

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

IN RE: DISCIPLINE OF THOMAS S. Case No.: 84263  
SHADDIX, ESQ.  
NEVADA BAR NO. 7905

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**RESPONDENT'S REPLY BRIEF**

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Respondent in Proper Person

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## **I. STATEMENT OF RELEVANT FACTS**

Respondent in Proper Person reiterates the facts in his Opening Brief as though set forth herein *en haec verba*.<sup>1</sup>

On April 19, 2022 Respondent in Proper Person made a partial good-faith payment in the amount of three-thousand (\$3,000.00) dollars to the State Bar of Nevada. Please see Exhibit “1”, attached hereto and incorporated herein by this reference.

Moreover, on June 6, 2022 Respondent filed his Motion for Extension of Time to File Reply Brief Pursuant to NRAP 31(b)(3). This Court granted that Motion on June 13, 2022. This timely Reply Brief, amended as directed by the Clerk, follows.

## **II. ARGUMENT**

In its Answering Brief, the State Bar wholly ignores (at a minimum) the quasi-judicial role which the Formal Hearing Panel Chair serves in a disciplinary hearing. SCR 103(6) states in pertinent part as follows: “. . . The designated hearing panel chair shall preside over any and all motions or other requests. . .” Moreover, SCR 105(2)(b) states in pertinent part as follows: “. . . a hearing panel chair, who shall preside over any and all motions or other requests as provided by SCR 103(6) and the

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<sup>1</sup> The above statement regarding *en haec verba* is referencing the facts as stated in Respondent’s Supplement to Opening Brief filed April 12, 2022.

subsequent hearing. . .”

In this case, in accordance with the Supreme Court Rules just cited, Formal Hearing Panel Chair Andrew Chiu, Esq., without limitation, signed Orders and granted Motions (see ROA 018) and signed Findings of Fact, Conclusions of Law and Recommendations (see ROA 020-024), performing the exact same functions as a commissioner or hearing master would in an inferior tribunal to the District Court. These commissioners or hearing masters, in, e.g. ADR, civil discovery, probate or criminal arraignment, all perform quasi-judicial roles. Even though set in an administrative environment, so does the Formal Hearing Panel Chair in a State Bar disciplinary proceeding.

As stated in the Opening Brief, Formal Hearing Panel Chair Andrew Chiu stated on the record: “. . . You know, we’ll of course **hear** everything and see, and I obviously don’t want to **poison the well** with the other panel members, **BUT**, you know, that would be more of, you know, the Bar bending over backwards to facilitate that . . .” [Emphasis added]. [ROA 052, ll. 8-12]. *Query*: Would this Honorable Supreme Court condone a district court trial judge making such a prejudicial statement to the jury at the outset of a serious felony trial, prior to even *one word of testimony* having been received by the jury?

The State Bar relies on *Valdez v. State*, 124 Nev. 1172, 1190 (2008), and

*Mason v. State*, 2017 Nev. Unpub. LEXIS 398 for their position that Mr. Chiu’s improper statements are somehow being argued by Respondent as prosecutorial misconduct, and that Respondent has waived this issue by not preserving the issue with an objection at the time of the hearing. Respondent respectfully believes that the State Bar has missed the point; Respondent submits that Mr. Chiu’s improper comments were tantamount to *judicial misconduct*.

The United States Supreme Court held in *In re Ruffalo*, 390 U.S. 544, 550-551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), that where administrative proceedings contemplate the deprivation of a license to practice one’s profession they are adversary proceedings of a quasi-criminal nature and procedural due process must be afforded the licensee; the Court held that “[t]hese are adversary proceedings of a quasi-criminal nature.” *Id.*, 390 U.S. 544, 551 [citing *cf. In re Gault*, 387 U.S. 1, 33 (1967)].

In *Gunera-Pastrana v. State*, 490 P.3d 1262, 1266 (2021), this Court held that “[w]e apply plain-error review to unpreserved claims of judicial misconduct, *Parodi v. Washoe Med. Ctr., Inc.*, 111 Nev. 365, 368, 892 P.2d 588, 590 (1995), and unpreserved constitutional errors, *Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015). For plain-error review, “an appellant must demonstrate that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law

from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (internal quotation marks omitted)."

In this case, Mr. Chiu's comments were (1) inappropriate and clearly prejudicial; (2) the plain meaning of his prejudicial comments virtually "leaps" off the transcript page upon the first reading of the same; and, (3) it strains credulity to believe that it had no influence over the panel, especially the layperson member of the panel who was essentially non-communicative and non-participatory in the entire hearing.

Not only does Formal Hearing Panel Chair serve as the "judge" in adjudicating motions, admitting evidence and ruling on objections, but he or she serves as at least *part* of the panel which is also *the finder of fact*, indeed, the "jury". As stated in the previous paragraph, another significant member of the Formal Hearing Panel is a non-lawyer layperson. In this case, that panel member was layperson Angela Hanson, pursuant to SCR 105(2)(a), which states in pertinent part as follows: "...A hearing panel as finally constituted shall include a non-lawyer..." Ms. Hanson was involved in an automobile accident on the morning of Respondent's hearing, and Respondent is informed and believes she was still under the effects of that traumatic event. Ms. Hanson introduced herself at the beginning of Respondent's hearing, and according



to the Record on Appeal, took no further part in the hearing whatsoever, other than to caucus with the Panel and, upon information and belief, vote the way Mr. Chiu had previously made it abundantly clear that he wanted her to.

This Court further held in *Gunera-Pastrana* that “[t]he influence of the trial judge on the jury is necessarily and properly of great weight and his lightest word or intimation is received with deference, and may prove controlling.” *Quercia v. United States*, 289 U.S. 466, 470 (1933) (internal quotation marks omitted). Thus, [this Court has] explained that “[w]hat may be innocuous conduct in some circumstances may constitute prejudicial conduct in a trial setting.” *Parodi*, 111 Nev. at 367, 892 P.2d at 589. *Gunera-Pastrana*, 490 P.3d 1262 at 1266 [citing *Quercia*, 289 U.S. at 470].

Moreover, this Court has held that in *Gunera-Pastrana* that: “[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice.” *Estelle v. Williams*, 425 U.S. 501, 503 (1976); see also Nev. Const. art. 1, § 8. To this end, the United States Supreme Court “has declared that one accused of a crime is entitled to have his guilt or innocence determined *solely on the basis of the evidence introduced at trial*, and not on grounds of official suspicion, indictment, continued custody, *or other circumstances not adduced as proof at trial.*” *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978).” [*Gunera-Pastrana*, 490 P.3d 1262 at 1266-67], [Emphasis added].

Additionally, as a show of good faith, Respondent was able to secure the funds necessary in order to make a three thousand (\$3,000.00) dollar payment for costs due to the State Bar of Nevada as he represented he would in his Opening Brief. This partial payment was made on April 19, 2022. Please see “Exhibit “1”.

### **III. CONCLUSION**

The State Bar asserts that “context is everything.” Respondent submits that while context in various situations may be important of course, in this case, having the *defacto* judicial officer of his hearing not *poison* the “jury” (especially the non-lawyer layperson) with clearly prejudicial, irresponsible and inappropriate comments and conclusions (*prior to any* testimony being proffered) is, at a minimum, equally important. For the reasons set forth herein, Respondent in Proper Person respectfully requests that this matter be remanded to the State Bar of Nevada for a *live, in-person* Formal Panel Hearing with an impartial panel; that this Court fashion a sanction

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commensurate with his actual offenses in this matter; that this Court take into account the totality of the circumstances regarding the entirety of this matter; and for such other relief as the Court deems advisable.

Dated this 20th day of June, 2022.

Respectfully submitted,

LAW OFFICE OF THOMAS S. SHADDIX

/s/ Thomas S. Shaddix

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Respondent in Proper Person

### **ATTORNEY'S CERTIFICATE OF COMPLIANCE**

I hereby certify that this RESPONDENT'S REPLY BRIEF complies with the formatting requirements of NRAP of NRAP 32(a)(4), the typeface requirements of NRAP32(a)(5) and the type style requirements of NRAP 32(a)(6). This Reply has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font, is 2,039 words, ten (10) pages, in length (NRAP 32(a)(7).

I further certify that I have read this RESPONDENT'S REPLY BRIEF, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this RESPONDENT'S REPLY BRIEF complies with all applicable Nevada Rules of Appellate Procedure. I understand that I may be subject to sanctions in the event that this appellate pleading is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of June, 2022.

LAW OFFICE OF THOMAS S. SHADDIX

/s/ Thomas S. Shaddix

Thomas S. Shaddix, Esq.

Nevada State Bar No.: 7905

**DECLARATION OF THOMAS S. SHADDIX, ESQ., RESPONDENT,**  
**PURSUANT TO 28 U.S.C. 1746 IN SUPPORT OF**  
**RESPONDENT’S REPLY BRIEF**

That I have read the foregoing RESPONDENT’S REPLY BRIEF; I am the Respondent in Proper Person in the above-captioned matter and am competent to testify to the matters stated herein. I hereby incorporate by reference the entirety of the Brief set forth above, and everything contained therein is true and correct to the best of my knowledge, except for those matters stated upon information and belief, and as to those matters, I believe the same are true.

Executed at Las Vegas, Nevada, this 27th day of June, 2022, under penalty of perjury pursuant to 28 U.S.C. 1746.

/s/ Thomas S. Shaddix  
THOMAS S. SHADDIX, ESQ.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 27, 2022, I caused a true and correct copy of the foregoing RESPONDENT’S REPLY BRIEF (as corrected per the Clerk’s Notice of June 21, 2022) to be electronically served upon the following person(s) through the Supreme Court’s eflex service system:

BRUCE C. HAHN, ESQ.  
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Counsel for the State Bar of Nevada

/s/ Thomas S. Shaddix  
LAW OFFICE OF THOMAS S. SHADDIX

# **RESPONDENT'S EXHIBIT "1"**

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**State Bar Invoice**

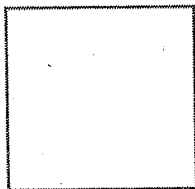
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**Thomas Shaddix, Esq.** <shaddixts@ticketdefenders.net>

----- Original message -----

From: Vanessa Dalton <VanessaD@nvbar.org>  
Date: 4/19/22 4:00 PM (GMT-08:00)  
To: shaddixts@ticketdefenders.net  
Subject: State Bar Invoice

The \$3000 payment you made will be applied to the attached invoice. Thank you.



**Vanessa Dalton**

Receptionist

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