

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE:

REINSTATEMENT OF
WILLIAM A. SWAFFORD, ESQ.
STATE BAR NO. 11469

Electronically Filed
Jun 21 2022 08:07 a.m.
Case No. Elizabeth A. Brown
Clerk of Supreme Court

Volume II

RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS
AND TRANSCRIPT OF HEARINGS

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**STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD**

FORMAL HEARING
(SCR 116 Petition for Reinstatement)
William A. Swafford, Esq. SBN. 11469
Case No.: SBN21-99129

Wednesday, April 20, 2022, beginning at 9:00 a.m. -- *Zoom Platform*

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PANEL

Rich Williamson, Esq. Chair
William Hanagami, Esq.
Tim Meade, Layperson

WILLIAM A. SWAFFORD, ESQ.
Petitioner – In Proper Person

R. KAIT FLOCCHINI, ESQ.
*Assistant Bar Counsel
State Bar of Nevada*

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
WILLIAM SWAFFORD, BAR NO. 11469.

No. 70200

FILED

SEP 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK*ORDER OF SUSPENSION*

This is an automatic review under SCR 105(3)(b) of the Northern Nevada Disciplinary Board hearing panel's findings of fact, conclusions of law and recommendation that attorney William Swafford be suspended from the practice of law for one year based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.3 (candor toward the tribunal), RPC 8.4(a) (misconduct: assisting another in violating an RPC), RPC 8.4(c) (misconduct: misrepresentation), and RPC 8.4(d) (misconduct: conduct prejudicial to the administration of justice), to run concurrently with a six-month-and-one-day suspension based on his violation of RPC 1.15 (safekeeping of property). The panel further recommends that Swafford pay to the State Bar the actual costs of the hearing and mailing expenses plus \$500 for staff and counsel salaries. The violations relate to Swafford (1) assisting another attorney in violating professional conduct rules concerning conflicts of interest, (2) failing to diligently represent a client in a criminal matter, and (3) overdrawing his IOLTA account.

First, Swafford knowingly assisted another attorney in representing two brothers, Eugene and Alejandro Pardo, with conflicting interests in a criminal matter. At the same time, Swafford failed to

diligently represent or communicate with Eugene, who retained Swafford as an attorney. In particular, Swafford allowed the other attorney to handle Eugene's case, including appearing at conferences and hearings and reaching a plea agreement, and Swafford failed to appear at the sentencing hearing after representing to the district court that he would appear on Eugene's behalf.

Second, Swafford's IOLTA account was overdrawn by \$27 after two checks totaling \$50 were presented for payment. The State Bar contacted Swafford on two occasions about the overdraft, but Swafford did not respond to the first letter, and represented that he would be providing a response to the second letter. However, Swafford failed to provide the State Bar with any substantive response.

Our review of the disciplinary panel's findings and recommendations is de novo. SCR 105(3)(b); *In re Discipline of Stuhff*, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We therefore "must examine the record anew and exercise independent judgment," but the disciplinary panel's recommendations nonetheless are persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). The State Bar generally has the burden of showing by clear and convincing evidence that an attorney committed the violations charged, *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995), but where, as here, the attorney fails to respond to a complaint, "the charges shall be deemed admitted," SCR 105(2). The issue before this court therefore is the appropriate level of discipline. Swafford did not file an opening brief; therefore, this matter stands submitted for decision on the record. SCR 105(3)(b).

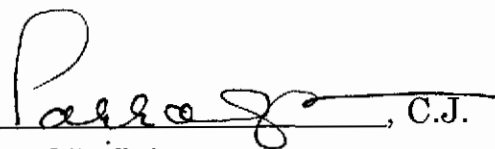
In determining the appropriate discipline, this court has considered four factors to be weighed: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). The purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988).

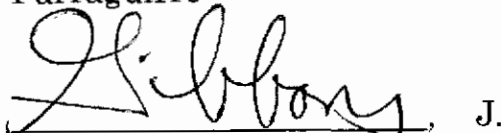
Absent mitigating factors, suspension generally is the appropriate discipline for knowingly failing to perform services for a client and engaging in a pattern of neglect that causes potential injury to a client. ABA Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (2015). Here, Swafford lacked diligence in representing Eugene by failing to counsel Eugene, failing to communicate with the district attorney on his behalf, and failing to appear at hearings. Suspension is also warranted absent mitigating factors for Swafford’s actions in improperly dealing with client property by overdrawing his IOLTA account, which potentially could cause injury to a client. *See id.* Standard 4.12.

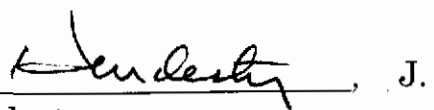
Here, the panel found no mitigating factors, but found Swafford’s failure to cooperate in the disciplinary matter and failure to respond to the State Bar’s inquiries about the IOLTA overdraft was an aggravating factor. Taking into consideration Swafford’s actions, the panel determined that Swafford’s mental state, the injury to the legal profession, and the potential injury to his client due to his misconduct warranted a suspension. However, the panel stated that it “did not find that the recommended sanction . . . should be increased because of the

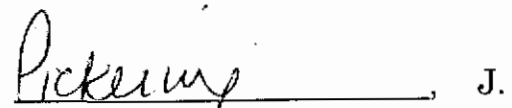
aggravating factor." We agree with the hearing panel that suspension is the appropriate discipline to protect the public, the courts, and the legal profession. *Claiborne*, 104 Nev. at 213, 756 P.2d at 527-28. But we conclude that the duration of the recommended suspensions is excessive considering the nature of the violations. Accordingly, we suspend attorney William Swafford from the practice of law for three months for the violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 3.3 (candor toward the tribunal), RPC 8.4(a) (misconduct: assisting another in violating an RPC), RPC 8.4(c) (misconduct: misrepresentation), and RPC 8.4(d) (misconduct: conduct prejudicial to the administration of justice), and a consecutive three-month-and-one-day suspension based on the violation of RPC 1.15 (safekeeping of property).¹ Swafford shall pay to the State Bar \$500 for staff and counsel salaries plus the actual costs of the disciplinary proceedings and mailing expenses within 30 days of this order. See SCR 120(7). The parties shall comply with the relevant provisions of SCR 121.1.

It is so ORDERED.


Parraguirre, C.J.


Gibbons, J.

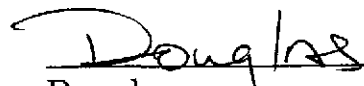

Hardesty, J.

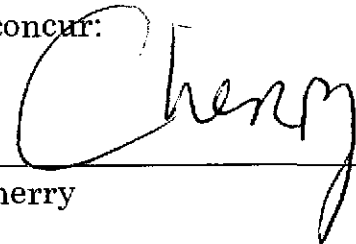

Pickering, J.

¹Because the total period of suspension exceeds six months, Swafford must petition for reinstatement. SCR 116(a).

DOUGLAS, J., with whom CHERRY, J., agrees, dissenting:

I would approve the recommended discipline in its entirety. Swafford did not respond to the investigative inquiries and did not participate in the disciplinary process after representing that he would be providing a response to the State Bar. Considering the totality of the circumstances and the lack of concern on Swafford's part, a one-year suspension and concurrent six-month-and-one-day suspension are appropriate.

 J.
Douglas

I concur:
 J.
Cherry

cc: Chair, Northern Nevada Disciplinary Board
William A. Swafford
C. Stanley Hunterton, Bar Counsel, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
WILLIAM SWAFFORD, BAR NO. 11469.

No. 71844

FILED

SEP 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney William Swafford be suspended for six months and one day to run consecutive to his prior suspension based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), and RPC 8.4(d) (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Swafford committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Swafford failed to answer the complaint and a default was entered.¹ SCR 105(2). The record therefore establishes that Swafford violated the above-referenced rules by failing to timely file a pleading on behalf of a client, adequately plead the client's claims, communicate with the client, deposit the client's funds into his trust account, and refund the client his unearned fees.

¹The complaint and notice of intent to proceed on a default basis were served on Swafford via regular and certified mail at his SCR 79 address and a Chicago address he had previously provided to the State Bar, as well as emailed to him. Swafford was personally served a notice of the disciplinary hearing and he appeared at the hearing.

Swafford ROA - 229
17-30361

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must . . . exercise independent judgment," the panel's recommendation is persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Swafford knowingly violated duties owed to his client (competence, diligence, communication, fees, and safekeeping property). The client was injured because his action was not properly pleaded, he had to retain new counsel to amend the pleading and proceed with the action, and he did not receive a refund of unearned fees. The baseline sanction for Swafford's misconduct, before consideration of aggravating and mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2013) ("Suspension is generally appropriate when . . . a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client . . .").

The panel found one aggravating circumstance (prior discipline) and five mitigating circumstances (personal and emotional problems, cooperative attitude toward the bar proceeding, remorse, inexperience in the practice of law, and mental disability). SCR 102.5. Specifically, Swafford was undergoing active medical treatment for a severe medical condition during his representation of the client and both his father and his uncle were diagnosed with terminal illnesses. Considering the numerous mitigating circumstances, the recommended suspension appears

appropriate, even though this is Swafford's second discipline for similar misconduct. Additionally, the requirement that Swafford obtain a fitness-for-duty evaluation before seeking reinstatement sufficiently protects the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby suspend attorney William Swafford from the practice of law in Nevada for a period of six months and one day commencing from the date of this order. Before applying for reinstatement, Swafford must obtain a fitness-for-duty evaluation from a competent, licensed neurologist. Swafford shall participate in any fee dispute arbitration proceeding instituted by his client and shall abide by any award issued thereby. Further, Swafford shall pay the costs of the bar proceedings, including \$2,500 pursuant to SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Chair, Northern Nevada Disciplinary Board
Law Offices of William Swafford LLC
C. Stanley Hunterton, Bar Counsel, State Bar of Nevada
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court

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STATE BAR OF NEVADA

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NORTHERN NEVADA DISCIPLINARY BOARD

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7 STATE BAR OF NEVADA,)

8 Complainant,)

9 vs.) Case No. OBC 15-1069

10 WILLIAM SWAFFORD, ESQ.)

11 Respondent.)

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FORMAL HEARING,

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Monday, October 10, 2016

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Reno, Nevada

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23 Job No.: 338244

24 Reported by:
Transcription

CAROL HUMMEL, RPR, CCR #340
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FORMAL HEARING - 10/10/2016

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 DISCIPLINARY BOARD</p> <p>5 Bruce Hahn, Esq., Chair</p> <p>6 Eric Stoval, Esq.</p> <p>7 Tim Meade, Lay member</p> <p>8 ALSO PRESENT:</p> <p>9 Kait Flocchini</p> <p>10 Deputy Bar Counsel</p> <p>11 William Swafford, Esq.</p> <p>12 Respondent</p> <p>13 Jeffrey Spencer</p> <p>14 Marilyn Spencer</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 I N D E X</p> <p>3 BAR WITNESS: DE CE RDE RCE</p> <p>4 Jeffrey Spencer 19</p> <p>5 Marilyn Spencer 28 36 58</p> <p>6 William Swafford 42 49</p> <p>7 80</p> <p>8</p> <p>9 DEFENSE WITNESS:</p> <p>10 NONE</p> <p>11</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 BAR EXHIBITS MARKED ADMITTED</p> <p>15 1 - Index of Documents 11 11</p> <p>16 2 - Affidavit dated 9-14-16 11 11</p> <p>17 3 - Check for \$7,000 12 12</p> <p>18 4 - Affidavit of Laura Peters 13 13</p> <p>19 5 - Email dated 6-4-16 50 50</p> <p>20 6 - Attorney-Client Fee Agreement 53 53</p> <p>21 7 - Case History 55 55</p> <p>22 8 - Bank Account Document 79 79</p> <p>23 9 - Check for \$18,050 80 80</p> <p>24 (All exhibits retained by the State Bar.)</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 -oOo-</p> <p>2 RENO, NEVADA; MONDAY, OCTOBER 10, 2016; 9:35 A.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 CHAIRMAN HAHN: Good morning, Ms. Hummel. It</p> <p>6 is Monday, October 10, approximately 9:35 A.M. We are</p> <p>7 scheduled here, a three-panel member of the Northern</p> <p>8 Nevada Disciplinary Board, involving the matter of State</p> <p>9 Bar of Nevada versus William Swafford, Esquire.</p> <p>10 If I could, my name is Bruce Hahn. I'm the</p> <p>11 chair for this morning. Could I have the panel members</p> <p>12 introduce themselves for the record, please.</p> <p>13 MR. STOVAL: Eric Stoval, attorney at law.</p> <p>14 MR. MEADE: Tim Meade, lay person.</p> <p>15 CHAIRMAN HAHN: Counsel for the State.</p> <p>16 MS. FLOCCHINI: Kait Flocchini here on behalf</p> <p>17 of the State Bar. With me is Laura Peters the paralegal.</p> <p>18 Also present are the grievants Jeff and Marilyn Spencer.</p> <p>19 CHAIRMAN HAHN: For the Respondent, please.</p> <p>20 MR. SWAFFORD: Myself, William Swafford.</p> <p>21 CHAIRMAN HAHN: Mr. Swafford, sometimes people</p> <p>22 have counsel, sometimes people don't. I'm sure you're</p> <p>23 good to go. But I just need to ask you about if you're</p> <p>24 comfortable proceeding by yourself today.</p> <p>25 MR. SWAFFORD: Yes.</p>	<p style="text-align: right;">Page 5</p> <p>1 CHAIRMAN HAHN: I see you have some type of a</p> <p>2 device on your left hand, looks like you hurt your fingers</p> <p>3 bad. How are you feeling today?</p> <p>4 MR. SWAFFORD: Okay.</p> <p>5 CHAIRMAN HAHN: Do you need medication for it?</p> <p>6 MR. SWAFFORD: No.</p> <p>7 CHAIRMAN HAHN: So you're just pushing through</p> <p>8 it?</p> <p>9 MR. SWAFFORD: Yes.</p> <p>10 CHAIRMAN HAHN: Do you feel there's any reason</p> <p>11 you couldn't proceed forward because of that?</p> <p>12 MR. SWAFFORD: No.</p> <p>13 CHAIRMAN HAHN: In setting the record today, I</p> <p>14 would make a couple of notations. It appears we're here</p> <p>15 of behalf of a complaint filed by the State Bar filed on</p> <p>16 or about July 29th, 2016, identifying seven separate</p> <p>17 counts alleged of a violation, namely the competence,</p> <p>18 diligence, communication, fees, safekeeping of property,</p> <p>19 bar admission, and misconduct.</p> <p>20 There was no answer that the panel members</p> <p>21 have received to that complaint.</p> <p>22 Thereafter there was an order summarizing an</p> <p>23 initial case conference in which I participated,</p> <p>24 Ms. Flocchini from the Bar participated, and no one from</p> <p>25 Mr. Swafford's office or his counsel appeared on his</p>

FORMAL HEARING - 10/10/2016

<p>Page 6</p> <p>1 behalf. The order was filed on September 9th, 2016.</p> <p>2 Thereafter there was a pretrial conference by</p> <p>3 phone in which I participated, Ms. Flocchini from the Bar</p> <p>4 participated. This was on or about September 23rd, 2016.</p> <p>5 No one on Mr. Swafford's behalf appeared nor did he appear</p> <p>6 on the phone.</p> <p>7 Thereafter there was a notice of intent to</p> <p>8 proceed on default which I believe was on or about, I</p> <p>9 think it was August 23rd of 2016. Thereafter there was a</p> <p>10 notice of hearing of today's date, October 10.</p> <p>11 And then there was a default order which was</p> <p>12 directed to the Chair. I believe that was on or about the</p> <p>13 26th of September, 2016, for which the appropriate time</p> <p>14 had elapsed for a responsive pleading. And there was no</p> <p>15 responsive pleading, and a default order was filed. I</p> <p>16 believe it was on or about the 26th of September 2016.</p> <p>17 I believe that the panel members today have</p> <p>18 received a series of documents. I believe, Mr. Swafford,</p> <p>19 correct me if I'm wrong, I believe you've had a chance to</p> <p>20 get these documents today; is that true?</p> <p>21 MR. SWAFFORD: True.</p> <p>22 CHAIRMAN HAHN: And it appears to be the</p> <p>23 Complaint, First Designation. That would be, looks like</p> <p>24 Page 1 through 35 of the panel's packet. There was Notice</p> <p>25 of Intent to Proceed on Default Basis filed August 23rd.</p>	<p>Page 7</p> <p>1 That's Pages 36 through 38. Thereafter an Order</p> <p>2 Appointing Formal Panel Hearing Chair that was filed</p> <p>3 September 1 of 2016. That was on Page 29 through 40.</p> <p>4 Thereafter on Pages 41 through 44 there's a</p> <p>5 Notice of Hearing, Summary of Evidence, Designation of</p> <p>6 Witnesses filed September 7th, 2016, that was on behalf of</p> <p>7 the State Bar.</p> <p>8 I believe the panel has now received any</p> <p>9 summary of evidence or designation of witnesses directly</p> <p>10 by the Respondent.</p> <p>11 Thereafter on Pages 45 through 46 an Order</p> <p>12 Appointing Formal Hearing Panel filed September 9th.</p> <p>13 Thereafter Pages 47 through 49, Order After Initial Case</p> <p>14 Conference. Again that was filed September 9th. Pages 50</p> <p>15 through 79, that's the Default Order which was executed by</p> <p>16 myself after sufficient time had elapsed after proper</p> <p>17 notice to Mr. Swafford's last known address on file with</p> <p>18 the State Bar. That was filed, that default Order was</p> <p>19 filed on or about September 26th.</p> <p>20 And then the last two pages, Order After</p> <p>21 Prehearing Conference filed September 26th, 2016. That's</p> <p>22 on Pages 80 through 81.</p> <p>23 What I would like to do is I would like to ask</p> <p>24 if the State Bar, and thereafter I would like to ask</p> <p>25 Mr. Swafford, is there any other exhibits that we missed?</p>
<p>Page 8</p> <p>1 MS. FLOCCHINI: I believe there are no</p> <p>2 exhibits that we have missed. But the State Bar will be</p> <p>3 offering other exhibits to the hearing panel today.</p> <p>4 Primarily we have a proof of service, personal</p> <p>5 service of the notice of hearing. We also have an</p> <p>6 additional check to confirm payment to Mr. Swafford for</p> <p>7 the representation to the Spencers. Then the discipline</p> <p>8 affidavit confirming Mr. Swafford's date of licensure and</p> <p>9 discipline.</p> <p>10 CHAIRMAN HAHN: Very well. And you anticipate</p> <p>11 presenting one or two witnesses today, Ms. Flocchini?</p> <p>12 MS. FLOCCHINI: Two.</p> <p>13 CHAIRMAN HAHN: That will be the Spencers?</p> <p>14 MS. FLOCCHINI: Yes.</p> <p>15 CHAIRMAN HAHN: Mr. Swafford, I want to ask</p> <p>16 you what I asked Ms. Flocchini. Do you have any exhibits</p> <p>17 or documents that you would like to present to the panel</p> <p>18 members here?</p> <p>19 MR. SWAFFORD: None.</p> <p>20 CHAIRMAN HAHN: Do you anticipate -- you don't</p> <p>21 have to tell me right now. But of course you have an</p> <p>22 opportunity to make a statement to the panel if you would</p> <p>23 like. Do you have any witnesses you would like to present</p> <p>24 today?</p> <p>25 MR. SWAFFORD: No witnesses. I will be making</p>	<p>Page 9</p> <p>1 a statement.</p> <p>2 CHAIRMAN HAHN: Very well. At the appropriate</p> <p>3 time I will invite you to share what you would like to the</p> <p>4 Bar here, and we'll go from there. How does that sound?</p> <p>5 MR. SWAFFORD: Sounds good.</p> <p>6 CHAIRMAN HAHN: I think at this time if we</p> <p>7 have all of the exhibits, and we have made sort of a</p> <p>8 summary of the record, I want to ask Ms. Flocchini, how do</p> <p>9 you think you'd like to proceed today?</p> <p>10 MS. FLOCCHINI: The State Bar would like to</p> <p>11 proceed on a default basis. Supreme Court Rule 105.2</p> <p>12 identifies that once an entry of default has been filed</p> <p>13 that all the allegations in the Complaint are deemed</p> <p>14 admitted. And that as a function of the allegations in</p> <p>15 the complaint being deemed admitted, we'll be simply</p> <p>16 presenting the panel with argument or presentation for why</p> <p>17 a particular sanction is appropriate.</p> <p>18 And the State Bar will be seeking suspension</p> <p>19 in this case pursuant to Standard 4.42 in the Annotated</p> <p>20 Standards for Imposing Lawyer Sanctions. I'll also be</p> <p>21 asking for costs in the amount of \$2500, plus the hard</p> <p>22 costs of the hearing, of the proceeding, the court</p> <p>23 reporter and transcript cost.</p> <p>24 And then we'll be asking this panel to order</p> <p>25 Mr. Swafford to pay restitution to the Spencers for the</p>

<p style="text-align: right;">Page 10</p> <p>1 monies that were paid and then not essentially earned by 2 the representation.</p> <p>3 CHAIRMAN HAHN: Very well. Mr. Swafford, let 4 me ask you. With regard to -- the State Bar is going to 5 proceed with the case as it sees fit, but does that order 6 sound sensible to you?</p> <p>7 MR. SWAFFORD: Fine.</p> <p>8 CHAIRMAN HAHN: Mr. Swafford, did you have a 9 chance to talk with Ms. Flocchini before we started? I 10 know we started about 25 minutes late. Did you have a 11 chance to speak with her concerning what you wanted to do 12 today, and what you understood her to be wanting to do 13 today?</p> <p>14 MR. SWAFFORD: I did.</p> <p>15 CHAIRMAN HAHN: Is there anything else, 16 Mr. Swafford, at this time before I turn it over to the 17 State Bar?</p> <p>18 MR. SWAFFORD: Nothing.</p> <p>19 CHAIRMAN HAHN: Miss Flocchini, please.</p> <p>20 MS. FLOCCHINI: Thank you. And if I may, I 21 would like to identify and have marked and admitted so the 22 panel can be using them, the formal hearing packet as 23 Exhibit 1. I would like to have that marked and then 24 offered and admitted, please.</p> <p>25 CHAIRMAN HAHN: This is the packet that I</p>	<p style="text-align: right;">Page 11</p> <p>1 already read into the record consisting of Pages 1 through 2 81?</p> <p>3 MS. FLOCCHINI: It is.</p> <p>4 CHAIRMAN HAHN: Any objection, Mr. Swafford?</p> <p>5 MR. SWAFFORD: No.</p> <p>6 CHAIRMAN HAHN: This is admitted as Exhibit 1. (Exhibit 1 marked for identification and 7 admitted into evidence.)</p> <p>8 MS. FLOCCHINI: Exhibit 2 is the Affidavit of 9 Service. I'm handing one to Mr. Swafford for review. 10 This is an Affidavit of Service showing that the request 11 for entry of default and notice of hearing and all of the 12 exhibits attached thereto were served on Mr. Swafford 13 personally on September 12th.</p> <p>14 CHAIRMAN HAHN: It's a singular document 15 you're offering as Exhibit 2 without the attachments that 16 you just referred to?</p> <p>17 MS. FLOCCHINI: Yes. It is a single piece of 18 paper that just says the documents were served.</p> <p>19 CHAIRMAN HAHN: Any objection, Mr. Swafford?</p> <p>20 MR. SWAFFORD: No objection.</p> <p>21 CHAIRMAN HAHN: Exhibit 2 is admitted. (Exhibit 2 marked for identification and 22 admitted into evidence.)</p> <p>23 CHAIRMAN HAHN: The record will reflect</p>
<p style="text-align: right;">Page 12</p> <p>1 Miss Flocchini passed out a single page to Mr. Swafford 2 and members of the panel. Exhibit 2, the Affidavit of 3 Service, file stamped September 20, 2016.</p> <p>4 MS. FLOCCHINI: I also have as an exhibit a 5 check from attorney William Routsis to attorney William 6 Swafford.</p> <p>7 And the representation from Mr. Routsis was 8 that -- the panel has been provided with a check that 9 indicates, that was to Mr. Routsis that indicates half of 10 it was for Mr. Swafford. And this is the payment from 11 Mr. Routsis to Mr. Swafford just closing that payment 12 loop. So we would offer that as Exhibit 3 and ask that it 13 be admitted.</p> <p>14 CHAIRMAN HAHN: Any objection, Mr. Swafford?</p> <p>15 MR. SWAFFORD: No objection.</p> <p>16 CHAIRMAN HAHN: Exhibit 3 is admitted. (Exhibit 3 marked for identification and 17 admitted into evidence.)</p> <p>18 CHAIRMAN HAHN: The description of Exhibit 3 19 is as follows. It appears to be a photocopy of a check 20 for \$7,000 paid to William Swafford drawn upon an account 21 of William Routsis, II, Esquire.</p> <p>22 MS. FLOCCHINI: Then our last exhibit, Exhibit 23 4, is the affidavit of Laura Peters, custodian of records 24 for the State Bar. This affidavit indicates that</p>	<p style="text-align: right;">Page 13</p> <p>1 Mr. Swafford was licensed on April 9, 2009, by the State 2 Bar of Nevada. He has one instance of prior discipline, 3 an order of suspension that was issued on September 22nd, 4 2016.</p> <p>5 I offer that as Exhibit 4 and ask that it be 6 admitted.</p> <p>7 CHAIRMAN HAHN: Mr. Swafford, any objection?</p> <p>8 MR. SWAFFORD: No objection.</p> <p>9 CHAIRMAN HAHN: Exhibit 4 is admitted. (Exhibit 4 marked for identification 10 and admitted into evidence.)</p> <p>11 MS. FLOCCHINI: I apologize.</p> <p>12 CHAIRMAN HAHN: I was going to, for the record 13 today, Exhibit 4 appears to be a four-page document. The 14 first is an Affidavit of Laura Peters. It's executed 15 October 6th and attached thereto what appears to be a 16 separate three-page document which is double sided 17 indicating an Order of Suspension filed September 22, 18 2016.</p> <p>19 Please, Ms. Flocchini.</p> <p>20 MS. FLOCCHINI: Thank you.</p> <p>21 Thank you for your time here today. We'll use 22 it wisely. We appreciate all the efforts, particularly on 23 behalf of the Chair appearing for this hearing.</p> <p>24 We are here today because we've received a</p>

<p style="text-align: right;">Page 14</p> <p>1 grievance from the Spencers with respect to the 2 representation that they did and did not receive from 3 Mr. Swafford. And on that basis we have asked the 4 Spencers to be here today. Although the complaint, the 5 allegations in the complaint are deemed admitted that 6 there was a lack of diligence, and a lack of competence in 7 and alleging proper matters in the complaint, a lack of 8 communication with the client that he didn't respond to 9 calls and emails. And in addition then unreasonable fees 10 charged.</p> <p>11 There was \$35,000 paid to Mr. Swafford for the 12 representation which was lacking, and therefore the fee 13 was unreasonable. And that Mr. Swafford deposited the 14 funds prior to earning, because he didn't earn them, prior 15 to earning those funds.</p> <p>16 In addition, we have alleged and present to 17 you by paper through the Notice of Entry of Default that 18 Mr. Swafford failed to properly respond to the complaint 19 and participate in this process which is important for our 20 process to work properly.</p> <p>21 And then also a violation of 8.4, which is our 22 general misconduct rule, that conduct has been prejudicial 23 to the administration of justice, particularly the justice 24 for the Spencers, but also justice in this proceeding.</p> <p>25 We received a grievance from Jeffery and</p>	<p style="text-align: right;">Page 15</p> <p>1 Marilyn Spencer regarding a civil matter that they hired 2 Mr. Swafford to handle. Mr. Swafford was hired in 3 conjunction with attorney William Routsis.</p> <p>4 Mr. Routsis had been hired to handle the 5 criminal matter for Mr. Spencer, and thereafter there was 6 a civil complaint that arose out of the criminal matter 7 for the allegations that had been made and then unproven 8 in the criminal complaint.</p> <p>9 And so Mr. Routsis stayed on. But as he is 10 not a regular civil attorney, he typically practices in 11 the area of criminal defense, Mr. Swafford was brought on 12 for his civil experience working with Mr. Routsis in 13 preparing a complaint and bringing the matter forward to 14 trial.</p> <p>15 After we received the grievance we 16 communicated with Mr. Swafford and asked for a response 17 about what had happened. Mr. Swafford responded that he 18 was out of town, he would get back to us. I met with 19 Mr. Swafford after the grievance came in, but we did not 20 receive a formal response to the complaint or to the 21 grievance so the matter proceeded to screening without any 22 input from Mr. Swafford.</p> <p>23 When there is no input, it automatically goes 24 to complaint. We prepared a complaint, and then that was 25 served.</p>
<p style="text-align: right;">Page 16</p> <p>1 And as you know, by the default having been 2 entered there was no answer to that. We have not heard 3 Mr. Swafford's side of the story with respect to the 4 Spencers in an official capacity.</p> <p>5 CHAIRMAN HAHN: Ms. Flocchini, may I interrupt 6 for just a moment.</p> <p>7 The date that you met with Mr. Swafford, what 8 was that date, and where did it take place, and who were 9 members to that discussion?</p> <p>10 MS. FLOCCHINI: Sure.</p> <p>11 CHAIRMAN HAHN: We can get back to it another 12 time.</p> <p>13 MS. FLOCCHINI: I want to give you a formal 14 date, but I will give you the best of my recollection.</p> <p>15 CHAIRMAN HAHN: Sure.</p> <p>16 MS. FLOCCHINI: Is that it was in April of 17 2016. So it was earlier this year prior to the complaint 18 being filed, and prior to this matter being screened.</p> <p>19 CHAIRMAN HAHN: Where did it take place?</p> <p>20 MS. FLOCCHINI: At our office here.</p> <p>21 CHAIRMAN HAHN: Who were the parties?</p> <p>22 MS. FLOCCHINI: Mr. Swafford came into the 23 office, and we met in the small conference room here.</p> <p>24 CHAIRMAN HAHN: Just yourself and 25 Mr. Swafford?</p>	<p style="text-align: right;">Page 17</p> <p>1 MS. FLOCCHINI: Yes.</p> <p>2 CHAIRMAN HAHN: Please continue. Sorry for 3 the interruption.</p> <p>4 MS. FLOCCHINI: That's fine. No problem.</p> <p>5 So I was pretty much at the end of my initial 6 presentation. As I said earlier, we will be seeking 7 suspension based on the factors of the duty violated, the 8 mental state of Mr. Swafford when he violated those 9 duties, the injury or potential injury to both the 10 Spencers and the system, the integrity of the system, the 11 process.</p> <p>12 And then the aggravating and mitigating 13 factors. Primarily the aggravating factors in this case 14 that we present to the panel are Mr. Swafford's failure to 15 participate in the proceeding, and the fact that there's 16 prior discipline. I would characterize it as other 17 discipline.</p> <p>18 There is another matter for which Mr. Swafford 19 has been suspended that the representations took place at 20 the same time. So while Mr. Swafford was failing in his 21 duties to the Spencers, he was failing in his duties with 22 another client in a similar fashion. And the other 23 client's failures have already resulted in a suspension.</p> <p>24 So I would like to call Jeff Spencer to 25 testify today.</p>

<p style="text-align: right;">Page 18</p> <p>1 CHAIRMAN HAHN: Please. 2 (The oath was administered to the witness.) 3 CHAIRMAN HAHN: Please have a seat, 4 Mr. Spencer. 5 Ms. Flocchini, prior to your examination we 6 had a question. 7 MR. MEADE: The suspension that he currently 8 has, it was at the same time? What I'm understanding, the 9 same time as when -- this all occurred concurrently? 10 MS. FLOCCHINI: Yes. 11 MR. MEADE: Okay. 12 MS. FLOCCHINI: Just for ease of reference, 13 the other clients are the Pardos, the other clients. So 14 the representation of Mr. Pardo and the representation of 15 Mr. Spencer were happening at the same time and the 16 failures were happening at the same time. 17 MR. MEADE: I just wanted to make sure that I 18 understood what you were saying. 19 MS. FLOCCHINI: The cases track together. We 20 received the complaint with respect to the Pardo case 21 prior to receiving the Spencers' complaint. That's why 22 they weren't handled in one hearing together because of 23 the way they came into our office. 24 MR. MEADE: Okay. Thank you. 25 CHAIRMAN HAHN: Please proceed.</p>	<p style="text-align: right;">Page 19</p> <p>1 JEFFREY SPENCER 2 called as a witness in said case, 3 having been first duly sworn, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MS. FLOCCHINI: 7 Q Good morning, Mr. Spencer. Thank you for your 8 time here. 9 A Good morning. 10 Q If you would please, could you spell your name 11 for the record. 12 A S-p-e-n-c-e-r. 13 Q And first name Jeffrey? 14 A Yes. 15 Q Spelled the typical way? 16 A J-e-f-f-r-e-y. 17 Q Thank you. You hired Mr. Swafford to 18 represent you; correct? 19 A Yes. 20 Q Tell us how that came about, please. 21 A The best of my recollection, we met in the 22 fall of 2014 at William Routsis's office, went over the 23 case at that time. I believe we agreed to start the 24 process. Nothing really happened with that. We were 25 filed against in January of 2015, and we talked again</p>
<p style="text-align: right;">Page 20</p> <p>1 about proceeding with this because we wanted to do it 2 earlier, but now we had to, since they were suing us in a 3 civil court. 4 Q So you met with Mr. Swafford and Mr. Routsis 5 in the fall of 2014 to discuss the civil suit? 6 A I believe that was the time, yes. 7 Q And you discussed the complaint being 8 prepared? 9 A Yes. 10 Q And who was to prepare the complaint? 11 A Mr. Swafford. 12 Q Did you sign a retainer agreement with 13 Mr. Swafford? 14 A Yes. 15 Q Why was Mr. Swafford involved in the case to 16 the best of your understanding? 17 A We retained Routsis because he knew the case 18 so well with the criminal part. It was a very involved 19 case. Mr. Routsis is not a civil attorney, so we retained 20 Mr. Swafford to handle the civil writing, I guess you 21 would call it. 22 Q You were served with a complaint somewhere in 23 January of 2015 in that civil suit? 24 A Yes. 25 Q And the service of that complaint actually</p>	<p style="text-align: right;">Page 21</p> <p>1 initiated the civil suit; correct? 2 A Yes. 3 Q And then -- so your complaint became a 4 counterclaim? 5 A Yes. 6 Q And I'm going to show you a document that is 7 part of Exhibit 1. This is for -- the exhibits get 8 confusing. 9 The document that I'm showing you is an 10 Exhibit 2 to the Complaint that was filed in this matter. 11 Do you recognize that document? 12 A Yes. 13 Q And is that the answer and counterclaim that 14 Mr. Swafford prepared on your behalf? 15 A Yes. 16 CHAIRMAN HAHN: For clarity of our record 17 today, that will be Exhibit 2 sub-tabbed as part of the 18 State Bar's Exhibit No. 1. And this would be indicated on 19 Page 14 at the very bottom of the document. 20 MS. FLOCCHINI: Yes. Thank you. That's a 21 good reference point. It is 14 through 25 of the hearing 22 packet. 23 BY MS. FLOCCHINI: 24 Q Did you pay Mr. Swafford for the work that he 25 performed?</p>

<p style="text-align: right;">Page 22</p> <p>1 A Yes.</p> <p>2 Q Do you remember how much you paid him</p> <p>3 initially?</p> <p>4 A I'd have to look at the check. I think maybe</p> <p>5 seven, five or 7,000.</p> <p>6 Q I'm going to show you a document that is</p> <p>7 marked as Exhibit 3 to the complaint in the matter. It is</p> <p>8 identified by Pages 26 through 28 of the hearing packet.</p> <p>9 Do you recognize that document?</p> <p>10 A Yes.</p> <p>11 Q Can you read the title of it for us, please.</p> <p>12 A Attorney Client Fee Agreement.</p> <p>13 Q Did you electronically sign that document?</p> <p>14 A Yes.</p> <p>15 Q This is a fee agreement that you signed with</p> <p>16 Mr. Swafford?</p> <p>17 A Yes.</p> <p>18 Q After the answer and counterclaim was filed in</p> <p>19 February of 2015, did you personally have any</p> <p>20 communication with Mr. Swafford?</p> <p>21 A No.</p> <p>22 Q Did you personally attempt to communicate with</p> <p>23 Mr. Swafford thereafter?</p> <p>24 A No.</p> <p>25 Q Was all of the communication or any attempts</p>	<p style="text-align: right;">Page 23</p> <p>1 to communicate with Mr. Swafford thereafter done by you?</p> <p>2 A Yes.</p> <p>3 Q What is the current status of your civil</p> <p>4 litigation?</p> <p>5 A I don't know exactly the terms. They filed to</p> <p>6 be released through the title restraint.</p> <p>7 Q Did they file a motion for summary judgment?</p> <p>8 A Yes.</p> <p>9 Q Is Mr. Routsis still your attorney in that</p> <p>10 case?</p> <p>11 A Yes.</p> <p>12 Q And you retained another attorney to help</p> <p>13 represent you; correct?</p> <p>14 A Yes. Lynn Pierce.</p> <p>15 Q And have you paid Miss Pierce for her</p> <p>16 services?</p> <p>17 A Yes.</p> <p>18 MS. FLOCCHINI: I think those are all the</p> <p>19 questions I have for you. Mr. Swafford may have questions</p> <p>20 for you.</p> <p>21 MR. SWAFFORD: I don't.</p> <p>22 MS. FLOCCHINI: And the panel may have</p> <p>23 questions for you.</p> <p>24 CHAIRMAN HAHN: Mr. Swafford, you're</p> <p>25 declining, you have no questions of the witness?</p>
<p style="text-align: right;">Page 24</p> <p>1 MR. SWAFFORD: No.</p> <p>2 CHAIRMAN HAHN: Let me start to my left. Any</p> <p>3 questions from members of the panel?</p> <p>4 MR. STOVAL: With respect to the fee agreement</p> <p>5 that you signed, is that the complete fee agreement or are</p> <p>6 there pages missing?</p> <p>7 THE WITNESS: It is complete.</p> <p>8 MR. STOVAL: The reason I ask is that it looks</p> <p>9 like -- it doesn't seem like it flows from one page to the</p> <p>10 next. If you look at the first page, and then there's the</p> <p>11 last page, and I don't see, I don't see anything -- in my</p> <p>12 book it's 27, it goes from 27 to 28, only shows two pages.</p> <p>13 Is there another page I'm missing?</p> <p>14 THE WITNESS: Not that I remember.</p> <p>15 MS. FLOCCHINI: If I may. I identified Page</p> <p>16 26 because that was the page that had the exhibit number</p> <p>17 on it. And all I have is two pages in our current packet.</p> <p>18 We're confirming that it wasn't a copier error</p> <p>19 that resulted in a page being missing.</p> <p>20 MR. STOVAL: That's fine.</p> <p>21 You were going to pay Mr. Swafford a</p> <p>22 contingency fee in addition to the hourly fee?</p> <p>23 THE WITNESS: Yes.</p> <p>24 MR. STOVAL: What was the amount of that</p> <p>25 contingency fee, sir?</p>	<p style="text-align: right;">Page 25</p> <p>1 THE WITNESS: I believe 33 percent.</p> <p>2 MR. STOVAL: The fee agreement that you looked</p> <p>3 at that's in front of you, how many pages does that</p> <p>4 consist of?</p> <p>5 THE WITNESS: Two.</p> <p>6 MR. STOVAL: Thank you. That's all.</p> <p>7 MR. MEADE: I don't have any questions. I</p> <p>8 just agree that it doesn't flow right.</p> <p>9 CHAIRMAN HAHN: Did you have a page -- did you</p> <p>10 have any questions of Mr. Spencer with regard to his</p> <p>11 testimony?</p> <p>12 MR. MEADE: No, I do not.</p> <p>13 CHAIRMAN HAHN: Mr. Spencer, I have a few</p> <p>14 questions, if I may.</p> <p>15 It appears from the exhibits that we have that</p> <p>16 you or your spouse directed a check, and I'm referring to</p> <p>17 Exhibit 12 of the State Bar's packet. It appears that</p> <p>18 there is a check 6146 to William Routsis in the amount of</p> <p>19 \$13,900. Does that sound about right?</p> <p>20 THE WITNESS: Yes.</p> <p>21 CHAIRMAN HAHN: And that was dated February</p> <p>22 13th. There appears to be a second check that was issued</p> <p>23 to William Swafford as opposed to William Routsis. A</p> <p>24 second check, that's number 61, appears to be 66, for</p> <p>25 \$18,050. And again, that was to William Swafford. Does</p>

<p style="text-align: right;">Page 26</p> <p>1 that sound right?</p> <p>2 THE WITNESS: Yes.</p> <p>3 CHAIRMAN HAHN: Then we were presented today,</p> <p>4 I believe it's with Exhibit 3, a check from William</p> <p>5 Routsis to William Swafford for \$7,000. Does that sound</p> <p>6 right?</p> <p>7 THE WITNESS: Yes.</p> <p>8 CHAIRMAN HAHN: Then I have one other check,</p> <p>9 and I just want to make sure I have all my information</p> <p>10 correct. I believe there was one additional check, and I</p> <p>11 just want to make sure. It appears to be Exhibit 1 of the</p> <p>12 State's packet which is also identified as Exhibit 1. So</p> <p>13 this would be sub-Exhibit 1 identified as Page 12. This</p> <p>14 is a \$10,000 check. And that was written, it appears, by</p> <p>15 Miss Spencer from a joint account that you have to William</p> <p>16 Swafford for \$10,000. Does that sound right?</p> <p>17 THE WITNESS: Yes.</p> <p>18 CHAIRMAN HAHN: So there's a total of four</p> <p>19 checks involved?</p> <p>20 THE WITNESS: Yes.</p> <p>21 CHAIRMAN HAHN: Any other checks that we're</p> <p>22 missing?</p> <p>23 THE WITNESS: I don't think so.</p> <p>24 CHAIRMAN HAHN: Did that provoke any other</p> <p>25 questions from the panel members?</p>	<p style="text-align: right;">Page 27</p> <p>1 MR. STOVAL: Not from me. Thank you.</p> <p>2 CHAIRMAN HAHN: Ms. Flocchini.</p> <p>3 MS. FLOCCHINI: I have no further questions</p> <p>4 for Mr. Spencer.</p> <p>5 CHAIRMAN HAHN: Again, no questions,</p> <p>6 Mr. Swafford?</p> <p>7 MR. SWAFFORD: Give me a second to add the</p> <p>8 numbers up.</p> <p>9 CHAIRMAN HAHN: Of course.</p> <p>10 MR. SWAFFORD: No, no questions.</p> <p>11 CHAIRMAN HAHN: You can stand down. Thank you</p> <p>12 for your time.</p> <p>13 Ms. Flocchini.</p> <p>14 MS. FLOCCHINI: The State Bar will call</p> <p>15 Marilyn Spencer to testify, please.</p> <p>16 (The oath was administered to the witness.)</p> <p>17 CHAIRMAN HAHN: Have a seat. Good morning.</p> <p>18 Ms. Flocchini, your witness.</p> <p>19 MS. FLOCCHINI: Thank you.</p> <p>20 MARILYN SPENCER</p> <p>21 called as a witness in said case,</p> <p>22 having been first duly sworn, was</p> <p>23 examined and testified as follows:</p> <p>24 DIRECT EXAMINATION</p> <p>25 BY MS. FLOCCHINI:</p>
<p style="text-align: right;">Page 28</p> <p>1 Q Mrs. Spencer, thank you for coming here today,</p> <p>2 for your time. Our chair, Chair Hahn, reviewed the checks</p> <p>3 with Mr. Spencer, and you specifically signed the checks</p> <p>4 so I want to go over those with you.</p> <p>5 If I may, I'm going to show you what's marked</p> <p>6 as Hearing Exhibit 1 as Pages 12, 31 and 32. Look at</p> <p>7 those.</p> <p>8 A Okay.</p> <p>9 Q Let's look at Page 12. That's a check for</p> <p>10 \$10,000; correct?</p> <p>11 A Yes.</p> <p>12 Q Made out to whom?</p> <p>13 A William Swafford.</p> <p>14 Q And did you sign that check?</p> <p>15 A Yes, I did.</p> <p>16 Q And was that check for payment for the</p> <p>17 representation in the civil lawsuit?</p> <p>18 A Yes.</p> <p>19 Q If you will look at Page 31, please. To whom</p> <p>20 is that check made out to?</p> <p>21 A Mr. Swafford.</p> <p>22 Q Is that for \$18,500?</p> <p>23 A 18,050.</p> <p>24 Q Thank you. 18,050. Did you sign the check?</p> <p>25 A Yes, I did.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Was it payment for representation related to</p> <p>2 the civil lawsuit?</p> <p>3 A Yes.</p> <p>4 Q If you can turn that page over and look at</p> <p>5 Page 32. Again, is that a check that you prepared?</p> <p>6 A 32 or 30?</p> <p>7 Q I apologize. 30.</p> <p>8 A Okay. Yes.</p> <p>9 Q To whom is it made out?</p> <p>10 A William Routsis.</p> <p>11 Q For how much?</p> <p>12 A \$13,900.</p> <p>13 Q Could you tell us what's in the memo, please.</p> <p>14 A 6950 to William R. and 6950 to Swafford.</p> <p>15 Q Was this for payment related to representation</p> <p>16 in the civil lawsuit?</p> <p>17 A Yes.</p> <p>18 Q Was it your understanding that these payments</p> <p>19 were made in addition to any contingency fee that may be</p> <p>20 paid as a result of an award of a civil lawsuit?</p> <p>21 A Yes.</p> <p>22 Q Were you the person, the primary contact</p> <p>23 person between you and Mr. Swafford with respect to the</p> <p>24 lawsuit for the lawyers?</p> <p>25 A Yes, I was.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q That was an awkward question, but I think we 2 got where I was going with that. 3 As often happens when you have two people 4 working together, you divide and conquer your duties; 5 right? 6 A Uh-huh. 7 Q And you were the one who communicated with the 8 attorney about the preparation of the complaints? 9 A Yes. 10 Q And about preparation of a, what then became a 11 counterclaim? 12 A Yes. 13 Q And about preparation of an amended 14 counterclaim? 15 A Yes. 16 Q Did you communicate with Mr. Swafford 17 directly? 18 A Yes. 19 Q Were there occasions when you contacted 20 Mr. Swafford and he replied to you? 21 A Yes. 22 Q We got a grievance from you because that 23 stopped; right? 24 A Yes. 25 Q So about when did Mr. Swafford stop</p>	<p style="text-align: right;">Page 31</p> <p>1 communicating with you? 2 A I would say in the spring, early summer of 3 2015. I need to refer to my emails, but I think that's 4 when it was. 5 Q So the counterclaim was filed in February of 6 2015, and thereafter you started working with Mr. Routsis 7 and Mr. Swafford on an amended counterclaim; correct? 8 A Yes. My husband's counterclaim, yes. 9 Q Yes? 10 A Okay. Yes. 11 Q And the complaint identifies that you emailed 12 Mr. Swafford on July 6th and did not receive a response; 13 is that accurate? 14 A Probably, yes. 15 Q Was there a time at which you and your husband 16 became frustrated with Mr. Swafford's failure to respond, 17 and you decided to go with a different attorney? 18 A Yes. After several months of no response we 19 decided to file a complaint and spoke with Mr. Routsis 20 about trying to get somebody else to help us. 21 Q The complaint identifies six different 22 occasions between July 6th and September 7th where you 23 emailed Mr. Swafford and didn't get a response. 24 A Yes. 25 Q Do you have any dispute with that</p>
<p style="text-align: right;">Page 32</p> <p>1 representation? 2 A No. There were emails and phone calls. 3 Q And did you ever receive a return phone call 4 from Mr. Swafford? 5 A No. 6 Q Were you able to leave voice mails for 7 Mr. Swafford? 8 A Up to a point. I don't know the date, but his 9 voice mail became full so I would just call. 10 Q Do you know approximately when you retained 11 the second attorney and asked for Mr. Swafford to resign? 12 A I don't recall the date because it went on for 13 several months. We were told that we had to go through 14 certain steps for Miss Pierce to be able to come on board. 15 She had to file some paperwork, send some things to 16 Mr. Swafford. I'm not sure exactly when that was. 17 Q Was it in the fall of 2015 that this was 18 occurring? 19 A Yes, it was. 20 Q Why was an amended counterclaim prepared? 21 A Because certain people were not named in the 22 countersuit that were supposed to be named. And we also 23 found evidence of the involvement of another set of 24 people. 25 Q So there were additional people that needed to</p>	<p style="text-align: right;">Page 33</p> <p>1 be named -- 2 A Yes. 3 Q -- in the counterclaim? 4 A Uh-huh. 5 Q The first set of people that were not properly 6 named, were they known to you prior to the counterclaim 7 being filed in February of 2015? 8 A Yes. 9 Q And had you told Mr. Swafford about those 10 people? 11 A I'm sorry. Would you -- I'm sorry. 12 Q Sure. You identified for us two reasons why 13 an amended counterclaim was prepared, why that was 14 started? 15 A Yes. 16 Q The first was that some people weren't named 17 in the first counterclaim? 18 A Yes. 19 Q And that there was an additional set of people 20 that you found out were involved and needed to be added 21 in? 22 A Yes. 23 Q So did you tell Mr. Swafford about the first 24 set of people that were not named? 25 A Yes. I went over the initial paperwork that</p>

<p style="text-align: right;">Page 34</p> <p>1 he sent to me and made corrections and sent that back.</p> <p>2 Q And those corrections were on the initial</p> <p>3 counterclaim?</p> <p>4 A Yes.</p> <p>5 Q Before that was filed in February?</p> <p>6 A Yes.</p> <p>7 Q So you communicated to Mr. Swafford there were</p> <p>8 things missing before February?</p> <p>9 A Yes.</p> <p>10 Q And it wasn't corrected?</p> <p>11 A Yes.</p> <p>12 Q And an inaccurate counterclaim was filed?</p> <p>13 A Yes.</p> <p>14 Q So then the process started whereby you needed</p> <p>15 to amend the counterclaim?</p> <p>16 A Yes.</p> <p>17 Q And you communicated that to Mr. Swafford?</p> <p>18 A Yes.</p> <p>19 Q Did he respond to you at that time, in the</p> <p>20 early spring of 2015?</p> <p>21 A Yes.</p> <p>22 Q Do you know when the amended counterclaim was</p> <p>23 filed?</p> <p>24 A I'm sorry, I don't recall.</p> <p>25 Q Was it the fall of 2015?</p>	<p style="text-align: right;">Page 35</p> <p>1 A The one from Mr. Swafford you mean or the</p> <p>2 one --</p> <p>3 Q The second counterclaim that fixed everything.</p> <p>4 A That sounds about right.</p> <p>5 Q Did Miss Pierce file that?</p> <p>6 A You know, there's some discrepancy as to one</p> <p>7 of the filings, if it was correctly filed or not. So I'm</p> <p>8 not sure. I'm sorry.</p> <p>9 Q That's fine. That's okay. I am asking for</p> <p>10 your memory. I appreciate that. We want to present the</p> <p>11 panel with the client's perspective, and that's why you</p> <p>12 are here. We also have a docket, so it's fine.</p> <p>13 A Okay.</p> <p>14 Q No worries. Have you received a refund of any</p> <p>15 money from Mr. Spencer?</p> <p>16 A Mr. Swafford?</p> <p>17 Q Yes. Mr. Spencer gives you money all the</p> <p>18 time. Thank you.</p> <p>19 A Not as much as I would like.</p> <p>20 Q Have you received a refund of any money from</p> <p>21 Mr. Swafford?</p> <p>22 A No.</p> <p>23 Q When Mr. Swafford was retained in the fall of</p> <p>24 2014 did you start working with him on the complaint at</p> <p>25 that point?</p>
<p style="text-align: right;">Page 36</p> <p>1 A Yes.</p> <p>2 Q But nothing was filed until February of 2015</p> <p>3 when it became a counterclaim?</p> <p>4 A Correct.</p> <p>5 MS. FLOCCHINI: I think those are all the</p> <p>6 questions that I have for you right now. Thank you. As</p> <p>7 with Mr. Spencer, Mr. Swafford may have questions or the</p> <p>8 panel members may have questions.</p> <p>9 CHAIRMAN HAHN: Mr. Swafford, your witness,</p> <p>10 please.</p> <p>11 MR. SWAFFORD: Should I sit or stand?</p> <p>12 CHAIRMAN HAHN: Your choice.</p> <p>13 MR. SWAFFORD: I'll sit.</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. SWAFFORD:</p> <p>16 Q After the initial complaint was filed and we</p> <p>17 spoke about amending it, did I send you a copy of an</p> <p>18 amended counterclaim that I worked on?</p> <p>19 A Yes, you did.</p> <p>20 Q And you had some other corrections you wanted</p> <p>21 me to make with that; correct?</p> <p>22 A Yes.</p> <p>23 Q Did you speak with Mr. Routsis at all about</p> <p>24 those, the amended counterclaim that I did?</p> <p>25 A I think I did, yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Do you remember seeing a -- in that amended</p> <p>2 counterclaim I added additional parties that were being</p> <p>3 sued; correct?</p> <p>4 A Yes.</p> <p>5 Q Do you remember seeing some stipulations that</p> <p>6 I prepared to those individuals to amend the complaint?</p> <p>7 A What do you mean by stipulation?</p> <p>8 Q The additional plaintiffs that we added to our</p> <p>9 counterclaims, do you remember seeing some stipulations</p> <p>10 that I prepared allowing that we were seeking a leave to</p> <p>11 amend the complaint, and I was asking if they would sign a</p> <p>12 stipulation to do so. Do you remember seeing those?</p> <p>13 I was essentially asking them if they would</p> <p>14 agree to let us amend the counterclaim. Do you remember</p> <p>15 seeing that?</p> <p>16 A To the other attorneys for --</p> <p>17 Q No, to the other parties that we were adding</p> <p>18 to the lawsuit, did Mr. Routsis show you those?</p> <p>19 A I don't remember. I'm sorry.</p> <p>20 Q That's fine. What about that motion, a motion</p> <p>21 for leave to amend the new counterclaim. Do you remember</p> <p>22 seeing that?</p> <p>23 A Sounds familiar.</p> <p>24 Q Okay. It's okay if you don't clearly</p> <p>25 remember. But you do remember -- when I added</p>

<p style="text-align: right;">Page 38</p> <p>1 additional -- when we added additional parties, we also</p> <p>2 added additional claims. Do you remember that?</p> <p>3 A Yes.</p> <p>4 Q Causes of action, some causes of action?</p> <p>5 A Yes.</p> <p>6 MR. SWAFFORD: That's all the question I have.</p> <p>7 CHAIRMAN HAHN: I have a few more questions.</p> <p>8 Any questions from members of the panel?</p> <p>9 MR. STOVAL: No questions.</p> <p>10 MR. MEADE: I have one question. On Exhibit</p> <p>11 31, Page 31, what does it say? It looks like you're</p> <p>12 replacing a check. Is there another check that's missing?</p> <p>13 THE WITNESS: No. I had written the previous</p> <p>14 check for the incorrect amount so it was voided. They</p> <p>15 were never cashed or deposited.</p> <p>16 MR. MEADE: That was what my concern was, we</p> <p>17 were missing another 18,000 or something like that?</p> <p>18 THE WITNESS: No.</p> <p>19 MR. MEADE: That was my only question.</p> <p>20 CHAIRMAN HAHN: I have a couple questions,</p> <p>21 Miss Spencer. I just want to make sure. If I understand</p> <p>22 the testimony in the exhibits, you wrote Mr. Swafford two</p> <p>23 checks?</p> <p>24 THE WITNESS: Correct.</p> <p>25 CHAIRMAN HAHN: One for \$10,000, which was</p>	<p style="text-align: right;">Page 39</p> <p>1 check number 428 on or about August 17 of 2014. Then you</p> <p>2 wrote him a separate check again from your joint account</p> <p>3 with Mr. Spencer to Mr. Swafford on or about March 17th,</p> <p>4 2015, check number 6166 in the amount of \$18,050. Does</p> <p>5 that sound right?</p> <p>6 THE WITNESS: Yes. That was actually from my</p> <p>7 account.</p> <p>8 CHAIRMAN HAHN: Forgive me. So the total</p> <p>9 money that went from the Spencer household to Mr. Swafford</p> <p>10 would have been \$28,050. Does that sound right? 10,000</p> <p>11 plus 18,050.</p> <p>12 THE WITNESS: Those two directly, yes. And</p> <p>13 then the one that I wrote in February I had only brought</p> <p>14 one check with me, and that's why it was written to</p> <p>15 Mr. Routsis and split.</p> <p>16 CHAIRMAN HAHN: That was check number 6146</p> <p>17 written on or about February 13th, 2015, in the amount of</p> <p>18 \$13,900?</p> <p>19 THE WITNESS: Yes.</p> <p>20 CHAIRMAN HAHN: And that was given to</p> <p>21 Mr. Routsis?</p> <p>22 THE WITNESS: Yes.</p> <p>23 CHAIRMAN HAHN: But your understanding, if I</p> <p>24 understand your testimony, that was going to be split</p> <p>25 between Mr. Routsis and Mr. Swafford?</p>
<p style="text-align: right;">Page 40</p> <p>1 THE WITNESS: Yes.</p> <p>2 CHAIRMAN HAHN: That's all the questions I</p> <p>3 have. Did my questions provoke any more questions from</p> <p>4 the panel?</p> <p>5 MR. STOVAL: No.</p> <p>6 MR. MEADE: No.</p> <p>7 CHAIRMAN HAHN: Miss Flocchini, any questions</p> <p>8 based on what I asked?</p> <p>9 MS. FLOCCHINI: No, thank you.</p> <p>10 CHAIRMAN HAHN: Mr. Swafford, anything based</p> <p>11 on what I asked?</p> <p>12 MR. SWAFFORD: No.</p> <p>13 CHAIRMAN HAHN: Any other questions of the</p> <p>14 witness?</p> <p>15 MS. FLOCCHINI: None from me.</p> <p>16 CHAIRMAN HAHN: You may stand down</p> <p>17 Miss Spencer. Thank you for your testimony.</p> <p>18 MS. FLOCCHINI: The State Bar would like to</p> <p>19 ask Mr. Swafford a few questions. Other than that, we</p> <p>20 have no further questions. It's simply affirming receipt</p> <p>21 of the grievance, conversation going toward the violation</p> <p>22 of Rule of Professional Conduct 8.1.</p> <p>23 CHAIRMAN HAHN: Very well. I didn't mean to</p> <p>24 cut you off.</p> <p>25 MS. FLOCCHINI: I want to offer to the Chair</p>	<p style="text-align: right;">Page 41</p> <p>1 that I believe Mr. Swafford would like to make a</p> <p>2 statement. I can ask him questions afterward or ahead,</p> <p>3 however you want to do it.</p> <p>4 CHAIRMAN HAHN: This is part of your</p> <p>5 presentation; am I correct?</p> <p>6 MS. FLOCCHINI: Yes.</p> <p>7 CHAIRMAN HAHN: Mr. Swafford, would you be so</p> <p>8 kind. We'll let you answer the questions for the purposes</p> <p>9 of the State's presentation. And I would like to keep</p> <p>10 separate your statement that you would like to make on</p> <p>11 behalf of yourself. Is that okay?</p> <p>12 MR. SWAFFORD: Yes.</p> <p>13 CHAIRMAN HAHN: Mr. Swafford, would you please</p> <p>14 be so kind to stand and be sworn.</p> <p>15 (The oath was administered to the witness.)</p> <p>16 CHAIRMAN HAHN: Miss Flocchini, may he remain</p> <p>17 seated where he is?</p> <p>18 MS. FLOCCHINI: Yes, that's fine.</p> <p>19 CHAIRMAN HAHN: Your witness, Miss Flocchini.</p> <p>20 MS. FLOCCHINI: Thank you.</p> <p>21 WILLIAM SWAFFORD</p> <p>22 called as a witness in said case,</p> <p>23 having been first duly sworn, was</p> <p>24 examined and testified as follows:</p> <p>25 DIRECT EXAMINATION</p>

<p style="text-align: right;">Page 42</p> <p>1 BY MS. FLOCCHINI:</p> <p>2 Q Mr. Swafford, did you receive in September of</p> <p>3 2015 notification of the grievance from the Spencers?</p> <p>4 A In September -- I want be a hundred percent</p> <p>5 honest. The first time I received notification of this is</p> <p>6 when I was personally served at my home. That's when I</p> <p>7 got everything.</p> <p>8 I know, I'm aware by reading this that I was</p> <p>9 sent an email, and I'll explain why I never read those. I</p> <p>10 never read my mail during that time for some reason I'll</p> <p>11 explain.</p> <p>12 When I was served in my home is the first</p> <p>13 time. But I received notice three weeks ago, about.</p> <p>14 Q Do you remember coming in to talk with me in</p> <p>15 April of 2016?</p> <p>16 A Yes.</p> <p>17 Q Did we discuss the complaint regarding the</p> <p>18 representation of the Spencers?</p> <p>19 A Briefly. We were discussing the Pardo case,</p> <p>20 and when we got done talking about Pardo we discussed it a</p> <p>21 little bit. I didn't know at that time the exact claims</p> <p>22 against me, what they were. I knew probably what they</p> <p>23 were based on what was going on. And we talked about</p> <p>24 how -- I don't know. I was asking you some questions</p> <p>25 about the other case and just about my status in general.</p>	<p style="text-align: right;">Page 43</p> <p>1 And we did discuss it. I was aware that it</p> <p>2 existed and that I was telling you I was going to want to</p> <p>3 respond to that one because I didn't respond to the Pardo</p> <p>4 case. And I ended up not responding to this one either.</p> <p>5 But at the time I wanted to.</p> <p>6 Q So we did discuss it in April of 2016, and you</p> <p>7 intended --</p> <p>8 A Yes.</p> <p>9 Q -- give us a response, but we didn't receive</p> <p>10 one; correct?</p> <p>11 A Correct.</p> <p>12 Q Did you send one?</p> <p>13 A No.</p> <p>14 Q Did you send an answer to the complaint?</p> <p>15 A No, ma'am.</p> <p>16 CHAIRMAN HAHN: We're talking about the</p> <p>17 Spencer complaint?</p> <p>18 MS. FLOCCHINI: Yes. Thank you.</p> <p>19 BY MS. FLOCCHINI:</p> <p>20 Q There was a complaint filed on July 29th,</p> <p>21 2016, and it was served at the address of 21385 Saddleback</p> <p>22 Road, Reno, Nevada 89521. Is that your residence?</p> <p>23 A Yep.</p> <p>24 Q So mail that was sent to you at that address</p> <p>25 would have made it to you?</p>
<p style="text-align: right;">Page 44</p> <p>1 A It's kind of weird. That residence is in the</p> <p>2 Virginia City Highlands. I don't know if you are familiar</p> <p>3 with that, driving to Virginia City Highlands there's a</p> <p>4 mailbox. So the people that live in the Virginia City</p> <p>5 Highlands send something to their home, it doesn't</p> <p>6 actually get delivered to the house, it gets delivered to</p> <p>7 the mailbox in the front. So actually I didn't receive</p> <p>8 it. I didn't.</p> <p>9 Q But this is the address --</p> <p>10 A Yes.</p> <p>11 Q -- to which mail would be sent?</p> <p>12 A Yes, it is.</p> <p>13 Q And you received other mail that goes to this</p> <p>14 address?</p> <p>15 A No. That's the address that I have on file</p> <p>16 with the State Bar, and I was receiving mail there for the</p> <p>17 purpose -- I'll explain later -- for the last couple</p> <p>18 months. I don't know. I don't know, to tell you the</p> <p>19 truth, if it's there or not.</p> <p>20 Q So this is the address --</p> <p>21 A That's the address with the Bar, yes.</p> <p>22 Q 2135 Saddleback Road is the address that you</p> <p>23 have identified to the State Bar --</p> <p>24 A Yes.</p> <p>25 Q -- pursuant to Supreme Court Rule 79?</p>	<p style="text-align: right;">Page 45</p> <p>1 A Correct.</p> <p>2 Q And you received by personal service the</p> <p>3 notice of hearing for today with the request for entry of</p> <p>4 default with the complaint attached; correct?</p> <p>5 A Yes, I did.</p> <p>6 Q You didn't contact the State Bar between</p> <p>7 September 12th when you received the papers and today;</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 MS. FLOCCHINI: Those are all the questions I</p> <p>11 have. Thank you.</p> <p>12 CHAIRMAN HAHN: Very well. Members of the</p> <p>13 panel, please.</p> <p>14 MR. STOVAL: No.</p> <p>15 MR. MEADE: Nothing.</p> <p>16 CHAIRMAN HAHN: I have a couple of questions</p> <p>17 if I may, Mr. Swafford.</p> <p>18 THE WITNESS: Yes.</p> <p>19 CHAIRMAN HAHN: The address on Saddleback.</p> <p>20 THE WITNESS: Yes.</p> <p>21 CHAIRMAN HAHN: How long had that been -- how</p> <p>22 long have you had that on file with the State Bar?</p> <p>23 THE WITNESS: I think about a year. Well, I</p> <p>24 was living in Chicago for about four years until recently,</p> <p>25 maybe five. And I used that address, it's a home office I</p>

<p style="text-align: right;">Page 46</p> <p>1 have, and that might have been the one I had on file. 2 I've had a couple addresses on file, but I think at least 3 a year, maybe two years that address. 4 CHAIRMAN HAHN: When did you start that 5 address, what's your best estimate? 6 THE WITNESS: I want to say two years ago, but 7 it could have been -- I think about two years ago. 8 CHAIRMAN HAHN: So if you had the Saddleback 9 address on file with the Bar about two years ago. 10 THE WITNESS: Yes. 11 CHAIRMAN HAHN: And you had it on file for 12 about a year, that means you stopped having it on file 13 with the Bar about a year ago? 14 THE WITNESS: No. It's still on file. I was 15 still receiving communications from the Bar when I was in 16 Chicago. They were sending my stuff to the address in 17 Chicago. I don't know if I had two addresses on file. 18 Honestly, I'm -- I'll explain why I'm a little murky with 19 that. I might only have the Chicago address on file. I'm 20 not a hundred percent sure. 21 CHAIRMAN HAHN: Okay. I just want to make 22 sure I understand where the questions lie, and what the 23 answers are. 24 THE WITNESS: Yes. 25 CHAIRMAN HAHN: So when you said you were</p>	<p style="text-align: right;">Page 47</p> <p>1 receiving stuff from the Bar in Chicago -- 2 THE WITNESS: Yes. 3 CHAIRMAN HAHN: -- do you mean the Pardo 4 material? Do you mean the Spencer material? Or do you 5 mean both? 6 THE WITNESS: I never received any Spencer 7 material in Chicago. I know it was sent there, because 8 the attorney I had law office space with there, these 9 documents were sent to the Chicago office, and he took 10 pictures of them and emailed them to me so I would know 11 about this hearing today. So I know they are still going 12 there too. 13 This is all my fault. I'll give a statement 14 on this. I was keeping my address correctly, but these 15 are sent -- the Spencer material I never got when I was in 16 Chicago, but I did get the Pardo material there. I moved 17 back here from Chicago about last November. 18 CHAIRMAN HAHN: You moved from Chicago -- 19 THE WITNESS: Chicago back to Reno. I'll 20 explain that. So I haven't been in Chicago since last 21 November. I've been here the last 11 months permanently. 22 CHAIRMAN HAHN: So the Saddleback address that 23 you have there, the Virginia Highland area -- 24 THE WITNESS: Yes. It's actually Reno, 25 Nevada, but the ZIP code is 89512 Reno, Nevada. But it's</p>
<p style="text-align: right;">Page 48</p> <p>1 Virginia City Highlands is where it is. It's kind of 2 weird. 3 CHAIRMAN HAHN: If I understood your response 4 to the State Bar, you were getting materials there, but 5 you weren't checking to see if materials had arrived? 6 THE WITNESS: Yeah. 7 CHAIRMAN HAHN: So when you were getting it, 8 you weren't opening it, but it had been delivered? 9 THE WITNESS: I don't know if I was getting 10 it. I had an uncle that was getting that stuff and 11 putting it in the box for me, and it's probably in that 12 box. 13 CHAIRMAN HAHN: So if I understand your 14 testimony you had a family relative -- 15 THE WITNESS: Yes. 16 CHAIRMAN HAHN: -- here in town who was -- 17 THE WITNESS: Picking that up. 18 CHAIRMAN HAHN: -- accessing the mail drop you 19 have in the Virginia City Highlands at Saddleback? 20 THE WITNESS: Exactly. 21 CHAIRMAN HAHN: How long was he -- 22 THE WITNESS: Probably for about the last 23 year. 24 CHAIRMAN HAHN: The entire time that you have 25 been here in Reno when you moved back?</p>	<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Yeah. 2 CHAIRMAN HAHN: Did my questions provoke 3 anything else from the panel members? 4 MR. MEADE: No. 5 CHAIRMAN HAHN: Miss Flocchini? 6 MS. FLOCCHINI: Yes, I have just a few more 7 questions. 8 CHAIRMAN HAHN: Sure. 9 REDIRECT EXAMINATION 10 BY MS. FLOCCHINI: 11 Q What is your email address, Mr. Swafford? 12 A Swaffordw@gmail.com. 13 MS. FLOCCHINI: I would like to enter as 14 Exhibit 5 an email from Mr. Swafford at 15 swaffordw@gmail.com to Miss Peters. I'm going to show it 16 to Mr. Swafford. 17 I'd like to mark it as Exhibit 6 and ask that 18 it be -- 19 THE REPORTER: It should be Exhibit 5. 20 CHAIRMAN HAHN: I show we had, Exhibit 1 was 21 the packet, Exhibit 2 was the Affidavit of Service, 22 Exhibit 3 was the check for \$7,000, Exhibit 4 was an 23 Affidavit from Miss Peters along with an Order from the 24 supreme court. I'm not aware of an Exhibit 5. I presume 25 this is Exhibit 5. Am I correct?</p>

<p style="text-align: right;">Page 50</p> <p>1 MS. FLOCCHINI: Yes. Thank you.</p> <p>2 CHAIRMAN HAHN: Tell me when you have had a</p> <p>3 chance to finish reading that.</p> <p>4 MR. SWAFFORD: I will. I remember that.</p> <p>5 CHAIRMAN HAHN: Mr. Swafford, have you had a</p> <p>6 chance to look at that document?</p> <p>7 MR. SWAFFORD: Yes. I just did.</p> <p>8 CHAIRMAN HAHN: Have you seen it before?</p> <p>9 MR. SWAFFORD: Yes. It's an email I wrote.</p> <p>10 CHAIRMAN HAHN: Do you have any objection to</p> <p>11 it being admitted?</p> <p>12 MR. SWAFFORD: No.</p> <p>13 CHAIRMAN HAHN: Very well. Exhibit 5 is</p> <p>14 admitted.</p> <p>15 (Exhibit 5 marked for identification</p> <p>16 and admitted into evidence.)</p> <p>17 BY MS. FLOCCHINI:</p> <p>18 Q Mr. Swafford, we have discussed this, but just</p> <p>19 for the record, is Exhibit 5 an email that you wrote?</p> <p>20 A Yes, it is.</p> <p>21 Q Did you send it to Miss Peters at the State</p> <p>22 Bar?</p> <p>23 A Yes.</p> <p>24 Q Is it dated June 4th, 2016?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q In that did you identify that you had received</p> <p>2 a grievance related to the Spencers?</p> <p>3 A What I was trying to do, I knew -- we spoke</p> <p>4 about it in April, and I knew that there was one that I</p> <p>5 was going to have to respond to. But honestly, I hadn't</p> <p>6 seen it until, actually looked at the Complaint itself.</p> <p>7 It's my own fault. It's negligence.</p> <p>8 Q So you were aware in June of 2016 that there</p> <p>9 was a grievance --</p> <p>10 A Yes.</p> <p>11 Q -- which you needed to respond to?</p> <p>12 A Yeah.</p> <p>13 MS. FLOCCHINI: Thank you. This is my only</p> <p>14 copy.</p> <p>15 CHAIRMAN HAHN: Well, this is Exhibit 5. For</p> <p>16 the record this is an email drawn from the email box of</p> <p>17 Laura Peters from William Swafford sent Saturday, June 4,</p> <p>18 2016, 1:32 p.m.</p> <p>19 Please continue.</p> <p>20 BY MS. FLOCCHINI:</p> <p>21 Q For clarity of the record I would like to</p> <p>22 offer two other exhibits for the panel's consideration.</p> <p>23 I'm showing the one I would like to offer as</p> <p>24 Exhibit 6 to Mr. Swafford.</p> <p>25 A Is this any different?</p>
<p style="text-align: right;">Page 52</p> <p>1 Q The second page.</p> <p>2 A It's different than the one that was in here?</p> <p>3 Q It is.</p> <p>4 A Let me look it over.</p> <p>5 CHAIRMAN HAHN: Take your time, Mr. Swafford.</p> <p>6 THE WITNESS: Where was that in the initial</p> <p>7 packet?</p> <p>8 MR. STOVAL: 26, 27, that area.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 MS. FLOCCHINI: The State Bar is offering as</p> <p>11 Exhibit 6 a three-page document for Attorney Client Fee</p> <p>12 Agreement. This is the complete fee agreement with the</p> <p>13 missing second page that was otherwise attached to the</p> <p>14 complaint and the hearing packet.</p> <p>15 CHAIRMAN HAHN: Mr. Swafford, have you had a</p> <p>16 chance to look at Exhibit 6?</p> <p>17 THE WITNESS: Yes.</p> <p>18 CHAIRMAN HAHN: Any objection to its</p> <p>19 admission?</p> <p>20 CHAIRMAN HAHN: No.</p> <p>21 CHAIRMAN HAHN: Exhibit 6 will be admitted.</p> <p>22 (Exhibit 6 marked for identification</p> <p>23 and admitted into evidence.)</p> <p>24 BY MS. FLOCCHINI:</p> <p>25 Q Mr. Swafford, I'm going to hand you Exhibit 6.</p>	<p style="text-align: right;">Page 53</p> <p>1 Does it identify that you were being paid a flat fee or an</p> <p>2 hourly rate?</p> <p>3 A It was supposed to be a flat fee, but it says</p> <p>4 flat fee -- it says pay Mr. Routsis the sum of \$50,000,</p> <p>5 25,000 of which will be assigned to Mr. Swafford. Then it</p> <p>6 says the initial payment for legal services will be held</p> <p>7 in trust and retained at \$250 an hour until deemed earned.</p> <p>8 CHAIRMAN HAHN: Mr. Swafford, you're very</p> <p>9 articulate, but our poor court reporter is trying to catch</p> <p>10 up.</p> <p>11 THE WITNESS: I'm sorry. Your question is, I</p> <p>12 guess I need -- it's unclear.</p> <p>13 BY MS. FLOCCHINI:</p> <p>14 Q This identifies that you would be earning the</p> <p>15 fee at an hourly rate?</p> <p>16 A Yes.</p> <p>17 Q Did you deposit the \$25,000 into an IOLTA</p> <p>18 account?</p> <p>19 A Yes.</p> <p>20 Q Did you wait until the fees were earned to</p> <p>21 distribute those to yourself?</p> <p>22 A I believe so.</p> <p>23 Q Did you prepare any invoices?</p> <p>24 A I kept track of it actually in, it's called</p> <p>25 CLIO where I kept track of a lot of hours I was doing, any</p>

<p style="text-align: right;">Page 54</p> <p>1 work. Later in the case I started keeping track on 2 another program, but I actually did keep track of most of 3 my hours. 4 You know what, those I might have put it right 5 in my business account. I don't know. At that time I 6 tried to put everything in my IOLTA account, but I have a 7 little bit of a hard time remembering that far back. This 8 is -- I'll talk about it later, the reason I can't really. 9 Q So you can't remember -- 10 A No. 11 Q -- where you deposited the check? 12 A Honestly I can't. 13 MS. FLOCCHINI: The State Bar would like to 14 offer a case history of the civil litigation that the 15 Spencers had for the panel's understanding of the 16 proceedings. It's dated July 22nd, 2016. I'll give 17 Mr. Swafford a copy to look at. 18 CHAIRMAN HAHN: Is this your proposed Exhibit 19 7? 20 MS. FLOCCHINI: Yes. 21 MR. SWAFFORD: All right. 22 MS. FLOCCHINI: You can keep that copy. We 23 offer this, the case history of the civil lawsuit, as 24 Exhibit No. 7 and ask that it be admitted. 25 CHAIRMAN HAHN: Mr. Swafford, did you have a</p>	<p style="text-align: right;">Page 55</p> <p>1 chance to look at it? 2 THE WITNESS: Yes. I have no objection. 3 CHAIRMAN HAHN: Very well. Exhibit 7 is 4 admitted. 5 (Exhibit 7 marked for identification 6 and admitted into evidence.) 7 CHAIRMAN HAHN: The record should reflect that 8 Exhibit 7 is a five-page single side what appears to be a 9 docket sheet from the Ninth Judicial District Court. Page 10 1 indicating July 22 of 2016 case history. 11 MS. FLOCCHINI: I have nothing further in our 12 case in chief. Thank you. 13 CHAIRMAN HAHN: Very well. If there's nothing 14 else from the State Bar at this time what I would like to 15 do prior to us hearing from the respondent Mr. Swafford 16 is, absent any objection from members of the panel, I 17 would like to take a ten-minute break, come on back about 18 maybe five minutes until 11:00, if that's okay, 19 Mr. Swafford. 20 MR. SWAFFORD: Yes. 21 CHAIRMAN HAHN: Then we would like to hear 22 what you have to offer on your behalf. 23 We are in recess. Off the record. 24 (Recess taken.) 25 CHAIRMAN HAHN: Back on the record in the</p>
<p style="text-align: right;">Page 56</p> <p>1 office of the Bar counsel, Case No. 15-1069 involving 2 State Bar of Nevada represented by Miss Flocchini who is 3 present involving a William Swafford who is also present 4 in pro per. It's approximately five minutes until -- 5 almost 11:00 A.M. this morning. 6 It's been brought to my attention prior to 7 proceeding with Mr. Swafford's presentation, if he 8 chooses, there's been a question concerning a late exhibit 9 offered by the Bar which is Exhibit 7 involving a 10 five-page, I believe, document sheet from the Ninth 11 Judicial District Court. 12 And so that being the case, I would invite 13 questions from the panel concerning this exhibit. And 14 again I will begin to my left. Mr. Stoval. 15 MR. STOVAL: Thank you. 16 Miss Flocchini, I'm curious about the identity 17 and the representation of the other attorneys listed in 18 the case history. As I'm reading this, it looks like 19 Mr. Moore and Mr. Brown and Mr. Pintar were representing 20 the Klementis, which I understand are the party opposites 21 or at least some of the party opposites of the Spencers. 22 But I also show Mr. Spencer as being represented by Lynn 23 Pierce and also by David Zaniel. 24 And I'm just curious, I think I've got a 25 pretty good understanding why, because as I understand it,</p>	<p style="text-align: right;">Page 57</p> <p>1 and I guess I could be wrong, but this is, the underlying 2 case is a civil matter, was a criminal matter with civil 3 implications. And they are probably claims covered by a 4 homeowner's policy for both sets of individuals, and that 5 these are known to me to be insurance defense attorneys. 6 Were the Spencers indeed represented by 7 insurance defense during this time? 8 MS. FLOCCHINI: I will tell you that I looked 9 at this and had the same impression. It looks like 10 insurance defense attorneys involved, and probably through 11 homeowner's insurance because of the nature of the claim 12 that was made. 13 And my understanding is that Mr. Zaniel and 14 his office was representing -- the Spencers are here and 15 could testify and answer questions as to Mr. Zaniel and 16 his office representing in the matter. 17 My purpose in providing the docket was just 18 for a general understanding, because our recollection, the 19 Spencers' recollections, and Mr. Swafford's recollections 20 are not as fresh about the litigation, and when the 21 litigation was initiated and so on, I thought. And the 22 purpose of this was to just give you documentary evidence 23 about the flow of that civil litigation. 24 I acknowledge it does end in July of 2016. 25 But it shows Miss Pierce coming into the case and working</p>

<p style="text-align: right;">Page 58</p> <p>1 on the case from there on out. And it's preceding when 2 Miss Pierce was involved. 3 MR. STOVAL: I would like to know when 4 Mr. Zaniel, if he was representing the Spencers, when he 5 came on board. 6 MS. FLOCCHINI: Yes. I believe that 7 Mrs. Spencer is probably the most knowledgeable on that 8 issue and can answer the question for the panel. 9 CHAIRMAN HAHN: Miss Spencer, please have a 10 seat. You've been previously sworn. 11 Miss Flocchini. 12 MARILYN SPENCER 13 having been previously sworn, testified further: 14 FURTHER EXAMINATION 15 BY MS. FLOCCHINI: 16 Q Miss Spencer, was Mr. Zaniel retained to 17 represent your husband in the civil litigation in the 18 Ninth Judicial District? 19 A For a portion of it, yes. 20 Q Who retained him? 21 A Our insurance company brought him in strictly 22 to represent him for the suit filed from Helmut Klementi 23 against my husband. He didn't do anything else but what 24 pertains to that case. He's not -- what do you call it 25 when you cross?</p>	<p style="text-align: right;">Page 59</p> <p>1 Q The counterclaim? 2 A He's doing nothing for the counterclaim. 3 Q And when did -- do you remember when 4 Mr. Zaniel came on as counsel? 5 A It was probably in the spring of 2015, 6 sometime in the spring of 2015. It was about four months 7 of dealing with the insurance company before they decided 8 to represent my husband. 9 Q Would April seem reasonable? 10 A Yes. 11 Q And is Mr. Zaniel still involved in 12 representing your husband in the civil lawsuit? 13 A Yes. 14 MS. FLOCCHINI: Any further questions? 15 MR. MEADE: I have a question. By the way I 16 understand this where it says the parties, involved 17 parties, and it has a list of all the attorneys that 18 represent that involve parties. Why doesn't it have 19 Mr. Swafford listed as an attorney for the party being 20 removed? 21 Like you've got an example, the example I have 22 here is, I guess, Joel Laub representing somebody. He was 23 removed, and it shows that he was removed. I don't see 24 where Mr. Swafford was representing the plaintiffs and was 25 removed. I'm trying to understand who filed what of these</p>
<p style="text-align: right;">Page 60</p> <p>1 documents. 2 MS. FLOCCHINI: I appreciate that. And I do 3 not know why the court removed, doesn't have Mr. Swafford 4 or Mr. Routsis for that matter, listed, because 5 Mr. Routsis made an appearance in the case and is involved 6 in the representation of Mr. Spencer in his counterclaim. 7 I know that Miss Pierce replaced Mr. Swafford. 8 That Mr. Swafford was removed from the case and Miss 9 Pierce came in. And then on the second page it identifies 10 David Zaniel as counsel for Mr. Spencer. 11 So again, frankly it's unclear to me how the 12 Ninth Judicial District Court goes about keeping a record 13 of the attorneys involved in the case. But I know that 14 that is what transpired. And we know from looking at the 15 answer and counterclaim that was filed in February 2015, 16 and Mr. Swafford was counsel of record at that time. 17 MR. MEADE: Okay. So my second question is 18 that the documents that you have circled, were those 19 documents that Mr. Swafford prepared for Miss Pierce? 20 You have an answer to a counterclaim under 21 document tracking. And then you've got a motion notice 22 of -- motion for leave to amend complaint. 23 MS. FLOCCHINI: Yes. 24 MR. MEADE: Were those prepared by Miss Pierce 25 or were they prepared by Mr. Swafford?</p>	<p style="text-align: right;">Page 61</p> <p>1 MS. FLOCCHINI: I know that the answer to the 2 counterclaim was prepared by Mr. Swafford and Mr. Routsis 3 with consultation from Mr. and Mrs. Spencer. 4 MR. MEADE: Okay. 5 MS. FLOCCHINI: The notice of motion and 6 motion for leave to amend complaint was filed in June of 7 2015. 8 MR. MEADE: Because this is confusing to me. 9 MS. FLOCCHINI: It was filed by the plaintiff. 10 And it is identified, if you follow that line across, it 11 identifies the parties as TLC001. 12 MR. MEADE: Right. 13 MS. FLOCCHINI: And on the first page, TLC001 14 is Helmut Klementi. So they filed that motion. 15 The documents are circled because they were 16 documents that we asked the court to provide. So we 17 circled those that we need more, and we asked the court to 18 send us those documents directly. The Ninth Judicial 19 District Court doesn't have the documents on-line like the 20 Second Judicial District Court so we had to specifically 21 ask for them. So we received those documents. 22 And I think I originally asked for that notice 23 of motion for leave to amend because it wasn't clear to me 24 who had filed it, and I wanted to look at it and found 25 that it was not filed by Mr. Swafford.</p>

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<p style="text-align: right;">Page 62</p> <p>1 MR. MEADE: Okay.</p> <p>2 CHAIRMAN HAHN: Any more?</p> <p>3 MR. MEADE: No. Thank you.</p> <p>4 CHAIRMAN HAHN: Mr. Stoval?</p> <p>5 MR. STOVAL: No questions.</p> <p>6 CHAIRMAN HAHN: Miss Spencer, just a few. I</p> <p>7 just want to make sure I have a grasp of this.</p> <p>8 About what point in time -- your testimony</p> <p>9 was, if I understand your testimony, is you lost contact</p> <p>10 with Mr. Swafford in the spring or summer of '15. Does</p> <p>11 that sound right?</p> <p>12 THE WITNESS: Yes.</p> <p>13 CHAIRMAN HAHN: Do you remember the date</p> <p>14 approximately that your new counsel to defend your husband</p> <p>15 against the lawsuit that was filed against him, do you</p> <p>16 remember when that was, approximately when the new counsel</p> <p>17 came on, which I believe you indicated was Lynn Pierce.</p> <p>18 THE WITNESS: Lynn Pierce, actually it was --</p> <p>19 there were several months from the time we initially</p> <p>20 talked to her and she agreed to represent. She had to</p> <p>21 file paperwork for Mr. Swafford to remove himself or</p> <p>22 recuse. I'm not sure what the word is. And that took</p> <p>23 several months. So I'm not exactly sure when the timeline</p> <p>24 came.</p> <p>25 I know she did file the paperwork with the</p>	<p style="text-align: right;">Page 63</p> <p>1 district court to come on board. So whatever that date</p> <p>2 was was when she formally came on, because she couldn't do</p> <p>3 anything for us until she took over from Mr. Swafford.</p> <p>4 I'm sorry I don't have the date.</p> <p>5 CHAIRMAN HAHN: That's okay. Just so I</p> <p>6 understand your testimony. You lost contact with</p> <p>7 Mr. Swafford somewhere between spring and summer of '15?</p> <p>8 THE WITNESS: Uh-huh.</p> <p>9 CHAIRMAN HAHN: Is that a yes?</p> <p>10 THE WITNESS: Yes.</p> <p>11 CHAIRMAN HAHN: I need it for the court</p> <p>12 reporter.</p> <p>13 THE WITNESS: I'm sorry. Yes.</p> <p>14 CHAIRMAN HAHN: And then a couple of months</p> <p>15 later --</p> <p>16 THE WITNESS: It was probably into the fall</p> <p>17 when -- after several months of no response, we decided,</p> <p>18 okay, we have to do something else, get somebody else in</p> <p>19 here.</p> <p>20 CHAIRMAN HAHN: That's when you contacted</p> <p>21 Miss Pierce?</p> <p>22 THE WITNESS: Yes.</p> <p>23 CHAIRMAN HAHN: Then it took perhaps another</p> <p>24 couple of months until the institution of counsel was</p> <p>25 arranged between Mr. Swafford and Miss Pierce to where she</p>
<p style="text-align: right;">Page 64</p> <p>1 could appear in court on your behalf; is that true?</p> <p>2 THE WITNESS: Yes. Correct.</p> <p>3 CHAIRMAN HAHN: She would have come on board,</p> <p>4 if I understand your testimony, somewhere in the very late</p> <p>5 fall or winter --</p> <p>6 THE WITNESS: Yes.</p> <p>7 CHAIRMAN HAHN: -- of '15. Is that accurate?</p> <p>8 THE WITNESS: Yes.</p> <p>9 CHAIRMAN HAHN: With regard to -- again, just</p> <p>10 to confirm your husband's role. He was a defendant in</p> <p>11 that civil case that had been brought against him by the</p> <p>12 Klementis; is that true?</p> <p>13 THE WITNESS: Yes. It was brought against him</p> <p>14 by Helmut Klementi initially, then the countersuit was</p> <p>15 filed.</p> <p>16 CHAIRMAN HAHN: Again, between you and</p> <p>17 Mr. Swafford a counterclaim was filed?</p> <p>18 THE WITNESS: Yes.</p> <p>19 CHAIRMAN HAHN: Is there any questions that</p> <p>20 that's provoked from members of the panel?</p> <p>21 MR. MEADE: No.</p> <p>22 CHAIRMAN HAHN: Mr. Swafford, did any of the</p> <p>23 panel's questions provoke any questions?</p> <p>24 MR. SWAFFORD: No.</p> <p>25 CHAIRMAN HAHN: You may stand down. Thank</p>	<p style="text-align: right;">Page 65</p> <p>1 you, Miss Spencer.</p> <p>2 Anything else from the State Bar?</p> <p>3 MS. FLOCCINI: Not at this time. Thank you.</p> <p>4 CHAIRMAN HAHN: Very well. The State rests.</p> <p>5 Mr. Swafford, you have an opportunity before</p> <p>6 this panel to present evidence, to offer an unsworn</p> <p>7 statement in allocution, if you would like. If you have</p> <p>8 any documents you would like to provide this is your</p> <p>9 opportunity.</p> <p>10 Have you had a chance to kind of think about</p> <p>11 what you want to do today?</p> <p>12 MR. SWAFFORD: Yes, I would.</p> <p>13 CHAIRMAN HAHN: How would you like to proceed?</p> <p>14 Would you like to present evidence?</p> <p>15 MR. SWAFFORD: Just testimony.</p> <p>16 CHAIRMAN HAHN: You have been previously</p> <p>17 sworn, so we'll accept the following presentation from you</p> <p>18 as sworn testimony.</p> <p>19 MR. SWAFFORD: Okay.</p> <p>20 CHAIRMAN HAHN: Very well. Please.</p> <p>21 MR. SWAFFORD: I would like to address a</p> <p>22 couple of areas. I would like to address my relationship</p> <p>23 with Mr. Routsis who was the other attorney I was on the</p> <p>24 case with, a medical history, and the way these kind of</p> <p>25 tie together. I understand it may sound like I'm rambling</p>

<p style="text-align: right;">Page 66</p> <p>1 in a couple of places here, but I promise everything I say 2 is relevant. Bear with me. 3 I'm going to start with I guess my 4 relationship with Mr. Routsis and my medical history, 5 because it kind of relates together. 6 I graduated from law school in December of 7 2008, and I passed the Nevada Bar in February of 2009. 8 About four months before I passed the Bar exam I was 9 playing flag football. I didn't have a helmet on, playing 10 flag football, going for a ball, going up for a catch I 11 shattered my skull in five places. I probably should have 12 died. I had my face rebuilt. 13 And at the time they never really evaluate -- 14 well, where I went anyway. I went to a doctor in Indiana. 15 He said no doctor in Indiana can cure this. A guy on my 16 team dad was a heart surgeon. He had season tickets with 17 a cosmetic surgeon. They had White Sox tickets together. 18 He got me in to see him the next week, and I got my face 19 rebuilt. And they never really checked or told me about 20 concussion, traumatic brain injury, what I should be 21 looking for. 22 I went right back to studying for my Bar exam. 23 I probably should have took a year off school, shouldn't 24 have probably took the Bar at all at that time. Studied 25 for the Bar at that time. Horrible things I did for the</p>	<p style="text-align: right;">Page 67</p> <p>1 condition I had, but I didn't know I had anything wrong. 2 To come straight to the point, I have 3 traumatic brain injury. 4 CHAIRMAN HAHN: Mr. Swafford, again you're 5 extremely -- 6 MR. SWAFFORD: I'm too fast. I'm sorry. 7 CHAIRMAN HAHN: The court reporter's fast 8 too -- 9 MR. SWAFFORD: I apologize. 10 CHAIRMAN HAHN: You just need to slow down 11 just a little bit for her. 12 MR. SWAFFORD: Okay. I have traumatic brain 13 injury. It's called hypopituitarism. My pituitary gland 14 doesn't work. I inject myself with three hormones every 15 day. I'll have to do that for the rest of my life. 16 At the time though I passed the Bar exam I 17 didn't know I had any of these problems. I passed the Bar 18 exam pretty easily. 19 The first thing started going wrong, I 20 couldn't sleep at night, really difficult time sleeping. 21 A lot of anxiety, and for the first time in my life I 22 couldn't really concentrate. And I was diagnosed with 23 ADD, insomnia, given drugs for those, psychiatric drugs. 24 Lived with it. Went on for a couple years. 25 Started a practice with Mr. Routsis directly out of law</p>
<p style="text-align: right;">Page 68</p> <p>1 school. We worked together. He was a trial attorney. I 2 wrote motions, pleadings, that kind of thing. I had a 3 little bit of experience in law school and started -- we 4 started doing well together. 5 Relating to competence, before I jump around. 6 We also started a firm with an attorney here in town Joey 7 Gilbert. He used to be one of my best friends when I was 8 a kid. He hired an attorney to represent him in a civil 9 suit relating to allegations that he failed a drug test 10 and ruined his boxing career. 11 Mark Wray was his attorney, and he had me 12 write all of his -- I actually did the complaint, the 13 pleadings, motion, oppositions to motions to dismiss, 14 summary judgment. I did a very good job. That was really 15 the only civil experience I had. But this case went on 16 for about two years before it was finally dropped, and I 17 got a great deal of experience. 18 One of the problems though was that I filed a 19 complaint that one of my attorney friends in Chicago had. 20 And he had a great idea, but it was, the allegations were 21 based on Chicago law. And during the motion to dismiss 22 stage they alleged that I did not make a lot -- I didn't 23 allege specific facts. 24 And the motion to dismiss stage, because there 25 was two defendants, Quest Diagnostics and one of the</p>	<p style="text-align: right;">Page 69</p> <p>1 doctors, they were represented by a large law firm in 2 Houston. They were filing staggered motions to dismiss. 3 So every two weeks they would file one for the other 4 client, and I really learned the hard way about getting 5 better prepared before you file this complaint. 6 In this case the reason -- I'm going to get 7 back to what I just said. I moved to Massachusetts. In 8 2012 I moved to Boston. I passed the Massachusetts Bar 9 exam. I wasn't there for very long. I moved back to 10 Chicago in 2012. I passed the Bar exam in Illinois. I 11 just want to get -- these are places I like, I wanted to 12 get all the Bar exams out of the way while it was still 13 fresh in my head. 14 My problems were getting a lot worse though. 15 I still didn't know at the time I had traumatic brain 16 injury. I thought I had bipolar disorder. That's what I 17 was diagnosed with. The reason they thought bipolar, a 18 lot of the symptoms are the same. Can't sleep at night, 19 extreme anxiety, stressed out all the time, bad mood 20 swings, significant weight fluctuation, et cetera. Other 21 problems with my body. 22 But things started going wrong. I started 23 losing the use of my left hand. If I took this off, you 24 would see two fingers kind of hanging. I started having 25 all the problems. Some of my doctors started tying it</p>

<p style="text-align: right;">Page 70</p> <p>1 together saying this isn't bipolar disorder, this looks 2 like you have brain injury. Did you ever get evaluated 3 for this, et cetera. No, I never did.</p> <p>4 And I started, I tried to start my own law 5 practice in Chicago. Horrible idea. One of my friends is 6 a family law attorney, from school, and he wanted me to 7 open -- we're weren't partners, but he did family law, I 8 did criminal law. I tried to start my own practice there. 9 With what I was suffering from, it was a bad idea. My 10 life really got out of control and things weren't going 11 good.</p> <p>12 Before law school I obtained two other 13 graduate degrees. So I figured I'm going to get out of 14 law. This isn't going to work for me anymore, I'm going 15 to get into something else. I was having a lot of trouble 16 getting a job, it's really competitive there. I had been 17 a criminal defense attorney for five years. I was having 18 a hard enough time explaining how that related to -- my 19 other degrees are in economics and international policy.</p> <p>20 I was kind of getting frustrated. I didn't 21 talk to Mr. Routsis in a few years. Gave him a call. We 22 talked about things, and he told me his dad -- he took a 23 year off because his dad died and he wanted to get back to 24 going again and he wanted me to write his motions like I 25 did. I was still in Chicago helping build up his practice</p>	<p style="text-align: right;">Page 71</p> <p>1 but writing his motions, briefs, helping him with the 2 business side of it, trying to help him get clients.</p> <p>3 I started doing that and -- to cut right to 4 the chase. There was a case in Reno, a big case that is 5 that Darren Mack case. He was doing the habeas petition 6 on that, and he asked me to do the habeas and the State 7 habeas and the reply. The record was just immense. It 8 took me probably six months just to familiarize with it.</p> <p>9 I wrote for years for him. I would do a 10 motion or an appeal or a petition, and that was it. He 11 would sign and file it.</p> <p>12 This one when I was done with it, he didn't 13 like it. It wasn't what he wanted. Due to my condition 14 sometimes I will be up four days at a time; that's pretty 15 common for me. I'm getting better, but it was common for 16 me to be awake four days, sleep a day, be awake for four 17 days, sleep a day. I'd have so much anxiety one of the 18 things I would do is research and read. And I did really 19 good work in my opinion because of the, kind of my 20 condition, I think. I was just constantly on the computer 21 researching and writing.</p> <p>22 And anyway, I worked, killed myself on this 23 thing. I did eight versions of it. He didn't like any of 24 them. Finally I said this is it. I'm not doing any more. 25 This is the last one. He still didn't like it.</p>
<p style="text-align: right;">Page 72</p> <p>1 He hired someone else to edit it. Edited it 2 one day, filed it. We started arguing. He wanted me to 3 pay back the money from other cases -- we started 4 fighting. Our relationship turned sour.</p> <p>5 This is about the same time, now I had been 6 working on the Spencer case. William called me. He knew 7 that me and him were starting to fall out a little bit. I 8 started working for another attorney who was taking a 9 little bit more of my time. William realized I was 10 probably going to start working for him full time, and he 11 called me and said, William, I did this criminal case. 12 And he explained to me, explained to me some of the 13 details of the Spencers' criminal case. And he said they 14 were the victims, the alleged victims, lied about 15 everything and tried to ruin these people's lives.</p> <p>16 And he was aware of what I did on that, that 17 civil case previously. And he said, well, you know, if 18 you can do this, you can get paid X amount of money, and 19 you can still work from Chicago, and I'll do all the 20 hearings in Reno, I'll be the attorney in Reno, I'll do 21 the trial. I want you to keep it, try to get me to trial, 22 do what you did before. And I agreed.</p> <p>23 And I met with the Spencers a few times. I 24 started working on their case. I didn't want to make the 25 same mistake I did before. They had a lot of claims I</p>	<p style="text-align: right;">Page 73</p> <p>1 thought were very similar that I worked on before, but I 2 didn't want to spend another year in a motion to dismiss 3 stage based on the claims I was bringing.</p> <p>4 I researched them extensively. They had a 5 criminal trial. Probably lasted about a week. I don't 6 know how long, might have been a two-week trial. I can't 7 remember. One- or two-week trial, criminal trial.</p> <p>8 So they had their preliminary transcript of 9 the criminal trial, then a lot of administrative 10 proceedings involving their case, a lot of evidence. And 11 it was substantial, a big record. It took me a long time 12 to go through the record and figure out what causes of 13 action I thought we should bring, and why we should bring 14 them.</p> <p>15 As I was doing this, I was right in the middle 16 of it, William wanted me to take some time and work more 17 on the Mack case. He had some other things come up. He 18 wanted me to do this. So I kind of felt like I was 19 working for him still. He kind of had some power over me. 20 You know, William, take a little time with the Spencers. 21 Do this. Do this. And our relationship went really sour.</p> <p>22 I have to skip around here with regard to the 23 Spencers. So I filed the first -- they were sued. I 24 filed the first response and counterclaim. And some of 25 the people they wanted to -- the first time I spoke to</p>

<p style="text-align: right;">Page 74</p> <p>1 them I was aware that they wanted to sue the district 2 attorney, and pretty much everyone involved. I think they 3 wanted to sue the judge. And I was trying to narrow down 4 who we can sue.</p> <p>5 A lot of the actions of the people in this 6 case involved testimony in front of the administrative 7 hearing where I thought there would probably be a 8 privilege, and I was trying to find other ways to sue 9 besides defamation to get around either quasi-judicial or 10 absolute privilege. And I thought I had found some pretty 11 creative things. And I had done similar things in the 12 other suit, and I thought they were good.</p> <p>13 And then they wanted to bring in more people. 14 And I thought some of the defendants were, in my mind I 15 knew that the motion to dismiss stage, summary judgment 16 was a nightmare because of how many possible privileges 17 there were, and the timely things. In my opinion I think 18 I spent a lot of time on it. I did as good of a job as I 19 could.</p> <p>20 And Mr. Routsis, you will see with this -- 21 which exhibit was this? I don't know the number, but it 22 was the one where I got suspended in another case.</p> <p>23 CHAIRMAN HAHN: You're referring to, I 24 believe, that would be Exhibit 4. Does that sound right? 25 MR. SWAFFORD: Mine's not numbered. But it's</p>	<p style="text-align: right;">Page 75</p> <p>1 Order of Suspension.</p> <p>2 CHAIRMAN HAHN: On Page 1 of that, that's the 3 affidavit of Miss Peters.</p> <p>4 MR. SWAFFORD: Yes.</p> <p>5 CHAIRMAN HAHN: That would be Exhibit 4. 6 Please continue.</p> <p>7 MR. SWAFFORD: I think it would be the second 8 page after the affidavit. You will see it says I 9 knowingly assisted another attorney in representing two 10 brothers with conflicting interest in a criminal matter. 11 And I would like to take a moment to discuss what happened 12 here.</p> <p>13 There was two brothers. They were riding in a 14 car. And one of these brothers had an extensive felony 15 background, and one of them had no criminal record at all. 16 They were caught with an ounce of marijuana.</p> <p>17 William had the idea that we'll get the 18 brother with no criminal history, and he'll say it's his. 19 They'll drop the case against the other brother, and we'll 20 get the one with no criminal history in a diversion 21 program. Neither one of them will do any time. So he 22 called me into his office.</p> <p>23 I will finish. He called me into his office 24 and tells me that -- and the two brothers come in and we 25 talk to them. And he quotes them \$10,000. Says if they</p>
<p style="text-align: right;">Page 76</p> <p>1 decide to pay he will represent one and I'll represent the 2 other, split the fee.</p> <p>3 And I was still living in Chicago. So I was 4 going to go back to Chicago the next day. And he had me 5 sign a letter of representation, just blank sign it. He 6 said if they come back you will represent one. I'll file 7 this.</p> <p>8 It ended up I heard about this for the first 9 time about four months later. I never got paid a dollar. 10 I didn't know about the case. This is the result.</p> <p>11 So I was pretty upset with him. We were 12 already arguing with each other. In my opinion he was 13 trying to get me in trouble with the Bar. In my opinion 14 he was trying to do anything he could to hurt me. I spent 15 a lot of time preparing this amended complaint in this 16 case. Gave it to him with instructions, a motion for 17 leave to file it, stipulation for the other parties to 18 consent. Instructions. Everything he needed. I 19 explained to him all the issues. He said thanks, I'm 20 going to file this.</p> <p>21 Never filed it. In this complaint it says I 22 never did it. I don't know this, but I have a sneaking 23 suspicion that the amended complaint filed by the next 24 attorney is probably what I did. I've never seen it, so I 25 don't know.</p>	<p style="text-align: right;">Page 77</p> <p>1 But at that time I don't know. Not only was 2 I -- that was right before I was diagnosed with traumatic 3 brain injury. It was the worst my condition got.</p> <p>4 But my father used to be an attorney here in 5 Nevada too. At the time I knew he had dementia but I 6 didn't know he had Alzheimer's. And my mom's brother, who 7 was kind of like my dad too, he now has stage 4 cancer. 8 But he was dying. So it was kind of a time where I'm 9 going through this stuff. I don't know what's wrong with 10 me. I have just so much anxiety, and my body is getting 11 all screwed up, I know there's something wrong with me. 12 My dad has Alzheimer's. My uncle's dying.</p> <p>13 I had a girlfriend. I was going to marry this 14 girl, but I decided I had to leave her and go back to 15 Nevada to help my family. I'm going through this with 16 William. And I thought -- I got to the point where, you 17 know what, he's not going to let me do my job here. And I 18 told him, William, I'm done. I quit. I quit working on 19 this case. It's all you, buddy.</p> <p>20 I know that was not the right thing to do, and 21 I apologize to the Spencers. I feel bad that they might 22 have got hurt by this. But in all honesty I did do a lot 23 of work on this. I know they are going to be seeking 24 restitution. I would like to -- I wanted to actually 25 respond to this. I've had a really tough last couple of</p>

<p style="text-align: right;">Page 78</p> <p>1 months. I have been going through hell, and I didn't 2 respond to this. I didn't even look at my mail. My life 3 got pretty screwed up, and it's pretty messed up. 4 And one thing I got, I would like to request, 5 because I didn't respond to this or ask for it to be set 6 aside to default judgment. I would have liked to respond 7 to some of this, to tell you the truth. But because they 8 are seeking restitution I would like to request maybe a 9 fee hearing where I can show a lot of the work I did do. 10 Besides that, I apologize to the Spencers. I 11 didn't mean to hurt you guys. I'm sorry. I wanted 12 everything to be fair and right. And, shit, I don't know 13 what else to say. That's it. 14 CHAIRMAN HAHN: Thank you, Mr. Swafford. 15 Are there any questions from the State Bar 16 based on his narrative in responding to the complaint and 17 the evidence here that the Bar has on Mr. Swafford before 18 I go to the panel? 19 MS. FLOCCHINI: I have no questions related to 20 that. I do have one other question that I want to follow 21 up with at the end. 22 CHAIRMAN HAHN: The question's relating to 23 what? 24 MS. FLOCCHINI: It is related to payment. 25 CHAIRMAN HAHN: Well, do you have any</p>	<p style="text-align: right;">Page 79</p> <p>1 objection to her bringing that up now, Mr. Swafford? 2 MR. SWAFFORD: No. Not at all. 3 CHAIRMAN HAHN: Please, go ahead. 4 MS. FLOCCHINI: I'm going to show 5 Mr. Swafford a document for the purposes of the hearing. 6 We'll have that marked as Exhibit 8. It's a document 7 related to the bank account that he's identified as his 8 IOLTA trust account with the State Bar. I would like to 9 have that admitted. 10 CHAIRMAN HAHN: Mr. Swafford, have you had a 11 chance to look at that? 12 MR. SWAFFORD: Yes. 13 CHAIRMAN HAHN: Any objection? 14 MR. SWAFFORD: No. 15 CHAIRMAN HAHN: Exhibit 8 is admitted which 16 refers to a bank account, namely Mr. Swafford's IOLTA 17 account. 18 (Exhibit 8 marked for identification 19 and admitted into evidence.) 20 MS. FLOCCHINI: I have a document that I would 21 like to have marked as Exhibit 9 and admitted. It's a 22 check that was deposited into a bank account that we 23 received in response to a subpoena of Mr. Swafford's bank 24 account. 25 CHAIRMAN HAHN: Mr. Swafford, have you had a</p>
<p style="text-align: right;">Page 80</p> <p>1 chance to look at proposed Exhibit 9? 2 CHAIRMAN HAHN: Yes. 3 CHAIRMAN HAHN: Any objection to that being 4 admitted? 5 MR. SWAFFORD: No. 6 CHAIRMAN HAHN: Exhibit 9 is admitted. 7 (Exhibit 9 marked for identification and 8 admitted into evidence.) 9 FURTHER EXAMINATION 10 BY MS. FLOCCHINI: 11 Q Mr. Swafford, showing you what's been marked 12 as Exhibit 9 to the hearing. In the middle of the page it 13 identifies your IOLTA bank account number. Do you see 14 that? 15 A No. 16 Q (Indicating on document.) 17 A Yes, I do. 18 Q Could you tell us the last four digits? 19 A 2253. 20 Q I'm going to show you what's been marked as 21 Exhibit 9. At the bottom it identifies an account to 22 which a check was deposited. 23 A This right here? Or this one, 2240? 24 Q Those are the last four digits of the account 25 to which the check was deposited; correct?</p>	<p style="text-align: right;">Page 81</p> <p>1 A Yes. 2 Q Is the check the \$18,000 payment from 3 Miss Spencer? 4 A Yep. 5 Q And so my impression from Exhibits 8 and 9 is 6 that \$18,000 was not deposited into your IOLTA account. 7 Am I correct? 8 A You're correct. 9 CHAIRMAN HAHN: We received those Exhibits 8 10 and 9, a copy of. 11 MR. MEADE: I have a question. IOLTA account, 12 that's the trust account? 13 MS. FLOCCHINI: Yes. The IOLTA account is the 14 trust account to which you are supposed to deposit. 15 MR. MEADE: I've never heard that term before. 16 I wanted to make sure I understood what checking account 17 we're talking about. 18 CHAIRMAN HAHN: Miss Flocchini, prior to me 19 offering up questioning to the panel members of 20 Mr. Swafford based on the narrative, is there any other 21 clarifications or additional items you want to bring up? 22 MS. FLOCCHINI: No, I have no further 23 questions for Mr. Swafford. Thank you. 24 CHAIRMAN HAHN: What I would like to do is I'd 25 like to turn it over to members of the panel for any</p>

<p style="text-align: right;">Page 82</p> <p>1 questions of Mr. Swafford. I will begin with Mr. Stoval. 2 MR. STOVAL: Sir, listening to your testimony, 3 thank you very much for it. It appears to me, and I will 4 invite you to correct me if I'm wrong. But it appears to 5 me that you acknowledge some wrongdoing with respect to 6 the suspension. You apologized to them. 7 What particularly do you think you did wrong 8 with the handling of their case? 9 MR. SWAFFORD: Quit talking to them. Didn't 10 keep -- I don't know. I should have told them about what 11 was going on between me and William. But I felt like it 12 was -- I felt like William obviously just wanted a 13 criminal case. They liked him a lot. He's the one that 14 introduced me to them. I got to a point where it was 15 impossible to do my job. I wish I could have explained 16 that to them. But I just somehow kept working with them, 17 but I didn't. 18 And I turned my back on life. I moved back 19 from Chicago at that time. I moved back here in November. 20 Kind of a pain just to move, but I didn't know what was 21 going to happen with my life. I'm worried that I can't 22 have kids anymore. I'm probably going to get cancer from 23 all the hormones I'm taking. My dad's dying of 24 Alzheimer's. My uncle is dying. In my mind my whole life 25 is over now.</p>	<p style="text-align: right;">Page 83</p> <p>1 I probably won't be able to be a lawyer 2 anymore. I have problems upstairs. And I don't know what 3 I'm going to do. I went to school. So many student 4 loans. I went to school, I have two master's degrees and 5 a law degree. I think I'm a pretty good lawyer, but I 6 don't know if I can do it anymore. 7 I'm just sorry that all this happened. I know 8 that. I did some things wrong, but I honestly tried as 9 hard as I could. I didn't have any bad intentions. 10 MR. STOVAL: What about the money that they 11 paid you? 12 MR. SWAFFORD: Here's the thing. I worked a 13 lot on this case for like a year. Going through a huge 14 record trying to find causes of action that applied to all 15 these different individuals who were all honestly 16 protected by all kinds of different privileges and 17 defenses and just trying to -- and trying to find a way to 18 make -- it's like if someone goes and lies about you, and 19 it becomes the basis of a criminal complaint, it's hard to 20 make the cause of action on that, especially if they do it 21 in an administrative quasi judicial proceeding or 22 something that's protected by a privilege. 23 And I don't know. It's difficult. And I 24 think I found a way to do it. I found a way that survived 25 in court in another case in very similar allegation, went</p>
<p style="text-align: right;">Page 84</p> <p>1 on motion to dismiss for a year. I kept it in. And I had 2 those ideas in my mind. These are going to be the issues. 3 And I work hard on everything I do. I don't know. I 4 worked very hard on this case. I really did. 5 MR. STOVAL: With respect to your fee 6 agreement with them. 7 MR. SWAFFORD: Yes. 8 MR. STOVAL: There was an hourly component 9 where there was a flat fee and hourly, and then there is a 10 contingency component. 11 MR. SWAFFORD: I'm glad you brought that up. 12 The agreement, it's really between Jeff Spencer and 13 William Routsis. And it says in here William Routsis will 14 assign some of the money to me. 15 And I remember preparing -- William wanted me 16 to help, Mr. Routsis wanted me to prepare an agreement, 17 and I did. And this is pretty close to what I did, but I 18 don't know if this is exactly what I wrote in here. 19 The way I always worked with Mr. Routsis for 20 years was that I would just get paid a certain amount up 21 front, and I would work until completion. And I don't 22 know. To me it was kind of the same thing we've been 23 doing all the time. This is only the -- I only did two 24 civil cases in my life. This is the second one. 25 Well, that's not true. I did some small like</p>	<p style="text-align: right;">Page 85</p> <p>1 domestic motions to vacate, protection orders, that kind 2 of a thing. 3 But Mr. Routsis contacted me. He wanted me to 4 do the same thing I did in the cases before. This is kind 5 of what I had, and me and him kind of talking it through, 6 and -- I don't know. 7 MR. STOVAL: If you're to keep your license 8 and keep practicing law, sir, what's to keep other members 9 of the public from having the same problems the Spencers 10 had with respect to your representation? 11 THE WITNESS: Honestly, I can't work the way I 12 did on this case with another lawyer in another state 13 where in my mind what I was hired to do was to research 14 and writing and prepare documents, just like I've done in 15 all the other cases. 16 Most of my other cases I was never 17 representing clients, I was only working for other 18 attorneys. And I don't know. If I stick to criminal law 19 it would be the answer to your question. Stick to what I 20 know. Don't get in this situation again. I'm really 21 sorry I got in this situation. 22 MR. STOVAL: That's all I have. 23 CHAIRMAN HAHN: Mr. Meade. 24 MR. MEADE: When everything started going bad, 25 why didn't you talk to the Spencers about that they needed</p>

<p style="text-align: right;">Page 86</p> <p>1 to get another attorney to represent them?</p> <p>2 MR. SWAFFORD: I was talking to William about</p> <p>3 that. And William was -- I'm sorry, Mr. Routsis. From my</p> <p>4 understanding he was in pretty much communication with</p> <p>5 them every day. And he was threatening me. He was</p> <p>6 telling me he wanted me off the case and they wanted me</p> <p>7 off the case. He told me they were getting another</p> <p>8 attorney.</p> <p>9 And the last time that me and William spoke,</p> <p>10 Mr. Routsis spoke, we were kind of in agreement that we</p> <p>11 were done with each other, and they would be getting</p> <p>12 another attorney, and that was it.</p> <p>13 MR. MEADE: Do you remember when that was?</p> <p>14 MR. SWAFFORD: I kind of do. It was -- not</p> <p>15 exactly, but I'm going to say it was around August of that</p> <p>16 year, maybe in September of that year.</p> <p>17 MR. MEADE: August of 2015 or 2016?</p> <p>18 MR. SWAFFORD: Not '16. It would have been</p> <p>19 2015. The only reason I remember that is my brother got</p> <p>20 married that August. After I got back from his wedding I</p> <p>21 spoke with William, Mr. Routsis about that, and it was</p> <p>22 right about the end of August.</p> <p>23 MR. MEADE: Okay. That's really all the</p> <p>24 questions that I have.</p> <p>25 CHAIRMAN HAHN: Mr. Swafford, I have a few</p>	<p style="text-align: right;">Page 87</p> <p>1 questions, if I may.</p> <p>2 Throughout this hearing this morning you</p> <p>3 strike me as again very articulate and certainly</p> <p>4 appropriate. How do you feel today? Do you feel pretty</p> <p>5 good?</p> <p>6 MR. SWAFFORD: No, I don't feel good at all.</p> <p>7 CHAIRMAN HAHN: In what way?</p> <p>8 MR. SWAFFORD: Stress. Anxiety. I didn't</p> <p>9 sleep last night. Scared. Really sad about everything.</p> <p>10 I don't know. Embarrassed.</p> <p>11 CHAIRMAN HAHN: Sure. Sure. You talked about</p> <p>12 your traumatic brain injury. Did you receive that</p> <p>13 official diagnosis?</p> <p>14 MR. SWAFFORD: Oh, yeah.</p> <p>15 CHAIRMAN HAHN: What date was that?</p> <p>16 MR. SWAFFORD: It would have been about</p> <p>17 January of 2016.</p> <p>18 CHAIRMAN HAHN: January of '16?</p> <p>19 MR. SWAFFORD: Yes.</p> <p>20 CHAIRMAN HAHN: And you had injured yourself</p> <p>21 in this flag football episode prior to taking the Nevada</p> <p>22 Bar in '09.</p> <p>23 MR. SWAFFORD: A couple months before.</p> <p>24 CHAIRMAN HAHN: Again, you know what I'm going</p> <p>25 to say before I say --</p>
<p style="text-align: right;">Page 88</p> <p>1 MR. SWAFFORD: I'm sorry.</p> <p>2 CHAIRMAN HAHN: I just need the clarity for</p> <p>3 the poor court reporter.</p> <p>4 MR. SWAFFORD: I'm sorry.</p> <p>5 CHAIRMAN HAHN: So what type of active</p> <p>6 treatment or passive treatment have you received for the</p> <p>7 traumatic brain injury diagnosis in January of '16?</p> <p>8 MR. SWAFFORD: If you really want to know, I</p> <p>9 take hormone injections every day. Testosterone</p> <p>10 injections. HCG injections, human chorionic gonadotropin,</p> <p>11 I think. Speaking with -- actually, he's testing with a</p> <p>12 blood pressure medicine that makes it -- I get real</p> <p>13 thirsty all the time, and I get this clear fluid in my</p> <p>14 nose. And he's actually treating that with a blood</p> <p>15 pressure medicine. Starts with a C. I'm sorry. It's on</p> <p>16 the tip of my tongue.</p> <p>17 For ADD I do have to take Adderall when I am</p> <p>18 doing research.</p> <p>19 CHAIRMAN HAHN: Uh-huh. It's --</p> <p>20 MR. SWAFFORD: He took me off Seroquel. When</p> <p>21 they thought I was bipolar he took me off all that stuff.</p> <p>22 A lot of it's trying to stay in relaxing settings where I</p> <p>23 don't have stress. The problem is I have a ton of stress</p> <p>24 all the time. I'm taking care of a dad who has</p> <p>25 Alzheimer's, an uncle with cancer. I'm not treating it</p>	<p style="text-align: right;">Page 89</p> <p>1 the way -- I'm trying to, but it's not going exactly the</p> <p>2 way it would be perfect if I was laying on a beach</p> <p>3 somewhere doing nothing.</p> <p>4 CHAIRMAN HAHN: Mr. Swafford, you shared with</p> <p>5 us, I would like to talk with you about what type of</p> <p>6 medical care you were under during the time of the</p> <p>7 Spencers' representation.</p> <p>8 In other words, you heard Miss Spencer. Her</p> <p>9 testimony was she lost contact with you in the spring or</p> <p>10 summer of 2015. And the fee agreement was signed in</p> <p>11 February of '15, so we have a several-month span.</p> <p>12 MR. SWAFFORD: Okay.</p> <p>13 CHAIRMAN HAHN: This was before you were</p> <p>14 diagnosed with TBI?</p> <p>15 MR. SWAFFORD: Yes. During that time I was</p> <p>16 living in Chicago. My primary care doctor's name was Eric</p> <p>17 Christoff. He was a Northwestern Memorial physician and a</p> <p>18 professor. At that time I was also seeing -- I had two</p> <p>19 different psychiatrists.</p> <p>20 I had also had a few panic attacks due to</p> <p>21 this. I didn't understand what they were. I thought they</p> <p>22 were heart attacks. I had to take an ambulance twice.</p> <p>23 One time I went to the hospital on my own. One time I was</p> <p>24 committed for two days in like a psychiatric hospital</p> <p>25 because they thought I might have been suicidal after one</p>

<p style="text-align: right;">Page 90</p> <p>1 of my panic attacks.</p> <p>2 CHAIRMAN HAHN: When was this?</p> <p>3 MR. SWAFFORD: About the same time this was</p> <p>4 going on. I would say early 2015, maybe late 2014. It</p> <p>5 was at Rush Memorial Hospital. I was in there for two</p> <p>6 days. I had a really bad panic attack where the blood</p> <p>7 pressure got up to like 200 over a hundred. And I was --</p> <p>8 I don't know. I couldn't sleep. And I saw some</p> <p>9 psychiatrists in there.</p> <p>10 Once again, it was just bipolar. Some</p> <p>11 possible schizophrenia, but mainly bipolar.</p> <p>12 CHAIRMAN HAHN: Okay. Let me ask you --</p> <p>13 MR. SWAFFORD: The medicine I was on at that</p> <p>14 time, they were all bipolar medications, they were Lamisil</p> <p>15 and Seroquel. They didn't do anything. They made,</p> <p>16 probably made my condition worse. They made me gain about</p> <p>17 60 pounds.</p> <p>18 CHAIRMAN HAHN: Is it fair to say that during</p> <p>19 the time of the Spencer representation from February of</p> <p>20 '15 up until where you lost contact with them in spring or</p> <p>21 summer of '15 you were under active medical care --</p> <p>22 MR. SWAFFORD: Oh, yeah.</p> <p>23 CHAIRMAN HAHN: -- by virtue of getting</p> <p>24 medication?</p> <p>25 MR. SWAFFORD: Yes.</p>	<p style="text-align: right;">Page 91</p> <p>1 CHAIRMAN HAHN: Did you have something to add?</p> <p>2 MR. SWAFFORD: No. Just what you're talking</p> <p>3 about, medication. I am so involved with my insurance and</p> <p>4 all that. I have records of every month. It's</p> <p>5 ridiculous. But look at the prescriptions I've taken for</p> <p>6 the last two years.</p> <p>7 CHAIRMAN HAHN: Again, I'm trying to focus on</p> <p>8 the time of the Spencer representation.</p> <p>9 MR. SWAFFORD: That was during the time I'm</p> <p>10 talking about.</p> <p>11 MR. MEADE: Can I ask one question?</p> <p>12 CHAIRMAN HAHN: Sure.</p> <p>13 MR. MEADE: During the period that you were</p> <p>14 representing the Spencers were you taking Seroquel and</p> <p>15 Tementil?</p> <p>16 MR. SWAFFORD: Yes. Both of those, among</p> <p>17 other things.</p> <p>18 MR. MEADE: Was one of the side effects that</p> <p>19 you had for that, that this increased your -- you said you</p> <p>20 had paranoia or --</p> <p>21 MR. SWAFFORD: High levels of anxiety,</p> <p>22 depression, couldn't sleep.</p> <p>23 MR. MEADE: Okay.</p> <p>24 MR. SWAFFORD: The only thing that would help</p> <p>25 me get sometimes to sleep if I haven't slept in a few</p>
<p style="text-align: right;">Page 92</p> <p>1 days, the Seroquel would. But it ended up being that my</p> <p>2 problem was my pituitary gland didn't work.</p> <p>3 MR. MEADE: I understand that.</p> <p>4 MR. SWAFFORD: They weren't doing anything.</p> <p>5 Maybe it was a placebo effect sometimes where I'd think</p> <p>6 they would. I'd get on something new, and I don't know,</p> <p>7 my girlfriend would be happy, I was taking care of my</p> <p>8 problems. But they weren't helping, no.</p> <p>9 MR. MEADE: Okay.</p> <p>10 CHAIRMAN HAHN: Just a few more, Mr. Swafford,</p> <p>11 and I'll let you go. With regard to your criminal</p> <p>12 practice that you had in Chicago.</p> <p>13 MR. SWAFFORD: Yes.</p> <p>14 CHAIRMAN HAHN: Were you actively practicing</p> <p>15 in Chicago up until the time of your contact with the</p> <p>16 Spencers?</p> <p>17 MR. SWAFFORD: I had stopped actively</p> <p>18 practicing probably -- I can't remember when, but before I</p> <p>19 started the Spencer case I had already stopped actively</p> <p>20 practicing in Chicago.</p> <p>21 CHAIRMAN HAHN: For about how long?</p> <p>22 MR. SWAFFORD: I want to say six months. It</p> <p>23 could have been longer, could have been a year. I think</p> <p>24 it was six months, maybe a little longer than that though.</p> <p>25 CHAIRMAN HAHN: Is it fair to say you were in</p>	<p style="text-align: right;">Page 93</p> <p>1 active criminal practice in Chicago at least three years</p> <p>2 before the contact with the Spencers?</p> <p>3 MR. SWAFFORD: Let me think about that.</p> <p>4 Probably not quite that long. Because I think I started</p> <p>5 in December of 2012. And then -- I tried to do it for</p> <p>6 about two years, and then I just -- I had too many</p> <p>7 problems. I was just -- I wasn't sleeping ever. And I</p> <p>8 don't know, I just wasn't doing good. I thought I needed</p> <p>9 to completely get out of law. I started trying to get</p> <p>10 jobs elsewhere.</p> <p>11 CHAIRMAN HAHN: Prior to the Pardo and the</p> <p>12 Spencer cases you mentioned that you had done a few civil</p> <p>13 matters in terms of dealing with protection orders prior</p> <p>14 to that?</p> <p>15 MR. SWAFFORD: Yes.</p> <p>16 CHAIRMAN HAHN: Is that true?</p> <p>17 THE WITNESS: Yes.</p> <p>18 CHAIRMAN HAHN: Was that a success for you?</p> <p>19 MR. SWAFFORD: Actually, it was, yes.</p> <p>20 CHAIRMAN HAHN: Other than --</p> <p>21 MR. SWAFFORD: Can I interject real quick?</p> <p>22 CHAIRMAN HAHN: Very well.</p> <p>23 MR. SWAFFORD: I had one other civil case I</p> <p>24 forgot to tell you.</p> <p>25 CHAIRMAN HAHN: Please.</p>

<p style="text-align: right;">Page 94</p> <p>1 MR. SWAFFORD: The plaintiff was Henry Walls. 2 It was against Waste Management, and it was actually 3 pretty good. But it was such a big case that we got Vic 4 Drakulich and Don, and all I did was I filed the complaint 5 in my name and did some of the initial discovery. And 6 then they got on it and did most of it, took most of the 7 fees. 8 CHAIRMAN HAHN: What I want to do in finishing 9 up is I just kind of want to go through some of the claims 10 that the Bar has made. 11 You did not enter a response. A default order 12 has been entered against you. As I listen to your 13 testimony, you shared you wanted to respond. So I'm going 14 to ask you, just in summary fashion, to address each of 15 the claims the Bar has made that has been entered by 16 virtue of the default order, and building off what 17 Mr. Stoval asked you. 18 With regard to the State Bar claims of 19 competence, do you agree or disagree? 20 MR. SWAFFORD: I disagree with that one. But 21 I don't completely disagree. I think I was competent, but 22 there are some things I didn't know how to do. 23 CHAIRMAN HAHN: Let me phrase my question. 24 MR. SWAFFORD: All right. 25 CHAIRMAN HAHN: These rules of professional</p>	<p style="text-align: right;">Page 95</p> <p>1 conduct, they are very, very broad. But the State Bar 2 made very specific allegations that may affect the much 3 broader label. 4 MR. SWAFFORD: Yes. 5 CHAIRMAN HAHN: With regard to, and I'll point 6 you out to Page 5 of the complaint. Maybe take a peek at 7 that if you have that handy. 8 MR. SWAFFORD: All right. 9 CHAIRMAN HAHN: Do you have that handy? 10 MR. SWAFFORD: (Showing document to Chairman 11 Hahn.) 12 CHAIRMAN HAHN: The Bar made very specific 13 complaints concerning the Rule of Professional Conduct 1.1 14 as to competence. Factually is the Bar accurate? 15 MR. SWAFFORD: Yes. I'm sorry. With all 16 these give me a second to -- 27, I disagree with. 17 CHAIRMAN HAHN: Okay. 18 MR. SWAFFORD: 8 I partially disagree with. I 19 think some of the facts that were in that group were kind 20 of irrelevant. 21 29 I disagree with because I did prepare it 22 for Mr. Routsis who was going to file everything. I 23 wasn't expected to come back to Reno and file. 24 30 I disagree with. I disagree with most of 25 these --</p>
<p style="text-align: right;">Page 96</p> <p>1 CHAIRMAN HAHN: Where did you fail with regard 2 to Count 1 as you testified earlier? 3 MR. SWAFFORD: I failed to communicate, Part 4 D. That's Part D of the same thing; right? 5 CHAIRMAN HAHN: Okay. 6 MR. SWAFFORD: Failed to contact for over two 7 months. 8 CHAIRMAN HAHN: Okay. 9 MR. SWAFFORD: Me and Mr. Routsis did contact 10 each other during that time a little bit. But at some 11 point we ceased communicating with each other so that's 12 mostly true. 13 CHAIRMAN HAHN: Okay. 14 MS. FLOCCHINI: Which number are we on? 15 MR. SWAFFORD: I'm sorry. Number 14. 16 I disagree with 15. Like I said, there were 17 some things that I think are kind of irrelevant that they 18 asked me to change, and I did change. 19 And then on 17 I agree, I did not refund any 20 money. And sorry, I skipped 16. 21 No, on 16 I did -- I amended it so I disagree 22 with that too. 23 CHAIRMAN HAHN: Okay. So do you acknowledge 24 that you failed the Rule of Professional Conduct, 25 competence, in some areas?</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. SWAFFORD: Yes. 2 CHAIRMAN HAHN: With regard to Count 2, the 3 Rule of Professional Conduct 1.3, diligence. Do you have 4 that handy? 5 MR. SWAFFORD: I'm sorry. I'm a little out of 6 order. What date? Let me just get it out of here and in 7 order. 8 CHAIRMAN HAHN: Please. Thank you. 9 MR. STOVAL: Page 6, sir. 10 MR. SWAFFORD: Here we go. I've got it. 11 CHAIRMAN HAHN: Mr. Swafford, again diligence 12 is a very broad concept. The Bar made very specific 13 allegations regarding where they believe you failed with 14 regard to that. Do you acknowledge some of those? 15 MR. SWAFFORD: I think I acknowledge all of 16 these. 17 CHAIRMAN HAHN: All right. 18 MR. SWAFFORD: I'm sorry, except for one. 19 Again, I did prepare an amended counterclaim and a 20 third-party complaint on behalf of the Spencers. 21 CHAIRMAN HAHN: Other than that section of 22 preparing an amended counterclaim -- 23 MR. SWAFFORD: Yes. 24 CHAIRMAN HAHN: -- do you acknowledge 25 violating the Rule of Professional Conduct 1.3?</p>

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<p style="text-align: right;">Page 98</p> <p>1 MR. SWAFFORD: Yes.</p> <p>2 CHAIRMAN HAHN: Moving to Count 3, the Rule of</p> <p>3 Professional Conduct 1.4, communication. The Bar made</p> <p>4 some very specific allegations. Do you acknowledge some</p> <p>5 of those being accurate?</p> <p>6 MR. SWAFFORD: Yes.</p> <p>7 CHAIRMAN HAHN: Moving to Count 4. This would</p> <p>8 be on Page 7. I'm looking at line 18 or 19. The Bar made</p> <p>9 specific allegations concerning fees under Rule 1.5. Do</p> <p>10 you acknowledge the truth of some of those allegations</p> <p>11 that the Bar has made?</p> <p>12 MR. SWAFFORD: I kind of --</p> <p>13 CHAIRMAN HAHN: Take your time, Mr. Swafford.</p> <p>14 It's okay. Take your time.</p> <p>15 MR. SWAFFORD: I disagree with that one.</p> <p>16 CHAIRMAN HAHN: Do you disagree with each of</p> <p>17 those points?</p> <p>18 MR. SWAFFORD: I was paid \$35,000. I agree</p> <p>19 with that.</p> <p>20 CHAIRMAN HAHN: Okay.</p> <p>21 MR. SWAFFORD: Appropriately and adequately</p> <p>22 represent, yeah, I agree with that.</p> <p>23 CHAIRMAN HAHN: You agree with the truth of</p> <p>24 Item 49 which is on line 9 of Page 8?</p> <p>25 MR. SWAFFORD: Yes.</p>	<p style="text-align: right;">Page 99</p> <p>1 CHAIRMAN HAHN: Okay. Please.</p> <p>2 MR. SWAFFORD: Oh, I agree.</p> <p>3 CHAIRMAN HAHN: You know the drill. I kind of</p> <p>4 want to make sure the panel understands.</p> <p>5 As to Count 5, Rule of Professional Conduct</p> <p>6 1.15, the safekeeping of property. The Bar has made a</p> <p>7 specific allegation there. Do you acknowledge the factual</p> <p>8 truth of that or dispute it?</p> <p>9 MR. SWAFFORD: Yeah, I acknowledge it.</p> <p>10 CHAIRMAN HAHN: Moving to Count 6, Rule of</p> <p>11 Professional Conduct 8.1. This is on Page 9. The Bar has</p> <p>12 made a specific allegation. Do you agree as to the</p> <p>13 factual truth of those points?</p> <p>14 MR. SWAFFORD: Yes.</p> <p>15 CHAIRMAN HAHN: Moving down to Count 7, Rule</p> <p>16 of Professional Conduct 8.4, misconduct. The Bar has made</p> <p>17 some specific allegations. Do you agree or disagree with</p> <p>18 the factual accuracy of their representation?</p> <p>19 MR. SWAFFORD: Yes.</p> <p>20 CHAIRMAN HAHN: You agree?</p> <p>21 MR. SWAFFORD: Yes.</p> <p>22 CHAIRMAN HAHN: Very well. I don't think I</p> <p>23 have any other questions at this time, Mr. Swafford. I</p> <p>24 want to invite any questions from the panel as to any</p> <p>25 questions that I have brought up.</p>
<p style="text-align: right;">Page 100</p> <p>1 Mr. Stoval, anything?</p> <p>2 MR. STOVAL: Of the \$35,000 that was paid to</p> <p>3 you by the Spencers, do you believe that they are entitled</p> <p>4 to receive all of that back from you?</p> <p>5 MR. SWAFFORD: No.</p> <p>6 MR. STOVAL: How much do you believe they are</p> <p>7 entitled to receive back?</p> <p>8 MR. SWAFFORD: I don't know. I would have to</p> <p>9 go back. I think they are entitled to something. I spent</p> <p>10 so much time on that, and I did prepare the amended</p> <p>11 complaint. I know they said I didn't. And I don't know</p> <p>12 what causes of action were filed after. I don't know if</p> <p>13 it's the same one I came up with. I don't know which one</p> <p>14 they are going with.</p> <p>15 And I told them up front how I was going to do</p> <p>16 this, that I was going to do all the research from looking</p> <p>17 through the entire record, which is pretty extensive,</p> <p>18 going to understand it. I was going to file claims that I</p> <p>19 thought would not get dismissed. And I wasn't just going</p> <p>20 to file the complaint and figure it out later.</p> <p>21 So I did spend quite a bit of time, but I</p> <p>22 don't know the answer to that question. I don't know. I</p> <p>23 spent so much time on that. And I think I got to a point</p> <p>24 where the other attorneys made it impossible for me.</p> <p>25 I think the agreement was kind of with the</p>	<p style="text-align: right;">Page 101</p> <p>1 other attorneys, and I acknowledge that I probably need to</p> <p>2 pay back, but I can't tell you how much.</p> <p>3 MR. STOVAL: Exhibit 6, the Attorney Fee</p> <p>4 Agreement. Did you sign this agreement?</p> <p>5 MR. SWAFFORD: No. Okay. I'm glad you asked</p> <p>6 that. That's why I have a little bit of a problem with</p> <p>7 this is that I have a PDF editing program. If you look at</p> <p>8 the complaint where you see my signature, and it's --</p> <p>9 right here how it's -- I signed it with a -- this isn't</p> <p>10 ink, this is done in a PDF editing program. I use the</p> <p>11 same program when I do agreements that Mr. Routsis asked</p> <p>12 me to prepare and send them; I actually had my signature</p> <p>13 like that on there. So I'm not exactly sure how this</p> <p>14 doesn't have it on there or what. I'm a little bit</p> <p>15 confused by this.</p> <p>16 MR. STOVAL: Did you intend to sign this</p> <p>17 agreement at the time?</p> <p>18 MR. SWAFFORD: Yes.</p> <p>19 MR. STOVAL: That's all I have.</p> <p>20 CHAIRMAN HAHN: Mr. Meade?</p> <p>21 MR. MEADE: I have no questions.</p> <p>22 CHAIRMAN HAHN: All right. Anything that the</p> <p>23 panel brought up, Miss Flocchini, that you would like to</p> <p>24 address?</p> <p>25 MS. FLOCCHINI: I have no further questions.</p>

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<p style="text-align: right;">Page 102</p> <p>1 CHAIRMAN HAHN: Thank you for your testimony, 2 Mr. Swafford. 3 I believe at this time the evidence is closed, 4 absent anything further from the parties. 5 Miss Flocchini. 6 MS. FLOCCHINI: Again, thank you for your time 7 today and your attention to this matter. Your questions 8 show that you are very thoughtful in analyzing the matter, 9 so the State Bar appreciates your service. 10 As we addressed in the beginning, this is a 11 default matter pursuant to Supreme Court Rule 105.2. All 12 of the allegations in the complaint are deemed admitted. 13 And those allegations show a lack of competence, a lack of 14 diligence, a lack of communication, unreasonable fees 15 charged, a failure to safekeep client property, a failure 16 to respond to the Bar, and conduct that was prejudicial to 17 the administration of justice. 18 In addition to that, and as Chair Hahn went 19 through, Mr. Swafford acknowledged that he had violated 20 those Rules of Professional Conduct through his 21 representation or lack thereof with the Spencers, and in 22 addition his failure to respond to the State Bar. 23 The supreme court has instructed us to present 24 to you, and for you to apply the four factors that are set 25 forth by the ABA in deciding what kind of sanctions are</p>	<p style="text-align: right;">Page 103</p> <p>1 appropriate for particular violations of the Rules of 2 Professional Conduct. Those four factors are the duty 3 violated, the mental state of the attorney, the injury or 4 potential injury, and any aggravating or mitigating 5 factors that would warrant moving up or down in a 6 sanction. 7 I'm going to refer you to the ABA standard for 8 imposing sanctions, Section 4, and specifically Section 9 4.42 which provides that a violation of a duty to a client 10 that is knowing, which is a specific mental state that 11 injured or potentially injured the client warrants 12 suspension. 13 And that from there you apply aggravating and 14 mitigating factors to decide if more sanctions are 15 appropriate or a very long suspension or if the mitigating 16 factors warrant a public reprimand instead of suspension. 17 We present to the panel that suspension is 18 appropriate in this case. We have admitted and 19 acknowledged violations of seven Rules of Professional 20 Conduct through the failure to adequately represent the 21 Spencers and to safekeep the funds prior to having been 22 earned. 23 In addition, a failure of the system by not 24 responding to the State Bar, both of which have caused 25 injury and/or potential injury.</p>
<p style="text-align: right;">Page 104</p> <p>1 The State Bar presents to the panel that you 2 should apply the mental state of knowing to Mr. Swafford's 3 conduct. Knowing is specifically defined by the ABA 4 standard as having knowledge of your conduct, but not an 5 intent to violate the rule. 6 All attorneys are imputed with the knowledge 7 of the Rules of Professional Conduct; you're expected to 8 know them and follow them. There is no defense to that. 9 You can't say, well, I didn't read that rule. No. You're 10 expected to know them and follow them. 11 And the bookend standards around knowing are 12 one, negligence would be a lower standard. The rule was 13 it's not quite sure if your client was clear if your 14 conduct violated the rule, may be a little murky area. 15 This is not murky. You didn't call the client back. You 16 didn't move fast enough for their matter, and it caused 17 injury or potential injury. You didn't deposit the money 18 properly. And that's clear. So this is not a negligence 19 case. 20 The other bookend is an intentional violation 21 of the Rules of Professional Conduct. Intentional is I 22 know I owe you a duty, and I'm choosing to ignore it. Or, 23 for example, stealing money. I know that I'm supposed to 24 be holding your personal injury settlement, and I just 25 took it and spent it. That's an intentional violation of</p>	<p style="text-align: right;">Page 105</p> <p>1 your duty. 2 In this case I don't think there is 3 intentional conduct, it's negligent, it's a knowing 4 violation. 5 The injury or potential injury, the standards 6 tell us to consider the injury to the client, the injury 7 to the integrity of the system, and the integrity of the 8 profession. And in this case we have injury to all three. 9 The injury to the client is the loss of their 10 strategical advantage by the failure to file the complaint 11 when it was Mr. Swafford was first brought on board. 12 The complaint sets forth, the Spencers 13 testified that they communicated with Mr. Swafford in the 14 fall of 2014 in order to move forward with their civil 15 matter. A complaint was not filed. And in late 2014, 16 very beginning of 2015, a complaint was filed against them 17 related to the same matter, so now they are on the 18 defensive instead of offensive in the case, and it had to 19 become a counterclaim filed in February of 2015. That 20 delay was an injury to them. 21 And then further there was the need to file an 22 amended complaint or an amended counterclaim. And because 23 of that delay, and also because of what was filed, the 24 Spencers are facing motions for a lack of alleging things 25 in a timely manner, and alleging them properly so there is</p>

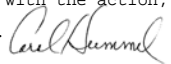
<p style="text-align: right;">Page 106</p> <p>1 a potential injury. The ABA Standards state to consider 2 an injury and a potential injury equally.</p> <p>3 In addition, the Spencers have paid \$35,000 4 for the representation, and yet didn't receive full 5 service for that and had to file with new counsel.</p> <p>6 There has been an injury to the profession, 7 the Spencers, and anyone the Spencers know are aware of 8 Mr. Swafford's failure. And the impression that that 9 gives to the profession as a whole is an injury. In 10 addition, these claims of not been moved forward 11 appropriately and diligently, that's an injury to the 12 judicial system. There's a case out there, and a judge, 13 another attorney that have had to be delayed because of 14 Mr. Swafford's failures.</p> <p>15 And then finally the injury to the system, and 16 our system in particular by Mr. Swafford's failure to 17 respond to the grievance and to the complaint until today. 18 And that is, again, that's an injury to our system that 19 needs to be taken into consideration in deciding what 20 sanction is appropriate.</p> <p>21 It's always difficult to figure out what is an 22 appropriate sanction, particularly when we're talking 23 about suspension, and particularly when every matter is 24 very fact specific, every attorney is different, every 25 client situation is different, and it's difficult to get</p>	<p style="text-align: right;">Page 107</p> <p>1 to a set of standards. But the supreme court and the 2 State Bar in conjunction with the prosecutors in the 3 matter have been working very diligently to try to set 4 forth some bookends for people to appreciate what to 5 expect.</p> <p>6 For your reference therefore I point you 7 toward the order in Exhibit 4, which is the supreme court 8 order in the prior matter involving Mr. Swafford in which 9 the supreme court suspended Mr. Swafford for three months 10 for his violation of similar duties to his other client, 11 Mr. Pardo.</p> <p>12 So I think that the prior panel suspended or 13 recommended that Mr. Swafford be suspended for a year for 14 violating his duties to that client. The supreme court 15 order instead said three-months' suspension was 16 appropriate with the dissenting opinion by two justices.</p> <p>17 And so I give you that as reference, and I 18 believe that that should be the bottom of your decision, 19 that it should be three months or more for the conduct 20 involved in this case.</p> <p>21 In that case the differences, there was a 22 failure to communicate, and there was a failure to move 23 the case forward appropriately. In the end there was no 24 actual injury to the client. There was a very severe 25 potential injury, because it was a criminal case where</p>
<p style="text-align: right;">Page 108</p> <p>1 representation was lacking. But in the end there was no 2 actual injury to that client.</p> <p>3 And in this case we have a different situation 4 where there is more injury and/or potential injury to the 5 Spencers because of Mr. Swafford's failure to uphold his 6 duties. So we're asking that you suspend Mr. Swafford for 7 no less than six months and a day.</p> <p>8 And that is specifically requested because 9 after six months and a day he must apply for 10 reinstatement. And I think that that addresses some 11 concerns that I believe are implied in questions from the 12 panel that this conduct can't happen again. We need to 13 protect the public and the integrity of the profession 14 from this happening again. Although Mr. Swafford is a 15 young attorney, he needs to change his course before he's 16 allowed to represent people again.</p> <p>17 I made that presentation or that request to 18 the panel taking into consideration the supreme court's 19 statement in the Claiborne case that the purpose of our 20 discipline system is to protect the public and the 21 integrity of the profession, it's not just to punish 22 attorneys, but it is a system by which we're trying to 23 either make better attorneys or keep bad attorneys from 24 practicing at all.</p> <p>25 And so in this case we can recommend a</p>	<p style="text-align: right;">Page 109</p> <p>1 suspension that would require Mr. Swafford to come back 2 and show how he can be a better attorney before he's 3 allowed to practice.</p> <p>4 We're also asking that the panel order 5 restitution to the Spencers. The Spencers paid \$35,000 6 for Mr. Swafford's representation. The State Bar 7 acknowledges there was an answer and counterclaim prepared 8 and filed as part of the representation, but the speed at 9 which it happened was inappropriate, and the work that was 10 done was insufficient for the representation.</p> <p>11 I don't have a recommendation about how much 12 should be given back, frankly. We would ask for a full 13 restitution but acknowledge that there was work done.</p> <p>14 There is also the option of enforcing a 15 provision of any awards and enforcement provisions for any 16 awards from a fee dispute arbitration, a requirement of 17 participating in that and enforcing that as a condition of 18 reinstatement.</p> <p>19 Finally, the State Bar would ask for an award 20 of costs pursuant to SCR 120 in the amount of \$2500, plus 21 any hard costs associated with this hearing. Those hard 22 costs are the cost of the transcript of the proceeding, 23 and mailing costs, certified mailing costs required to 24 serve documents by certified mail, and then the personal 25 service expense. The greatest expense of that is</p>

<p style="text-align: right;">Page 110</p> <p>1 obviously the transcript.</p> <p>2 Thank you.</p> <p>3 CHAIRMAN HAHN: Miss Flocchini, before you</p> <p>4 stand down. Questions from the panel?</p> <p>5 MR. STOVAL: No.</p> <p>6 MR. MEADE: Hold on. I do have a question</p> <p>7 about the 35,000 and whether restitution -- how are we</p> <p>8 supposed to determine the amount of restitution? You said</p> <p>9 with the order of fee arbitration. Is that what I</p> <p>10 understand you said?</p> <p>11 MS. FLOCCHINI: So the panel can require that</p> <p>12 Mr. Swafford participate in either a fee arbitration or if</p> <p>13 there is a payment made by this client security fund that</p> <p>14 that money be refunded before Mr. Swafford would be</p> <p>15 reinstated. The panel can also determine an amount that</p> <p>16 you have full discretion to order restitution today.</p> <p>17 And the fee agreement acknowledges an hourly</p> <p>18 rate of \$250. I think one of the virtues of us having</p> <p>19 attorneys on the panel are that you have an understanding</p> <p>20 of what might be a reasonable amount of hours involved in</p> <p>21 performing a certain amount of work is available to you.</p> <p>22 It's accessible to you. You have it.</p> <p>23 And so if that's the way that you would like</p> <p>24 to determine a restitution award today or if you would</p> <p>25 like to defer to other systems that we have available at</p>	<p style="text-align: right;">Page 111</p> <p>1 the State Bar, you can do that as well, and ask that that</p> <p>2 be a condition of any reinstatement, a repayment be a</p> <p>3 condition of any reinstatement.</p> <p>4 If you award restitution to the Spencers, you</p> <p>5 can also make payments of that restitution a condition of</p> <p>6 any reinstatement. Just your award here, rather than</p> <p>7 deferring to anybody else, if you make a determination it</p> <p>8 can be done today.</p> <p>9 CHAIRMAN HAHN: Just a couple questions. The</p> <p>10 Bar is recommending three remedies, suspension,</p> <p>11 restitution and costs; am I correct?</p> <p>12 MS. FLOCCHINI: Correct.</p> <p>13 CHAIRMAN HAHN: With regard to the suspension,</p> <p>14 the Bar is recommending six months and a day; is that</p> <p>15 true?</p> <p>16 MS. FLOCCHINI: It is true. At least.</p> <p>17 CHAIRMAN HAHN: With regard to the</p> <p>18 restitution, the sum of \$35,000, that was derived from the</p> <p>19 \$10,000 check, 428, the 18,050 check number 6166 in</p> <p>20 addition to the \$7,000 from Mr. Routsis rather than the</p> <p>21 Spencers in check number 1443, which would be a total of</p> <p>22 \$35,050?</p> <p>23 MS. FLOCCHINI: We were using the calculation</p> <p>24 of the \$6,950 that the Spencers paid to Mr. Routsis. And</p> <p>25 then the check from Mr. Routsis to Mr. Swafford was just</p>
<p style="text-align: right;">Page 112</p> <p>1 to show that the payment was actually forwarded on to</p> <p>2 Mr. Routsis. We acknowledge that it was more than the</p> <p>3 Spencers paid. I did not ask Mr. Routsis why he added \$50</p> <p>4 to it, but I know the Spencers paid \$6,950 for</p> <p>5 Mr. Swafford.</p> <p>6 CHAIRMAN HAHN: So that's where the 35,000</p> <p>7 comes from?</p> <p>8 MS. FLOCCHINI: Yes.</p> <p>9 CHAIRMAN HAHN: Then the cost specifically,</p> <p>10 what was the sum again?</p> <p>11 MS. FLOCCHINI: 2500 plus the hard costs of</p> <p>12 the proceeding.</p> <p>13 CHAIRMAN HAHN: Which is?</p> <p>14 MS. FLOCCHINI: So it would be the cost of the</p> <p>15 court reporter transcript, and mailing costs, and the</p> <p>16 service cost.</p> <p>17 CHAIRMAN HAHN: For a grand total of \$2500?</p> <p>18 MS. FLOCCHINI: No.</p> <p>19 MR. MEADE: Plus the costs.</p> <p>20 MS. FLOCCHINI: Pursuant to Supreme Court Rule</p> <p>21 120, we're allowed to request hard costs of the</p> <p>22 proceeding, expert costs and salaries, Bar counsel and</p> <p>23 administrative salaries associated with the proceeding.</p> <p>24 And through a policy that's come down through the Board of</p> <p>25 Governors, rather than parsing out all those pieces, we're</p>	<p style="text-align: right;">Page 113</p> <p>1 requesting for the level of suspension, \$2500 will</p> <p>2 represent, it's representative of the salaries and the</p> <p>3 costs, the administrative costs that would go in, plus the</p> <p>4 hard copy.</p> <p>5 CHAIRMAN HAHN: So the total sum that the Bar</p> <p>6 is seeking is?</p> <p>7 MS. FLOCCHINI: I don't know, because I don't</p> <p>8 have the cost of the transcript.</p> <p>9 CHAIRMAN HAHN: Very well. Any other</p> <p>10 questions? Mr. Swafford?</p> <p>11 MR. SWAFFORD: I have nothing else.</p> <p>12 CHAIRMAN HAHN: You waive any final</p> <p>13 presentation to the panel?</p> <p>14 MR. SWAFFORD: I think I said everything I</p> <p>15 want to say. I'll leave it at that.</p> <p>16 CHAIRMAN HAHN: Okay. Very well. At this</p> <p>17 time argument is closed, and the panel will deliberate,</p> <p>18 and we'll recall everyone when we're finished.</p> <p>19 MS. FLOCCHINI: For the panel's consideration</p> <p>20 I have a findings and conclusion worksheet if you would</p> <p>21 like it.</p> <p>22 CHAIRMAN HAHN: Please.</p> <p>23 (Recess taken.)</p> <p>24 CHAIRMAN HAHN: Back on the record in the</p> <p>25 matter of State Bar versus William Swafford, OBC15-1069.</p>

<p style="text-align: right;">Page 114</p> <p>1 Again, Monday the 10th at approximately 12:45 P.M.</p> <p>2 The panel members are present, the State Bar</p> <p>3 representative Miss Flocchini is present, and Mr. Swafford</p> <p>4 is present.</p> <p>5 The record should reflect that the panel has</p> <p>6 met in confidence, deliberated the matter, and unanimously</p> <p>7 reached the following findings involving Mr. Swafford.</p> <p>8 And this is based upon the testimony of Jeffery Spencer,</p> <p>9 based on the testimony of Mrs. Spencer, based on the</p> <p>10 testimony of Mr. Swafford today. In addition to all of</p> <p>11 the exhibits which have been identified as Exhibit 1,</p> <p>12 which is the State Bar packet, in addition to 2 through 9</p> <p>13 of the other exhibits that were submitted.</p> <p>14 So in totality based on this evidence the</p> <p>15 panel reached the following findings and conclusions.</p> <p>16 The panel unanimously finds that the seven</p> <p>17 counts offered by the State Bar, Competence, Rule 1.1;</p> <p>18 Diligence, Rule 1.3; Communication, Rule 1.4; Speed, Rule</p> <p>19 1.5; Safekeeping Property, Rule 1.15; Bar Admission,</p> <p>20 8.1(b), and Misconduct, 8.4 have, in fact, been committed</p> <p>21 by Mr. Swafford.</p> <p>22 And that is based on not only the default,</p> <p>23 which all of those matters have in fact been admitted by</p> <p>24 Mr. Swafford, and it is supported by the testimony of the</p> <p>25 parties, the three parties identified earlier.</p>	<p style="text-align: right;">Page 115</p> <p>1 With regard to the determination, again, that</p> <p>2 has been based on the testimony of the clients in this</p> <p>3 matter who were aggrieved, Mr. and Mrs. Spencer, and also</p> <p>4 supported by the testimony of Mr. Swafford.</p> <p>5 The panel also finds that with regard to the</p> <p>6 intent level that Mr. Swafford made these admissions and</p> <p>7 conducted his business and representation of the Spencers</p> <p>8 was knowingly as opposed to intentionally. It was less</p> <p>9 than intentionally and certainly higher than negligent</p> <p>10 failure.</p> <p>11 Again, the testimony that supported this</p> <p>12 finding in addition to the admissions made by Mr. Swafford</p> <p>13 was that of namely Miss Spencer who indicated under oath</p> <p>14 that she attempted to reach out to Mr. Swafford on a</p> <p>15 number of occasions, and unfortunately her attempts were</p> <p>16 unresolved simply because there was no response.</p> <p>17 With regard to the injury that was done, the</p> <p>18 immediate injury was remedied by the Spencers and</p> <p>19 self-help hiring a separate lawyer. I believe that had</p> <p>20 been identified in one of the Bar's exhibits. The Ninth</p> <p>21 Judicial District Court docket sheet identifies her name,</p> <p>22 that that was the remedy that they had to seek to try and</p> <p>23 shore up not only their own counterclaim but a defense of</p> <p>24 the criminal lawsuit that had been asserted against them</p> <p>25 by the Klementis.</p>
<p style="text-align: right;">Page 116</p> <p>1 With regard to the aggravating and mitigating</p> <p>2 factors. As the panel has found by virtue of the</p> <p>3 testimony and the default admission, not only the duty</p> <p>4 violated and knowing violations have been committed</p> <p>5 knowingly and injury, the following aggravating and</p> <p>6 mitigating circumstances.</p> <p>7 In aggravation the panel has considered, and</p> <p>8 again unanimously finds, evidence clear and convincing</p> <p>9 standard, that there was a prior discipline matter</p> <p>10 involving Mr. Swafford and that involved the Pardo matter</p> <p>11 which has been submitted summarized by the Nevada Supreme</p> <p>12 Court in one of the exhibits that is attached to the</p> <p>13 affidavit of Laura Peters. I believe that was Exhibit 5</p> <p>14 as it's been identified. No, Exhibit 4. That was the</p> <p>15 Peters affidavit. That is what the panel found in</p> <p>16 aggravation.</p> <p>17 In mitigation the panel find unanimously to a</p> <p>18 clear and convincing standard the five separate mitigating</p> <p>19 factors. The mitigating factors are personal and</p> <p>20 emotional problems that Mr. Swafford was laboring under.</p> <p>21 His testimony which was unrebutted identified family</p> <p>22 health concerns, namely of his father who was also a</p> <p>23 Nevada attorney at one time who was one struggling with</p> <p>24 Alzheimer's, and a debilitating condition.</p> <p>25 Mr. Swafford referenced a girlfriend, that he</p>	<p style="text-align: right;">Page 117</p> <p>1 had to leave a relationship on sudden notice. And that</p> <p>2 would have caused the difficulties, perhaps contributing</p> <p>3 to some of the struggling that we're hearing today.</p> <p>4 The second finding the panel makes is</p> <p>5 cooperative attitude. While Mr. Swafford largely ignored</p> <p>6 filing an answer, filing responsive pleading, the panel</p> <p>7 noted that Mr. Swafford did, in fact, meet with</p> <p>8 Miss Flocchini face-to-face in April of '16. The panel</p> <p>9 finds also in his presentation today a cooperative</p> <p>10 attitude, an attitude which goes to the fifth finding</p> <p>11 closely related which is an attitude of remorse.</p> <p>12 He indicated, although the record won't</p> <p>13 reflect clearly, he stood and acknowledged the Spencers in</p> <p>14 person and apologized to them directly. While the</p> <p>15 transcript may reflect it was perhaps short and cavalier,</p> <p>16 that's not what the panel saw. The panel saw an attitude</p> <p>17 of remorse and concern on behalf of the aggrieved victims.</p> <p>18 So that will incorporate the panel's finding as to Number</p> <p>19 2 and Number 5.</p> <p>20 The third mitigating factor we found is</p> <p>21 inexperience in law. Upon questioning of Mr. Swafford he</p> <p>22 acknowledged that although he has been licensed since</p> <p>23 2009, he had only been in practice two years, only had</p> <p>24 several minor protection order violation matters that he</p> <p>25 had represented others civilly.</p>

<p style="text-align: right;">Page 118</p> <p>1 Mr. Swafford clearly is a highly intelligent 2 man having obtained Bar status in three states, 3 Massachusetts, Illinois, and Nevada. But for whatever 4 reason the commensurate experience of law, it's not 5 reflected from his Bar admission from '09 to the present 6 date. It was rather inexperience. 7 Lastly, the Bar found in mitigation Number 4 8 which was a mental disability. We find that through clear 9 and convincing evidence. Mr. Swafford testified 10 persuasively to having a severe injury to where his facial 11 bones and skull was fractured as a result of an impact 12 injury in '09 playing flag football to the point to where 13 he was debilitated, somehow was able to take the Bar exam, 14 but nonetheless began experiencing enormous difficulties 15 physically by virtue of insomnia, concentration issues by 16 virtue of ADD, what later became diagnosed in early '16 as 17 traumatic brain injury. Weight fluctuation, attention 18 struggles, and then of course needing the active 19 medications that he was on to the point where initially it 20 was diagnosed as possible bipolar, which would have been 21 associated with perhaps some depression and insomnia, but 22 later was subsumed by a more accurate diagnosis of 23 traumatic brain injury. 24 So the panel finds those five factors 25 unanimously. And in weighing those matters out with</p>	<p style="text-align: right;">Page 119</p> <p>1 regard to the testimony, the panel unanimously found the 2 testimony of both the Spencers and Mr. Swafford very 3 credible. We had no questions concerning the credibility 4 offered by any of these people in person which we had a 5 chance to observe the questions ourselves. 6 With regard to the recommended discipline by 7 the panel. The panel unanimously considered the following 8 consequences as a result of Mr. Swafford's default 9 admission, in addition to it was supported by the 10 testimony to a clear and convincing standard, that he will 11 be suspended from the practice of law in the state of 12 Nevada for six months and one day. 13 Further, that restitution be determined by the 14 State Bar fee dispute committee to assess restitution, if 15 any, to be found by them de novo with proper evidence and 16 testimony supporting hours actually invested by 17 Mr. Swafford in addition to the actual harm and costs that 18 the Spencers may have incurred by virtue of a new lawyer. 19 The panel unanimously concludes that the costs 20 of the proceedings in the amount of \$2500 will be assessed 21 against Mr. Swafford, in addition to the ultimate hard 22 copy costs, transcript cost by Miss Hummel for her 23 presence here. 24 And further, that prior to Mr. Swafford's 25 application to practice law or readmission if he makes</p>
<p style="text-align: right;">Page 120</p> <p>1 such a request, that a fitness for duty evaluation be 2 performed by a competent licensed neurologist to fully 3 assess not only his past but his present symptoms of 4 traumatic brain injury, and that should accompany his 5 application should he apply for readmission to practice 6 law in the state of Nevada. 7 Is that accurate, Mr. Meade? 8 MR. MEADE: Yes. 9 CHAIRMAN HAHN: Is that accurate, Mr. Stoval? 10 MR. STOVAL: Yes. I will make the one 11 addition, that his readmission not be conditioned upon 12 payment of restitution, if any. 13 CHAIRMAN HAHN: Agreed. That's what we 14 discussed. Is that accurate, Mr. Meade? 15 MR. MEADE: Yes. 16 CHAIRMAN HAHN: Anything further? 17 MR. STOVAL: No. 18 CHAIRMAN HAHN: That's the findings and 19 conclusions of this panel, Miss Flocchini. Any questions 20 for clarification to this panel's order? 21 MS. FLOCCHINI: With respect to the injury, 22 the panel has acknowledged injury to the client, the 23 Spencers, through the failure or the violation of the rule 24 of professional conduct on duty toward clients. Did the 25 panel consider the injury to the integrity of the</p>	<p style="text-align: right;">Page 121</p> <p>1 profession or the system, and in particular the violation 2 related to 8.1(b)? 3 CHAIRMAN HAHN: We found it as to the 4 profession, although I don't remember if there was a 5 specific discussion as to the other point. But as to the 6 profession, yes. 7 MR. STOVAL: To the community, I think that 8 involved the final imposition of the sentence we imposed, 9 the suspension, plus a day, plus the neurologist's 10 evaluation. 11 Do you concur? 12 MR. MEADE: Yes. 13 CHAIRMAN HAHN: And the chair concurs. 14 MS. FLOCCHINI: So there was injury related to 15 the violation of 8.1? 16 CHAIRMAN HAHN: Yes. 17 MS. FLOCCHINI: Did the mitigating factors 18 impact the term of the suspension that the panel decided 19 upon? 20 CHAIRMAN HAHN: They did. That involved a 21 downward departure from the higher end of the Bar's 22 recommendation the panel consider. 23 MS. FLOCCHINI: Okay. I appreciate that. 24 CHAIRMAN HAHN: The panel weighed the 25 aggravation versus mitigating factors. The five</p>

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<p style="text-align: right;">Page 122</p> <p>1 mitigating factors, and one aggravating factor, and that</p> <p>2 was considered in the ultimate by this panel.</p> <p>3 Anything further?</p> <p>4 MS. FLOCCHINI: Those are all my questions. I</p> <p>5 will be happy to prepare the order.</p> <p>6 CHAIRMAN HAHN: Mr. Swafford, do you have any</p> <p>7 questions about this panel's order?</p> <p>8 MR. SWAFFORD: No, I don't.</p> <p>9 CHAIRMAN HAHN: Thank you for coming. Thank</p> <p>10 you for your presentation, Miss Flocchini.</p> <p>11 (Proceedings concluded at 12:55 P.M.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 123</p> <p>1 STATE OF NEVADA)</p> <p style="text-align: center;">) ss.</p> <p>2 COUNTY OF WASHOE)</p> <p>3</p> <p>4 I, CAROL HUMMEL, a notary public in and for</p> <p>5 the County of Washoe, State of Nevada, do hereby certify:</p> <p>6 That at 9:25 A.M. on Monday, the 10th day of</p> <p>7 October, 2016, at the offices of Nevada State Bar, 9456</p> <p>8 Double R Boulevard, Reno, Nevada, personally appeared</p> <p>9 witnesses who were sworn by me and were deposed in the</p> <p>10 matter entitled herein;</p> <p>11 That said transcript which appears</p> <p>12 hereinbefore was taken in verbatim stenotype notes by me,</p> <p>13 a Certified Court Reporter, and thereafter reduced to</p> <p>14 writing by means of computer-assisted transcription as</p> <p>15 herein appears;</p> <p>16 That the foregoing transcript, consisting of</p> <p>17 Pages 1 through 122, inclusive, is a full, true and</p> <p>18 correct transcription of my stenotype notes of said</p> <p>19 proceedings;</p> <p>20 I further certify that I am not an attorney or</p> <p>21 counsel for any of the parties, nor a relative or employee</p> <p>22 of any attorney or counsel connected with the action, nor</p> <p>23 financially interested in the action. </p> <p>24</p> <p style="text-align: right;">CAROL HUMMEL, CCR #340</p> <p>25</p>

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<p>want 8:15 9:8 16:13 26:9,11 28:4 35:10 38:21 40:25 41:3 42:4 43:2 46:6,21 62:7 65:11 69:11 72:21,24 73:2 78:20 81:21 88:8 92:22 94:8,9 99:4,24 113:15</p> <p>wanted 10:11 18:17 20:1 36:20 43:5 61:24 69:11 70:6,23,24 71:13 72:2 73:16,18,25 74:1,3,13 77:24 78:11 81:16 82:12 84:15,16 85:3 86:6 94:13</p> <p>wanting 10:12</p> <p>warrant 103:5,16</p> <p>warrants 103:11</p> <p>Waste 94:2</p> <p>way 18:23 19:15 59:15 65:24 69:4, 12 83:17,24 84:19 85:11 87:7 89:1,2 110:23</p> <p>ways 74:8</p> <p>wedding 86:20</p> <p>week 66:18 73:5</p> <p>weeks 42:13 69:3</p> <p>weighing 118:25</p> <p>weight 69:20 118:17</p> <p>weird 44:1 48:2</p> <p>went 19:22 32:12 33:25 39:9 66:14, 22 67:24 68:15 73:21 83:3,4,25</p>	<p>89:23 102:18</p> <p>whatever 63:1 118:3</p> <p>whereby 34:14</p> <p>whether 110:7</p> <p>while 17:20 69:12 117:5,14</p> <p>White 66:17</p> <p>whole 82:24 106:9</p> <p>whom 28:12,19 29:9</p> <p>will 8:2,13,25 9:3, 18 11:25 16:14 17:6 21:17 27:14 28:19 50:4 52:21 53:5,6 56:14 57:8 71:14 74:20 75:8, 21,23 76:1,6 82:1,3 84:13 113:1,17 117:18 119:10,20</p> <p>William 4:9,20 12:5,21,22 15:3 19:22 25:18,23, 25 26:4,5,15 28:13 29:10,14 41:21 51:17 56:3 72:6,9,11 73:16, 20 75:17 77:16, 18 82:11,12 84:13,15 86:2,3, 9,21 113:25</p> <p>winter 64:5</p> <p>wisely 13:23</p> <p>wish 82:15</p> <p>without 11:16 15:21</p> <p>witness 18:2 19:2 23:25 24:7,14,23</p>	<p>25:1,5,20 26:2,7, 17,20,23 27:16, 18,21 36:9 38:13, 18,24 39:6,12,19, 22 40:1,14 41:15, 19,22 45:18,20, 23 46:6,10,14,24 47:2,6,19,24 48:6,9,15,17,20, 22 49:1 52:6,9,17 53:11 55:2 62:12, 18 63:8,10,13,16, 22 64:2,6,8,13,18 85:11 93:17</p> <p>witnesses 7:6,9 8:11,23,25</p> <p>word 62:22</p> <p>words 89:8</p> <p>work 14:20 21:24 54:1 67:14 70:14 71:19 72:19 73:16 77:23 78:9 84:3,21 85:11 92:2 109:9,13 110:21</p> <p>worked 36:18 68:1 71:22 73:1 83:12 84:4,19</p> <p>working 15:12 30:4 31:6 35:24 57:25 72:6,8,10, 24 73:19 77:18 82:16 85:17 107:3</p> <p>worksheet 113:20</p> <p>worried 82:21</p> <p>worries 35:14</p> <p>worse 69:14 90:16</p> <p>worst 77:3</p>	<p>Wray 68:11</p> <p>write 68:12 70:24</p> <p>writing 20:20 71:1,21 85:14</p> <p>written 26:14 38:13 39:14,17</p> <p>wrong 6:19 57:1 67:1,19 69:22 77:9,11 82:4,7 83:8</p> <p>wrongdoing 82:5</p> <p>wrote 38:22 39:2, 13 50:9,19 68:2 71:9 84:18</p> <hr/> <p>Y</p> <hr/> <p>year 16:17 45:23 46:3,12,13 48:23 66:23 70:23 73:2 83:13 84:1 86:16 92:23 107:13</p> <p>years 45:24 46:3, 6,7,9 67:24 68:16 70:17,21 71:9 84:20 91:6 93:1,6 117:23</p> <p>yet 106:4</p> <p>young 108:15</p> <p>yourself 4:24 16:24 41:11 53:21 87:20</p> <hr/> <p>Z</p> <hr/> <p>Zaniel 56:23 57:13,15 58:4,16 59:4,11 60:10</p> <p>ZIP 47:25</p>
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Case No. OBC15-0690, OBC15-0828

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

WILLIAM SWAFFORD,

STATE BAR NO. 11469

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDATION AFTER
FORMAL HEARING**

This matter involving attorney William Swafford, Esq. ("Respondent"), Bar No. 11469, initially came before a designated Formal Hearing Panel of the Northern Nevada Disciplinary Board ("Panel") at 9:00 a.m. on March 15, 2016, at the offices of the State Bar of Nevada in Reno, Nevada. The Panel consisted of Chair Barth F. Aaron, Esq.; Jill Greiner, Esq.; and Rick Lund, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the State Bar of Nevada ("State Bar"). No one appeared representing Respondent. Respondent was not present and a Default had previously been entered against him.

1 The State Bar presented materials consisting of pleadings and State Bar
2 documents, which were admitted into evidence as Exhibits 1-6. The Panel also heard a
3 statement from the State Bar.

4 Based upon the evidence presented and testimony received, the Panel unanimously
5 issues the following Findings of Fact, Conclusions of Law, and Recommendation:

6 **FINDINGS OF FACT**

7 1. Respondent is an attorney licensed to practice law in the State of Nevada
8 and was admitted to the State Bar of Nevada on April 9, 2009.

9 2. During the period in question, Respondent practiced law in Washoe County,
10 Nevada.

11 3. On November 24, 2015, the Office of Bar Counsel filed a disciplinary
12 Complaint which charged Respondent with violations of Rule of Professional Conduct
13 ("RPC") 8.4(a) (Misconduct, Assisting Another in Violating RPCs), RPC 1.1 (Competence),
14 RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 3.3 (Candor Toward the Tribunal),
15 RPC 8.4(c) (Misconduct, Misrepresentation), RPC 8.4(d) (Misconduct, Prejudicial to the
16 Administration of Justice), and RPC 1.15 (Safekeeping Property).

17 4. Respondent did not file an Answer.

18 5. A Notice of Intent to Proceed on a Default Basis was filed on January 4, 2016.

19 6. The Order Appointing Formal Hearing Panel Chair was filed on January 25,
20 2016.

21 7. An Entry of Default was filed on February 9, 2016.

22 8. A Notice of Default Hearing was filed on February 12, 2016.

23 ///

24 ///

FACTS RELEVANT TO COUNTS 1 TO 7:

9. In or about May, 2014 Respondent was residing in Chicago, Illinois but was in Reno, Nevada visiting family.

10. In or about May, 2014 Eugene Pardo and his brother contacted attorney William J. Routsis after both were arrested for a drug offense. Routsis involved Respondent in the matter to avoid a conflict of interest issue between the two brothers.

11. Routsis and Respondent met with the Pardo Brothers in May, 2014, while Respondent was in Reno, Nevada. They did not retain Routsis or Respondent at the initial consultation.

12. Respondent left a signed a "blank" authorization of counsel form with Routsis to complete if the Pardo Brothers decided to retain them. Respondent then returned to Chicago.

13. Routsis represented to Respondent that if the Pardo Brothers did retain them, then they would charge a flat fee for the representation and split the fee 50/50.

14. Thereafter, the Pardo Brothers did retain Routsis and Respondent.

15. On June 12, 2014, the "blank" form that Respondent signed was filed by Routsis in Eugene Pardo's case. See Exhibit 1, Complaint (Exhibit 1, thereto).

16. On August 13, 2014, Routsis sent Respondent's "client" a letter informing him of a Mandatory Settlement Conference ("MSC") set for September 18, 2014 and requesting that the client call Routsis to confirm receipt of the letter.

17. Respondent was not informed of the representation until September 8, 2014 when he was notified of the MSC and that Routsis intended to meet with both clients to prepare for the MSC. Respondent was not informed which Pardo brother he represented.

1 18. Respondent did not meet with the clients or attend the September 18, 2014
2 MSC. Routsis handled it for both Pardo brothers.

3 19. Routsis sent Respondent's "client" letters on September 19, 2014, October
4 15, 2014, and October 30, 2014 notifying him of rescheduled MSCs and asking him to call
5 Routsis to confirm receipt of the letters.

6 20. In October 2014, Respondent told Routsis that he saw no issues that were
7 ripe for motion practice in either Pardo Brother's matter.

8 21. On or about November 11, 2014 Routsis told Respondent that Routsis had
9 "Pardo handled." He stated that he had a deal worked out for both brothers and he "just
10 need[ed] [Respondent] to speak with [his] client who is taking full responsibility for all the
11 drugs, and his brother is having all charges dismissed which is good as his brother has the
12 long criminal record."

13 22. Routsis told Respondent that he would make a special appearance for
14 Respondent at arraignment and sentencing.

15 23. Routsis also told Respondent that he would keep all of the fee paid by the
16 Pardo Brothers unless there was a need to file a motion, with the implication being that
17 Respondent would write any motion, but otherwise Routsis would do all of the work on
18 behalf of both Pardo Brothers and thus earn all of the fee.

19 24. One day earlier, on November 10, 2014, Routsis wrote to Eugene Pardo, the
20 brother that was Respondent's "client," to inform him of a MSC scheduled for December 4,
21 2014 and requesting that Eugene call him to confirm receipt of the letter.

22 25. On January 13, 2015, Routsis simply informed Respondent that the Pardo
23 Brothers had an MSC scheduled for the next day.

1 26. Thereafter, Routsis, through his secretary, suggested that Respondent speak
2 with "one of the clients" about waiving his preliminary hearing. However, Respondent did
3 not know which Pardo Brother he was representing until February 24, 2015 when Routsis's
4 secretary e-mailed him Eugene's phone number and a Plea offer for him to review with
5 Eugene.

6 27. Respondent was told by the secretary that Routsis "has been making all court
7 appearances and will continue on making them."

8 28. Respondent did speak with Eugene by telephone on February 24, 2015 and
9 reviewed with him whether he should waive the Preliminary Hearing.

10 29. Eugene signed the waiver of Preliminary Hearing on February 25, 2015.
11 Routsis specially appeared with Eugene.

12 30. When Assistant District Attorney Lyon pointed out an error in the waiver of
13 the Preliminary Hearing that was to Eugene's detriment, Routsis remedied the problem,
14 not Respondent.

15 31. Respondent never communicated with ADA Lyon regarding the plea deal for
16 Eugene; Routsis handled the negotiations for both Pardo Brothers.

17 32. Routsis then attempted to arrange for Respondent to meet with Eugene in
18 March, 2015.

19 33. Respondent appeared with Eugene at the arraignment hearing on March 18,
20 2015 because the Court ordered him to personally appear rather than appearing through
21 Routsis.

22 34. Routsis paid for Respondent's plane tickets so that he could return to Reno
23 from Chicago for this appearance.

1 35. Respondent met with Eugene and Routsis the morning of March 18, 2015 at
2 Routsis' office. Routsis explained the particulars to Eugene and both attorneys attended
3 the hearing with Eugene.

4 36. At the hearing, Respondent told the Court that he could personally appear on
5 the date scheduled for the Sentencing Hearing.

6 37. After the hearing to enter the Plea, Routsis told Respondent that he did not
7 need to appear at the sentencing hearing because the Court did not order him to personally
8 appear and Routsis could cover it for him.

9 38. Routsis, not Respondent, arranged for Eugene to have a substance abuse
10 evaluation prior to the Sentencing Hearing.

11 39. On May 20, 2015, Routsis sent Eugene a letter advising him that his
12 Sentencing date was scheduled for May 27, 2015 and, again, requesting that Eugene call
13 Routsis to confirm receipt of the letter.

14 40. Respondent relied on Routsis' representation and he did not attend the
15 Sentencing Hearing with Eugene. Instead, Routsis appeared and at Judge Freeman's
16 invitation 'stepped in' to assist Eugene because Routsis represented that Respondent had
17 "fallen off the face of the earth and [was] not answering e-mails or phone calls."

18 41. On May 29, 2015, Routsis emailed Respondent to inform him that he had
19 "handled the sentencing on Pardo" and that Judge Freeman asked Routsis if Respondent
20 had abandoned the client.

21 42. Eugene was allowed to enter the Drug Diversion Program instead of
22 receiving a sentence for his crime. As of the date of the Formal Hearing in this matter,
23 Eugene continues to be in the Drug Diversion Program. If Eugene successfully completes
24
25

1 the diversion program, the admitted crime will not appear as a felony conviction on his
2 record.

3 **FACTS RELEVANT TO COUNT 8:**

4 43. On June 26, 2015, the State Bar was notified that Respondent IOLTA
5 had an overdraft of -\$27.00 on that date due to two checks, totaling, \$50.00, being
6 presented for payment on that date.

7 44. On July 31, 2015, the State Bar wrote to Respondent and requested that he
8 explain the reason for the overdraft and what he had done to correct it.

9 45. Respondent failed to respond to the State Bar.

10 46. On September 4, 2015, the State Bar sent Respondent another letter
11 requesting an explanation for the IOLTA overdraft. The letter was also e-mailed to
12 Respondent.

13 47. On September 9, 2015, Respondent replied to the State Bar's e-mail and
14 represented that a response would be forthcoming.

15 48. Respondent failed to send the State Bar a substantive response to its
16 inquiry regarding the IOLTA overdraft.

17 **CONCLUSIONS OF LAW**

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

20 1. That the Northern Nevada Disciplinary Board has jurisdiction over
21 Respondent and the subject matter of these proceedings pursuant to SCR 99;

22 2. That venue is proper in Washoe County; and

23 3. The State Bar must prove by clear and convincing evidence that Respondent
24 violated any Rules of Professional Conduct. See Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*,

1 108 Nev. At 633-634, 837 P.2d at 856; *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d
2 386, 387 (1990).

3 4. All allegations in the Complaint are deemed admitted by the default of
4 Respondent in this matter. SCR 105(2).

5 5. The appropriate level of discipline must be determined considering "all
6 relevant factors and mitigating circumstances on a case-by-case basis." *State Bar of*
7 *Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate The
8 American Bar Association Standards for Imposing Lawyer Sanctions' four factors to be
9 considered in determining the appropriate disciplinary sanction: "the duty violated, the
10 lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and
11 the existence of aggravating or mitigating factors." *See In re Discipline of Lerner*, 124 Nev.
12 1232, 1246, 197 P.3d 1067, 1078 (2008).

13 **COUNTS 1 to 7:**

14 6. The Panel unanimously finds that the foregoing findings of fact prove by clear
15 and convincing evidence that:

16 a. Respondent knowingly violated Rule 8.4(a) (Misconduct- assisting
17 another in violating a RPC) of the Nevada Rules of Professional Conduct ("RPC")
18 by assisting Routsis in representing two client with conflicting interests in related
19 criminal matters. This conduct, which includes Respondent's failure to represent
20 his own client, also violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4
21 (Communication) and RPC 8.4 (d) (Misconduct- prejudicial to the administration of
22 justice).

23 b. Respondent violated RPC 3.3 (Candor toward the Tribunal) and RPC
24 8.4(c) (Misconduct- misrepresentation) and RPC 8.4(d) (Misconduct- prejudicial to
25

1 the administration of justice) by intentionally misleading the Court when he stated
2 he was available to appear at Eugene's Sentencing Hearing because Respondent
3 never intended to appear at that hearing.

4 c. Respondent's conduct caused injury to the legal profession and the
5 public because it gave the Pardo Brothers, and any other layperson involved in their
6 criminal matters, the impression that independent counsel is not required or valued.
7 Respondent's conduct had the potential to cause serious injury to his client. This
8 situation is a good example of why two clients in one criminal matter deserve
9 separate counsel.

10 7. Pursuant to SCR 102.5, the Panel unanimously found that
11 Respondent's lack of cooperation in the disciplinary matter was an aggravating factor with
12 respect to Counts 1-7 in this matter.

13 8. The Panel unanimously found no mitigating factors existed with respect to
14 Counts 1-7 in this matter.

15 9. The Panel unanimously found that Respondent's mental state, the injury to
16 the legal profession and the potential injury to the client by Respondent's misconduct
17 warranted a suspension of one year from the practice of law. The Panel did not find that
18 the recommended sanction, in response to Counts 1 to 7, should be increased because of
19 the aggravating factor.

20 **COUNT 8:**

21 10. The Panel unanimously finds that the foregoing findings of fact prove by clear
22 and convincing evidence that Respondent knowingly violated RPC 1.15 (Safekeeping of
23 Property) when he wrote checks against insufficient funds in his IOLTA.

11. The Panel unanimously finds that no injury from Respondent's misconduct was proven, but the potential injury to the legal profession and any clients exists.

12. Pursuant to SCR 102.5, the Panel unanimously found that (i) Respondent's failure to respond to the State Bar's inquiries regarding the overdrafts and (ii) Respondent's failure to participate in the disciplinary matter after the Complaint was filed were aggravating factors that it considered in deciding the appropriate sanction for Respondent's misconduct.

13. The Panel unanimously found no mitigating factors existed with respect to Count 8 of this matter.

14. The Panel unanimously found that the aggravating factors were reason to increase the recommended sanction for Respondent's misconduct in Count 8.

ORDER

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

1. Respondent be suspended for one year for his conduct that violated RPC 8.4(a) (Misconduct- assisting another in violating a RPC), RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication) and RPC 8.4 (d) (Misconduct- prejudicial to the administration of justice), RPC 3.3 (Candor toward the Tribunal) and RPC 8.4(c) (Misconduct- misrepresentation).

2. Respondent be suspended for six months and one day for his conduct that violated RPC 1.15 (Safekeeping of Property).

3. Respondent's suspensions shall run concurrently.

4. Pursuant to SCR 120, Respondent shall pay \$500 plus the actual costs of the Formal Hearing and mailing expenses to the State Bar of Nevada within 30 days of the


1 Nevada Supreme Court's acceptance and approval of this Panel's recommendation for
2 sanctions.

3 DATED this _____ day of March, 2016.

4
5
6 BARTH F. AARON, ESQ., Chair
Northern Nevada Disciplinary Panel

7
8 Submitted By:

9 STATE BAR OF NEVADA
10 C. STANLEY HUNTERTON, BAR COUNSEL

11 
12 R. Kait Flocchini, Assistant Bar Counsel
13 Nevada Bar No. 9861
14 9456 Double R. Blvd, Ste 100
Reno, Nevada 89521
(775)329-4100

Case No. OBC15-1069

**STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,
Complainant,
vs.
WILLIAM SWAFFORD,
STATE BAR NO. 11469
Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDATION AFTER
FORMAL HEARING**

This matter involving attorney William Swafford, Esq. ("Respondent"), Bar No. 11469, initially came before a designated Formal Hearing Panel of the Northern Nevada Disciplinary Board ("Panel") at 9:00 a.m. on October 10, 2016, at the offices of the State Bar of Nevada in Reno, Nevada. The Panel consisted of Chair Bruce Hahn, Esq.; Eric Stovall, Esq.; and Tim Meade, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the State Bar of Nevada ("State Bar"). Respondent appeared on his own behalf.

1 The State Bar presented materials consisting of pleadings and State Bar
2 documents, which were admitted into evidence as Exhibits 1-9 without objection.
3 Respondent did not offered any Exhibits. The Panel also heard a statement from the State
4 Bar, testimony from grievants Jeffrey Spencer and Marilyn Spencer, and testimony from
5 Respondent.

6 Based upon the evidence presented and testimony received, the Panel unanimously
7 issues the following Findings of Fact, Conclusions of Law, and Recommendation:

8 FINDINGS OF FACT

9 JURISDICTIONAL AND PROCEDURAL FACTS

10 1. Respondent is an attorney licensed to practice law in the State of Nevada
11 and was admitted to the State Bar of Nevada on April 9, 2009. *See* Transcript of Hearing,
12 dated October 10, 2016, ("Transcript"), Exhibit 4 (Affidavit of Custodian of Records).

13 2. During the period in question, Respondent practiced law in Northern Nevada.
14 *See* Transcript, at 70:20-76:25 (discussing various matters in Northern Nevada on which
15 he worked) and *see generally* Transcript at Exhibit 1 (Hearing Packet), pgs. 1-4.

16 3. On July 29, 2016, the Office of Bar Counsel filed a disciplinary Complaint
17 which charged Respondent with violations of Rule of Professional Conduct ("RPC") RPC
18 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees), RPC
19 1.15 (Safekeeping of Property), RPC 8.1(b) (Bar Admissions and Disciplinary Matters), and
20 RPC 8.4(d) (Misconduct, Prejudicial to the Administration of Justice). *See* Transcript at
21 Exhibit 1, pgs. 1-31.

22 4. Respondent did not file an Answer. *See id.* at 50-79.

23 5. A Notice of Intent to Proceed on a Default Basis was filed and served on
24 August 23, 2016. *See id.* at 50-79.

1 6. The Order Appointing Formal Hearing Panel Chair was filed on September
2 9, 2016. *See id.* at 45-46.

3 7. The Request to Enter Default was personally served on Respondent on
4 September 12, 2016. *See id.* at 81.

5 8. A Notice of Hearing and Summary of Evidence and Designation of Witnesses
6 was filed and served on September 7, 2016. *See id.* at 41-44.

7 9. Default was entered against Respondent on September 26, 2016. *See id.* at
8 50-79.

9 10. Respondent stated affirmatively that there was no reason, medical or
10 otherwise, that prevented him from participating in the Formal Hearing. *See Transcript* at
11 4:21-5:12.

12 **FACTS RELEVANT TO COUNTS 1 TO 5 and 7:**

13 11. In 2014, Respondent lived in Chicago, Illinois and his practice of law
14 consisted primarily of contract work for attorney William J. Routsis II ("Routsis") and other
15 Reno attorneys on various matters. *See Transcript* at 70:20-71:9.

16 12. In August 2014, Jeffrey Spencer ("Spencer") hired the attorney team of
17 Respondent and Routsis to pursue a claim against a party whom Spencer claimed had
18 caused his wrongful arrest in Douglas County. *See Transcript* at 19:17-20:21.

19 13. Routsis had previously handled a related criminal matter for Spencer in which
20 Spencer was found not guilty. Spencer then asked Routsis to pursue a tort claim against
21 the party responsible for his arrest. *See id.*

22 14. In August 2014, Spencer paid Respondent \$10,000 to prepare the pleadings
23 in the lawsuit. *See Transcript*, 28:9-18 and Exhibit 1, pg. 12.

1 15. Respondent worked on a draft Complaint and sought input from Spencer,
2 and his wife Marilyn Spencer, for the pleading. See Transcript, 35:23-36:4.

3 16. Between August and January, 2015, the Spencers had difficulty reaching
4 Respondent to convey comments on drafts of the Complaint. See Transcript, 33:23-34:13.

5 17. Respondent failed to prepare a final pleading for filing before Spencer was
6 served in or about January 2015 with a Complaint by another party involved in the
7 underlying dispute. See Transcript, 19:17-21:5.

8 18. On or about February 3, 2015, Respondent finally filed an Answer and
9 Counterclaim on behalf of Spencer. See Transcript, Exhibit 1, pgs. 14-25, and Exhibit 7.

10 19. The Spencers identified to Respondent that the Counterclaim was deficient
11 in several respects. Again, the Spencers had a difficult time reaching Respondent to
12 convey their comments and proposed revisions for an Amended Counterclaim. See
13 Transcript, 30:7-35:8.

14 20. Spencer entered into an Attorney Client Fee Agreement ("the Agreement")
15 with Routsis wherein Respondent is designated as sharing responsibility for the handling
16 of Spencer's case. See Transcript, Exhibit 3.

17 21. Respondent was identified as serving as "civil technician" and eventual
18 second chair to Routsis at trial in the civil lawsuit. See *id.*

19 22. The Agreement provided that Respondent would be paid one half of \$50,000
20 to defend Spencer in the civil lawsuit. This was identified as a flat fee that would be held
21 in trust and transferred to Respondent at \$250 per hour of work performed. Spencer also
22 agreed that the flat fee was nonrefundable. The Agreement also provided that the
23 attorneys, including Respondent, would be compensated for pursuing a civil counterclaim
24 via a contingency fee. See Transcript, 22:6-17, 24:21-25:1, and Exhibit 6.

1 23. Respondent received \$35,000 from the Spencers, pursuant to the
2 Agreement. See Transcript, 28:19-25:17, 38:20-40:1, and Exhibit 1, pgs. 3-31 therein.

3 24. Respondent did not deposit the funds into an IOLTA trust account or transfer
4 the funds to his personal account only after earning the funds. See Transcript, 80:11-81:8,
5 Exhibit 8 and Exhibit 9.

6 25. After executing the Agreement, the Spencers and Routsis lost contact with
7 Respondent for five months. Specifically:

8 a. Marilyn emailed Respondent on July 6, 2015, regarding amending the
9 'complaint' and issuing disclosures. Respondent did not respond.

10 b. Marilyn emailed Respondent on August 4, 2015, regarding potential
11 additional defendants to add to the 'complaint.'

12 c. Marilyn emailed Respondent on August 5, 2015, regarding a status
13 conference set in the civil lawsuit and additional potential defendants to add to the
14 'complaint.'

15 d. Marilyn emailed Respondent on August 6, 2015, regarding Respondent's
16 failure to communicate with him, or his wife, in the last month.

17 e. Marilyn emailed Respondent on September 3, 2015, regarding
18 Respondent's failure to contact them for over two months.

19 f. Marilyn emailed Respondent on September 7, 2015, regarding a
20 scheduled early case conference the next week and their frustration at Respondent's lack
21 of communication and representation.

22 g. Routsis sent Respondent a letter on October 15, 2015, requesting that he
23 sign a substitution of counsel.

24 See Transcript, 30:25-32:19 and Exhibit 1, pgs. 3-4.

1 26. Respondent failed to respond to any of the Spencers' or Routsis's above-
2 described attempts to contact him. *See id.* and Transcript, 82:9-17.

3 27. Respondent's failure to respond to the Spencers' or Routsis's
4 communications was due in part to a falling out between Respondent and Routsis and
5 personal and medical problems that Respondent was dealing with at the time. *See*
6 Transcript, 76:3-78:13 and 85:24-86:17.

7 28. Respondent failed to accurately recite facts in the counterclaim that he
8 prepared, despite being provided the accurate information by the Spencers. *See*
9 Transcript, 32:20-34:21.

10 29. Respondent failed to seek amendment of the counterclaim such that included
11 third-party claims may be barred by the Statute of Limitations. *See* Transcript, Exhibit 1,
12 pg. 4.

13 30. Respondent has not refunded any money to the Spencers. *See* Transcript,
14 35:20-22.

15 **FACTS RELEVANT TO COUNT 6 (RPC 8.1(b)):**

16 31. On September 11, 2015, the State Bar asked Respondent to respond to
17 allegations the grievance Spencer filed. *See* Transcript, Exhibit 1, pg. 4.

18 32. The State Bar's initial letter was sent to the address which Respondent
19 provided pursuant to SCR 79. *See id.*

20 33. Swafford failed to timely respond to the State Bar's request. *See id.*

21 34. A follow-up letter was sent via certified and first class mail to the address
22 which Respondent provided pursuant to SCR 79 and to the alternate address in Chicago,
23 Illinois which he had provided to the State Bar membership department. A copy of the
24 letter was also e-mailed to Respondent at swafford@wswoffordlaw.com. *See* Transcript,
25

1 Exhibit 1, pg. 5.

2 35. The certified letter that was sent to Chicago, Illinois was returned, but no
3 other letters were returned to the State Bar. *See id.*

4 36. The State Bar received no response from Respondent. *See id.*

5 37. Respondent met with Assistant Bar Counsel Kait Flocchini on April 8, 2016
6 at the State Bar office. They discussed the grievance and Respondent asserted that, on
7 or about April 18, 2016, he would provide a formal response or medical documentation to
8 support an SCR 117 Petition. *See Transcript, 42:14-43:11 and Exhibit 1, pg. 5.*

9 38. Respondent did not send a response to the State Bar. *See Transcript, 43:14-*
10 *15.*

11 39. The State Bar served Respondent with the Complaint in this matter, pursuant
12 to the requirements of SCR 79, at 21385 Saddleback Road, Reno, Nevada 89521. *See*
13 *Transcript, 44:21-45:1 and Exhibit 1, pg. 35.*

14 40. Although Respondent stated that he was not sure he actually received the
15 Complaint, on or about July 19, 2016, Respondent did confirm that 21385 Saddleback
16 Road, Reno, Nevada 89521 was his address that was provided to the State Bar for service
17 of such a pleading. *See Transcript at 43:20-45:1.*

18 41. Respondent confirmed his email address of swaffordw@gmail.com and that
19 he emailed the State Bar from that email address acknowledging that he owed the State
20 Bar a response to the Spencer's grievance. *See Transcript, 49:11-12, 46:18-51:12, and*
21 *Exhibit 6.*

22 42. Respondent acknowledged personal receipt of the Notice of Hearing and the
23 Request for Entry of Default, to which a copy of the Complaint was attached. *See*
24 *Transcript at 45:2-5.*

1 43. Respondent failed to respond to the Complaint, and any of the allegations
2 therein. See Transcript, 43:14-15 and Exhibit 1, 50-79.

3 44. Respondent did not contact the State Bar between when he was personal
4 served with the Complaint and Notice of Hearing and the date of the Formal Hearing. See
5 Transcript, 45:6-9.

6 45. Respondent did not seek to set aside the default judgment. See *e.g.*
7 Transcript, 78:4-6.

8 46. Respondent and Routsis had a falling out regarding other cases that they
9 worked on together which impacted Respondent's willingness to communicate regarding
10 the Spencers' matter. See Transcript, 71:22-72:7 (strained relationship with Routsis),
11 73:15-21 (relationship with Routsis soured), 76:11-25 (opinion that Routsis was trying to
12 hurt him).

13 47. Respondent was dealing with medical issues that impacted his ability to
14 adequately represent the Spencers. Chiefly, Respondent was inaccurately diagnosed and
15 was being treated for Bipolar Disorder, which exacerbated his symptoms of insomnia and
16 anxiety. See Transcript, 89:4-92:9.

17 48. Respondent was re-diagnosed in January 2016 with Traumatic Brain Injury
18 and has been treating the symptoms of that diagnosis since that time. See Transcript,
19 87:11-89:3. Respondent continues to experience insomnia, anxiety, and difficulty
20 focusing. See Transcript, 67:12-24, 69:14-70:3 and 71:13-21 (discussing prior symptoms)
21 and 88:8-89:3 (discussing current medical status).

22 32. Respondent had practiced criminal law for approximately three years and
23 had minimal experience in civil litigation when he agreed to represent Mr. Spencer. See
24 Transcript, 92:10-94:7.

CONCLUSIONS OF LAW

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

1. The Northern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

2. Venue is proper in Washoe County.

3. Respondent was properly, and actually, notified of the Formal Hearing.

4. All witnesses were credible and the Panel gave their testimony full weight.

5. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

6. All allegations in the Complaint are deemed admitted by the default of Respondent in this matter. SCR 105(2).

7. In addition, the Panel unanimously finds that the foregoing findings of fact prove by clear and convincing evidence that:

a. Respondent knowingly violated RPC 1.1 (Competence) and RPC 1.3 (Diligence) by failing to properly and promptly draft and file pleadings on behalf of Mr. Spencer.

b. Respondent knowingly violated RPC 1.4 (Communication) by failing to properly and promptly communicate with the Spencers and Routsis regarding the representation.

c. Respondent violated RPC 1.5 (Fees) by failing to perform a reasonable amount of legal service for the Spencers commensurate with the

\$35,000 they paid him and by failing to refund any of the money paid when the attorney-client relationship ended.

d. Respondent violated RPC 1.15 (Safekeeping of Property) by failing to deposit the funds from the Spencers into an IOLTA Trust Account and only withdraw the funds after earning them.

e. Respondent violated RPC 8.4(d) (Misconduct) because his above-mentioned failures created prejudice to Mr. Spencer in the administration of justice.

f. Respondent's conduct caused injury to the Spencers who have had to retain separate counsel to take over from Respondent and pursue their claims.

8. The Panel unanimously finds that the foregoing findings of fact prove by clear and convincing evidence that:

a. Respondent knowingly violated RPC 8.1(b) by failing to respond to the State Bar's inquiries regarding the Spencers' grievance and the Complaint in this matter.

b. Respondent's violation of RPC 8.1(b) caused injury to the profession and the integrity of the legal system.

9. The appropriate level of discipline must be determined considering “all relevant factors and mitigating circumstances on a case-by-case basis.” *State Bar of Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate The American Bar Association Standards for Imposing Lawyer Sanctions’ four factors to be considered in determining the appropriate disciplinary sanction: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” *See In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).

1 10. Pursuant to SCR 102.5, the Panel unanimously found that Respondent's
2 prior discipline was an aggravating factor with respect to this matter.

3 11. The Panel unanimously found the following mitigating factors:

4 a. personal and emotion problems, including the major illnesses of
5 Respondent's father and uncle and the breakdown of Respondent's romantic
6 relationship (SCR 102.5(2)(c));

7 b. a cooperative attitude toward the proceeding in that Respondent met
8 with the State Bar to discuss the grievance and, after failing to respond to the
9 State Bar and the Complaint, did not seek to refute the allegations for the first
10 time at the Formal Hearing (SCR 102.5(2)(e));

11 c. remorse for the consequences of his conduct (SCR 102.5(2)(m));

12 d. inexperience in the practice of law, which is not accurately reflected in
13 the number of years Respondent has been licensed (SCR 102.5(2)(f)); and

14 e. mental disability which impacted Respondent's underlying conduct
15 (SCR 102.5(2)(i)).

16 12. The Panel unanimously found that Respondent's mental state, the injury to
17 the legal profession and the potential injury to the client by Respondent's misconduct
18 warranted a suspension from the practice of law. The Panel found that the mitigating
19 factors, particularly Respondent's mental/medical issues during his representation of the
20 Spencers warranted a recommendation for a suspension of six-months-and-one-day with
21 the requirement that Respondent provide a "fitness for duty" evaluation from a competent
22 licensed neurologist with any Petition for Reinstatement following such suspension.

23 13. The Panel unanimously found insufficient information to evaluate how much
24 of the \$35,000 paid to Respondent should be returned to the Spencers, and therefore,
25

1 directs that such amount should be determined by a *de novo* review of the representation
2 by the State Bar's Fee Dispute Arbitration Committee.

3 **ORDER**

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

6 1. Respondent be suspended for six-months-and-one-day for his conduct that
7 violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication) RPC 1.5
8 (Fees), RPC 1.15 (Safekeeping of Property), RPC 8.1(b) (Bar Admission and Disciplinary
9 Matters) and RPC 8.4 (d) (Misconduct- prejudicial to the administration of justice).

10 2. The suspension is intended to run consecutive to the prior suspension
11 imposed and therefore should start no sooner than March 24, 2017.

12 3. Respondent shall submit a "fitness for duty" evaluation performed by a
13 competent licensed neurologist with any Petition for Reinstatement following the
14 aforementioned suspension.

15 4. Respondent shall participate in any Fee Dispute Arbitration proceeding
16 instituted by the Spencers and shall abide by any award issued thereby.

17 ///

18
19 ///

20
21 ///

22
23 ///


5. Pursuant to SCR 120, Respondent shall pay \$2,500 plus the actual costs of the Formal Hearing and mailing expenses to the State Bar of Nevada within 30 days of the Nevada Supreme Court's acceptance and approval of this Panel's recommendation for sanctions.

DATED this ____ day of November, 2016.

BRUCE HAHN, ESQ., Chair
Northern Nevada Disciplinary Panel

Submitted By:

STATE BAR OF NEVADA
C. STANLEY HUNTERTON, BAR COUNSEL


R. Kait Flocchini, Assistant Bar Counsel
 Nevada Bar No. 9861
 9456 Double R. Blvd, Ste 100
 Reno, Nevada 89521
 (775)329-4100

Approved as to Form and Content:

William Swafford
Nevada Bar No. 11469
Respondent

RECEIVED BY

OCT 16 2017

STATE BAR OF NEVADA

#332624

2000 Jan



FILED

OCT 15 2016

STATE BAR OF NEVADA

BY:

OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

WILLIAM A. SWAFFORD, ESQ.,
Nevada Bar No. 11469,

Respondent.

BILL OF COSTS

Description

Amount

Transcript of Hearing held October 10, 2016

\$1,141.50

Administrative costs pursuant to SCR 120

2,500.00

Nationwide Legal

180.00

Certified Mailing Costs

84.18

\$3,905.68

Dated this 30th day of November, 2016.

STATE BAR OF NEVADA

C. Stan Hunterton, Bar Counsel

RECEIVED

OCT 13 2017

OFFICE OF BAR COUNSEL

\$2000 4020
SCR 120
Costs

By:

Rait Flocchini

R. Kait Flocchini, Assistant Bar Counsel

Nevada Bar No. 9861

9456 Double R Blvd., Suite B

Reno, NV 89521

(775) 329-4100

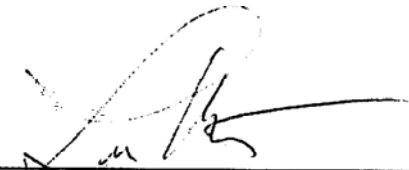
1 **CERTIFICATE OF MAILING**

2 The undersigned hereby certifies a copy of the foregoing **Bill of Costs** was
3 deposited in the United States Mail at Reno, Nevada, postage fully pre-paid thereon
4 for first class mail, addressed to:

5 William Swafford, Esq.
6 Law Offices of William Swafford LLC
7 21385 Saddleback Rd.
8 Reno NV 89521

9 Document was also e-mailed to swaffordw@gmail.com

10 DATED this th 2 day of December, 2016.

11 
12 _____
13 Laura Peters, an employee of
14 the State Bar of Nevada.
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RECEIVED BY

OCT 16 2017

STATE BAR OF NEVADA



FILED

Case Number: OBC15-0690, OBC15-0828

#332624

2000 Am

OCT 13 2016

STATE BAR OF NEVADA

STATE BAR OF NEVADA
BY: [Signature]
OFFICE OF BAR COUNSEL

NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

WILLIAM SWAFFORD, ESQ.

STATE BAR NO. 11469,

Respondent.

BILL OF COSTS

Description

Amount

Transcript of Hearing held March 15, 2016

\$ 467.00

Administrative costs pursuant to SCR 120

500.00

Certified Mailing Costs

74.14

\$1,041.14

Dated this 13th day of October, 2016.

STATE BAR OF NEVADA
David A. Clark, Bar Counsel

By:

[Signature]

R. Kait Flocchini, Assistant Bar Counsel
Nevada Bar No. 9861
9456 Double R Blvd., Suite B
Reno, NV 89521
(775) 329-4100

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William Swafford, Esq.
21385 Saddleback Rd.
Reno, NV 89521

DATED this 13th day of October, 2016.

[Handwritten signature]



William Swafford <swaffordw@gmail.com>

Case Nos. OBC15-0690 (Supreme Crt No. 70200) & OBC15-1069 (Supreme Crt No. 71843)

Jana Chaffee <janac@nvbar.org>
To: William Swafford <swaffordw@gmail.com>
Cc: Shelley Young <shelleyy@nvbar.org>

Wed, Oct 11, 2017 at 2:54 PM

Mr. Swafford,

This email will confirm our telephone conversation of yesterday, October 10, 2017 wherein we discussed your payment of the costs owed to the State Bar.

As we discussed, a payment of \$2,000.00 is due by the close of business on Friday, October 13, 2017. This can be done via credit card by calling our receptionist Vanessa Dalton, 702-382-2200. Or you may deliver a cashier's check made payable to the State Bar of Nevada.

Please include the above case numbers on your payment so that we may apply the payment to the proper cases.

The balance of your costs, \$2,946.82, is due on or before January 31, 2018. The same payment options are available for this payment in full.

If payment in full is not received on or before January 31, 2018, the Office of Bar Counsel will initiate a separate discipline proceeding for multiple ethics violations associated with your non-payment.

Thank you.

Jana L. Chaffee

Hearing Paralegal, Office of Bar Counsel

janac@nvbar.org

Direct Line: (702) 317-1418

Main Line: (702) 382-2200



State Bar of Nevada

3100 W. Charleston Blvd., Suite 100

Swafford ROA - 317



United
FEDERAL CREDIT UNION

2807 S. State Street
St. Joseph, MI 49085-2454
USA
Tel: 1-888-982-1400

74-8489/2724

UNITED FEDERAL CREDIT UNION
SAINT JOSEPH, MICHIGAN 49085

349948

PAY *** Three Thousand Dollars and 00 Cents ***

TO THE ORDER OF THE STATE BAR OF NEVADA

Date
01/31/18

Amount
\$3,000.00

THIS CHECK IS VOID AFTER 90 DAYS

08C1506907 William Stettin
08C151069



AUTHORIZED SIGNATURE

Tony Orourke

11



United
FEDERAL CREDIT UNION

2807 S. State Street
St. Joseph, MI 49085-2434
USA
Tel: 1-888-982-1400

74-8489/2724

UNITED FEDERAL CREDIT UNION
SAINT JOSEPH, MICHIGAN 49085

332624

PAY *** Two Thousand Dollars and 00 Cents ***

TO THE
ORDER
OF
State Bar of Nevada

RE: 71844/70200
Swafford

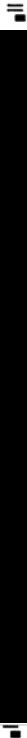
Date
10/12/17

Amount
\$2,000.00

THIS CHECK IS VOID AFTER 90 DAYS



[Signature]
AUTHORIZED SIGNATURE



THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS



United
FEDERAL CREDIT UNION

2807 S. State Street
St. Joseph, MI 49085-2454
USA
Tel: 1-888-982-1400

332624

UNITED FEDERAL CREDIT UNION
SAINT JOSEPH, MICHIGAN 49085

74-8489/2724

PAY * Two Thousand Dollars and 00 Cents *****

TO THE ORDER OF State Bar of Nevada

RE: 71844/70200
SWAFFORD

Date

10/12/17

Amount

\$2,000.00

THIS CHECK IS VOID AFTER 90 DAYS



[Signature]
AUTHORIZED SIGNATURE

ENDORSE HERE:

MP


DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

MP

Original
Document

MP

SECURITY FEATURES LISTED BELOW EXCEED INDUSTRY STANDARDS

SECURITY FEATURE	DESCRIPTION FOR FEATURE	
Heat Sensitive Lock Icon	Responds to heat. Icon will fade when rubbed briskly.	
Toner Adhesion	Chemical applied to the sheet that fuses the toner to the document when run through a laser printer.	
True Watermark	Watermark applied at paper mill. Hold up to light to verify.	
Fluorescent Fibers	Invisible Fibers milled into the paper that become visible under ultraviolet light.	
Chemical Reactivity	Paper reacts to chemical alteration leaving a visible stain on the paper.	
Colored Background Warning Border	Colored Pattern protects against alteration. Alerts financial institutions and criminals that fraud deterrent security features are present.	
Micro Printing	Border, Signature Line and Backer contain micro printing. Magnify to verify. When copied, appears as dotted line.	
Security Backer	Back pattern prevents cutting and pasting of the document.	

© Padlock design is a certification mark of the Check Payment Systems Association

Name: Will Albert Swafford | DOB: 6/23/1981 | MRN: 0656097 | PCP: Matthew C Wiese, P.A.-C.

MR-BRAIN-W/O - Details

Comments from the Doctor's Office

Very good news Will.

The Brain MRI looked good and nothing to suggest a disease or disorder within the brain matter.

Jonathan Artz MD

Study Result

Impression

MRI of the brain without contrast within normal limits.

Narrative

5/3/2021 5:56 PM

HISTORY/REASON FOR EXAM: Headache, chronic, no new features.

TECHNIQUE/EXAM DESCRIPTION:

MRI of the brain without contrast.

T1 sagittal, T2 fast spin-echo axial, T1 coronal, FLAIR coronal, diffusion-weighted and apparent diffusion coefficient (ADC map) axial images were obtained of the whole brain.

The study was performed on a G.E. Signa 1.5 Tesla MRI scanner.

COMPARISON: Head CT 12/12/2010

FINDINGS: Study mildly degraded by motion artifact.

The calvariae are unremarkable.

There are no extra-axial fluid collections. The ventricular system and basal cisterns are within normal limits. There are no areas of abnormal signal in the brain substance. There are no mass effects or shift of midline structures. There are no hemorrhagic lesions. The diffusion-weighted axial images show no evidence of acute cerebral infarction.

The brainstem and posterior fossa structures are unremarkable.

Swafford ROA - 322

Vascular flow voids in the vertebrobasilar and carotid arteries, circle of Willis, and dural venous sinuses are intact.

The paranasal sinuses and mastoids in the field of view are unremarkable.

Component Results

There is no component information for this result.

General Information

Ordered by Jonathan Artz, M.D.

Resulted on 05/03/2021 7:43 PM

Result Status: Final result

MyChart® licensed from Epic Systems Corporation © 1999 - 2020

Saturday, July 24, 2021

From: William A. Swafford
✉: Swaffordw@gmail.com
☎: 775.440.3449

Re: *Emergency Request for Brief Fitness for Duty to Practice Law Letter Addressing Recent Findings of Brain Scan and Consultation*

To: Dr. Jonathon Artz, M.D.
75 Pringle Way, Ste. 401
Reno, Nevada 89502

Dear Dr. Jonathon Artz, M.D.,

It is with diffident necessity that I now write to you, humbly requesting your immediate assistance with becoming relicensed to practice law in the State of Nevada. Years of odd, interconnected circumstances involving my health and professional discipline have unexpectedly created situation where I must immediately obtain a brief letter from you as a condition of being reinstated. Specifically, a disciplinary order filed by the Supreme Court of Nevada in 2016 that caused me to be suspended specifically conditioned my right to petition for reinstatement on first obtaining fitness for duty evaluation by a Nevada licensed neurologist. This order specifies that at the time I file my petition, I must provide evidence of a letter from a neurologist stating that I suffer from no brain injuries or abnormalities that would substantially prevent me from performing the duties imposed by law on attorneys under the Nevada Professional Rules of Conduct.

Initially, I recognize that this requirement is somewhat odd given that you only analyzed my recent MRI a few months ago and did not previously treat me for the conditions that affected my ability to effectively practice law in 2014 and 2015. However, because I must strictly adhere to the condition expressed in the disciplinary order, I must still ask that you write your medical conclusions concerning my MRI in a short letter to the State Bar of Nevada stating that you do not see any injury to my brain that would substantially interfere with my duties as a lawyer and ability to practice law. This letter can be very short as it is solely for the purpose of strict compliance with the licensing board's orders. I am also requesting a similar letter from the physician who has been treating me since 2016, Endocrinologist *Robert Fredericks, M.D.*, who will explain all of the details and circumstances that you cannot. The letter I sent to him is attached hereto so that if you would like to know more about my underlying health issues before the Bar quickly fill yourself in.

Obviously, I will pay you for an office visit or any other additional fee you need to write this short letter on my behalf, and if necessary, I can schedule an actual office visit to request the same. If there is no way that my insurance can be billed for your time I will happily pay out of pocket immediately. The problem is that my petition is due at the end of August, and the letter at issue must be attached as an exhibit thereto. Accordingly, I must pick this letter up from your office by the 18th of August. Given my lack of options, this is why I now request your assistance in this manner.

As suggested above, the letter should be addressed to the **State Bar of Nevada** in Reference to William A. Swafford, Esq., and should provide statements that you ordered an MRI of my brain recently, evaluated the MRI and concluded that I do not suffer from any serious injury to the brain

itself, or any substantial diseases that would limit my abilities to perform the daily tasks lawyers perform so that I could not practice law in this State. That is all that is required and hopefully will take very little of your valuable, limited time. I will pick this letter up from your office, copy it and attach it as an exhibit to my petition.

As a courtesy to you, I will briefly discuss and simplify the complex reasons I find myself in this unfortunate position needing your immediate help. As I briefly mentioned to you during our first office visit, I have been suspended from practicing law in this State since September of 2015 resulting from two disciplinary cases against me involving conduct that occurred between 2014 and 2015. This professional misconduct involved me having to end all communication with another lawyer I was working with on two cases after our relationship disintegrated at a time I was suffering from extreme anxiety, depression, stress, insomnia, inability to focus and concentrate, severe mood swings, stomach pain, migraines and inability to maintain meaningful relationships. Numerous physicians and mental health practitioners diagnosed me with bipolar disorder and medicated me with prescriptions such as Seroquel and Lamictal as well as antianxiety medicines. I was forced to close the law practice I dumped all of my savings into and was threatened with disbarment by the attorney I stopped working with. At this time my dad was diagnosed with Alzheimer's disease and my uncle, another dad to me was diagnosed with cancer and had his bladder and prostate removed, but the cancer moved into other muscles and organs. I was forced to care for two dying relatives who could no longer manage their affairs, learned that my dad had not paid taxes in 6 years and had his finances so messed up it was difficult to fix. My uncles girlfriend began trying to acquire his assets and house and I had to fight with her, a lawyer over everything. I ended up with two disciplinary cases filed against me and did not respond to either of them, and all of the allegations were deemed admitted by me for failure to respond. I was accused of taking \$40,000 in legal fees that I never earned and eventually showed that the allegations were false and I earned \$35,000 as determined by an independent fee dispute committee.

My suspensions totaled one year and two days in total. While I could have potentially been disbarred the Committee was highly understanding of my reasons for not responding and defending myself, but they ordered that when I filed for reinstatement I would have to attach a letter from a neurologist stating that my TBI (treated by Dr. Fredricks) was not so bad that it made me unfit to practice law. The other condition was that I had to participate in fee dispute hearings which the client did not file and commence until late 2020 which prevented me from filing a petition until recently, months before the deadline.

All things considered, this is why I am currently begging you to write this letter for me as soon as possible, and I do not ask that it take more than one page or less in total writing. I will immediately pay whatever you need for your time and will be extremely appreciative of your cooperation on short notice. On an unrelated note, I will be scheduling another follow up appointment to talk about my migraine issues. These personal legal matters have caused me to experience more headaches than usual. Not all of them are migraines, but I do get them still and the Imitrex does not help much. I hope that once this is all filed I will get far fewer migraines.

Sincerely,

William A. Swafford

Name: Will Albert Swafford | DOB: 6/23/1981 | MRN: 0656097 | PCP: Matthew C Wiese, P.A.-C.

Message Center

Physician Jonathan Artz

07/26/2021 06:00 PM

RE: Test Result Question

Will,

There is nothing on your Brain MRI from May 4th 2021 that is abnormal.

I do not have any reason or neurological evidence at this point to suggest you CAN NOT practice law at this time.

Having migraine headaches should not preclude you from practicing law.

Jonathan Artz MD

----- Message -----

From: William Albert Swafford

Sent: 7/26/2021 1:28 AM PDT

To: Physician Jonathan Artz

Subject: Test Result Question

Dr. Artz.,

Attached is a letter written to you, and a similar letter written to my endocrinologist requesting short letters that the State Bar ordered is a necessary condition of petitioning for reinstatement to practice law. I hate having to ask this, but my petition is due shortly and I cannot practice again unless I obtain this letter from you stating conclusions about my brain after looking at my MRI recently. The letter to you explains everything in detail, and the other letter provides additional details that were sent to my other physician in case you were interested in additional information. I will obviously pay for your time and will do so immediately. I thank you in advance. I will be scheduling a visit with office too.

Physician Assistant Matthe...

07/26/2021 11:45 AM

RE: Non-Urgent Medical Question

Swafford ROA - 326

Name: Will Albert Swafford | DOB: 6/23/1981 | MRN: 0656097 | PCP: Matthew C Wiese, P.A.-C.

Letter Details



Renown Medical Group South Meadows Pavilion
10085 Double R Blvd, STE 220 - Reno, NV 89521-3855
Phone: 775-982-5000 - Fax: 775-982-3900

July 26, 2021

Patient: **William Albert Swafford**
Date of Birth: **6/23/1981**

Re: Fitness-for-Duty Statement

To Whom it May Concern:

Mr. William Swafford has been under my care since February 11, 2019. I have seen him every 3 months over the past 2+ years. I have witnessed firsthand his conditions of anxiety and depression and ADHD improve significantly with the help of medication and personal growth. I feel he should have due process from the State Bar of Nevada and have his attorney license reinstated.

If you have any questions or concerns, please don't hesitate to call. Thank you kindly.

Sincerely,

Matthew C Wiese, P.A.-C.
Electronically Signed

This letter was initially viewed by Will Albert Swafford at 8/7/2021 9:15 PM.

Swafford ROA - 327



STATE BAR OF NEVADA

CLIENTS' SECURITY FUND APPLICATION FOR REIMBURSEMENT

RECEIVED BY
JAN 16 2020
STATE BAR OF NEVADA
PETITIONER'S
EXHIBIT
#9

Answer every question in this application. If space is inadequate, attach additional pages.

1. ☒ Mr. ☐ Mrs. ☐ Ms.

Name:
Address: City: State: Zip:
Home Phone: Alternate Phone:
Email (optional):

2. Name and current or last known address of attorney involved:

Name:
Address:
 City: State: Zip:

3. Statement of facts relating to your complaint about the attorney's conduct or dishonest act:

See attached

4. Amount of claim:

5. Statement of your financial loss (you must provide a copy of all receipts, canceled checks and/or bank statements that provide evidence of monies you paid to the attorney):

See attached

6. When did the loss occur?

Swafford ROA - 328



STATE BAR OF NEVADA
CLIENTS' SECURITY FUND
APPLICATION FOR REIMBURSEMENT

Page 2 of 4

7. What efforts, if any, have you made to recover the loss?

☐ Creditor's claim in estate.

Case Number:

☒ Fee Dispute.

Case Number:

FD19-104

☐ Small Claims Court action.

Case Number:

☐ Malpractice action.

Case Number:

☐ Police Report.

Case Number:

☐ Fraud claim with bank for forged endorsement.

Explanation:

☒ Other.

Explanation:

Tried to file Malpractice and I was told Mr Swafford did not have insurance on file with the Bar.

8. Please give a reason for why you believe an attorney-client relationship exists between you and the attorney. (Provide a copy of the retainer agreement that describes the work the attorney agreed to do for you.)

Copy of contract attached.

9. Did the attorney that you are filing a complaint against do any work for you? ☒ Yes ☐ No

If yes, please state what work was done and attach copies of ALL documents.

The 1st draft of the complaint could not be used, it was filled with inaccuracies, miss spelled words, incorrect names and dates. It did not include all the parties to the action. He did not make the corrections required to make it close to fileable it had to be completely redone by another attorney who I had to pay for the job. and then my wife had to file it.

10. Have you filed bankruptcy in the past 10 years? ☒ No ☐ Yes

If yes, please mark the corresponding bankruptcy filed.

☐ Chapter 7

☐ Chapter 11

☐ Chapter 13

☐ Other

Provide the date the bankruptcy was filed, the case number and the current status of the bankruptcy.



STATE BAR OF NEVADA
CLIENTS' SECURITY FUND
APPLICATION FOR REIMBURSEMENT

Page 3 of 4

11. If another attorney has been retained, please provide the following information: ☐ N/A

Attorney Name: Lynn Pierce than Kerry Doyle

Amount paid to your new attorney: 15,000 and 26,000

Please explain what work has been done by the new attorney and provide copies (if any).

Lynn Pierce re wrote the orginal complaint, did all responses, went to settlement conferances, hearings, meetings with William Routsis and myself and court appearences.
Kerry Doyle is handling the appeal.

12. To the best of your knowledge, has the attorney involved: (Check all that apply)

- ☐ Died ☐ Had a guardian appointed (either personal or estate)
☒ Been disbarred or suspended from practice ☐ Been found mentally incompetent
☒ Had disciplinary proceedings started in the State of Nevada ☒ Disappeared
☐ Voluntarily given up his or her right to practice law in the State of Nevada

13. Please provide additional information on any answer checked on question #12.

See attached transcripts from bar

14. Please provide names and contact information for other persons who can provide additional information concerning this claim:

Name: Marilyn Spencer

Address: PO Box 2326

City: Stateline State: Nv Zip: 89449

Phone: 530-400-2391

Email (optional): cme4loan@yahoo.com

Name: William Routsis

Address: 1070 Monroe St

City: Reno State: Nv Zip: 89509

Phone: 775-337-2609

Email (optional): _____



STATE BAR OF NEVADA
CLIENTS' SECURITY FUND
APPLICATION FOR REIMBURSEMENT

Page 4 of 4

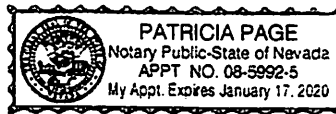
15. Applicant represents that the act(s) listed above occurred while the above-named attorney was licensed to practice law in the State of Nevada and while a lawyer-client relationship existed between attorney and applicant.
16. Applicant represents that Applicant has at no time been a partner or associate or spouse or other immediate family member of the above-named attorney.
17. Applicant agrees to cooperate in the investigation of this claim and in any related disciplinary proceedings against the above-named attorney. Before any payment can be received from the Clients' Security Fund, Applicant must sign and deliver to the State Bar an agreement whereby the State Bar of Nevada is subrogated to the rights against the above-named attorney in an amount equal to the amount paid to the applicant plus any costs incurred by the State Bar of Nevada in recovering that amount from the attorney of his or her estate, personal representatives, assigns or successors in interest.
18. Applicant understands and agrees that:
 - (a) Any reimbursement of loss from the Clients' Security Fund is at the sole discretion of the Clients' Security Fund Committee and not a matter of right. No person has any right to a reimbursement from the Fund as a third-party beneficiary or otherwise, either before or after allowance of the claim.
 - (b) If an attorney is retained to assist in the preparation of this claim, it is the policy of the Clients' Security Fund Committee that no fee or other compensation be paid to the attorney.
 - (c) The Clients' Security Fund Committee may award a portion of the reimbursement directly to third parties affected by the loss.

APPLICATION MUST BE VERIFIED

NOTE: YOUR APPLICATION WILL NOT BE PROCESSED UNLESS ALL RELEVANT DOCUMENTS, ETC ARE ATTACHED

State of Nevada

County of Douglas



Jeffrey Spencer, being first duly sworn, deposes and says: That (he/she) is the applicant in the above application; that (he/she) has read the application and knows the contents thereof, and the same is true of (his/her) own knowledge.

[Signature]
Signature of Applicant

Subscribed and sworn to me this 8th day of January, 2020.

[Signature]
Notary Public in and for said County and State

STATE BAR OF NEVADA
3100 W. CHARLESTON BLVD.,
SUITE 100
LAS VEGAS, NV 89102
(702) 382-2200
(800) 254-2797

Swafford ROA - 331

William Swafford signed a contract to handle the writing up of all documents and to Co-Chair during trial with William Routsis for a Civil Lawsuit. He did not full fill his contractual obligations in anyway. The 1st brief he wrote was filled with inaccuracies, the wrong names, dates, times, incorrect individuals and mis-spellings throughout. My wife reviewed the brief, made corrections -highlighted and noted. She sent back the brief to Mr Swafford requesting he make the corrections and send it back for review. He never did and filed the brief with all the inaccuracies. He disappeared for weeks at a time, Traveling to exotic places after he received a check from me, not answering his phone or returning messages. We had bi weekly meetings set and he showed up once but not for any of the rest, he never, emailed or informed us he would not be there. After trying to get Mr Swafford to complete the work he contracted for an not getting anywhere, with him. Time was running out, I was forced to hire another attorney to do the job he was hired for. Mr. Swafford was paid \$35,000 and did not full fill his contract. At the hearing at the Nv Bar, Mr Swafford admitted to not doing what he was contracted for, he was required by the bar to provide proof of the work he did, and the time spent. he did not provide this either and never responded to the bar or my request when I filed a fee dispute.

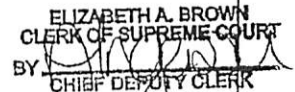
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF
WILLIAM SWAFFORD, BAR NO. 11469.

No. 71844

FILED

SEP 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney William Swafford be suspended for six months and one day to run consecutive to his prior suspension based on violations of RPC 1.1 (competence), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), and RPC 8.4(d) (misconduct). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The State Bar has the burden of showing by clear and convincing evidence that Swafford committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Swafford failed to answer the complaint and a default was entered.¹ SCR 105(2). The record therefore establishes that Swafford violated the above-referenced rules by failing to timely file a pleading on behalf of a client, adequately plead the client's claims, communicate with the client, deposit the client's funds into his trust account, and refund the client his unearned fees.

¹The complaint and notice of intent to proceed on a default basis were served on Swafford via regular and certified mail at his SCR 79 address and a Chicago address he had previously provided to the State Bar, as well as emailed to him. Swafford was personally served a notice of the disciplinary hearing and he appeared at the hearing.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must . . . exercise independent judgment," the panel's recommendation is persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Swafford knowingly violated duties owed to his client (competence, diligence, communication, fees, and safekeeping property). The client was injured because his action was not properly pleaded, he had to retain new counsel to amend the pleading and proceed with the action, and he did not receive a refund of unearned fees. The baseline sanction for Swafford's misconduct, before consideration of aggravating and mitigating circumstances, is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2013) ("Suspension is generally appropriate when . . . a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client . . .").

The panel found one aggravating circumstance (prior discipline) and five mitigating circumstances (personal and emotional problems, cooperative attitude toward the bar proceeding, remorse, inexperience in the practice of law, and mental disability). SCR 102.5. Specifically, Swafford was undergoing active medical treatment for a severe medical condition during his representation of the client and both his father and his uncle were diagnosed with terminal illnesses. Considering the numerous mitigating circumstances, the recommended suspension appears

appropriate, even though this is Swafford's second discipline for similar misconduct. Additionally, the requirement that Swafford obtain a fitness-for-duty evaluation before seeking reinstatement sufficiently protects the public, the courts, and the legal profession. *See State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney).

Accordingly, we hereby suspend attorney William Swafford from the practice of law in Nevada for a period of six months and one day commencing from the date of this order. Before applying for reinstatement, Swafford must obtain a fitness-for-duty evaluation from a competent, licensed neurologist. Swafford shall participate in any fee dispute arbitration proceeding instituted by his client and shall abide by any award issued thereby. Further, Swafford shall pay the costs of the bar proceedings, including \$2,500 pursuant to SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Chair, Northern Nevada Disciplinary Board
Law Offices of William Swafford LLC
C. Stanley Hunterton, Bar Counsel, State Bar of Nevada
Kimberly K. Farmer, Executive Director, State Bar of Nevada
Perry Thompson, Admissions Office, U.S. Supreme Court

Case No. OBC15-1069



FILED

NOV 6 4 2016

STATE BAR OF NEVADA

BY: *[Signature]*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

WILLIAM SWAFFORD,
STATE BAR NO. 11469

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDATION AFTER
FORMAL HEARING

This matter involving attorney William Swafford, Esq. ("Respondent"), Bar No. 11469, initially came before a designated Formal Hearing Panel of the Northern Nevada Disciplinary Board ("Panel") at 9:00 a.m. on October 10, 2016, at the offices of the State Bar of Nevada in Reno, Nevada. The Panel consisted of Chair Bruce Hahn, Esq.; Eric Stovall, Esq.; and Tim Meade, Laymember. Assistant Bar Counsel R. Kait Flocchini, Esq., represented the State Bar of Nevada ("State Bar"). Respondent appeared on his own behalf.

1 The State Bar presented materials consisting of pleadings and State Bar
2 documents, which were admitted into evidence as Exhibits 1-9 without objection.
3 Respondent did not offered any Exhibits. The Panel also heard a statement from the
4 State Bar, testimony from grievants Jeffrey Spencer and Marilyn Spencer, and testimony
5 from Respondent.

6 Based upon the evidence presented and testimony received, the Panel
7 unanimously issues the following Findings of Fact, Conclusions of Law, and
8 Recommendation:

9 FINDINGS OF FACT

10 JURISDICTIONAL AND PROCEDURAL FACTS

11 1. Respondent is an attorney licensed to practice law in the State of Nevada
12 and was admitted to the State Bar of Nevada on April 9, 2009. See Transcript of
13 Hearing, dated October 10, 2016, ("Transcript"), Exhibit 4 (Affidavit of Custodian of
14 Records).

15 2. During the period in question, Respondent practiced law in Northern
16 Nevada. See Transcript, at 70:20-76:25 (discussing various matters in Northern Nevada
17 on which he worked) and *see generally* Transcript at Exhibit 1 (Hearing Packet), pgs. 1-4.

18 3. On July 29, 2016, the Office of Bar Counsel filed a disciplinary Complaint
19 which charged Respondent with violations of Rule of Professional Conduct ("RPC") RPC
20 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.5 (Fees),
21 RPC 1.15 (Safekeeping of Property), RPC 8.1(b) (Bar Admissions and Disciplinary
22 Matters), and RPC 8.4(d) (Misconduct, Prejudicial to the Administration of Justice). See
23 Transcript at Exhibit 1, pgs. 1-31.

24 4. Respondent did not file an Answer. See *id.* at 50-79.

1 5. A Notice of Intent to Proceed on a Default Basis was filed and served on
2 August 23, 2016. *See id.* at 50-79.

3 6. The Order Appointing Formal Hearing Panel Chair was filed on September
4 9, 2016. *See id.* at 45-46.

5 7. The Request to Enter Default was personally served on Respondent on
6 September 12, 2016. *See id.* at 81.

7 8. A Notice of Hearing and Summary of Evidence and Designation of
8 Witnesses was filed and served on September 7, 2016. *See id.* at 41-44.

9 9. Default was entered against Respondent on September 26, 2016. *See id.*
10 at 50-79.

11 10. Respondent stated affirmatively that there was no reason, medical or
12 otherwise, that prevented him from participating in the Formal Hearing. *See Transcript at*
13 4:21-5:12.

14 **FACTS RELEVANT TO COUNTS 1 TO 5 and 7:**

15 11. In 2014, Respondent lived in Chicago, Illinois and his practice of law
16 consisted primarily of contract work for attorney William J. Routsis II ("Routsis") and other
17 Reno attorneys on various matters. *See Transcript at 70:20-71:9.*

18 12. In August 2014, Jeffrey Spencer ("Spencer") hired the attorney team of
19 Respondent and Routsis to pursue a claim against a party whom Spencer claimed had
20 caused his wrongful arrest in Douglas County. *See Transcript at 19:17-20:21.*

21 13. Routsis had previously handled a related criminal matter for Spencer in
22 which Spencer was found not guilty. Spencer then asked Routsis to pursue a tort claim
23 against the party responsible for his arrest. *See id.*

1 14. In August 2014, Spencer paid Respondent \$10,000 to prepare the
2 pleadings in the lawsuit. See Transcript, 28:9-18 and Exhibit 1, pg. 12.

3 15. Respondent worked on a draft Complaint and sought input from Spencer,
4 and his wife Marilyn Spencer, for the pleading. See Transcript, 35:23-36:4.

5 16. Between August and January, 2015, the Spencers had difficulty reaching
6 Respondent to convey comments on drafts of the Complaint. See Transcript, 33:23-
7 34:13.

8 17. Respondent failed to prepare a final pleading for filing before Spencer was
9 served in or about January 2015 with a Complaint by another party involved in the
10 underlying dispute. See Transcript, 19:17-21:5.

11 18. On or about February 3, 2015, Respondent finally filed an Answer and
12 Counterclaim on behalf of Spencer. See Transcript, Exhibit 1, pgs. 14-25, and Exhibit 7.

13 19. The Spencers identified to Respondent that the Counterclaim was deficient
14 in several respects. Again, the Spencers had a difficult time reaching Respondent to
15 convey their comments and proposed revisions for an Amended Counterclaim. See
16 Transcript, 30:7-35:8.

17 20. Spencer entered into an Attorney Client Fee Agreement ("the Agreement")
18 with Routsis wherein Respondent is designated as sharing responsibility for the handling
19 of Spencer's case. See Transcript, Exhibit 3.

20 21. Respondent was identified as serving as "civil technician" and eventual
21 second chair to Routsis at trial in the civil lawsuit. See *id.*

22 22. The Agreement provided that Respondent would be paid one half of
23 \$50,000 to defend Spencer in the civil lawsuit. This was identified as a flat fee that would
24 be held in trust and transferred to Respondent at \$250 per hour of work performed.

25

1 Spencer also agreed that the flat fee was nonrefundable. The Agreement also provided
2 that the attorneys, including Respondent, would be compensated for pursuing a civil
3 counterclaim via a contingency fee. See Transcript, 22:6-17, 24:21-25:1, and Exhibit 6.

4 23. Respondent received \$35,000 from the Spencers, pursuant to the
5 Agreement. See Transcript, 28:19-25:17, 38:20-40:1, and Exhibit 1, pgs. 3-31 therein.

6 24. Respondent did not deposit the funds into an IOLTA trust account or
7 transfer the funds to his personal account only after earning the funds. See Transcript,
8 80:11-81:8, Exhibit 8 and Exhibit 9.

9 25. After executing the Agreement, the Spencers and Routsis lost contact with
10 Respondent for five months. Specifically:

11 a. Marilyn emailed Respondent on July 6, 2015, regarding amending the
12 'complaint' and issuing disclosures. Respondent did not respond.

13 b. Marilyn emailed Respondent on August 4, 2015, regarding potential
14 additional defendants to add to the 'complaint.'

15 c. Marilyn emailed Respondent on August 5, 2015, regarding a status
16 conference set in the civil lawsuit and additional potential defendants to add to the
17 'complaint.'

18 d. Marilyn emailed Respondent on August 6, 2015, regarding
19 Respondent's failure to communicate with him, or his wife, in the last month.

20 e. Marilyn emailed Respondent on September 3, 2015, regarding
21 Respondent's failure to contact them for over two months.

22 f. Marilyn emailed Respondent on September 7, 2015, regarding a
23 scheduled early case conference the next week and their frustration at Respondent's lack
24 of communication and representation.

1 g. Routsis sent Respondent a letter on October 15, 2015, requesting that
2 he sign a substitution of counsel.

3 See Transcript, 30:25-32:19 and Exhibit 1, pgs. 3-4.

4 26. Respondent failed to respond to any of the Spencers' or Routsis's above-
5 described attempts to contact him. See *id.* and Transcript, 82:9-17.

6 27. Respondent's failure to respond to the Spencers' or Routsis's
7 communications was due in part to a falling out between Respondent and Routsis and
8 personal and medical problems that Respondent was dealing with at the time. See
9 Transcript, 76:3-78:13 and 85:24-86:17.

10 28. Respondent failed to accurately recite facts in the counterclaim that he
11 prepared, despite being provided the accurate information by the Spencers. See
12 Transcript, 32:20-34:21.

13 29. Respondent failed to seek amendment of the counterclaim such that
14 included third-party claims may be barred by the Statute of Limitations. See Transcript,
15 Exhibit 1, pg. 4.

16 30. Respondent has not refunded any money to the Spencers. See Transcript,
17 35:20-22.

18 **FACTS RELEVANT TO COUNT 6 (RPC 8.1(b)):**

19 31. On September 11, 2015, the State Bar asked Respondent to respond to
20 allegations the grievance Spencer filed. See Transcript, Exhibit 1, pg. 4.

21 32. The State Bar's initial letter was sent to the address which Respondent
22 provided pursuant to SCR 79. See *id.*

23 33. Swafford failed to timely respond to the State Bar's request. See *id.*

24 34. A follow-up letter was sent via certified and first class mail to the address
25

1 which Respondent provided pursuant to SCR 79 and to the alternate address in Chicago,
2 Illinois which he had provided to the State Bar membership department. A copy of the
3 letter was also e-mailed to Respondent at swafford@wswoffordlaw.com. See Transcript,
4 Exhibit 1, pg. 5.

5 35. The certified letter that was sent to Chicago, Illinois was returned, but no
6 other letters were returned to the State Bar. See *id.*

7 36. The State Bar received no response from Respondent. See *id.*

8 37. Respondent met with Assistant Bar Counsel Kait Flocchini on April 8, 2016
9 at the State Bar office. They discussed the grievance and Respondent asserted that, on
10 or about April 18, 2016, he would provide a formal response or medical documentation to
11 support an SCR 117 Petition. See Transcript, 42:14-43:11 and Exhibit 1, pg. 5.

12 38. Respondent did not send a response to the State Bar. See Transcript,
13 43:14-15.

14 39. The State Bar served Respondent with the Complaint in this matter,
15 pursuant to the requirements of SCR 79, at 21385 Saddleback Road, Reno, Nevada
16 89521. See Transcript, 44:21-45:1 and Exhibit 1, pg. 35.

17 40. Although Respondent stated that he was not sure he actually received the
18 Complaint, on or about July 19, 2016, Respondent did confirm that 21385 Saddleback
19 Road, Reno, Nevada 89521 was his address that was provided to the State Bar for
20 service of such a pleading. See Transcript at 43:20-45:1.

21 41. Respondent confirmed his email address of swaffordw@gmail.com and that
22 he emailed the State Bar from that email address acknowledging that he owed the State
23 Bar a response to the Spencer's grievance. See Transcript, 49:11-12, 46:18-51:12, and
24 Exhibit 6.

1 42. Respondent acknowledged personal receipt of the Notice of Hearing and
2 the Request for Entry of Default, to which a copy of the Complaint was attached. See
3 Transcript at 45:2-5.

4 43. Respondent failed to respond to the Complaint, and any of the allegations
5 therein. See Transcript, 43:14-15 and Exhibit 1, 50-79.

6 44. Respondent did not contact the State Bar between when he was personally
7 served with the Complaint and Notice of Hearing and the date of the Formal Hearing.
8 See Transcript, 45:6-9.

9 45. Respondent did not seek to set aside the default judgment. See e.g.
10 Transcript, 78:4-6.

11 46. Respondent and Routsis had a falling out regarding other cases that they
12 worked on together which impacted Respondent's willingness to communicate regarding
13 the Spencers' matter. See Transcript, 71:22-72:7 (strained relationship with Routsis),
14 73:15-21 (relationship with Routsis soured), 76:11-25 (opinion that Routsis was trying to
15 hurt him).

16 47. Respondent was dealing with medical issues that impacted his ability to
17 adequately represent the Spencers. Chiefly, Respondent was inaccurately diagnosed
18 and was being treated for Bipolar Disorder, which exacerbated his symptoms of insomnia
19 and anxiety. See Transcript, 89:4-92:9.

20 48. Respondent was re-diagnosed in January 2016 with Traumatic Brain Injury
21 and has been treating the symptoms of that diagnosis since that time. See Transcript,
22 87:11-89:3. Respondent continues to experience insomnia, anxiety, and difficulty
23 focusing. See Transcript, 67:12-24, 69:14-70:3 and 71:13-21 (discussing prior
24 symptoms) and 88:8-89:3 (discussing current medical status).

32. Respondent had practiced criminal law for approximately three years and had minimal experience in civil litigation when he agreed to represent Mr. Spencer. See Transcript, 92:10-94:7.

CONCLUSIONS OF LAW

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

1. The Northern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

2. Venue is proper in Washoe County.

3. Respondent was properly, and actually, notified of the Formal Hearing.

4. All witnesses were credible and the Panel gave their testimony full weight.

5. The State Bar must prove by clear and convincing evidence that Respondent violated any Rules of Professional Conduct. See Nev. Sup. Ct. R. 105(2)(f); *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

6. All allegations in the Complaint are deemed admitted by the default of Respondent in this matter. SCR 105(2).

7. In addition, the Panel unanimously finds that the foregoing findings of fact prove by clear and convincing evidence that:

a. Respondent knowingly violated RPC 1.1 (Competence) and RPC 1.3 (Diligence) by failing to properly and promptly draft and file pleadings on behalf of Mr. Spencer.

b. Respondent knowingly violated RPC 1.4 (Communication) by failing to properly and promptly communicate with the Spencers and Routsis regarding the representation.

1 c. Respondent violated RPC 1.5 (Fees) by failing to perform a
2 reasonable amount of legal service for the Spencers commensurate with the
3 \$35,000 they paid him and by failing to refund any of the money paid when the
4 attorney-client relationship ended.

5 d. Respondent violated RPC 1.15 (Safekeeping of Property) by failing
6 to deposit the funds from the Spencers into an IOLTA Trust Account and only
7 withdraw the funds after earning them.

8 e. Respondent violated RPC 8.4(d) (Misconduct) because his above-
9 mentioned failures created prejudice to Mr. Spencer in the administration of
10 justice.

11 f. Respondent's conduct caused injury to the Spencers who have had
12 to retain separate counsel to take over from Respondent and pursue their claims.

13 8. The Panel unanimously finds that the foregoing findings of fact prove by
14 clear and convincing evidence that:

15 a. Respondent knowingly violated RPC 8.1(b) by failing to respond to
16 the State Bar's inquiries regarding the Spencers' grievance and the Complaint in
17 this matter.

18 b. Respondent's violation of RPC 8.1(b) caused injury to the profession
19 and the integrity of the legal system.

20 9. The appropriate level of discipline must be determined considering "all
21 relevant factors and mitigating circumstances on a case-by-case basis." *State Bar of*
22 *Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate The
23 American Bar Association Standards for Imposing Lawyer Sanctions' four factors to be
24 considered in determining the appropriate disciplinary sanction: "the duty violated, the
25

1 lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct,
2 and the existence of aggravating or mitigating factors." See *In re Discipline of Lerner*,
3 124 Nev. 1232, 1246, 197 P.3d 1067, 1078 (2008).

4 10. Pursuant to SCR 102.5, the Panel unanimously found that Respondent's
5 prior discipline was an aggravating factor with respect to this matter.

6 11. The Panel unanimously found the following mitigating factors:

7 a. personal and emotion problems, including the major illnesses of
8 Respondent's father and uncle and the breakdown of Respondent's
9 romantic relationship (SCR 102.5(2)(c));

10 b. a cooperative attitude toward the proceeding in that Respondent met
11 with the State Bar to discuss the grievance and, after failing to respond to
12 the State Bar and the Complaint, did not seek to refute the allegations for
13 the first time at the Formal Hearing (SCR 102.5(2)(e));

14 c. remorse for the consequences of his conduct (SCR 102.5(2)(m));

15 d. inexperience in the practice of law, which is not accurately reflected
16 in the number of years Respondent has been licensed (SCR 102.5(2)(f));
17 and

18 e. mental disability which impacted Respondent's underlying conduct
19 (SCR 102.5(2)(i)).

20 12. The Panel unanimously found that Respondent's mental state, the injury to
21 the legal profession and the potential injury to the client by Respondent's misconduct
22 warranted a suspension from the practice of law. The Panel found that the mitigating
23 factors, particularly Respondent's mental/medical issues during his representation of the
24 Spencers warranted a recommendation for a suspension of six-months-and-one-day with
25

1 the requirement that Respondent provide a "fitness for duty" evaluation from a competent
2 licensed neurologist with any Petition for Reinstatement following such suspension.

3 13. The Panel unanimously found insufficient information to evaluate how much
4 of the \$35,000 paid to Respondent should be returned to the Spencers, and therefore,
5 directs that such amount should be determined by a *de novo* review of the representation
6 by the State Bar's Fee Dispute Arbitration Committee.

7 **ORDER**

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

10 1. Respondent be suspended for six-months-and-one-day for his conduct that
11 violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication) RPC
12 1.5 (Fees), RPC 1.15 (Safekeeping of Property), RPC 8.1(b) (Bar Admission and
13 Disciplinary Matters) and RPC 8.4 (d) (Misconduct- prejudicial to the administration of
14 justice).

15 2. The suspension is intended to run consecutive to the prior suspension
16 imposed and therefore should start no sooner than March 24, 2017.

17 3. Respondent shall submit a "fitness for duty" evaluation performed by a
18 competent licensed neurologist with any Petition for Reinstatement following the
19 aforementioned suspension.

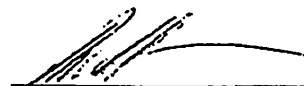
20 4. Respondent shall participate in any Fee Dispute Arbitration proceeding
21 instituted by the Spencers and shall abide by any award issued thereby.

22 ///

23
24 ///

1 5. Pursuant to SCR 120, Respondent shall pay \$2,500 plus the actual costs of the
2 Formal Hearing and mailing expenses to the State Bar of Nevada within 30 days of the
3 Nevada Supreme Court's acceptance and approval of this Panel's recommendation for
4 sanctions.

5 DATED this 4 day of November, 2016.

6
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8 
9 BRUCE HAHN, ESQ., Chair
10 Northern Nevada Disciplinary Panel

11 Submitted By:

12 STATE BAR OF NEVADA
13 C. STANLEY HUNTERTON, BAR COUNSEL

14
15 R. Kait Flocchini, Assistant Bar Counsel
16 Nevada Bar No. 9861
17 9456 Double R. Blvd, Ste 100
18 Reno, Nevada 89521
19 (775)329-4100


20 Approved as to Form and Content:

21
22 William Swafford
23 Nevada Bar No. 11469
24 Respondent
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William Swafford, Esq.
Law Offices of William Swafford, Esq.
21385 Saddleback Rd.
Reno, NV 89521

DATED this 14th day of November, 2016.


Laura Peters, an employee of
the State Bar of Nevada.

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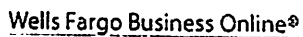


Laura Peters, an employee of
the State Bar of Nevada.

FOR RETURN ONLY
United Federal Credit Union
2807 S. State Street
Salt Lake City, UT 84108
→ 2484894 ←

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Security Features (except for the following):
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Check Number	Date Posted	Check Amount	Account Number
5156	6/7/71	\$18,050.00	ALPEN MTG XXXXXX0224

6165
 11-425472 9
 DATE 3/17/15
 PAY TO THE ORDER OF William J. Safford
Eighteen thousand fifty four 00/100 \$ 18,050.00
 DOLLARS 0 CENTS
 Wm J Safford
 1000 Duplace St NE 6166
 North West Lee

[illegible]

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Wells Fargo Business Online®

View Check Copy

Check Number	Date Posted	Check Amount	Account Number
6148	02/17/15	\$13,900.00	ALPEN MTC XXXXXX0224

6148
DATE 2/13/15
\$13,900.00
Pay to the order of William Rauts
Theresa Howard air conditioned + eq
Wells Fargo Bank
\$6950 to William R.
\$6950 to Swafford
Theresa Howard

Batch: 870839
Date: 02/17/15
Inq: 72
The Wells Fargo Bank of America, N.A.
Credited to 7-1 account by
The Wells Fargo Bank of America, N.A.
Endorsement: Cash on Hand
Batch: 870839
Date: 02/17/15
Inq: 72
The Wells Fargo Bank of America, N.A.
Credited to 7-1 account by
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Endorsement: Cash on Hand
Batch: 870839
Date: 02/17/15
Inq: 72
The Wells Fargo Bank of America, N.A.
Credited to 7-1 account by
The Wells Fargo Bank of America, N.A.
Endorsement: Cash on Hand

Equal Housing Lender

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ATTORNEY CLIENT FEE AGREEMENT

JEFFREY SPENCER ("Client") hires Attorney William J. Routsis II, Esq. to defend the claims filed against him by Plaintiff Helmut Klementi in the Ninth Judicial District Court for the State of Nevada. County of Douglass.

In order to defend Client's case and prosecute potential counter claims against Mr. Klementi and other potential defendants who may be liable to Client for damages in connection with events surrounding the civil case at issue, Mr. Routsis will associate with attorney William A. Swafford, Esq. who will share responsibility for the handling of Client's case. Mr. Routsis will split his attorney fees received on this contract, and assigns 50% of all legal fees paid by Client to Mr. Swafford.

The legal services to be performed pursuant to this contract are twofold. First, Attorneys and their agents and assigns will defend the civil case filed by Mr. Klementi. Second, Attorneys will pursue counterclaims against all Defendant's potentially liable for the injuries incurred by Client by the actions of third party defendant's in relation to the previous criminal case in which Client was acquitted for three counts of elderly exploitation and abuse.

With respect to the defense of civil claims, Client will pay Mr. Routsis the sum of \$50,000. \$25,000 of which will be assigned to Mr. Swafford. This initial payment for legal services will be held in trust and retained as legal fees at a rate of \$250 per hour until the entire sum is deemed earned and retained by counsel. At the end of each month, attorneys will provide Client with a statement of hours spent working on the case and brief summaries of the work performed.

Attorneys agree to use their best efforts in representing Client, and Client agrees to pay as agreed and to assist in the litigation of the case. Client is gaining the benefit of knowledge that he cannot be charged more than \$50,000 in legal service fees irrespective of actual time spent by Attorneys pursuing his claims and defenses. Client knows that other law firms may charge clients hourly for their legal services and that the Attorney's fees in this case could be substantially higher than what is being charged in this fee agreement as a flat fee by Attorney (Attorney charges \$250/hour as primary owner of firm in event of a fee dispute). In exchange for this 'benefit' Client/Guarantor understands that the fee that Client/Guarantor is agreeing to is a non-refundable fee as it is not based upon any specific hourly rate at which Attorney will be billing the client. This means that once paid, no portion of this fee shall be refunded to Client/Guarantor. Client/Guarantor further agrees that this flat fee is a reasonable and fair fee, as is Attorney's hourly rate should any portions of this agreement be unenforceable.

Attorney agrees to return all of Client's emails and phone calls promptly, and within no longer than three business days.

With respect to the prosecution of claims against potential defendants, attorneys are retained on a contingent-fee basis and client agrees to pay:

33% of the gross amount of funds recovered by either settlement or jury verdict.

For example, if the case settles for \$100 and you owe a third party \$10, we receive \$33, the third party receives \$10 and you receive \$57. Except as provided in the next paragraph, contingent attorney fees are recovered from the filing of claims against liable parties. If no fees are recovered, no fees will be payable to us. You will, however, be liable for all costs incurred on your behalf regardless of recovery.

TERMINATION OF REPRESENTATION AND POST-REPRESENTATION MATTERS:

Either party may terminate the representation at any time, subject to our obligations under the Rules of Professional Conduct and the approval of the court if the matter is in litigation. In the event this agreement is terminated by us before settlement or ultimate recovery, no fees shall be payable to us, but you shall remain responsible for payment of all costs advanced by us. In the event this agreement is terminated by you before settlement or ultimate recovery, you agree to pay us our fees at the hourly rates customarily charged by us for all time reasonably spent by us on your behalf before your termination of this agreement, plus any costs advanced. Attorney's hourly rates are \$250 per hour. In addition, other attorneys and paralegals may work on your matter. Unless previously terminated, our representation will terminate upon us sending you a closing letter and providing you with an accounting of all funds received and disbursed on your behalf.

COSTS: You will be responsible for all actual out-of-pocket costs we incur on your behalf. Typical costs include: travel expenses, long-distance telephone calls, outgoing fax, Federal Express, courier services, and delivery charges, photocopying, online database retrieval charges (Lexis, Westlaw, etc.), filing fees, and other litigation related expenses. We anticipate making advances to cover out-of-pocket costs incurred but reserve the right to forward to you any larger items (such as expert witness fees or deposition costs) with the request that you pay them directly to the service providers. Costs advanced by us are taken out of your portion of any settlement proceeds after the contingency amount has been calculated.

OPPOSING PARTY'S FEES AND COSTS: In the event that you lose in litigation, you may be responsible for the opposing party's attorneys' fees and costs.

CLIENT'S RESPONSIBILITIES: We cannot effectively represent you without your cooperation and assistance. You agree to cooperate fully with us and to provide promptly all information known or available to you that is relevant to our representation. Your obligations include timely providing requested information and documents, assisting in discovery, disclosure and trial preparation, cooperating in scheduling and related matters, responding timely to telephone calls and correspondence, and informing us of changes in your address and telephone numbers.

SETTLEMENT: We will not enter into a settlement without your consent.

DOCUMENT RETENTION: At the end of our engagement, we will turn over the file to you. If you do not want the file, you agree that the file may be destroyed in accordance with our document retention policy and the Nevada Rules of Professional Conduct. Currently, it is our policy to destroy files seven years after the termination of the representation.

ARBITRATION OF FEE DISPUTES: If a dispute arises between us and you regarding our fees, the parties agree to resolve that dispute through the State Bar's Fee Dispute Arbitration Program. Either party may initiate fee arbitration by contacting the State Bar's Client Protection Coordinator at 702-382-2200 or by going to the Fee Dispute webpage at www.nvbar.org.

NO ADVICE REGARDING THIS FEE AGREEMENT: We are not acting as your counsel with respect to this agreement. If you wish to be advised on whether you should enter into this agreement, we recommend that you consult with independent counsel of your choice.

NO GUARANTEES HAVE BEEN MADE AS TO WHAT AMOUNTS, IF ANY, YOU MAY BE ENTITLED TO RECOVER IN THIS CASE OR THE FINAL OUTCOME IN THIS CASE.

DATED this 13th day of February, 2015. Jeff Spencer Client's Name

DATED this _____ day of February, 2015. _____ Attorney's Name

DATED this _____ day of February, 2015. _____ Attorney's Name

In addition: 8/2014 \$10,000 has already been paid (5,000 to William Swafford and 5,000 to William Routsis) to proceed with the filings.

After reviewing my accounting, the check written in Aug of 2014 was to William Swafford only, William Routsis did not receive \$5,000 of that check.

I would like to Advise the Nevada State Bar of the following:

Mr. William Swafford
Attorney at Law licensed in Nevada, California and Illinois
Nevada Bar number 11469
775-391-0048.

Mr. William Swafford /Attorney at Law has abandoned me as his client.

Myself, my wife and William Routsis have continually tried to contact Mr. Swafford for the last several months thru email and phone calls and there has been no response. I hired/contracted Mr. Swafford in August of 2014. Mr. Swafford was to partner as the civil technician with William Routsis re: my civil case in Douglas County. 14-CV-0260 Mr. Swafford was paid in good faith the requested \$5,000 in August of 2014. He was to commence the filing of a law suit at that time. He did nothing but give excuses for 5 months until I was served with a civil suit in January of 2015. Because of this, our statute of limitations for filing certain complaints have passed.

At this point after discussion with Mr. Routsis and Mr. Swafford, both agreed to move forward, Mr. Swafford agreed to a contingency % handling all the technical research and writing for our case. When it came to trial he would 2nd chair with Mr. Routsis. For this he was paid an additional 25,000 to cover his costs for travel ect. when it came time for the trial. All totaling \$30,000.

We were to have weekly conference calls with Mr. Routsis and Mr. Swafford for updates and planning. Mr. Swafford made the first 2 calls and no more. Mr. Swafford promised to respond to emails and phone calls within 48 hours. He has not done this either.

So far all Mr. Swafford has done is to write up the initial complaint, in which he did not include all parties. We then had to go over more evidence and show why the additional parties had to be included. Mr. Swafford finally drafted the amended complaint, my wife went back and forth with him several times regarding mistakes. Finally we had to make the corrections ourselves and have Mr. Routsis's secretary write it up for filing. I have since been told these filings need to be re-done because they are not correct. It has taken months to get the smallest things done. And these were not done correctly. Mr. Swafford has been MIA for months now and has put us into a serious position. He has not been a man of his word, he has not done the work he promised to do. The little he did do was sloppy, incorrect and riddled with mistakes. Mr. Swafford has taken complete advantage of us financially, and walked away without a 2nd thought.

This borders on Criminal behavior.

We have exhausted our finances and do not have the funds to hire another attorney to complete the technical work to get us to our next step let alone to trial. Our time is up. Mr. Swafford has done this to one other client that we know of, he did not show up to a hearing in Judge Knight's court.

I am my wits end, I do not know what to do at this point.

According to Mr. Routsis and Mr. Zaniel the first meeting with Judge Kosach is on Sept 14, 2015 for the initial status conference.

I humbly request the Bar to order Mr. Swafford to appear immediately and answer for his behavior, or have Mr. Swafford refund my money immediately so I can seek counsel elsewhere.

Any help from the Bar would be appreciated.

Sincerely,

Jeffery D Spencer

PO Box 2326

Stateline Nv 89449

530 318-1876

Please forward to the court for Judge Kosach to review.

I would like to advise the court the following:

Mr. William Swafford
Attorney at Law licensed in Nevada, Mass and Illinois
Nevada Bar number 11469
(775) 391-0048

Mr. Swafford has abandoned me as his client.

Case # 14-CV-0260

Myself, my wife and William Routsis have tried to contact him more then a month thru emails, texts and phone calls and there has been no response.

I hired/contracted Mr. Swafford in August of 2014. Mr. Swafford was to partner as the civil technician with William Routsis re: my civil case in Douglas County.

Mr. Swafford was initially paid \$5,000 in August of 2014 to commence the filing of a law suit. He did nothing but give excuses for 5 months until I was served with a civil suit in January of 2015. Because of this, our statue of limitations for filing certain complaints have passed.

At this point after discussion with Mr. Routsis and Mr. Swafford, both agreed to move forward, Mr. Swafford agreed to a contingency % handling all the technical research and writing for my case. When it came to trial he would 2nd chair with Mr. Routsis. For this part he was paid an additional \$25,000 to cover his costs for travel ect. when it came time for the trial. Not for motion work. All totaling \$30,000.

In January 2015, We all agreed to have weekly conference calls with Mr. Routsis and Mr. Swafford for updates and planning. Mr. Swafford made the first 2 calls and no more. Mr. Swafford then promised to respond to emails and phone calls within 48 hours. He has not done this either. Continuing to give unacceptable excuses as to why he did not call, was not answering the phone, returning the many many messages left for him, not getting the work done in a timely fashion or done at all, and MIA for weeks at a time.

So far all Mr. Swafford has done is to write up the initial complaint, in which he did not include all parties as instructed. We then had to go over the evidence again to show why the additional parties had to be included. Mr. Swafford finally drafted the amended complaint, my wife went back and forth with him several times regarding mistakes. Finally, we had to make the corrections ourselves and have Mr. Routsis's secretary type it up for filing. It has taken months to get the smallest things done, and they were not done correctly. Mr. Swafford left it up to my wife to proof read and supply him with a list of corrects. He was the one paid to do this, not my wife. He has not completed any of the work he contracted and agreed to do.

This time Mr. Swafford has been MIA for over a month, and has put us into a serious position. He has not been a man of his word, done the work he promised to do and has taken complete advantage of us financially. This boards on Criminal behavior.

I cannot fire Mr. Swafford an allow him to just walk away. We have exhausted our finances and do not have the funds to hire another attorney to complete the technical work to get us to our next step, let alone to trial. Our time is up. Mr. Swafford has an ethical duty to complete the work he agreed to and was contracted to do.

I have been informed that Mr. Swafford has done this to other client, he did not show up to a hearing in Judge Freemans court.

I am at my wits end, I do not know what to do at this point. It has been over a year since this began, I gave Mr. Swafford chance after chance to redeem himself and honor his commitment.

According to Mr. Routsis the first meeting with Judge Kosach is on Sept 14,2015 for the initial status conference. There is so much to do before that. This is a complex Civil case stemming from a criminal trial in which I was found not guilty on all counts.

Mr. Routsis represented me in that trial and though he is not a civil attorney, we hired him to be the trial attorney for this civil case.

Mr. Routsis will also be writing a statement collaborating the claims above.

I humbly request the court to order Mr. Swafford to appear immediately and answer for his behavior.

If possible have Mr. Swafford refund my money or detain him and force him to do his job. Any help from the courts would be appreciated.

Please keep this confidential and if possible sealed from opposing counsel.

Sincerely

Jeffery D Spencer