.

Q. All right. And do these documents mostly identify monthly statements and deposits?

A. Correct.

Q. All right. I'd like to move to 14C, for our record. Is it consistent with your memory that this packet is roughly 232 pages?

A. Correct.

Q. And was this the bank's return of records on the joint account with the suffix of 3840, in other words one that you didn't prepare a summary for?

A. Correct.

Q. Okay. And does this mostly consist of monthly statements, personal debits and a few checks?

A. Correct.

Q. All right. And then now moving to your recollection of Exhibit 15A, was that approximately 43 pages of documents here?

A. Correct.

Q. Okay. And is this the -- does this principally represent the business record affidavit of the custodian of records for the Zion Bank Corp.

1 corporation?
2 A. Correct. I believe there were some records
3 with it as well.
4 Q. Yes. And that was principally checks,
5 wasn't it?
6 A. And I think statements.
7 Q. All right. Very well. Now, when I had
8 talked earlier about what we had, I'd like to talk
9 lastly about 15B. Is it consistent with your
10 recollection that this is approximately eight pages
11 involving the monthly statements involving the IOLTA
12 account of 4783?
13 A. Correct.
14 Q. Okay. And these documents, when you bundled
15 them up and made them available and presented them
16 for the Office of Bar Counsel, were they in
17 substantially the same condition as when you received
18 them?
19 A. Correct, they were.
20 Q. All right. Very well. And you mentioned
21 that you prepared investigative summaries for the
22 IOLTA account, which was 4783, and then the business
23 account of 4775; is that true?
24 A. True. Correct.
25 Q. All right. Miss Bradley, if I can trouble

you again, I'm going to ask that you pull up and publish what has been marked and admitted as Exhibit 9, the summary for the IOLTA account. Now for completeness, Ms. Bradley, could you scroll slowly to the bottom of this four page document. Very well. Go ahead and go on up to the top.

Miss Watson, does Exhibit 9 look familiar?

A. It does.

Q. How do you know?

A. This is the summary of the trust account that I prepared.

Q. Okay. So you personally drew from the documents from Zion Bank Corp. that you subpoenaed and prepared this document on your own to summarize your findings; am I correct?

A. Correct.

Q. All right. If I can, how did you identify it at the top?

A. Well, the Nevada State Bank was the bank we obtained the records from, then the trust account obviously is the last four numbers of that account, and the name of the account from the records. And then we entered into the spreadsheet from the statements and the records themselves the date of the transaction, whether the transaction was a

1 debit/credit, the balance in the account on that
2 date, a description of the transaction, and then any
3 other relevant data that was on the records.
4 Q. Okay. Now, the name that's identified at
5 the top says Joseph Derrick Stephen Penney. The
6 respondent in this case has been identified as
7 Derrick Stephen Penney. Why did you put the name
8 "Joseph" in there?
9 A. It must have been reflected on the record.
10 Q. Okay. In other words, are you acquainted
11 with the term "signature card"?
12 A. I am.
13 Q. Tell us what that means.
14 A. It's the document that the bank prepares
15 when you open an account to gather your information.
16 Q. Okay. Is that where you got the name
17 "Joseph" from?
18 A. Potentially.
19 Q. Very well. All right. If I can, could you
20 begin on page one of Exhibit 9, which has been marked
21 and admitted and is currently published. And is it
22 possible, Miss Bradley, that you could expand that
23 just a little bit for Miss Watson, if you can.
24 All right. Very well. Miss Watson, if I
25 can, beginning with page one of Exhibit 9, can you

1 sort of walk me and the panel through what we're
2 looking at and what the significance of it is?
3 A. I think if you can look at this one, on
4 October the 29th, 2018, we can see that there is a
5 deposit into the account matching the amount of the
6 check from Stewart Title that was received on behalf
7 of Mr. Monje's estate for Mr. Penney's client, Estela
8 Montoya, that was deposited on, again, October 29th,
9 2018.
10 Q. What was the beginning balance immediately
11 prior to the deposit of that Monje estate proceeds?
12 In other words, how much money was in there before
13 the estate check was placed by Mr. Penney in his
14 IOLTA?
15 A. $66,724.
16 Q. So that's the sum that he had in there
17 before he put in the Monje money; am I correct?
18 A. Correct.
19 Q. All right. And then you made a note in the
20 far right-hand margin of October 29th, 2018; am I
21 correct?
22 A. I did.
23 Q. What does the note day?
24 A. That this is the amount of the Stewart Title
25 check.

1 Q. Okay. When you say "Stewart Title check,"
2 is that the exhibit that you've previous identified
3 for this panel as, I believe it was Exhibit 5?
4 A. Correct.
5 Q. Very well. If you would, Miss Bradley,
6 could you scroll down just a little bit. And then
7 what I'd ask you to do, Miss Watson -- and we'll stop
8 right there. Beginning right there, yes,
9 Miss Bradley, thank you.
10 Miss Watson, could you sort of share with us
11 the entries that you made in both of the left-hand
12 margin columns and explain to the panel what those
13 entries are?
14 A. Well, we have a number of transactions here
15 that transfers out of the IOLTA account into the
16 business account that we identified with the last
17 number of 4775, and you can see there are periodic
18 transfers. We don't know for which client that these
19 transfers belong because what we classify as
20 unidentified.
21 And there's also some transactions for
22 interest that's -- with an IOLTA account interest is
23 deposited monthly and then ultimately transferred
24 into the, I believe a foundation account, Nevada
25 foundation.

Q. Okay. All right. So if I could, just so I understand, beginning with the entry of October 29, 2018, you showed the deposit in the third column over, am I correct, the $153,000?

A. Correct.

Q. All right. Moving immediately below to October 29, 2018, you show a number of $3,950 in the second column. What is represented there? Is that a debit?

A. Correct. The left-hand column is debits.

Q. Okay. So the first column, beginning with the left-hand margin is the date, the second column is debits, the third column is deposits; am I correct?

A. Correct.

Q. All right. Now, if we were to go on that second entry of October 29, there's the date, there shows a debit of 3950. Is that the same date as the check was deposited?

A. Correct.

Q. And then there's a number in the fourth column. Tell the panel what that number is, which is $216,638.25. What does the fourth column represent?

A. That is the running balance in the trust account.

Q. Okay.
A. So after that transaction, that would have been the balance.
Q. All right. Now, moving to the fifth column on that same line, there's an entry. It says "Tfr to #4775." What did you mean to designate with that entry?
A. The records reflected that that withdrawal, that debit was a transfer of funds from the IOLTA account to the business account ending in 4775.
Q. Okay. So when we're looking at the sheet, we're looking at the IOLTA account of 4783, and then you're tracking where that money is going to by identifying it in that fifth column; am I correct?
A. Correct.
Q. Okay. All right. So the same day that the Monje deposit was made, there was a withdrawal and transfer from the IOLTA to Mr. Penney's business account of $3,950 the same day; am I correct?
A. Correct.
Q. All right. Very well. Could you -- is there any other summary you'd like to offer to the panel with regard to page one?
A. No. I mean, there was additional funds in the account. Obviously before the Monje deposit was

1 made, Mr. Penney had also received settlement funds
2 on behalf of a Carissa Macbriar that were on deposit
3 in the deposit, and then shortly -- was it March 14,
4 2019, at the bottom of the page we can see that he
5 also received settlement funds on behalf of a Jeremy
6 Habibian that went into the account.
7 Q. Was that $6,500?
8 A. Correct.
9 Q. Okay. The rest of the deposits that are
10 identified on page one, are those interest payments
11 only?
12 A. With the exception I think of one on
13 October 23rd, 2018, it looks like a T. Doram paid a
14 thousand dollars, was deposited into the account.
15 Q. Of course. I meant from October 29, '18
16 forward on page one.
17 A. Yeah. Correct. They're just interest
18 payments.
19 Q. Okay. So other than the Habibian matter,
20 which was $6500, all of the deposits were just
21 interest bearing only, correct?
22 A. Correct.
23 Q. All right. Now, can you identify for our
24 record how many separate withdrawals were made on
25 page one from October 29, 2018 through March 14 of

2019? In other words, could you just count them up and identify for our record how many withdrawals Mr. Penney made?

A. On this page I believe there are nine.

Q. And were those transferred from the IOLTA account to his business account, which is 4775?

A. Correct.

Q. All right. Miss Bradley, can I trouble you to move to page two please of Exhibit 9.

All right. Now, Miss Watson, do you see -- do you see some credits that you identified on the column three of this document, page two?

A. Correct. These are, again, interest deposits.

Q. All right. And on page two, Miss Bradley, if you would kindly scroll down just to the bottom of page two, I want to see if there's any other, any other entries other than interest bearing.

Are there any others, Miss Watson?

A. No.

Q. All right. Miss Bradley, could you scroll up to the top please of page two.

And I'm just going to ask you, Miss Watson, how many withdrawals did you identify for our panel that were made from the IOLTA account over to his

operating account, 4775?

A. Could you scroll down, Miss Bradley, a little bit.

Yeah, on this page I believe there are 17.

Q. Okay. There's 17 on page two; am I correct?

A. Correct.

Q. All right. Very well. The format that you described for our panel on page one of identifying deposits, identifying debits, and then identifying notes of transfers in column five, is that the same methodology that you described as on page one?

A. Correct.

Q. All right. Miss Bradley, please scroll down to page three of Exhibit 9. All right. Thank you.

Now, with regard to this matter, if I can, let's start with the deposits or the credits, Miss Watson. Was one of these matters appeared to be a true deposit from another client?

A. Correct. On July 19th, 2020 Mr. Penney deposited a settlement it looks like on behalf of a client, Trent Griffith, for $9,000.

Q. All right. Are there any others on page three that you've identified?

A. No.

Q. Okay. So the rest of the credits or

1 deposits that you've identified, those are all
2 interest bearing only, correct?
3 A. Correct.
4 Q. All right. Now, with regard to the
5 withdrawals and transfers from the IOLTA account over
6 to the business account, could you identify for our
7 panel and our record how many are on page three?
8 A. I believe there are 12.
9 Q. So we had 17 on page two, we had 12 on page
10 three, and then of course we had a number on page
11 one; am I correct?
12 A. Correct.
13 Q. Very well. The same methodology that you
14 identified on page two and page three, did you apply
15 that here on page one and page two?
16 A. Yes.
17 Q. Very well. Miss Bradley, could scroll down
18 to page four of Exhibit 9.
19 All right. Miss Watson, if we can here, is
20 the same methodology that you applied to page one,
21 two, three apply here to page four?
22 A. Correct.
23 Q. And are there any credits that came in from
24 clients or were these all interest bearing?
25 A. This is all interest.

1 Q. Okay. And then with regard to the
2 withdrawals that were transferred from the IOLTA over
3 to the business account, how many do you identify
4 here?
5 A. One.
6 Q. And what's the date of that entry please?
7 A. February 3rd, 2021.
8 Q. Very well. And what was the date that you
9 identified the last entry in connection with this
10 case?
11 A. This is the end of records we received,
12 which was February 26, 2021.
13 Q. All right. Very well. So there's only that
14 one entry of February 3rd, 2021 reflects a transfer
15 to the business account; am I correct?
16 A. Correct.
17 Q. Okay. So we have one transfer there on page
18 four, 12 on page three, 17 on page two, and then a
19 number of others on page one; am I correct?
20 A. Correct.
21 Q. All right. Thank you, Ms. Bradley. If I
22 can, Ms. Bradley, I want to trouble you again. I'm
23 going to ask you to identify and pull up for our
24 panel what has been previously marked and admitted as
25 Exhibit 10.

1 Miss Watson, can I talk to you about your
2 ledgers for the business account of 4775?
3 A. Okay.
4 Q. Could you tell our panel how this is --
5 forgive me. Yes, Miss Bradley, you're correct.
6 Could you please scroll through the entirety of it so
7 Miss Watson can identify it.
8 Miss Watson, does this appear to be a 14
9 page summary that you prepared in connection with
10 Mr. Penney's business or operating account?
11 A. Correct.
12 Q. All right. So if I can, can you -- are the
13 columns that you've identified with Exhibit 9, are
14 those the same type of columns that you used here in
15 Exhibit 10?
16 A. Correct.
17 Q. So in other words, the columns are the date,
18 whether there was a debit, whether there was a
19 credit, the running balance, and then a description,
20 and then a payor or payee and then a notation column;
21 am I correct?
22 A. Correct.
23 Q. All right. And for our record, on page one
24 of Exhibit 10, what account number suffix did you
25 list for this?

A. 4775.
Q. So this is the operating account of Mr. Penney; am I correct?
A. Correct.
Q. All right. Understood. So could you tell us the beginning, the first entry date that you listed here?
A. July 31st, 2018.
Q. Okay. Now, there's a beginning balance that's identified here. What balance is that for our record?
A. $2,985.35.
Q. Okay. All right. So could you identify for our record what you were trying to point out to a potential future panel, such as we have here today, with this document in relationship to the very first ledger that you put? In other words, why did you create this ledger here?
A. Well, first we look to see whether potentially the funds that might have or probably should have been in the trust account are in another account, and then we look to see -- well, if they're not there, which it didn't seem to be in this case, what the funds were used, and then it gives us an idea of, you know, what the funds are being used for,

if there are any potential issues as far as, you know, alcohol or drug addiction, which we didn't see in this case, but we can get some clues from the operating account records.

Q. Okay. Now, with regard to page one of this 14 page document, Exhibit 10, you made some payor/payee notes that we didn't really see so much of on Exhibit 9. How did you come up with these identifiers for the payor/payee? In other words, how did you know to write those entries in?

A. That was directly from the bank account statements.

Q. Okay. So the bank actually identified these payors or payees; am I correct?

A. Correct.

Q. Now, in cases of checks, for example, I want to take you to the entry of August 9 of 2018. Do you see a debit of $1,328?

A. Correct.

Q. And then if I could take you to column six, which is the payor/payee column, do you see that entry there where it says "OLLV"?

A. Yes.

Q. Where did you come up with that acronym?

A. That was directly from the check.

Q. And then do you list a memo or a note immediately to the right of that "OLLV" entry?
A. Correct.
Q. What does that say?
A. That says "B & J Penney Tuition."
Q. What were you trying to communicate there to a panel?
A. That was the memo that came directly off the check that -- I mean, it just reflects what was in the bank records. I mean, it's no more than that. And it obviously says that that check was used to pay B & J Penney tuition.
Q. Okay. Do you know if Mr. Penney -- in connection with the investigation, did you became aware of whether or not Mr. Penney had children?
A. I think just through the records it became evident that he had children.
Q. Very well. So the memo or note that says "B & J Penney Tuition," if I understand your testimony, you didn't make that up, that was actually written on the check; am I correct?
A. Correct. And to be honest there may have been actual names there and I just, for my purposes, made them initials.
Q. Okay. Very well. Now, I'd like to talk

about page one, and then we'll scroll through the rest of our pages for completeness for the summary, but could you sort of share with the panel how you tried to identify where the money was going from the IOLTA over to this particular account, which is the business account, how were you able to identify that by your description in your notes on this summary sheet?

A. Well, again, the bank records, they pretty much outline where the money was being spent, so you could tell it was, it was for personal and business expenses rather than being paid out to clients, such as Miss Montoya.

Q. Okay. And so, again, just so I understand, the payor and payee column and then the memo note column, you didn't make those up? Those came directly from the bank or from the check actual memo entry; am I correct?

A. Correct.

Q. All right. Miss Bradley, would you please scroll down to the bottom of page one. If we could stop right there.

Miss Watson, can you sort of summarize for our panel who the payees were in what you've noted to be significant in connection with your investigation

on page one? In other words, what's the significance of these entries on this page?

A. Well, again, I think you can tell most of these, Century Link, Nevada Energy, TD Autofinance, Nationstar, Abetter Health Insurance, and the amounts involving reflect the payment of bills, expenses, business expenses and not payments related to any client.

Q. Okay. And for completeness, what's the last date entry on page one?

A. September 24th, 2018.

Q. Okay. Miss Bradley, could you scroll to page two please.

Is this more, again, of your entries of what the bank records described?

A. Exactly.

Q. Okay. And could -- from an investigative standpoint, could you identify points of significance on page two? I don't want to have to go through all of them and waste your time, Miss Watson.

A. No, again, I mean, it's -- again, it's similar payees on these payments reflective of paying bills and other personal expenses rather than payment of clients. We do see a couple of payments here, I think there was one to Mr. Guzman who looks like he

1 was a client, was paid settlements of $9,433 on
2 October 19, 2018, which reflects that they were
3 settlement proceeds that went to a client. Again
4 this was out of an operating account and not a trust
5 account, but he was paid.
6 Q. Okay. Very well. Miss Bradley, could you
7 scroll down to the bottom of page two.
8 Miss Watson, anything else you wanted to
9 point out on page two of significance to the panel or
10 is it simply more of the same?
11 A. It's, again, reflective of the same.
12 Q. Very well. Could you scroll to page three,
13 Ms. Bradley.
14 Miss Watson, anything you'd like to identify
15 of significant of page three, or is it again pretty
16 much more of the same, personal expenses?
17 A. Again, it's more of the same. We can see
18 that there was a payment to his client, Macbriar, on
19 November 21st, 2018. If you recollect, her deposit
20 was deposited into the trust account, but otherwise
21 it's similar, business and personal expenses.
22 Q. If I can I'd like to take you to an entry of
23 January 4 of 2019. Do you see a payor/payee
24 identified in that entry?
25 A. Correct. It looks like a deposit was

1 received from a Stephen and Nora Penney.
2 Q. Okay. And what was that deposit? How much
3 was it?
4 A. $122.70.
5 Q. Okay. So that was just a small amount from
6 these payors; am I correct?
7 A. Correct.
8 Q. Okay. And do you also see a tuition payment
9 identified associated with an entry of December 31,
10 2018?
11 A. Correct. A tuition payment of $1,028.
12 Q. Okay. If I can, can you scroll to page
13 four, Miss Bradley, and I'll speed this up a little
14 bit if I can, Miss Watson.
15 If I can, at some point in time, we're now
16 in the 2019s; am I correct?
17 A. Correct.
18 Q. All right. So for purposes of generally
19 describing for our record, again are we seeing more
20 of the same type of financial transactions for
21 personal expenses from the business account?
22 A. Correct. And, again, we see some additional
23 payments on behalf of clients, again mostly for
24 personal or business expenses.
25 Q. Okay. All right. Could you scroll down to

1 the bottom of that page, Miss Bradley?
2 Okay. All right. And does that page appear
3 to end on March 7, 2019?
4 A. Correct.
5 Q. Okay. All right. If you can, scroll to
6 page five please.
7 Now, if I can, with regard to the balance
8 that you had described earlier, Miss Watson, if I
9 remember your testimony, going back to the IOLTA
10 account, you mentioned that when the Monje estate's
11 moneys, the $153,000 was put in, there was about a
12 $66,000 balance; am I correct?
13 A. Correct.
14 Q. And, again, talking about the IOLTA, at some
15 point in time did that sum become completely
16 depleted?
17 A. Yes. I think if you look, the records at
18 the end of February 2021 there was $15,000, just
19 above $15,000 in the account.
20 Q. So in February 2021, from the IOLTA account,
21 it started off at roughly $210,000; am I correct?
22 A. Correct.
23 Q. And then it was ultimately depleted in
24 February of 2021 to about $15,000, correct?
25 A. Correct.

1 Q. All right. Now, with regard to this
2 particular page of the operating account, how would
3 you summarize this page? And I'm just going to go
4 through each page and just sort of ask you to
5 summarize. Is there anything different that we're
6 looking at here?
7 A. No.
8 Q. Okay. You made a memo note on March 7 of
9 2019 with regard to some names and some descriptions.
10 Who's the payor and payee identified on March 7?
11 A. OLLV.
12 Q. Okay. Do you know what that stands for?
13 A. I don't.
14 Q. Okay. The memo note that you identified,
15 what was listed on that particular check?
16 A. Again, J Penney registration fee, and then a
17 second one for a B Penney registration fee.
18 Q. Very well. Anything else you'd like to
19 identify for the panel on this page, and again I'll
20 just go through the pages to use your time wisely.
21 A. No. Again, it's the same type of
22 transactions that were seen on the prior pages.
23 Q. Okay. Could you scroll down, Miss Bradley,
24 slowly to the bottom of the page.
25 All right. If you can, is there an entry of

1 May 2nd, 2019?
2 A. Correct.
3 Q. And who's the payor or payee there?
4 A. Again it's OLLV.
5 Q. And what was the memo note you identified?
6 A. "2019 Walk-a-Thon."
7 Q. Okay. Moving to page six, Miss Bradley,
8 please.
9 Anything you'd like to point out to the
10 panel on page six?
11 A. No. Again it's similar transactions.
12 Q. And beginning on May 8, 2019, do you see a
13 credit of $5,608.48 that you've identified there?
14 A. Correct. It's one of the transfers into the
15 account from the IOLTA.
16 Q. Okay. And are there similar transfers that
17 you've identified as well?
18 A. Correct.
19 Q. Okay. Please continue, Ms. Bradley,
20 scrolling.
21 And let's go to page seven. Anything you'd
22 like to point out to the panel on page seven,
23 Miss Watson?
24 A. No. Again it's the similar type of
25 transactions.

Q. Okay. Moving to the next page, Miss Bradley.

Now, if I can stop right there. With the last page and then with this page you have a different color identified for the balance. What's the significance of that, Miss Watson?

A. The account went into the negative, was overdrawn.

Q. And what was the most it became overdrawn? Was that consistent with your entry of September 23rd, 2019?

A. Correct. It looks like it was overdrawn by $244.

Q. Very well. Anything else you'd like to point out to the panel as to this page?

A. No. Again it's more of the same type of transactions.

Q. Okay. But the withdrawals became so significant, as I understand your testimony, in September of '19 that it actually went negative; am I correct?

A. Correct. So the transfers were going over from IOLTA, and then you can see that the funds are being depleted by the expenses, and then that particular instance it was overdrawn.

Q. Okay. And then immediately after that last overdrawn note that you have of September 23rd, 2019, do you show a credit or an infusion of cash of September 24, 2019 for $5,000?

A. Correct.

Q. And where -- what account was that transferred from?

A. From the IOLTA.

Q. Okay. Very well. If you would, please continue to scroll, Miss Bradley. That was page 8 of 14. I'd like to go to page nine.

Miss Watson, how would you summarize this for the panel?

A. Again it's similar type of transactions, transfers from the IOLTA and then expenses.

Q. Miss Bradley, could you go to page ten.

Miss Watson, how would you summarize this page for our panel? Any different?

A. No, it's again the same type of transactions.

Q. If I can I want to draw your attention to January 30 of 2020. Do you see an entry with the payor/payee identified as OLLV, as in "Victor"?

A. Correct. It looks like there are two on January 30th.

Q. And what was the memo note that was posted for the first entry of January 30, 2020? In other words, what was the memo to the OLLV on the check?

A. "B & J Penney Tuition."

Q. Okay. And with regard to the second entry for January 30, what memo note did you identify there for the panel?

A. It says "Church Donation."

Q. Okay. Very well. If you would, please continue to scroll to the next page, Ms. Bradley.

Now, with regard to this page, how would you summarize this page to the panel please?

A. Again it's similar to the others we've already looked at.

Q. Okay. Next page, Ms. Bradley.

Now, moving to page 12, could you summarize 12 for our panel please?

A. It's again the same type of transactions that we've seen previously.

Q. Okay. Next page please. Could you summarize this panel -- this page for the panel?

A. Again it's the same type of transactions that we've seen previously.

Q. Okay. One more page, Ms. Bradley.

The last page, what's the final entry that

1 you made in connection with this case on this
2 summary?
3 A. This one, February 23rd, 2021, the last
4 transaction is a check issued for $425 to a Bill
5 Norris for rent.
6 Q. And if I could direct your attention to just
7 a few lines above, February 3rd, 2021, do you see a
8 credit that you identified as coming from somewhere?
9 A. Correct. That's a $5,000 transfer from the
10 IOLTA.
11 Q. Very well. All right. Miss Bradley, thank
12 you. I'm going to ask that you go to our next
13 exhibit, which would be Exhibit 11 please. The last
14 summary, Miss Watson. And for our record, this
15 document has already been marked and admitted as
16 Exhibit 11. Thank you, Ms. Bradley.
17 Miss Watson, can you identify what this
18 document is?
19 A. Yes. This is what I call a client ledger.
20 Again it's taking records in this case from both the
21 trust and the business checking account. And what I
22 tried to determine by combining those records is when
23 an attorney receives funds on behalf of a client and
24 then disburses those funds, taking into consideration
25 what their fee might have been, if I can make a

1 determination if they should or potentially should be
2 holding funds in trust for any other clients.
3 Q. And in this case you identified four
4 clients. You identified Macbriar, the Monje, Jesus
5 Sierra Monje estate, the Jeremy Habibian, and then
6 the Trent Griffith, four clients on this one-page
7 document; am I correct?
8 A. Correct.
9 Q. All right. And could you sort of share with
10 the panel what the significance from an investigative
11 standpoint was for you in making the entries that you
12 did? In other words, what does it mean, Miss Watson?
13 A. Well, in this case, when we already had
14 Miss Montoya that was claiming that she hadn't
15 received funds that were owed to her, I do look at
16 other potential clients that may have not received
17 all their settlement funds. And in the records that
18 we had received, there were three other clients for
19 whom Mr. Penney had deposited funds into his trust
20 account.
21 So looking at those transactions and then
22 subsequent disbursement of those funds, you can see,
23 in the example of Miss Macbriar, he received $44,999.
24 I could find disbursements, four disbursements to
25 Miss Macbriar which reduced the balance, you can see

in the client trust balance column, the running balance of her client trust funds, and allowing an estimated fee, I typically use a 33 and a third, not knowing too much about the representation agreement, to come up with $12,837 that potentially Mr. Penney should have been holding in trust for Miss Macbriar, either for her or potentially for lienholders if it's a PI settlement.

And we can see with Mr. Habibian it looks like all the funds with disbursed. There were no issues. And again with Mr. Griffith it looked like potentially he could have been or supposed to have been holding another $3700 for Mr. Griffith.

Q. Okay. All right. Thank you, Miss Watson. I'd like to move to a completely new area of testimony, if I may. With regard to the investigative measures that you went to in this case, you reached out, you got some bank records, you extrapolated with the data, drew some conclusions. That was one aspect of your investigation; am I correct?

A. Correct.

Q. Did you try and reach out to Mr. Penney to get his side of the story?

A. I did.

1 Q. Okay. I'd like to talk about that. If I
2 can, I want to talk about the Bar's outreaches. If I
3 can, Miss Bradley, can I trouble you to pull up
4 Exhibit 6, which has been marked and admitted. As
5 best as you can, Miss Bradley, could you expand that?
6 Maybe lengthwise rather than width. I'm losing
7 quality there. I don't want to go that bad. Thank
8 you.
9 All right. Miss Watson, tell us what we're
10 looking at here in Exhibit 6 on page one.
11 A. This is my initial letter of investigation
12 to Mr. Penney on February 12th, 2021. It's the
13 letter that any time we have allegations of
14 misappropriation or a grievant expresses concerns
15 over funds that are supposed to be held in trust,
16 this is our standard letter of investigation that
17 asks for certain records from the respondent's bank
18 account, and this is at the direction of Bar Counsel
19 that we request this number of records.
20 Q. Did you draft that letter?
21 A. I did.
22 Q. And did you send it out?
23 A. I did.
24 Q. What addresses did you send it out to? I
25 see it's dated February 12th, 2021, but how did you

send it out? Could you share that with the panel?

A. It was emailed to Mr. Penney. And looking at the letter now, I believe there may be a typographical error in the email address that's actually on the email, or on the letter, but I believe it was correctly sent to his SCR 79 email address that we have in the State Bar records.

Q. Is there also a physical address on West Sahara?

A. Correct.

Q. Did you also mail out the letter in addition to emailing it?

A. I did not mail the initial letter, no.

Q. So it went out to Mr. Penney's SCR 79 address; am I correct?

A. The email address, correct.

Q. And with regard to the SCR 79, we're referring to the Supreme Court rule?

A. Correct.

Q. Does the Supreme Court Rule 79 require that each lawyer have to maintain three points of contact, that way they can communicate with the Bar at any time?

A. Yes. An address, a phone number, and an email.

1 Q. Those three different modalities of contact?
2 A. Correct.
3 Q. Okay. And you sent it out to Mr. Penney's
4 SCR 79 email address. Could you tell the panel, and
5 it's difficult to see. Miss Bradley, could you
6 expand that just a bit and scroll down just a bit.
7 Stop right there and scroll up just a few clicks.
8 Miss Watson, what are you asking Mr. Penney
9 to provide you with?
10 A. We asked him to provide a copy of the
11 retainer agreement related to the grievant's case.
12 If he has received funds on behalf of that client, we
13 ask him to confirm that, and then provide a copy of
14 the check and the deposit. And then we ask them to
15 provide a copy of their bank records and accounting
16 records to show when those funds were deposited and
17 that they're being safe kept in trust.
18 Q. Okay. Go ahead, I'm sorry.
19 A. And we also ask for his complete set of
20 records so we can evaluate that in conjunction with
21 his other clients.
22 Q. Okay. And tell the panel when he provided
23 all those documents.
24 A. I'm sorry, when he provided all those
25 documents?

1 Q. Yes.
2 A. I didn't receive those document from
3 Mr. Penney.
4 Q. Understood. Miss Bradley, could you scroll
5 to page two.
6 And what are you asking for on page two,
7 basically numbers 7, 8 and 9?
8 A. Again this is a copy relative to his
9 accounting records, if he's -- if the funds aren't in
10 trust, they've been disbursed, we ask for any copies
11 of invoices or billing statements to justify the
12 disbursements. And then if the records that we've
13 requested doesn't exist, we ask them, the respondent,
14 to explain why.
15 Q. Now, there's a final paragraph below a due
16 date. I'd like to talk with you about the due date.
17 What's the purpose of the due date, Miss Watson?
18 A. Well, when we're assigned an investigation,
19 and we do have deadlines on trying to wrap those up,
20 not have them linger forever, so we give a two-week
21 deadline to provide those records to us so we can
22 move forward with the investigation.
23 Q. In this case your due date was February 26
24 of 2021; am I correct?
25 A. Correct.

1 Q. All right. And going up right immediately
2 above it, that paragraph, what are you trying to
3 communicate in that paragraph there, Miss Watson?
4 A. This is a warning to respondents that they
5 have a duty to respond to inquiries from the State
6 Bar under the Rule of Professional Conduct.
7 Q. Do you offer a, for lack of a better term, a
8 warning of what might happen if they don't respond?
9 A. Correct. I mean, under the rule, if we
10 don't hear, receive a response, it would be a
11 violation of that specific rule.
12 Q. And is that rule Nevada Rule of Professional
13 Conduct 8.1(b), as in "boy"?
14 A. Correct.
15 Q. Okay. So you provided that to Mr. Penney at
16 the very get-go with this first letter; am I correct?
17 A. Correct.
18 Q. All right. Very well. Miss Bradley, could
19 you scroll down to the next page please.
20 Tell us what we're looking at here,
21 Miss Watson.
22 A. This is the email to Mr. Penney that
23 attached the letter that we just reviewed.
24 Q. Is that where it says "attachments" above
25 the bold line at the top of the page in blue font?

A. Correct. The attachments were the complaint from Miss Montoya, as well as the letter we just looked at.

Q. Very well. Miss Bradley, forgive me, would you please scroll to the next page.

What's the significance of this page, page four of Exhibit 6?

A. It's my practice to always request a delivery receipt and a read receipt for these type of communications, and this is just a copy of the delivery receipt saying that the message was relayed.

Q. And with regard to this, so you did, in fact, use the correct email address as it's reflected on this delivery sheet; am I correct?

A. Correct.

Q. All right. Very well. Next page, Ms. Bradley.

What's the significance of this document, Miss Watson?

A. I believe that after I sent this letter out, I did not receive a response, and I contacted Mr. Penney via phone. I left him a voice message to see if he had received the email correspondence, and I didn't get a call back.

So the next step from us as an

1 investigation, we then do use the SCR 79 address and
2 actually go ahead and mail the letter. So that was
3 done. I mailed the letter of investigation to him,
4 and we may come across it in these exhibits.
5 But that second letter was returned to the
6 State Bar as undeliverable, and I believe this is the
7 returned email that provided us with a forwarding
8 address, although at that point the forwarding order
9 had expired so it wasn't forwarded.
10 Q. Now, the forwarding address, are you
11 referring to that yellow sticker sort of on the
12 left-hand margin of this page?
13 A. Correct.
14 Q. Does that refer to a Los Dolces physical
15 address?
16 A. Correct.
17 Q. Very well. Miss Bradley, next page. If I
18 could stop right there now on this page, which I
19 believe is page seven, Miss Watson, what are we
20 looking at here now? Did you give up?
21 A. No. This would have been the correspondence
22 that was in that returned envelope, I believe. This
23 is the second letter I sent to Mr. Penney after we
24 didn't get a response to the emailed letter.
25 Q. So if I understand your testimony so far,

1 you emailed a letter on February 12, 2021; am I
2 correct?
3 A. Correct.
4 Q. And then you called Mr. Penney's SCR 79
5 phone number on February 17, 2021; does that sound
6 right?
7 A. Correct.
8 Q. You left your contact information, your name
9 and a contact number and identified yourself as a
10 member of the Bar on that message; am I correct?
11 A. I believe so, correct.
12 Q. Very well. Now we're at March 2, 2021. I
13 see in bold you identified something that says sent
14 by regular and certified email. What does that mean?
15 A. It was mailed -- we sent the letter twice,
16 by regular mail and then we also sent it certified to
17 get a return receipt.
18 Q. And did you identify a due date on this
19 document?
20 A. Yes. It's March 16th, 2021.
21 Q. Okay. Miss Bradley, next page please.
22 Now what's the significance of page eight?
23 It looks like we've seen this before, Miss Watson.
24 A. This was the original letter, and it would
25 have been enclosed with the second letter, or the

1 March 2nd letter.
2 Q. Okay. Next page. Next page. Now we have
3 another envelope, if I see it correctly, that it was
4 rejected. Am I correct, Miss Watson?
5 A. Correct.
6 Q. Okay. This is on page 10 of 20. Next page.
7 Let's stop there. Miss Watson, what are we looking
8 at here? You're acquainted with the term "green
9 card" as a colloquialism, correct?
10 A. Correct. And this --
11 Q. What were you trying to do here?
12 A. Well, this was part of the certified mailing
13 that was eventually returned because he was no longer
14 at that Sahara address.
15 Q. Next page please. So that green card shows
16 that no one signed for that document; am I correct?
17 A. Correct.
18 Q. Okay. We're here on the March 2nd, 2021
19 letter. We're now on page 12 of 20. Is this just
20 another copy of what the panel's already seen?
21 A. Correct.
22 Q. Okay. Next page please. This February 12,
23 2021 letter, this is an enclosure that you made of
24 your original correspondence?
25 A. Correct.

Q. Next page please. Next page. Let's stop here, Miss Bradley.

What's the date of this document as part of the collective Exhibit 6 on page 15 of 20?

A. This is a March 19th, 2021 letter.

Q. And did you send it to a different physical address this time?

A. Correct. This is sent to the Los Dolces Street address that was reflected on the return label.

Q. And you identified a regular and certified mail number; am I correct?

A. Correct. It was sent regular and certified.

Q. Okay. But you had already called Mr. Penney a month ago, back in February, by the time you sent out this letter; am I correct?

A. Correct.

Q. Okay. Now, did you offer a due date in this case, being 14 days from the date of this March 19 letter; am I correct?

A. Correct.

Q. Okay. Next page please. Here on this page of 16, we're looking at another copy of your February 12 letter, correct?

A. Correct.

1 Q. Okay. Let's stop here at page 18 of 20.
2 Tell the panel what we're looking at here.
3 A. This comes from the USPS website. I believe
4 I had checked, after sending the March 19th letter, I
5 hadn't received the green card back at that time so I
6 wanted to verify if it was delivered, and the report
7 on that particular tracking number indicated the
8 letter had been left with an individual at that
9 address.
10 Q. Okay. Let's scroll down and see if we can
11 see who that was. Moving to page 19, tell our panel
12 what we're looking at here.
13 A. This is actually the returned green card
14 that was attached to the letter.
15 Q. And is there a person that identified
16 themselves, at least in some fashion by a name?
17 A. Correct. It looks like it was received by a
18 D. Penney.
19 Q. And what was the date of delivery?
20 A. March 20th, 2021.
21 Q. And the red stamp indicating State Bar of
22 Nevada, March 22, that's the date that this came back
23 to the State Bar?
24 A. Correct.
25 Q. Okay. Go to the last page, Ms. Bradley, if

1 you'd be so kind. Very well, page 20 of 20. Thank
2 you, Miss Bradley.
3 If I could go back to the phone inquiries,
4 Ms. Watson, I want to take you to April 2nd, 2021.
5 Did you reach out to Mr. Penney again?
6 A. I did. I believe I noticed that he had
7 updated his membership records at that point, so I
8 called his new number and left a message for him to
9 call me.
10 Q. Was that a number that he now identified as
11 his SCR 79 address up in Humboldt?
12 A. Correct.
13 Q. Okay. Did you leave a message?
14 A. Yes.
15 Q. Did you identify yourself?
16 A. Yes.
17 Q. When did Mr. Penney call you back?
18 A. I did not receive a return phone call.
19 Q. Okay. And then if I can, ultimately
20 Mr. Penney did write you twice, on February -- on
21 April 26 and on May 4; am I correct?
22 A. Correct.
23 Q. Okay. When he wrote you on April 26, how
24 many documents did he provide you with, if any?
25 A. I didn't receive any documents from him.

Q. When Mr. Penney wrote you on May 4 of 2021, how many documents, if any, did he provide you with?
A. None.
Q. Did he indicate kind of what he thought about the Bar's investigation in his letter of May 4?
MS. STRAND: Objection, calls for speculation.
CHAIR HOGAN: I'm going to overrule it.
BY MR. HAHN:
Q. Yeah, just so I can understand, Miss Watson. I just want to make clear for the defense, I want to know if you happen to recall what Mr. Penney wrote, in other words what his own statement was. I'm not asking you to speculate.
A. I believe the words were that we were trying to go on a fishing expedition.
Q. And did he ask you to do something about the investigation?
A. Yeah. I believe he, because at that point Miss Montoya had received her funds, he believed we should close our file and dismiss the investigation.
Q. Did he also tell you to cease and desist?
A. Correct.
Q. Very well. Miss Watson, I'd like to -- we've already talked about the bank records. We've

1 talked about a second component of your testimony,
2 which had to do with the Bar's attempts to reach
3 Mr. Penney and see if he was willing to cooperate.
4 We've also talked about the docket sheet on
5 the underlying probate matter of Exhibit 8. I'd like
6 to sort of talk with you about a last area, if I may,
7 involving a Ms. Estela Montoya. You did speak with
8 her in connection with this case, correct?
9 A. Correct.
10 Q. And if I can, I'd like to take you to April
11 of 2021. Did you receive a call from her?
12 A. I did.
13 Q. Did she, without telling us what she said,
14 did she seem surprised in sharing information with
15 you?
16 A. Yes.
17 Q. If I can, Miss Bradley, can I trouble you
18 for Exhibit 12, which has been marked and admitted
19 into evidence. And could you scroll to the bottom,
20 Ms. Bradley, for purposes of completeness. Okay, go
21 on up to the top.
22 If I can, Ms. Watson, tell us what we're
23 looking at in Exhibit 12.
24 A. This is a deposit that was made into
25 Mr. Penney's business account sometime in early April

I believe of 2021. April 9th, 2021.
Q. And what's the amount?
A. $140,000.
Q. Now, if I can, I'll direct your attention to the left margin, second column, or forgive me the second row, first column. Do you see an account number that you've seen before and testified to in this case?
A. Correct. That's the account ending in 4775.
Q. So in this particular case, 4775, that was Mr. Penney's business account, if I understood your testimony; is that correct?
A. Correct.
Q. And does it show a date?
A. April 9th, 2021.
Q. Okay. And if you could, could you, forgive me, Ms. Bradley, could you scroll to the next page.
What are we looking at here on page two of Exhibit 12, Miss Watson?
A. That is a copy of a check that was deposited.
Q. And how much is the check for?
A. $140,000.
Q. And what name does it bear?
A. It's made out to Joseph Derrick Stephen Penney, PC.

1 Q. Okay. Is there a memo listed?
2 A. It says "PL" in the memo line.
3 Q. Is that consistent with "personal loan"?
4 A. It could be, correct.
5 Q. And who was the person who drafted the check
6 by virtue of the upper left-hand portion identified
7 on the check itself?
8 A. Stephen L. Penney and a Nora M. Penney.
9 Q. Okay. Have we seen that name before in
10 connection with this case?
11 A. They did provide funds that were deposited I
12 think before in the operating account.
13 Q. And that was a nominal amount for just over
14 a hundred dollars, correct?
15 A. Correct.
16 Q. Very well. If you'll give me just a moment,
17 Miss Watson, please.
18 No other questions, Chair. I'll pass the
19 witness. Thank you.
20 CHAIR HOGAN: Cross?
21 MS. STRAND: Thank you.
22 CROSS-EXAMINATION
23 BY MS. STRAND:
24 Q. Miss Watson, as part of your duties as an
25 investigator with the State Bar, when you were an

1 investigator, you're familiar with the actual
2 complaints that are filed, correct?
3 A. Correct.
4 Q. And you're familiar with the complaint in
5 Mr. Penney's case?
6 A. The formal complaint or the grievance
7 received by Miss Montoya?
8 Q. The formal complaint.
9 A. I'm familiar with it. I don't know
10 personally if I've actually read through it.
11 Q. It wouldn't surprise you to hear that one of
12 the allegations against Mr. Penney involved
13 communication with the Bar?
14 A. No.
15 Q. Okay. So I want to talk a little bit about
16 your communications with Mr. Penney. You testified
17 on direct that you were the one that made the
18 majority of the attempts to contact Mr. Penney?
19 A. During the investigative phase, yes.
20 Q. And you initially reached out on
21 February 12th, 2021?
22 A. Correct.
23 Q. That one was the one that was done via
24 email?
25 A. Correct.

Q. And you testified, and we saw, that you received a delivery receipt for that email?
A. Correct.
Q. But you didn't receive an actual receipt indicating that it had been read, correct?
A. Correct.
Q. And had you previously corresponded with Mr. Penney via email?
A. No. And that's specifically why I believe I called him after that.
Q. Perfect. So you hadn't previously corresponded with him though?
A. Not by email, no.
Q. And so you don't know if it maybe went to his junk mail or something to that effect?
A. Correct.
Q. And you stated that you did attempt to call him at his SCR 79 address, right, or his phone number?
A. Phone number, correct.
Q. Thank you. And that was listed for his business in Las Vegas, correct?
A. Correct.
Q. Left a voicemail?
A. Correct.

Q. But yet again you don't know whether or not Mr. Penney received that voicemail?
A. Correct.
Q. And it looks like the next time you attempted to contact him was March 2nd, 2021?
A. That sounds right, correct.
Q. And that was when you sent the letter to his business located in Las Vegas?
A. The Sahara address, correct.
Q. Correct. And you received a notice back from the post office that that may not be the correct address anymore?
A. Correct.
Q. So you sent another letter on March 19th?
A. Correct.
Q. And this time you sent it to the address up in Humboldt County?
A. No, I believe that one was to the residential address.
Q. Oh, I'm sorry. Okay, so that one was to the residential address, okay. And you did not -- you don't have confirmation that Mr. Penney received that one either?
A. Well, it was signed for. The green card reflected that it was signed by someone at that

1 address by the name of D. Penney.
2 Q. Oh, I'm sorry. Okay, yes. Okay, on the
3 March 19th one. And ultimately you sent a letter up
4 to his address in Humboldt as well, correct?
5 A. Correct. I believe that was after he had
6 reached out to us indicating that he had only -- I
7 think it was -- I'm trying to think. Early April we
8 received a letter saying he had only recently become
9 aware of the investigation and would be preparing a
10 response in two weeks. I didn't receive a response
11 within that timeframe, so I sent a subsequent letter
12 to the now updated SCR 79 address in Humboldt County.
13 Q. Okay. Perfect. So let me just make sure.
14 So you send the letter to his home address in Las
15 Vegas on March 19th and you received the green card?
16 A. Correct.
17 Q. And then on March 29 he updated his Supreme
18 Court address?
19 A. It was sometime around that timeframe, yes.
20 Q. And you have some communication with him
21 afterwards, and then you receive a letter from him on
22 October 26, 2021, and that's the first physical
23 letter you receive from him, correct?
24 A. It wouldn't have been October 26. My
25 investigation was over in the April-May timeframe, so

1 he may have been communicating with the hearing
2 paralegals later on, but I think when I turned over
3 my file it was no later than May, I think, of 2021.
4 Q. So if he had sent a letter on April 26th of
5 2021, you would have been familiar with it?
6 A. Oh, I'm sorry, I thought you said October.
7 Q. No, I may have misspoke. I don't know.
8 A. Yes.
9 Q. You received the April 26th letter --
10 A. Correct.
11 Q. -- the one you just testified to on direct?
12 And that was, you know, less than a month
13 after his updated SCR was changed?
14 A. Correct.
15 Q. And would have been less than a month since
16 you sent a new letter to the address that was updated
17 on the SCR?
18 A. Correct.
19 Q. All right. And after that April 26 letter,
20 you continued to communicate with him and ultimately
21 received a second letter on May 14th?
22 A. Correct. I believe that was the response,
23 yes.
24 Q. In both those letters you stated that he did
25 not provide any bank documents or anything like that?

1 A. Correct.
2 Q. The State Bar had already subpoenaed the
3 banks at this time, correct?
4 A. We had subpoenaed the banks.
5 Q. You guys had received the subpoenas back
6 from the banks by March of 2021?
7 A. Correct.
8 Q. So you already had a complete record from,
9 you know, the source itself, both of his bank
10 accounts?
11 A. Well, again, we received the records from
12 the bank, but the bank doesn't provide us with the
13 accounting, the internal accounting records that help
14 us analyze the bank records. It's always helpful to
15 receive the attorney's internal accounting records so
16 we can identify what those, you know, transfers were
17 for and if they've withdrawn fees. So, yes, that
18 would have been helpful to receive from Mr. Penney
19 himself.
20 Q. But by the point that Mr. Penney responded,
21 you had at least received a complete copy of the bank
22 records?
23 A. Correct.
24 Q. Okay. Now, I also want to move on and talk
25 about one of the other allegations, two of the other

allegations against Mr. Penney, which is in regard to his diligence and his moving forward, moving -- expediting the litigation. You reviewed the Register of Actions in this case, correct?

A. Correct.

Q. And that's something that you do pretty regularly as part of your duties as an investigator?

A. Correct.

Q. You've read many Registers of Actions over your 12 years as an investigator?

A. Correct.

Q. And you're pretty familiar with, you know, what to look for on them?

A. In most cases.

Q. And in this case you saw that the initial case, basically the first thing that was filed into the case was in August of 2017?

A. Correct.

Q. And there was a notice of a hearing set, and the hearing wasn't set until January of 2018?

A. Correct.

Q. And it's not unusual for there to be a significant period of time between an initial filing and when the court can actually set a hearing?

A. No. No. I mean, not in that case, no.

1 Q. And you saw that following the hearing there
2 were some other filings, some waivers and a petition
3 done in, you know, the weeks following the hearing?
4 A. Correct.
5 Q. And that the order admitting the will to
6 probate was ultimately filed in May of 2018?
7 A. Correct.
8 Q. And then there was a delay between, you
9 know, the order and some of the other -- and letters
10 testamentary and the notice to creditors, which
11 didn't go out until July of 2019; is that correct?
12 A. Correct.
13 Q. And in your experience it's not unusual for
14 there to be, you know, a large break in time between
15 filings in a legal case?
16 A. No, not between filings. It's just unusual
17 when knowing that a case, the last filing was a year
18 prior to the investigation beginning.
19 Q. And but it's not unusual for cases to
20 sometimes have a break of upwards of a year in
21 between filings?
22 A. Again it depends on the case, but, no, it's
23 not unusual.
24 Q. And it's not always indicative that there's
25 something, it can be, but sometimes there's nothing

wrong?

A. It can be, or, like you said, sometimes it -- in this case I had received information that there were no other assets, so it seemed unusual to me that there had been no efforts to move the case towards conclusion and disposition of the estate.

Q. Understood. Now, I want to talk to you about the fees in this case. You received a copy of the fee agreement?

A. Correct.

Q. You received that from the grievant herself, Miss Montoya?

A. Correct.

Q. And you reviewed it?

A. Yes.

Q. And you see that he, or that Mr. Penney charged Miss Montoya $3600 for his services?

A. Correct. And --

Q. Go ahead.

A. And I believe there was a contingency additional fee built in as well.

Q. That didn't include the contingency?

A. No, I believe that was in addition to the fees that they paid up front.

Q. You would agree with me that the original

fee was $3,000, correct?

A. I'd have to look at the agreement again. It was around $3,000.

Q. Miss Bradley, would it be possible to pull up an exhibit please. I think the fee agreement is exhibit -- let me look at my cheat sheet. Is that State Bar of Nevada Exhibit 4.

MS. BRADLEY: Miss Strand, I'm sorry to interrupt. It appears Zoom is adding Mr. Hogan. I don't know if he dropped off or if he's rejoining.

MS. STRAND: Oh, no.

CHAIR HOGAN: I'm still here. I'm trying -- I'm still trying to mess with that video.

MS. BRADLEY: Okay. Sorry for the interruption.

Miss Strand, I'm sorry to interrupt you. Could you repeat the exhibit?

BY MS. STRAND:

Q. Can we please bring up Exhibit 4. It should be the fee agreement one. And can we scroll down. Okay, perfect. If you can leave it right there.

Miss Watson, this is the fee agreement that you reviewed that you received from Miss Montoya, correct?

A. Correct.

Q. And at the bottom there's a section that discusses fees?
A. Correct.
Q. And you would agree with me that the initial fee was 3150 for the first thousand dollars on the estate, or, I'm sorry, first hundred thousand dollars on the estate?
A. Correct.
Q. And a two percent fee for any amount that was over that?
A. Correct.
Q. And that the total fee that Mr. Penney ultimately charged Miss Montoya was $3600?
A. I believe so, correct.
Q. Okay. Thank you, Miss Bradley.
And you review fee agreements in most of the cases that you investigate; is that correct?
A. Correct.
Q. You've seen a significant number over the years?
A. Yes.
Q. And you would agree with me that $3600 is on the low end of what many attorneys charge for these sorts of things?
A. For a probate case, yeah. Again it depends

on the value of the estate.

MS. STRAND: Perfect. No further questions, your Honor. I would pass this witness.

CHAIR HOGAN: Redirect?

MR. HAHN: I'll waive, Chair. Thank you.

CHAIR HOGAN: Thank you, Miss Watson. Appreciate your time. You can step down or step away, whatever that is in a Zoom frame.

THE WITNESS: I can leave.

CHAIR HOGAN: Folks, we've been going for almost two hours. Does anyone need a break?

MS. STRAND: I was going to request one, your Honor. If we could take a brief ten-minute recess.

CHAIR HOGAN: Let's take ten. We'll be back at just a couple minutes after 11:00 please.

(A recess was taken.)

CHAIR HOGAN: Let's go back on the record. Bar, your next witness please.

MR. HAHN: I would invite Ms. Bradley to -- I would invite Ms. Bradley to invite in the next witness, which is Ms. Estela Montoya. And, Ms. Hines, would you be kind enough to swear her in please.

Ms. Bradley, with the Chair's permission, Ms. Bradley, is it possible we have another witness

1 available? I see that, you know, we've -- it looks
2 like we've spent just a few minutes trying to connect
3 up with Miss Montoya. If you have another witness
4 available, maybe we can perhaps pipe them in.
5 MS. BRADLEY: Patsy, can you hear us?
6 CHAIR HOGAN: Yes, we can hear you.
7 MS. BRADLEY: She can't hear us.
8 PATSY OLIVAS: Hello? Hello?
9 MR. HAHN: Hi. This is Bruce Hahn with the
10 State Bar. Who's on the line with us right now?
11 PATSY OLIVAS: My name is Patsy Olivas.
12 MR. HAHN: Okay. Miss Olivas, do you -- I
13 see your audio. Do you have a FaceTime option with
14 you right now?
15 PATSY OLIVAS: I do not know how to use it.
16 My daughter always helps me, and she's -- I'm at work.
17 MR. HAHN: Okay. All right. So right now
18 you're able to use audio, you've identified yourself
19 as Patsy Olivas. You don't know how to activate the
20 FaceTime option, is that it?
21 PATSY OLIVAS: No, sir, I don't. I've never
22 used it, and I don't know how to -- I don't even know
23 how to start it.
24 MR. HAHN: Wow. Okay. All right.
25 PATSY OLIVAS: Yeah.

1 MR. HAHN: Very well. Chair Hogan, the Bar
2 would be asking permission for Miss Olivas to offer
3 her testimony by audio.
4 MS. STRAND: And, Mr. Hogan, I would have to
5 object. I think that it interferes with the panel's
6 ability to, you know, determine the witness'
7 truthfulness and credibleness, and I think it
8 interferes with Mr. Penney's right to confront the
9 witnesses against him.
10 CHAIR HOGAN: I'm going to allow it. I
11 think the panel can read -- if you get into the
12 middle of a scenario where you believe that the
13 testimony does impair specifically Mr. Penney's right
14 to defend, please raise that objection again.
15 MS. STRAND: Understood. Thank you.
16 MR. HAHN: Ms. Bradley, with the Chair's
17 permission, Ms. Bradley, if I could also invite you,
18 perhaps what we could do is is if you happen to hear
19 that Miss Montoya becomes available, we could connect
20 her in through FaceTime, we could interrupt
21 Ms. Olivas' testimony and then invite her, during
22 that break for her, to see if she can't get some
23 assistance with the audio -- with the visual
24 component of the otherwise audiovisual testimony.
25 Does that make sense, Ms. Bradley?

1 All right. Hopefully I communicated that,
2 Chair.
3 All right. Ms. Olivas, can you hear us okay?
4 PATSY OLIVAS: Yes.
5 MR. HAHN: Okay. Miss Olivas --
6 PATSY OLIVAS: Yes, I can.
7 MR. HAHN: Okay. Let me tell you what we're
8 looking at. There's a number of us on audiovisual
9 right now.
10 PATSY OLIVAS: Okay.
11 MR. HAHN: I'm going to ask that the court
12 reporter will swear you in to testify, and you will
13 need to raise your right hand at her request, okay?
14 So you're only going to hear her voice.
15 PATSY OLIVAS: Okay.
16 MR. HAHN: Her name is Ms. Hines, so please
17 follow her instructions carefully, okay?
18 PATSY OLIVAS: Okay.
19 Thereupon--
20 PATSY OLIVAS
21 was called as a witness by the Complainant, and
22 having been first duly sworn, testified as follows:
23 DIRECT EXAMINATION
24 BY MR. HAHN:
25 Q. Miss Olivas, my name is Bruce Hahn. I'm

with the State Bar. I'm going to ask you some questions, and then at the end of my questions there's a lady representing Mr. Penney, her name is Emily Strand, she's going to ask you a series of questions, okay?

A. Okay.

Q. All right. Ms. Olivas, you mentioned your name. Could you tell us -- could you tell us how old you are?

A. I am 66.

Q. Are you retired or working?

A. I am -- I'm retired but I'm working part time.

Q. What line of work are you retired from?

A. I worked at the Luxor Hotel several years, and I'm now working for a tour company as a dispatcher.

Q. Okay. Are you a Clark County resident?

A. Yes.

Q. How long have you lived in Clark County?

A. Since 1966.

Q. Okay. Ms. Olivas, do you have brothers and sisters?

A. Yes, I do.

Q. Could you identify your siblings, beginning

with the oldest, and then go down to the youngest please?

A. Okay. I am the oldest, Patsy Olivas. My brother Sammy Monje, my brother Jessie Monje, my sister Anita Perez, Estela Monje -- Estela Monje Montoya, and then Robert Monje.

Q. And your father, if I understand it, your father passed away in the summer of 2015; am I correct?

A. Yes, sir.

Q. Okay. Was his name Jesus Sierra Monje?

A. Yes, sir.

Q. Okay. And with regard to -- with regard to his children, there's six of you; am I correct?

A. Yes.

Q. And among the six children, you have 20 grandchildren; am I correct?

A. Yes.

Q. And among the great grandchildren, you have about 28 amongst them; am I correct?

A. I would say pretty close, yes.

Q. Miss Olivas, if I may, are you familiar --

A. Uh-huh.

Q. -- with the name "Derrick Penney"?

A. Yes, sir.

Q. Have you met him before?
A. Yes, I have.
Q. Tell the panel where you met him. Where were you when you first met him?
A. At Las Vegas Academy in Las Vegas, Nevada. We were in a meeting room at the high school where Estela works.
Q. Okay. And when you say "Estela," you're talking about your younger sister, Estela Monje Montoya?
A. Yes.
Q. What was the purpose of the meeting?
A. To set up an appointment to get money distributed -- distribution for the check from the sale of the house.
Q. When you say "the sale of the house," what house?
A. Uh-huh. My father's house, Jesus Monje.
Q. When you say you got together at this meeting, who all was there?
A. It was myself, Estela, my brother Sammy, my daughter Amanda, and Mr. Penney.
Q. Did Mr. Penney come alone?
A. Yes.
Q. What date or window of time was this

1 meeting, to the best of your memory, Miss Olivas?
2 A. It was...
3 MS. STRAND: Your Honor, I'm going to have
4 to object. I hear pages flipping and I'm concerned
5 that the witness may be reviewing notes or something
6 that we don't have in the record. I'd like an
7 admonishment to the witness that she can only rely on
8 her memory at this point, not external sources.
9 MR. HAHN: I agree, Chair.
10 CHAIR HOGAN: Yes. Ma'am, if you would, if
11 that is you, it's hard to tell who's flipping pages,
12 but if you're looking through reference documents, we
13 ask that you not do so. If you do not remember
14 something specifically, then just testify to that,
15 that you have no specific recollection, but please
16 don't reference any outside documents.
17 THE WITNESS: Okay.
18 BY MR. HAHN:
19 Q. Miss Olivas, do you understand the Chair's
20 direction? Do you understand what he's saying to
21 you?
22 A. Yes.
23 Q. Okay. All right. So without looking at any
24 reference notes or any materials like that, just
25 offer your best recollection of your testimony, okay?

A. Okay.
Q. All right. So what is your best recollection of when you and some of your siblings met with Mr. Penney at that high school where Estela worked?
A. If I remember correctly, it was mid February of 2020.
Q. And you mentioned --
A. I don't remember the exact date.
Q. Okay. You mentioned the reason why. Had you tried to reach out to Mr. Penney before this meeting? Did you try and contact him?
A. Yes.
Q. How did that go?
A. Well, I would try to reach out to him via text to please give us a call, and he would just respond back with another text that he was working on it, that it was a process, the courts were down and it was going to take some time, he would get back to up as soon as he found out any new information.
Q. And this was all before the meeting that you described was about February of 2020?
A. Yes.
Q. Miss Olivas, could you tell the panel about how many times did you try to reach Mr. Penney by

text or email, or any other manner, before the meeting of February 2020? How many times?

A. I don't know. Ten to 15 times --

Q. Were those --

A. -- at least.

Q. Okay. Were those all by text or were some of them email or phone calls?

A. No, mine were only texts to him.

Q. Okay. And then you offered some different replies that you got from Mr. Penney's texts; am I correct?

A. Yes.

Q. Had he ever replied that he didn't want to talk to you?

A. Yes.

Q. You described the number of times you reached out to him. Was that part of the reason for a February 2020 meeting?

A. Well, it was actually it was ongoing before the meeting and after the meeting, I was trying to reach out to him to get some information to find a date where we could meet, what was going on on behalf of Stella, and I was just getting the same response back. And he finally told me that I needed to speak with Stella, she was the one in charge, that any

1 information that he had he would direct to her and it
2 was her responsibility to let us know.
3 Q. Okay. And so this was before and after the
4 February 2020 meeting?
5 A. Yes.
6 Q. Okay. I'd like to focus a little bit on the
7 meeting. About how long was it at the high school?
8 A. I would say maybe 45 minutes to an hour.
9 Q. Okay. What kind of concerns, if any, did
10 you and your family bring up to Mr. Penney?
11 A. Well, our main goal was to find out what was
12 a definite date of distribution for the checks. We
13 wanted to know, you know, he had all his information.
14 We wanted to know what was taking so long, was there
15 any holdup, because my dad didn't have any
16 outstanding debts, so we just -- we were just so
17 concerned why it was taking so long. It was just
18 like one thing after another, and we just wanted to
19 get some definite answers in person.
20 Q. Okay. What kind of answers did Mr. Penney
21 give you? Could you tell the panel just as best as
22 you remember just sort of step by step what replies
23 Mr. Penney gave you and your family?
24 A. The only thing that I can remember off the
25 bat was due to COVID the courtrooms were closed, they

1 were kind of reorganized their calendar and get times
2 set up for him to go into court and get the judge's
3 signature in order to get everything distributed.
4 Q. Okay. Did he give you -- did Mr. Penney
5 provide you with a reply that he was, quote, waiting
6 on the judge to sign off on the matter?
7 A. Yes.
8 Q. What did you understand that to mean? Share
9 with the panel the context in which he made that
10 statement to you. What did you understand that to
11 mean?
12 A. I'm not sure.
13 Q. Okay.
14 A. I'm not sure.
15 Q. What did you think was going to happen based
16 on what Mr. Penney told you? What was the next thing
17 that was supposed to happen?
18 A. In my -- in our mind I was thinking that he
19 was supposed to get the judge's signature and get the
20 check -- get the check back, give the check to Stella
21 and get it divided equally for the six of us.
22 So we -- our concern was why it was just
23 taking so long, and we just wanted definite answers.
24 This is like an ongoing thing and but I'm not -- I
25 don't really recollect the exact context of the

1 conversation.
2 Q. Okay. Fair enough. Now, when you had heard
3 about his response about COVID, are you aware that
4 Governor Sisolak didn't order any stay at home order
5 until March 31st of 2020? Does that sound right to
6 you?
7 A. I don't remember that.
8 Q. Okay. Very well. When you had heard
9 Mr. Penney's response about COVID-19 and the pandemic
10 that hit, how did that strike you?
11 A. Well, I knew it was happening. I knew a lot
12 of things were shut down, and we knew that. We knew
13 a lot of -- you know, the courts were closed, people
14 were working from home, working online, and we
15 understood that. I think everything -- we felt that
16 every -- that he was using that as an excuse.
17 Q. Why?
18 A. Because this had already been prolonged
19 prior to COVID hit and things were shut down.
20 Q. Did you ever go to the court to see if they
21 were open or closed?
22 A. Yes, I did.
23 Q. Tell the panel when you went.
24 A. I went -- oh, my God, I don't remember. I
25 don't -- I went to the courthouse, I was able to get

in, and I want to one of the offices inside the court, inside where they have one of their officers, and I asked questions about our case actually, and they gave me a printout of what was going on with our case. But I was able to get in, I was able to talk to somebody at the desk, but there were no definite answers.

Q. Okay.

A. So they gave me a copy of the printout at the desk inside the courthouse.

Q. Okay. Was that the Register of Actions or the docket sheet that explained the different steps of what was happening in the case?

A. Yes. Yes.

Q. Okay. All right. If I can, I'd like to talk with you about a Google report. Are you aware of a Google report that was made about Mr. Penney by a family member?

A. Yes.

Q. About when was that? Could you tell the panel if it was before the big meeting or after the meeting?

A. I don't remember. I'm going to say it was after the meeting.

Q. Okay. And was there a, let's just say a

1 review that was made by your family about
2 Mr. Penney's work in this probate matter?
3 A. Yes.
4 Q. Okay. And do you remember what was posted?
5 A. Word for word, no.
6 Q. Okay.
7 A. I don't.
8 Q. Let me ask you if this is consistent with
9 your recollection, Miss Olivas?
10 A. Okay.
11 Q. Do you remember the post being something
12 like "he took our money and had no ethics" --
13 MS. STRAND: Objection, your Honor. This is
14 hearsay. It's an out-of-court statement. I'm not
15 sure why it's being offered at this point, and also
16 it's leading the witness.
17 CHAIR HOGAN: Sustained.
18 BY MR. HAHN:
19 Q. Okay. You indicated that you don't recall
20 the specific statement that was posted by a family
21 member, correct?
22 A. Correct.
23 Q. Okay. Did you read the statement?
24 A. No.
25 Q. Okay. Very well. Did Mr. Penney return --

1 did Mr. Penney reach out and contact your family?
2 A. Yes.
3 Q. Okay. Did you hear what he said?
4 A. Yes.
5 Q. Tell the panel what he said.
6 A. He said that if we didn't take down -- he
7 said that if we didn't take down the review right
8 away, he would sue us for defamation and he would get
9 a lawyer and the lawyer would reach out to us --
10 Q. How did that make you feel?
11 A. -- for defamation of character.
12 Q. How did that make you feel?
13 MS. STRAND: Objection, your Honor.
14 Relevance. I'm not sure what the purpose of this
15 review is or why her feelings really matter. What
16 bearing does this have on whether or not he took
17 their funds or whether or not the fee was reasonable?
18 CHAIR HOGAN: Bar?
19 MR. HAHN: Well, with regard to the -- I
20 think it advances a fact of consequence. Number one,
21 it demonstrates the -- it demonstrates the witness'
22 familiarity with what occurred, because she's
23 testifying by audio, which we're grateful that the
24 Chair and defense are being gracious about this. We
25 believe that it advances a fact of consequence that

1 money was, in fact, taken, and it also indicates that
2 Mr. Penney was responsive to the specific question
3 about what was posted on the review.
4 I understand that the Chair disallowed it, I
5 get that, there was an objection, but it would tie
6 directly into that. So I believe it's relevant, and
7 then it would also demonstrate whether or not
8 there's, in fact, mitigation in this case. Was
9 there, in fact, remorse.
10 CHAIR HOGAN: Overruled. I'll allow it.
11 BY MR. HAHN:
12 Q. Miss Olivas, you had mentioned that
13 defamation of character, and so my next question was
14 is that in connection with your testimony today, how
15 did that make you feel?
16 A. I was -- I was surprised. I was kind of
17 upset and surprised at the same time because I
18 thought, wow, we've been texting him, we've been
19 trying to get some answers and all of a sudden they
20 put something on Google in a review and then he
21 responded in like two minutes.
22 That was kind of surprising, his reaction.
23 It's like, oh, you better take it -- you know, it was
24 like, oh, you better take it down because I'm going
25 to sue you, but right away, and it wasn't like -- you

1 know, it just happened so fast.
2 Q. Okay.
3 A. His response was fast.
4 Q. Just a few more questions, Miss Olivas.
5 A. Okay.
6 Q. Do you remember going to Mr. Penney's office
7 to try and figure out what was going on?
8 A. Yes.
9 Q. Tell the panel when you did that.
10 A. I don't remember the exact dates, but I did
11 go to his office. I had talked to my sister, Stella,
12 and I told her something wasn't right. So she gave
13 me the address, I went down there to the office, my
14 daughter and myself. We found the office, we
15 knocked -- we looked through the windows, we knocked
16 on the door, and there was nothing in there. The
17 office was empty, no papers, no chairs, there's
18 nothing. It was just empty.
19 So I told my daughter, I said, this is not
20 right. I go, something's going on. I said, and this
21 is the only address we have for him. So according to
22 what my sister had said, he had a flood issue and he
23 had to get out and he was working from home.
24 MS. STRAND: Objection, your Honor.
25 MR. HAHN: I concur, Chair. I concur.

BY MR. HAHN:

Q. Miss Olivas, I'm going to ask better questions, okay?

A. Okay.

Q. I'm going to ask best questions and my questions are going to be about what you did and what you said, okay?

A. Okay.

Q. Did you --

A. Okay. So --

Q. Did you -- did you look around to see if there was any reason why Mr. Penney may have vacated the premises?

A. Yes, I did.

Q. Okay. Without telling us what anyone said, tell the panel what you did.

A. I continued to walk around the building. I knocked on one of the other businesses. I went inside one of the other businesses and I asked them some questions.

Q. Okay. Had you been told something that may have happened to the office by Mr. Penney?

A. Yes.

Q. Okay. Now, tell the panel what Mr. Penney had told you.

A. We were told that his office was flooded and that he had to work from home.

Q. Okay. When you walked around, did you walk -- were you able to look inside Mr. Penney's building?

A. Yes.

Q. Did you see evidence of any apparent flood that you saw?

A. No.

Q. Okay. And when you went to the office, was this before the February 2020 meeting or after the 2020 meeting, as you recall?

A. I believe it was after.

MR. HAHN: Okay. And, Miss Olivas, if I may -- and, Chair, I want to invite you and Miss Strand to weigh in on this. I was going to ask Ms. Olivas questions about harm, and I don't know if you want to reserve that for, you know, panel deliberation into a possible second phase or if you would prefer that I ask those questions now.

THE WITNESS: Okay. I don't understand what you mean by "harm."

MR. HAHN: It's okay, Miss Olivas, I'm asking the Chair.

THE WITNESS: Oh, I'm sorry.

1 CHAIR HOGAN: Yes. Stand by just a moment,
2 ma'am.
3 Miss Strand, do you have any input?
4 MS. STRAND: I think we can do it at this
5 point and not have to call her back. I think that's
6 fine.
7 CHAIR HOGAN: That would be my preference.
8 I don't think we bifurcated between liability and
9 damages, so go ahead, Bar.
10 MR. HAHN: Very well.
11 Thank you, Miss Strand. Appreciate your
12 courtesies.
13 BY MR. HAHN:
14 Q. Miss Olivas, I'd like to talk about how this
15 has affected you and your family. The late --
16 ultimately you received moneys; am I correct?
17 A. Yes, we did.
18 Q. Okay. Could you tell the panel how this has
19 impacted you and your family?
20 A. It was just a long procedure. It was the
21 nerve-racking, wondering when and where, why it was
22 taking so long. It was just very nerve-racking
23 trying to find out what was taking so long and not
24 getting answers.
25 Q. Miss Olivas, did it put a strain on

relationships among you and your brothers and sisters?

A. Yes, it did.

Q. Tell the panel how that affected, how that affected you.

A. Well, being that my sister was -- my sister was in charge, we kind of felt like was she doing everything that she could, you know. Do we -- did we need to step in and go farther and help her figure out what was happening, because it was just -- it was just like prolonging and taking so long. And, you know, and Stella would reach out to us and say, hey, guys, I'm sorry, I'm doing everything I can, I'm not getting any answers either.

MS. STRAND: Objection.

BY MR. HAHN:

Q. Okay. Miss Olivas --

A. So that --

Q. Miss Olivas.

A. Yes.

MR. HAHN: I agree, Chair. I think Miss Strand is going to raise a proper hearsay objection. I concur.

BY MR. HAHN:

Q. Miss Olivas, if I may, without you telling

us what other people told you, how did this make you -- you mentioned that it put a strain on relationships. Can you sort of explain to the panel how the relationship became a little weird or different with your brothers and sisters?

A. It wasn't -- it wasn't like a big -- it wasn't -- I don't know how to explain it. It was just we all wanted to try and do what was right and not put all the burden on Estela.

MR. HAHN: Okay. Thank you, Chair. I'll pass the witness.

CHAIR HOGAN: Cross?

CROSS-EXAMINATION

BY MS. STRAND:

Q. Hi, Miss Olivas. My name is Emily Strand. Can you hear me okay?

A. Yes, ma'am.

Q. All right. I'm the attorney that represents Mr. Penney. I just have a few questions for you.

A. Okay.

Q. I just want to start with a couple of questions about how Mr. Penney got retained. You weren't the one that originally contacted him or retained him, were you?

A. No.

1 Q. That was your sister, Stella?
2 A. Yes.
3 Q. So she was Mr. Penney's client for all
4 intents and purposes?
5 A. Yes.
6 Q. And she's an adult, right?
7 A. Yes.
8 Q. You didn't have like a power of attorney or
9 anything for her?
10 A. No.
11 Q. And so at some point Mr. Penney told you
12 that he either didn't want to talk to you or couldn't
13 talk to you about certain aspects of the case; is
14 that true?
15 A. Yes.
16 Q. And he told you that you needed to get the
17 answers to your questions directly from your sister,
18 Stella?
19 A. Yes.
20 Q. Okay. With regard to the review, you
21 testified earlier that you weren't the one that
22 actually wrote the review?
23 A. No.
24 Q. Were you present when the review was written?
25 A. Yes.

Q. All right. You testified that Mr. Penney's response was pretty quick?
A. Yes.
Q. And was that response via telephone?
A. It was back in -- I believe, if I'm not mistaken, it was back in -- you know what, I don't remember. I don't remember how it came back, if it was in a text or -- I don't remember.
Q. And you said that you personally were there and heard or received the response from Mr. Penney?
A. It was myself and my daughter.
Q. And you don't recall whether he texted you or called you?
A. I don't remember.
Q. Okay. Now, when you went to Mr. Penney's office, you testified that it was closed, correct?
A. Yes.
Q. But you weren't able to go in and look around and see if there was any flood damage, right?
A. No, ma'am.
Q. You wouldn't have been able to test the water?
A. No.
Q. Run the lights, anything like that?
A. No.
Q. Okay. I want to talk about the client file