

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

2
3 IN RE: DISCIPLINE OF)
4 THOMAS S. SHADDIX, ESQ.,)
 NV BAR NO. 7905.)
)

Electronically Filed
Case No. 84263
May 06 2022 03:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

5
6
7
8
9
10 **STATE BAR OF**
11 **NEVADA’S**
12 **ANSWERING BRIEF**

13
14
15
16
17 STATE BAR OF NEVADA
18 Bruce Hahn, Asst. Bar Counsel
19 Nevada Bar No. 5011
 3100 W. Charleston Blvd., Ste. 100
 Las Vegas, Nevada 89102
20 Attorney for the State Bar of Nevada

 Thomas S. Shaddix, Esq.
 Nevada Bar No. 7905
 2550 East Desert Inn Road, #181
 Las Vegas, NV 89121
 Appellant, *pro se*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
I. STATEMENT OF ADDITIONAL FACTS.....	1
II. ARGUMENT	1
A. Standard of Review.....	1
B. Discussion	2
1. The Formal Hearing Chair’s comment made without objection did not amount to plain error.....	2
2. The Panel’s recommendation to lift the stay of suspension was warranted by the facts and circumstances presented.....	5
III. CONCLUSION.....	11
IV. ATTORNEY'S NRAP 28A CERTIFICATE.....	12
V. CERTIFICATE OF SERVICE BY MAIL.....	13

TABLE OF AUTHORITIES

Cases Cited

Page(s)

<i>Sowers v. Forest Hills Subdivision</i> , 129 Nev. 99, 294 P.3d 427 (2013).....	1
<i>McAllister v. United States</i> , 348 U.S. 19, 75 S.Ct. 6 (1954).....	2
<i>In re Discipline of Stuhff</i> , 108 Nev. 629, 837 P.2d 853 (1992).....	2
<i>Mason v. State</i> , 2017 Nev. Unpub. LEXIS 398.....	4, 5
<i>Valdez v. State</i> , 124 Nev. 1172, 196 P.3d 465 (2008).....	4

Court Rules

Supreme Court Rule 120	1, 10
Supreme Court Rule 105	1, 5
Supreme Court Rule 79	7

Secondary Sources

Nevada Rule of Appellate Procedure 28.....	12
--	----

1 I.

2 **STATEMENT OF FACTS**

3 Appellant Shaddix’s Formal Hearing of December 17, 2021 involved
4 allegations that he breached three material conditions of his probation terms
5 directed by the Nevada Supreme Court.¹ ROA, Vol II, Pgs. 41-42. The
6 conditions directed Shaddix to: i) Engage in binding fee dispute within 90 days,
7 ii) Obtain a legal practice mentor and provide quarterly reports, and iii) Pay SCR
8 120 costs within 30 days. ROA, Vol II. Pgs. 41-42, 95.

9 II.

10 **ARGUMENT**

11 **A. Standard of Review**

12 A deferential standard of review is used for the findings of fact made by
13 the Formal Hearing Panel (“Panel”) of the Southern Nevada Disciplinary Board
14 on December 17, 2021. *See* SCR 105(3)(b). This Court will not set the Panel’s
15 findings of fact aside unless they are clearly erroneous or unsupported by
16 substantial evidence. *See generally Sowers v. Forest Hills Subdivision*, 129
17 Nev. 99, 105, 294 P.3d 427, 432 (2013). “A finding is clearly erroneous when
18 ‘although there is evidence to support it, the reviewing court on the entire
19

20

¹ Case Number 82632 issued May 14, 2021.

1 evidence is left with the definite and firm conviction that a mistake has been
2 committed.'" *McAllister v. United States*, 348 U.S. 19, 20, 75 S.Ct. 6 (1954).

3 This Court then conducts a *de novo* review of the Panel's conclusions of
4 law and recommendation for lifting the probationary status of the term of
5 suspension imposed. *See* SCR 105(3)(b); *see also in re Discipline of Stuhff*, 108
6 Nev. 629, 633, 837 P.2d 853, 855 (1992).

7 Here, the Panel concluded that Appellant breached the three material
8 conditions of his probationary status as proved by clear and convincing
9 evidence. ROA, Vol I. Pg. 22, Vol. II, Pg.166. The Panel thereafter
10 recommended that Shaddix's stay of suspension of 6 months and 1 day be lifted
11 and hearing costs be assessed against him. ROA, Vol. I, Pg. 22, Vol. II, Pg. 166.

12 **B. Discussion**

13 **1. The Formal Hearing Chair's comment made without** 14 **objection did not amount to plain error.**

15 Context is everything. Following the State Bar's opening statement of its
16 allegations and prayer for relief, the appellant Shaddix made his opening
17 statement. Shaddix stated in his opening statement, he "didn't dispute the
18 allegation substance" but wanted to offer mitigation. ROA, Vol. II, Pgs.46-47.
19 Shaddix then opened the door and invited the Chair's comment that was
20 essentially directed to the State Bar. Shaddix's opening statement proceeded to

1 essentially ask the Panel to delay the proceedings and grant additional time to
2 cure the probation breaches he just conceded. Shaddix told the Panel:

3 ...I do have a plan forward. And I think that given the oppor-
4 tunity for just a short more amount of time. I can set some firm
5 deadlines today when each of these conditions that are in breach
6 will be remedied. And were talking – excuse me were talking
7 much sooner rather than later, not asking for an additional you
8 know, several months, but something more in the range of, you
9 know, 10 to 15 days to go ahead and make a good faith showing
10 that would be satisfactory the panel, and then probably only an
11 additional 45 days once I'm up and running.
12 running. ROA, Vol. II, Pg.49.

13 Shaddix finished his opening statement with the following, before the
14 Chair addressed the postponement question raised:

15 And then if going forward the State Bar still feels that I should
16 probably, as Mr. Hahn said, take a break from the practice of
17 law and get some things organized or together, or whether or
18 not that I would opt to go ahead and move on, perhaps go on a,
19 not a suspension status, but an inactive status until the State Bar
20 had other conditions that they would like me to meet, then I'd
certainly be willing to go ahead and open myself up to them
without qualification. ROA, Vol. II, Pg.51.

The Chair then responded:

So I don't really have any questions. The one thing, you know,
Mr. Shaddix, you know, *one thing that Bruce [Asst. Bar Coun-
sel] had commented on is that the Bar bent over backwards,*
and I think that was dealing with the payment plan. You know,
it seems like, and I don't know if you and Mr. Hahn have had
discussions already regarding some sort of continuance if that's
even, you know, has been placed in front of you, but you
know, these dates were already structured in such a way that
they were required....ROA, Vol. II, Pgs. 51-52 [Emphasis
added].

1 The Chair continued: You know, we'll of course hear
2 everything and see, and I obviously don't want to poison the well
3 with the other panel members, but you know, that would be more
4 of, you know, the Bar bending over backwards *to facilitate that*
5 [Emphasis added]. And I don't know if you've had those
6 discussions with Mr. Hahn before this hearing. You know it
7 sounds like some items were done, in fact, to assist you. Mr.
8 Hahn, any discussions previous to today's hearing regarding,
9 you know, any continuances or what Mr. Shaddix is proposing?

10 MR. HAHN: Thank you, Chair. Bruce Hahn on behalf of the
11 Bar. I did speak with Mr. Shaddix following our initial case
12 conference. I believe it was, and we don't feel that we can do
13 anymore.

14 Shaddix offered no objection to the Chair's comment.

15 Here, the context of the Chair's colloquial comment of "...I obviously
16 don't want to poison the well..." was regarding any merit to the Appellant's last
17 minute, oral continuance request. The Chair's idiom was attributed directly to
18 the State Bar's opening statement claims; representations that the State Bar
19 already had exhausted its options in making concessions to the Appellant.

20 This court has treated off-hand comments made by a judicial officer as
meriting relief only if there was significant injury amounting to "actual
prejudice or miscarriage of justice." *Mason v. State*, 2017 Nev. Unpub. LEXIS
398. As with many alleged errors, the burden is on a party to object. "When an
error has not been preserved, this court employs plain-error review." *Id.*, 12-13,
citing *Valdez v. State*, 124 Nev. 1172, 1190 (2008).

1 Here, as in *Mason*, Shaddix’s argument here “seems to mischaracterize
2 the [Chair’s] comments...” The context was Shaddix’s literal last-minute
3 continuance request.² The comment made in context was whether the State Bar
4 would consent to yet another continuance; not that the Chair had already arrived
5 at a determination of the evidence. Even if the Chair did however, much of the
6 State Bar’s evidence had already been admitted and published before hearing,
7 and Shaddix’s opening statement conceded breaching this court’s terms of
8 probation. The only issue that remained was the breach remedy in the context
9 of Shaddix’s opening statement concession. Because of these contextual facts,
10 there was no plain error and as such, Appellant Shaddix is not entitled to relief.

11 **2. The Panel’s recommendation to lift the stay of suspension was**
12 **warranted by the facts and circumstances presented.**

13 Here, the Panel’s recommendation to lift the stay of suspension was
14 warranted for two primary reasons. First, Shaddix stipulated to this consequence
15 by executing a Conditional Guilty Plea Memorandum in advance, essentially
16 consenting to the discipline meted out here should he decline to perform.
17 Second, Shaddix’s non-responsiveness to the State Bar’s efforts to help him
18
19

20 ² Shaddix testified that he was aware long before the Formal Hearing that the
State Bar would not delay proceedings any further. ROA, Vol. II, Pg. 96.

1 remediate demonstrate he is not amenable to supervision and therefore the stay
2 of suspension should be lifted.

3 The record demonstrates that Shaddix entered into an underlying
4 Conditional Guilty Plea agreement (“CGP”) that contemplated and stipulated to
5 a term of six months and one day suspension if he breached a probationary
6 condition(s). ROA, Vol. II, Pgs. 64, 250-263. The record here demonstrates no
7 objection from Shaddix to the underlying and corresponding Findings of Fact,
8 Conclusions of Law & Recommendation from the initial hearing panel on March
9 2, 2021. Cf. ROA, Vol. II, Pgs. 235-248. Here, the Panel found Shaddix
10 breached three of seven specific conditions of probation by clear and convincing
11 evidence. ROA, Vol. II, Pgs.166, 59-60. Shaddix cannot now be heard to
12 complain about consequences for his non-performance of essential conditions
13 precedent to a term of actual suspension.³ He knew the risk he was taking yet
14 made his repeated choices of non-compliance with this court’s conditions and
15 ignoring the State Bar’s repeated efforts.

16 ///

18 ³ Shaddix’s Opening Brief factual claims are unpinned; there is no reference in
19 the record to them, making his contentions difficult to properly respond to.
20 NRAP 28(a)(10(A). Likewise, he offers a completely unsupported claim of what
a prior Assistant Bar Counsel might have testified to – when the potential witness
was never called as a witness by Shaddix in his own defense.

1 First, he failed to prepare for terms he negotiated before January 15, 2021
2 when he signed the Conditional Guilty Plea agreement. His lack of preparation
3 for terms he negotiated for suggests a lack of good faith at the outset. Second,
4 Shaddix's refusal to initiate contact with the State Bar and his nearly consistent
5 refusal to reply after May 14, 2021 when this court issued an order approving,
6 demonstrates a lack of good faith, warranting the recommendation here. ROA,
7 Vol. II, Pgs.250-252, Pg. 63.

8 The State Bar made substantial efforts to help remediate Shaddix's
9 communication refusal and non-compliance with this court's order. His failure
10 to respond to those many efforts demonstrate the Panel's recommendation to lift
11 the suspension stay was warranted. To illustrate, the State Bar emailed Shaddix
12 a letter on May 14, 2021 offering him supplemental notice of the conditions and
13 their due dates, despite Appellant receiving this court's order directly. ROA,
14 Vol. II, Pgs.70-71,75. He didn't respond.⁴ The State Bar thereafter phoned the
15 Appellant at three different phone numbers with no success on June 1, 2021,
16 June 4 and June 17. ROA, Vol. II, Pgs. 76-77. The State Bar wrote Shaddix
17 again on June 22 which provoked a single phone call on July 1. ROA, Vol. II,
18 Pgs. 77-78. In this phone call, the State Bar reiterated the probation conditions
19

20 ⁴ Shaddix never provided proof of his claim that "spam filters" were blocking
the State Bar's email correspondence to his SCR 79 current email address.

1 of paying costs with a payment plan and securing a mentor. ROA, Vol. II.
2 Pgs.78, 80.

3 After receiving no compliance efforts or contact from Shaddix thereafter,
4 the State Bar sent him a letter via regular and certified mail on August 24,
5 warning him the matter would be referred to Bar Counsel absent his substantive
6 response. ROA, Vol. II, Pgs. 81-83. On September 22, 2021, the State Bar sent
7 a copy of a Probation Violation Report to Shaddix at his physical address and
8 two email addresses. ROA, Vol. II, Pgs. 82-83. The Appellant did not respond
9 to either the August or September contact attempts. ROA, Vol. II, Pgs. 82-83.

10 i. Binding Fee Dispute condition

11 Here, Shaddix expressly contemplated and consented to a material
12 probationary condition that he was to engage in binding fee dispute within 90
13 days of this court's future order. Shaddix had four months to prepare for this
14 court's order approving. The monetary dispute between he and his client was not
15 going away irrespective of this court supporting this as a probation condition.
16 On May 14, 2021, this court approved of this stipulated term and the initial
17 panel's other recommendations via CGP.⁵ That day, the State Bar sent Shaddix

18
19 ⁵ The binding fee dispute probation condition was concerned with about \$1,000
20 of "fines and fees of traffic tickets" involving Appellant's former client
Coleman. ROA, Vol. II, Pgs. 64-67, Pg. 79. This dispute condition here was
separate from a different condition of probation – Appellant paying a fixed
\$3,250 restitution sum to client Coleman by May 14, 2022 involving Coleman's

1 a letter by email providing him information on how to initiate the fee dispute
2 process. ROA, Vol. II, Pgs. 71-72. Thereafter, Shaddix had another three months
3 to comply before any breach claim could be brought. Here however, he chose
4 not to contact, much less engage in Fee Dispute, despite his January 2021
5 agreement and this court's order in May 2021. ROA, Vol. II, Pg.84, Pgs. 113-
6 114,⁶ Pg. 124, Pgs. 131-132. His complete lack of effort to comply with this
7 overdue material condition involving his former client, warranted the lifting of
8 the stay of suspension.

9 ii. Legal Practice Mentor condition

10 Shaddix expressly contemplated and consented to another material
11 probation condition in January 2021; to obtain a legal practice mentor and
12 provide quarterly reports. ROA, Vol. II, Pg.34, Pgs.72-74. On May 14, 2021, the
13 State Bar sent him a letter by email providing him information on securing a
14 mentor of his choice. ROA, Vol. II, Pgs. 72-73, Pg. 90. He was asked to provide
15 the State Bar a mentor by May 28, 2021. ROA, Vol. II, Pg. 74. Shaddix did not
16 provide a mentor, much less the mentor reports he consented to providing. ROA,
17 Vol. II, Pgs.104, 108. He did not return the State Bar's phone calls of June 1 and
18

19 _____
20 lost wages claim due to Appellant's handling of his case. ROA, Vol. II, Pgs. 86,
95.

⁶ Testimony of Cathy Britz, State Bar of Nevada Fee Dispute Coordinator.

1 June 4. ROA, Vol. II, Pg.77. On July 1, Shaddix finally called the State Bar
2 where once again, the State Bar discussed the necessity of compliance with the
3 court's probation conditions. ROA, Vol. II, Pgs.77-78. August 14, 2021 was the
4 last possible date to engage a mentor. ROA, Vol. II, Pg. 74. Shaddix did not
5 obtain a mentor as this court ordered.

6 iii. Payment of SCR 120 costs condition

7 Here, Shaddix expressly contemplated and consented to another
8 material probationary condition; to pay SCR 120 costs within 30 days of this
9 court's order.⁷ ROA, Vol. II, Pg.69. He negotiated this term with the State Bar
10 and confirmed it in January 2021 with the CGP. As with the other terms, the
11 State Bar emailed him a letter on May 14, advising him of what this court ordered
12 and the due dates. ROA, Vol. II, Pgs.70-72. The State Bar enclosed a copy of
13 this court's order. ROA, Vol. II, Pg.75. He had until June 14, 2021 to follow this
14 court's order. ROA, Vol. II, Pg.70. The State Bar tried to work out a payment
15 plan with Shaddix. ROA, Vol. II, Pgs. 80-81. He paid no monies whatsoever
16 toward the SCR 120 costs ordered. ROA, Vol. II, Pg. 83, Pgs. 121-122.

17 ///

18 ///

19
20

⁷ The costs under SCR 120(1)(& (3) totaled about \$4,032. ROA, Vol. II, Pg.63.

1 **III.**

2 **CONCLUSION**

3 The State Bar respectfully requests that this Court affirm the Panel's
4 conclusions of law that Respondent breached three material conditions of the
5 probationary terms approved by this court and lift the stay of his practice
6 suspension.

7 Respectfully submitted this 5 day of May 2022.

8 **STATE BAR OF NEVADA**

9 *Bruce Hahn*

10 By: Bruce Hahn, Assistant Bar Counsel
11 Nev. Bar No. 5011
3100 W. Charleston Blvd., Ste. 100
Las Vegas, NV 89102
12 **Attorney for State Bar of Nevada**

1

2 **CERTIFICATE OF COMPLIANCE**

3 1. I hereby certify that this brief complied with the formatting
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
5 and the type style requirements of NRAP 32(a)(6) because this brief has been
6 prepared in a proportionally spaced typeface using Word 2010 in Times New
7 Roman 14 point font size.

8 2. I further certify that this brief complies with the page or type volume
9 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
10 by NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or
11 more and contains no more than 14,000 words, and does not exceed 30 pages.

12 3. Finally, I hereby certify that I have read the foregoing Answering
13 Brief of the State Bar of Nevada, and to the best of my knowledge, information
14 and belief, this brief is not frivolous or interposed for any improper purpose. I
15 further certify this brief complies with all applicable Nevada Rules of Appellate
16 Procedure, including the requirement of NRAP 28(e), which requires every
17 assertion in the brief regarding matters in the record to be supported by
18 appropriate references to the record on appeal. I understand that I may be subject

19 ///

20 ///

1 to sanctions in the event that the accompanying brief is not in conformity with
2 the requirements of the Nevada Rules of Appellate Procedure.

3 DATED this 5 day of May 2022.

4 STATE BAR OF NEVADA
5 DANIEL M. HOOGE, BAR COUNSEL

6 *Bruce Hahn*
By: _____
7 Bruce Hahn, Asst. Bar Counsel
8 Nevada Bar No. 5011
3100 W. Charleston Blvd., Suite 100
9 Las Vegas, NV 89102
775.382.2200

1 **CERTIFICATE OF SERVICE BY MAIL**

2 The undersigned hereby certifies that a true and correct copy of the
3 foregoing **ANSWERING BRIEF** was placed in a sealed envelope and sent by
4 U.S. regular mail in Las Vegas, Nevada, postage fully prepaid thereon for first
5 class mail, addressed to:

6 Thomas S. Shaddix, Esq.
7 2550 East Desert Inn Road, #181
8 Las Vegas, NV 89121

9 And was served via e-mail to thomas@shaddixlaw.com;
10 shaddixts@ticketdefenders.net

11 Dated this 5th day of May 2022.

12 Sonia Del Rio
13 Sonia Del Rio, an employee of the
14 State Bar of Nevada
15
16
17
18
19
20