

IN RE:
PETITION FOR REINSTATEMENT
KYM S. CUSHING,
NEVADA BAR NO. 4242

Pursuant to SCR 121 the enclosed record of proceeding is being submitted for filing under seal and is deemed confidential.

Kym S. Cushing, Esq.
Nevada Bar No. 4242
24 Hummingbird Way
Henderson, NV 89014
Petitioner

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STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA

Complainant,

vs.

KYM SAMUEL CUSHING, ESQ.,
Nevada Bar No. 4242

Petitioner.

)
) Case No.
) SBN22-00022
)
)

CERTIFIED
TRANSCRIPT

FORMAL HEARING OF KYM SAMUEL CUSHING, ESQ.

Taken at the State Bar of Nevada Via Zoom Videoconference

3100 W. Charleston Boulevard, Suite 100

Las Vegas, Nevada

On Wednesday, April 27, 2022

At 9:00 a.m.

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

Appearances (via Zoom videoconference):

Commission Panel:

GARY A. PULLIAM, ESQ.
Panel Chairman

P. DAVID WESTBROOK, ESQ.
Panel Member

DR. JO KENT MCBEATH
Laymember

For the Complainant:

PHILLIP J. PATTEE, ESQ.
Assistant Bar Counsel
State Bar of Nevada
3100 W. Charleston Boulevard
Suite 100
Las Vegas, NV 89102
(702) 382-2200

For the Petitioner:

KYM SAMUEL CUSHING, ESQ.

Also Present:

TIFFANY BRADLEY
Hearing Paralegal

JOSHUA DAVIDSON
Observer

I N D E X

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(Thereupon Complainant's Exhibits
1-19 were previously admitted
into evidence.)

(Thereupon Petitioner's Exhibits
A-O were previously admitted into
evidence.)

CHAIR PULLIAM: The hearing will come to
order. This is In Re: Petition for reinstatement of
Kym S. Cushing, Nevada Bar Number 4242. This is Case
Number SBN-00022. My name is a Gary Pulliam. I've
been appointed as chairman of this panel for today.
My fellow panel members present are P. David
Westbrook, esquire, and Dr. Jo Kent McBeath. Also
present on behalf of the State Bar is Assistant Bar
Counsel Phil Pattee and hearing paralegal Tiffany
Bradley. Also present is petitioner Kym Cushing, who
will be representing himself.

Is that correct, Mr. Cushing? You're on
mute.

PETITIONER CUSHING: That is correct.

CHAIR PULLIAM: Okay. Very good. Now, you
understand you could have counsel if you wanted?
You're willing to waive that for today's hearing; is
that correct?

PETITIONER CUSHING: Yes, that's correct.

1 CHAIR PULLIAM: All right. Very good. All
2 right. Also present is Joshua Davidson, who is new
3 to the disciplinary panel, and he's going to watching
4 the proceedings, and so we welcome everybody.

5 At a prehearing conference held on
6 April 20th, 2022, the following exhibits were
7 admitted: State Bar 1 through 7 and Mr. Cushing's A
8 through O.

9 And, Mr. Cushing, you had expressed during
10 that conference a concern about one State Bar
11 exhibit. Do you want to address that now or --

12 PETITIONER CUSHING: No, it's fine. It's
13 fine. We agree to stipulate that into evidence. In
14 fact, I think both parties stipulated to each side's
15 list of exhibits --

16 CHAIR PULLIAM: Correct.

17 PETITIONER CUSHING: -- into evidence.

18 CHAIR PULLIAM: Right. That's what I was
19 just getting ready to do that. So at that prehearing
20 conference, we did admit those exhibits.

21 All right. Mr. Cushing, do you have any
22 witnesses you plan on calling today?

23 PETITIONER CUSHING: I may call two. It
24 just depends how things are going. I don't expect
25 this to go super, super long, so I tried to tailored

1 my presentation to be tight and short and to the
2 point.

3 CHAIR PULLIAM: Okay. Very good. And then
4 how about you, Mr. Pattee. Do you have any
5 witnesses?

6 MR. PATTEE: Potentially two, depending on,
7 as Mr. Cushing says, how things go.

8 CHAIR PULLIAM: Okay.

9 MR. PATTEE: At the prehearing conference we
10 asked that -- we had submitted actually 19 exhibits,
11 and the exhibit which Mr. Cushing raised the question
12 about was number 19 so --

13 THE COURT: Oh, I'm sorry, I was looking at
14 the wrong page. So 1 through 19 were admitted.
15 That's correct, Mr. Pattee. Thank you very much.

16 MR. PATTEE: Yeah, and we potentially have
17 two quick witnesses, depending on how everything
18 goes. With the panel's permission, usually the State
19 Bar, it's his burden but we go first because this is
20 what we do for a living, and if I could just give
21 everybody sort of an overview of why the heck we're
22 here and what the standards of proof is and who has
23 to do what. And it takes about 30 seconds but it's
24 sort of -- instead of throwing Mr. Cushing into the
25 deep end, if I could at the get-go, if you don't

1 mind, let me explain where we're at and point to some
2 documents and things like that.

3 CHAIR PULLIAM: Interesting, Phil. That's
4 right exactly where I was in my script to ask who was
5 going -- Mr. Cushing has the burden but who would go
6 first in this proceeding, so you just answered that.
7 So basically you're just going to give an overview of
8 what's going on, but let me address one thing real
9 quick.

10 Mr. Cushing, at some point are you planning
11 on testifying under oath?

12 PETITIONER CUSHING: Yes, I plan -- my whole
13 testimony is going to be under oath, so I have to be
14 sworn in.

15 CHAIR PULLIAM: Okay. So, Mr. Pattee,
16 you're going to provide the panel an overview of what
17 the process is and discuss the burden; is that
18 correct?

19 MR. PATTEE: Yes, that is correct.

20 CHAIR PULLIAM: All right. Well, go ahead
21 then.

22 MR. PATTEE: Can I -- I know this is a very
23 serious matter, and it is especially serious to
24 Mr. Cushing, and with a formal proceeding, but does
25 anybody have a problem with us dropping the Mr. and

1 Mrs. and just going with people's first names?

2 PETITIONER CUSHING: That's fine.

3 CHAIR PULLIAM: I have no problem.

4 PETITIONER CUSHING: I know Gary and I know
5 Phil, so...

6 MR. PATTEE: Yeah. Okay. Well, once again
7 my name is Phil Pattee. I'm an Assistant Bar Counsel
8 with the State Bar of Nevada and I've been assigned
9 to this matter, which, as I said before, is a
10 reinstatement hearing SBN22-0022 where Mr. Cushing,
11 aka Kym, is asking for reinstatement to the State Bar
12 of Nevada.

13 If you turn to Exhibit 1, which was our
14 formal packet, if you turn to what is actually page
15 two, there's a couple of cover pages, but there is
16 rule, I'm sorry, Supreme Court Rule 116, which goes
17 over what -- this is the rule which governs what
18 we're doing today.

19 And under procedure for reinstatement it
20 basically says that the attorney may be reinstated or
21 readmitted only if the attorney demonstrates by clear
22 and convincing evidence the following criteria, and
23 it goes A through G, which I counted it up, that's
24 eight things that he needs to show by clear and
25 convincing evidence, unless -- or if he can't prove

1 all that, then you go back up to subsection two, he
2 presents a good and sufficient reason why he should
3 nevertheless be reinstated or readmitted. So bottom
4 line here is this is his hearing, he can present
5 whatever he deems appropriate and however he wants to
6 do that.

7 The State Bar has planned on going through
8 some documents. I would suggest -- he can do what he
9 wants and we can defer to the panel chair. I would
10 suggest basically after hearing what his rough plans
11 are that I'll hold off on an opening statement, he
12 can make an opening statement, he can testify, he can
13 put on any witnesses he wants, and then I'll reserve
14 my cross-examination of Mr. Crushing until after the
15 end of his presentation, so it will have a little bit
16 more context instead of us going back and forth and
17 back and forth, let him put on his presentation and
18 then I'll jump in.

19 I've got also a fairly concise I think
20 presentation, and depending on how all this goes,
21 possibly a couple of five-minute witnesses and
22 hopefully we're out of here today.

23 PETITIONER CUSHING: We will be.

24 MR. PATTEE: And that's it for me.

25 CHAIR PULLIAM: Mr. Cushing, do you want to

1 just launch into your testimony or do you want to
2 give an opening as well?

3 PETITIONER CUSHING: It probably would be
4 better if I get sworn in from the very beginning,
5 that way I don't have to break it up and so...

6 CHAIR PULLIAM: Okay. So what we'll do
7 then, and, Phil, you alluded to this, is we'd like
8 Mr. Cushing to testify under oath, and then if --
9 then you want to cross-examine him, correct, at that
10 point, or at least reserve the right to?

11 MR. PATTEE: Yes, I'd like to reserve the
12 right to. Let's let him get his case in chief in and
13 then we can come back, and if I have questions for
14 him, and --

15 CHAIR PULLIAM: Okay.

16 MR. PATTEE: -- we can talk. And my basic
17 plan is to go through the various documents which
18 have been submitted in this matter, some of our
19 exhibits, and have some questions for Kym about
20 those. And it shouldn't take too long, and then
21 we'll go on from there. But, yeah, I think the best
22 thing, based on my knowledge of his cases, let him do
23 his thing and then --

24 CHAIR PULLIAM: Okay.

25 MR. PATTEE: -- we'll jump in in about an

1 hour.

2 CHAIR PULLIAM: Okay. All right.
3 Mr. Cushing, then let me go ahead and put you under
4 oath. I'm sorry, Debbie, do you want to put him
5 under oath? It's kind of your job, isn't it? Would
6 you mind doing that then.

7 Thereupon--

8 KYM CUSHING
9 was called as a witness, and having been first duly
10 sworn, testified as follows:

11 CHAIR PULLIAM: All right. Thank you,
12 Mr. Cushing, and thank you, Debbie, as well. So,
13 Mr. Cushing, go ahead. I'm going to put myself on
14 mute so the floor is...

15 PETITIONER CUSHING: Okay. You cut off
16 there at the end but I think you said the floor is
17 yours, something like that.

18 All right. First of all, I would like to
19 thank Panel Chair Gary Pulliam and Mr. Westbrook and
20 Dr. McBeath for participating as panel members in my
21 reinstatement hearing. It means a lot to me and I
22 thank you for your time. I'd also like to thank Bar
23 Counsel, Phil, and Tiffany for their professionalism
24 and courtesies and cooperation. They've been great
25 to work with.

1 As Phil alluded to earlier, Supreme Court
2 Rule 116.2 lists requirements that an attorney must
3 satisfy before he can be reinstated to the practice
4 of law, and I understand that I have the burden of
5 proof by clear and convincing evidence that I have to
6 satisfy those seven requirements.

7 Now I can do that in several ways. I can do
8 it through evidence that's been admitted into the
9 hearing. And, by the way, I would like to thank the
10 State Bar for agreeing to and stipulating to all the
11 admission of the exhibits. It makes things go a lot
12 smoother. I can meet my burden through testimony,
13 including my testimony.

14 All the exhibits that you have in front of
15 you were agreed to, as I said, by both parties. In
16 fact most of the evidence in your binders are
17 duplicates. There's a lot of duplication. Now,
18 through my testimony and through evidence that has
19 already been admitted I hope to demonstrate that I've
20 satisfied all seven requirements or factors of SCR
21 116.2, as well as satisfying the conditions set forth
22 in Supreme Court's order dated January 31, 2019, that
23 was my order of suspension.

24 I'm going to also focus my presentation on
25 my rehabilitation, what I've done to accomplish that,

1 what changes I have made in my life, and commitment
2 to do even better going forward.

3 MR. PATTEE: Mr. Cushing, can I interrupt
4 you for a moment?

5 PETITIONER CUSHING: Sure.

6 MR. PATTEE: In State Bar's Exhibit 3 is the
7 order of suspension.

8 PETITIONER CUSHING: Correct.

9 MR. PATTEE: And when Mr. Cushing was
10 suspended in January of 2020, he had several
11 conditions which he was supposed to complete. And if
12 we had included everything that he gave us and that
13 we have, the exhibits are available to the panel, and
14 Tiffany can send them over, but it would have been
15 volumes and volumes, because one of the things he did
16 was attach ever certificate for everything that he
17 was supposed to do.

18 He was supposed to go and -- he was supposed
19 to pay money. He was supposed to do CLEs. He was
20 supposed to go to doctors. And to cut through some
21 of the red tape here, he has -- the State Bar will
22 stipulate that he has met those requirements which
23 were spelled out in the Supreme Court's order of
24 January 2020.

25 Now, to be honest, did he pay the fees when

1 he was supposed to? No, but he has. There was a
2 question in our mind of whether he completed -- he
3 was supposed to do something like 35 or 36 CLE
4 courses, and there's a question of whether he got --
5 actually did all but one or were they duplicates or
6 whatever.

7 As far as the State Bar is concerned, if he
8 didn't fulfill completely the CLE requirements, he
9 has substantial compliance and we don't have a
10 problem with that. So as far as the State Bar is
11 concerned, he has met the requirements which were
12 included in his original suspension order of
13 December 20th.

14 So if he's planning on going through and
15 explaining that he was at Dr. Jones' office on such
16 and such a date and then went to a CLE on April 22nd,
17 he's provided all of that, and so we don't need to
18 get into that. We'll stipulate that he has complied
19 with the order with the requirements in his
20 suspension order.

21 PETITIONER CUSHING: I appreciate that and I
22 thank Mr. Pattee for that.

23 PANEL MEMBER WESTBROOK: I have a quick
24 question, you guys. Is the State Bar actually
25 challenging whether or not he completed any of these

1 procedures? Because if there's no challenge here,
2 I'm wondering why we would need a full hearing.
3 Maybe we can just take a look at the exhibits and
4 reach a decision, if the State Bar is agreeing and
5 stipulating that he actually met the requirements.

6 MR. PATTEE: He met the requirements that
7 the Supreme Court told him to do, but he still has to
8 prove by clear and convincing evidence the various
9 elements of Supreme Court Rule 116.

10 PANEL MEMBER WESTBROOK: Sure.

11 MR. PATTEE: So we don't -- at the moment we
12 don't have an opinion on whether we would object to
13 his suspension or his reinstatement, agree with his
14 reinstatement or don't have a position. It's up to
15 him, and we'll know in about an hour or so where
16 we're going with that. But he still has -- all I'm
17 saying is if he's planning on going through two hours
18 of "I did these CLEs," we got it. We believe --

19 PANEL MEMBER WESTBROOK: That sounds good.
20 All right. That's great. We're at a little bit of a
21 disadvantage because we don't have access to all the
22 exhibits right now, we only got Exhibit 1 in our
23 packet.

24 CHAIR PULLIAM: Okay. Well, let me address
25 that as well. And I'm talking about Rule 116.

1 There's other stuff in there that, the A through G
2 that I think his testimony would be addressing as
3 opposed to any documents. And, you know, that -- I
4 think that that's frankly a box that needs to be
5 checked.

6 PANEL MEMBER WESTBROOK: I agree.

7 CHAIR PULLIAM: And, Mr. Pattee, I
8 appreciate that as well that the State Bar's letting
9 us move about four or five slots on the game board
10 ahead, okay.

11 PANEL MEMBER WESTBROOK: I'll repeat that.
12 Thank you.

13 CHAIR PULLIAM: Mr. Cushing -- any other
14 questions, Mr. Westbrook?

15 PANEL MEMBER WESTBROOK: That answered my
16 question. Thank you.

17 CHAIR PULLIAM: All right. And how about
18 you, Dr. McBeath. Anything?

19 I think that was a "no."

20 PETITIONER CUSHING: That was a "no."

21 CHAIR PULLIAM: All right. Mr. Cushing,
22 remind you you're still under oath, so continue
23 please.

24 PETITIONER CUSHING: Okay. Well, I thank
25 the panel chair and Bar Counsel for that stipulation.

1 I'm not going to go through all the certificates of
2 completion or the CLE, but I want to touch on a
3 couple of things because the first element of SCR 116
4 is important. Since I have the burden of proof, and
5 some of the items in that Supreme Court order overlap
6 the other factors of SCR 116, but I am not going to
7 go through in great detail but I want to make sure I
8 have it on the record.

9 In SCR 116.2 the first requirement is full
10 compliance with the terms and conditions of all prior
11 disciplinary orders. And that's what the Supreme
12 Court order is involved with. There's only one. And
13 I want to just briefly touch on that. The first
14 Supreme Court requirement, and that's Exhibit B in my
15 packet and Exhibit 3 in the State Bar's packet, is,
16 quote, Cushing shall participate in the NLAP and
17 comply with any treatment recommendations, end quote.

18 I met with Larry Espidero, who was the
19 former director of NLAP. Unfortunately he passed
20 away last year, but it was very sad. But I met with
21 him. Exhibit D in my packet of exhibits are all of
22 the quarterly reports that he prepared. I signed a
23 contract for two years, and my -- the terms of my
24 contract were aftercare meetings twice a month,
25 12-step meetings twice weekly, PRN support group

1 meetings once a month, random urine screens four
2 times monthly, random drug tox screen and
3 breathalyzer tests at random intervals.

4 Now in Exhibit D they show that I attended
5 aftercare meetings at least twice a month for two
6 years. I attended AA 12-step meetings twice weekly
7 for two years, and incidentally I continue to do so.
8 I attended PRN support group meetings at least once a
9 month for two years. I passed every single random
10 urine test during those two years, and that was
11 around a hundred of them. I also passed every random
12 drug tox screen and breathalyzer test.

13 And I just want to read his discharge note,
14 which is Exhibit D, as in "David," and it's pages one
15 and two is where you can find it. It's on page two.
16 And I'm going to leave out the word "urine" in the
17 first sentence because it's a typo. I wasn't
18 swimming in urine, so I'm going to leave that out.

19 Larry Espidero said, quote, No changes. Kym
20 has attended all assigned groups in April, May and
21 June. Urine screens were negative. He has been
22 active in group and shown no resistance to the
23 program during this period. No issues of denial and
24 supportive of his peers in group. He has completed
25 all requirements in the PRN program and is released,

1 end quote. So that shows that I did complete the
2 NLAP program as ordered by the Supreme Court.

3 Incidentally, he did refer me to a
4 Dr. William Bauer, a psychiatrist. He was at Monte
5 Vista Hospital at the time. I met with him only
6 once, and he prescribed Prozac for depression and
7 trazodone for sleep. I didn't -- I took a couple of
8 them and I stopped. I didn't like the way they made
9 me feel, like loopy, I was in a cloud, brain fog and
10 jittery.

11 And I did some online research and I just
12 stopped taking them. And I don't need them. I
13 haven't taken any psychotropic drugs since that time,
14 that's been over four years ago. I just didn't
15 believe it was necessary. And I only had to meet
16 with Dr. Bauer once.

17 I do want to emphasize too that I attended
18 AA meetings for two years, but I continue to do so,
19 not twice a week but at least once a week. And I had
20 a graph with all the dates and times that I went to
21 those AA meetings, and those were -- that graph was
22 introduce into evidence in the underlying Bar
23 hearing.

24 So the second requirement in the Supreme
25 Court order is I should complete an anger management

1 program approved by the State Bar. That is Exhibit
2 K, which has been admitted into evidence. So I
3 completed that requirement.

4 The third requirement for the Supreme Court
5 order is I shall complete 10 CLE credits in addition
6 to the annual requirement with at least 5 of those
7 CLE credits in the area of substance abuse. Now I
8 think at the time the annual requirement for CLE was
9 13 credits, and I didn't know if I had to do those
10 CLE credits when I got the order, when I got the
11 order in 2020 or if I had to do it in '21 or when I
12 did the petition for reinstatement, so what I did, I
13 just did them in all years.

14 And there's no duplication in those
15 certificates of completion, and I double-checked.
16 But during 2019 through 2022, I completed 72.5 hours
17 total CLE credit. 23 of those hours was in ethics
18 and 22.75 in substance abuse. So if you have 13
19 annual requirement, I needed an extra 10 would be 23,
20 and I got 72 generals. If the annual requirement was
21 one substance abuse, I had 22.75. So those have been
22 admitted as Exhibit E, which is the graph.

23 And then I also included what Phil's
24 referring to earlier, all the certificates of
25 completion. Those are Exhibits F through J, and they

1 show that I have complied with Supreme Court's third
2 requirement for reinstatement. I've never taken so
3 many CLE credits in my life but they were very
4 interesting.

5 The fourth requirement was that I should pay
6 the cost of the disciplinary proceeding, including
7 2,500 under SCR 120 within 30 days. A cashiers check
8 for 7,500 was paid, and that is in exhibit as Exhibit
9 L in my packet.

10 I was ordered an additional \$718.74, that
11 was paid the same week, and that's Exhibit M, as in
12 "Mary," and that includes the \$1,000 prepayment
13 that's required. So L and M show that I paid my
14 outstanding costs. That was the last requirement of
15 the Supreme Court suspension order, and the
16 stipulation is that I have completed and complied
17 with all the Supreme Court's requirements.

18 But so that's the first element of the
19 Supreme Court Rule 116 that I satisfied prior
20 disciplinary orders. The second element of SCR 116
21 is, quote, the attorney has neither engaged in nor
22 attempted to engage in the unauthorized practice of
23 law during the period of suspension, end quote.

24 I have not engaged or attempted to engage in
25 the unauthorized practice of law in any manner or

1 fashion. I did not work at all in the legal field.
2 I didn't work for any employer. I took a complete
3 break from everything and it's been almost one and a
4 half years.

5 I voluntarily produced my tax returns.
6 Those are Exhibit O. They've been admitted into
7 evidence and they document my sources of income,
8 which have nothing to do with a legal field or job.
9 I'll discuss what I did during this time period a
10 little bit later in my presentation but I want to
11 move on to SCR 116, the third requirement, and this
12 is a big one. Quote, any physical -- yes?

13 MR. PATTEE: Before you get into the big
14 one, let me back up a little bit. You were just
15 talking about your medical records, and just as a
16 housekeeping matter, while it's on our minds, all of
17 this is going to the Supreme Court. Would you like
18 those medical records sealed when they go up to the
19 Supreme Court?

20 PETITIONER CUSHING: Yes, I would. Thank
21 you for reminding me of that, because there's some
22 sensitive information in there that I would not like
23 out, so thank you for that.

24 MR. PATTEE: No, we'll thank Tiffany for
25 that. Go ahead. Go ahead with the big one.

1 CHAIR PULLIAM: That will be my order as
2 well.

3 PETITIONER CUSHING: All right. Thank you.
4 So the third requirement under SCR 116, and I'll read
5 it, quote, Any physical or mental disability or
6 infirmity existing at the time of the suspension has
7 been removed. If alcohol or other drug abuse was a
8 causative factor in the attorney's misconduct, the
9 attorney has pursued appropriate treatment, has
10 abstained from the use of alcohol or other drugs for
11 a stated period of time, generally not less than one
12 year, and is likely to continue to abstain from
13 alcohol and drugs, end quote.

14 Now, this is the most important part, in my
15 opinion, of the requirements, at least in my case.
16 And this is where I'm going to spend most of my time
17 today. It has been four years since my last
18 alcoholic drink. Four years. I suffered no
19 relapses. None. I passed every urine drug test
20 during my two years with Larry in NLAP. I was
21 discharged from NLAP because Larry Espidero concluded
22 I didn't need to keep coming anymore.

23 As Exhibit N, as in "Nancy," State Bar
24 Exhibit 17, is a supplemental brief. And I wrote
25 that because I wanted to give the panel some context

1 and background into what was going on with me in my
2 life at the time in my work, not to excuse my actions
3 but to give you some insight and perspective, and I
4 just want to touch on a couple of things.

5 During the last couple of years at my old
6 firm, I was working insane hours. My physical health
7 was deteriorating and my mental health was
8 deteriorating. During the last year I worked there,
9 I lost 30 pounds. I went from 185 to 155. My hair
10 started to fall out and that scared me. I looked
11 terrible. I was literally working myself to death.

12 It was during this time that I started to
13 drink alcohol to get through the day. It was a means
14 to escape from the workload, the pressure and the
15 stress, but it was so stupid. Here I am in my late
16 fifties and I start to drink. There's no excuse for
17 that.

18 MS. BRADLEY: Mr. Cushing? Mr. Cushing?

19 PETITIONER CUSHING: Yes.

20 MS. BRADLEY: Sorry to interrupt you but
21 you're frozen. Okay, we're just waiting for you to
22 return. I'm sorry to interrupt. If you could please
23 repeat. My apologies.

24 PETITIONER CUSHING: Okay. Thank you for
25 telling me that, though. I was just telling how --

1 explaining how stupid I was. In my late fifties I
2 started to drink, and I did it as a means to escape
3 to handle the stress, but it got progressively worse
4 and very quickly and it took more and more for me to
5 get to that place of escape.

6 I started making bad decisions. Thankfully
7 none of my drinking never affected any of my clients,
8 their cases or my law practice. No one at my firm
9 even knew I drank alcohol and had problems. But it
10 did affect me. It affected my decisionmaking
11 process. It affected my health.

12 And I want to make also something clear. I
13 made the decision to start, the misguided belief that
14 it would make things better but it didn't, it made
15 things worse. I realize that now, I can see that
16 now, and I understand that now. I will never ever go
17 down that destructive path again. It's not worth it.
18 Drinking can give you temporary relief, but the
19 consequences of drinking have long-lasting effects
20 which will eventually result in permanent damage.

21 At NLAP I learned some strategies and
22 methods to cope with stress and how to diffuse them.
23 Number one was identify my stressors, and I have a
24 few of those. One is unreasonable arbitrary
25 deadlines, which drove me crazy when I was

1 practicing.

2 Another one was last minute scrambles or
3 procrastination, waiting until the last minute to get
4 something done. That drove me crazy.

5 Another one was lazy people. People who
6 would look to me to answer a question when that
7 person made no effort whatsoever to find the answer
8 herself.

9 Another one was overreliance on technology.
10 That's a stressor. For example, in my old firm,
11 associates, new associates would come into my office
12 and they would ask me a question about a case. And
13 I'd ask them what did you do to find the answer. And
14 invariably they would say, well, they checked the
15 computer and they couldn't find anything. And I
16 asked them if they checked the actual file, and it
17 was as if I was speaking a foreign language. You
18 know, they'd say something like, You mean the actual
19 file file? The file in the file room? Yeah.

20 The notion of checking the actual hard file
21 was completely anathema to them. They just assumed
22 everything contained in the computer -- or in the
23 hard file is in the computer, and that was rarely the
24 case. Those are my stressors.

25 What did I do to alleviate those? I learned

1 some healthy responses to stressors. I established
2 boundaries and limits of what I can do, and I
3 realized my limitations. I'm supposed to ask for
4 help. That's a tough one for me, and I'm still
5 working on that one, because I tend to view asking
6 for help as an admission of weakness, but I'm still
7 working on that.

8 Another one, which was rather surprising,
9 was meditation and yoga, which I find remarkably
10 interesting. For 15 years I was a certified personal
11 trainer at 24 Hour Fitness while I was working. I
12 then became a special master for the 24 Hour
13 corporation. There were 24 of us. I did this part
14 time while I practiced law.

15 My speciality was yoga and Pilates, believe
16 it or not. I was trained in both. I have national
17 certifications in both, including the National
18 Academy of Sports Medicine, the American Council on
19 Exercise, Stott Pilates, and YogaFit. We would
20 travel all over the United States and also foreign
21 countries and train instructors at their local
22 facilities.

23 I stopped doing this about eight years ago
24 because I was getting so crazy busy, I gave it up.
25 But looking back now I realize that yoga and Pilates

1 and meditation sustained me and they helped me and
2 they centered me and I decided to go back to do that.

3 I've also learned that establishing healthy
4 habits are important, like healthy eating and
5 sleeping habits. One thing that's really interesting
6 is when I stopped drinking, things tasted a lot
7 better, and I started to gain weight, which I found
8 fascinating.

9 Finally it's important to have a support
10 structure in place, and my support structure is my
11 wife. Believe me she's strict. After she found out
12 about my drinking, she made me sit down with her and
13 formulate a plan on how I could stop.

14 And one major thing that we did is I turned
15 over to her all the finances. She now controls
16 everything. Any separate accounts became joint
17 accounts. Her name is on everything. She tracks all
18 expenditures, and she never misses anything. I have
19 to account for any money that I spend with the
20 receipt.

21 We've been doing this for four years and it
22 works. And honestly, I don't really mind. I did it
23 for 30 years so now it's her turn, and it's actually
24 kind of liberating. Plus I'm home all the time, so
25 she knows where I am at all times. My Google

1 location history is activated on my cellphone so she
2 can check it any time to see where I am or where I've
3 gone. So those are my boundaries and my support
4 structures in place.

5 Once I was suspended, I had some choices to
6 make. I decided to use that time to decompress, work
7 on my physical and mental health. I hadn't had a
8 vacation in four years. I hadn't had a day off in
9 four years. I didn't work for any employer. I
10 considered it sort of a sabbatical.

11 So I started to do things that I always
12 wanted to do with my house and I got started. I've
13 always -- I think I mentioned I've always enjoyed
14 physical labor, crating things. I worked hard my
15 whole life. I started working when I was 12 years
16 old. I was self-sufficient by the age of 16.

17 When I was 16, I had to get out of my
18 parents' house, they were driving me crazy, so I went
19 as far as I could and I went to Switzerland, and I
20 went to a German high school in Switzerland. I went
21 on a two-year church mission to Norway. I paid for
22 that myself. I worked my way through college. I
23 worked my way through law school as a law clerk. So
24 I'm not afraid of hard, physical labor, I rather
25 enjoy it.

1 So what did I do? Well, it started with a
2 new roof which then led to a complete replacement of
3 the second story HVAC unit in the middle of August.
4 One thing led to another and it just kept going, and
5 I'm still doing that. I actually enjoy this.
6 There's something about working hard during the day
7 then feeling physically exhausted afterwards but then
8 feeling good like you've accomplished something.

9 During this break, my physical health has
10 improved dramatically. I'm in great shape. I feel
11 better. My blood pressure and cholesterol levels are
12 good. I'm sleeping better. In terms of mental
13 health, I've never felt better. I don't suffer from
14 bouts of depression or anxiety, and I'm much more
15 relaxed.

16 So how do you know, or how do I know that I
17 won't start drinking again or suffer a relapse? Well
18 first it's been four years since my last drink.
19 Second, Larry at NLAP released me two years ago
20 because he believed I didn't need to come back and
21 continue with the program. I also worked as a lawyer
22 that next year after I resigned but before I was
23 suspended.

24 I worked at a plaintiff firm, which was
25 fascinating, but unfortunately I was even busier

1 there than I was at my last firm and I had less help.
2 So even though I was busier there and under more
3 stress, I didn't suffer a relapse. I managed it with
4 the help of my family, NLAP and AA meetings.

5 I was a trial lawyer for 28 years, and I was
6 pretty good at it. When I would get prepared for
7 trial, it consumed me. I would focus one hundred
8 percent on that trial in being prepared. I could
9 never eat, I could never sleep, and after ever single
10 trial I would always get sick. It was incredibly
11 stressful, but I did that for 28 years; and although
12 incredibly stressful, I managed it. It probably
13 wasn't the healthiest way to go about it but it
14 worked for me.

15 So in terms of pressure, I managed it. I
16 didn't need something like alcohol to get me through
17 it. And really in my opinion nothing is more
18 stressful and demanding than being in trial, knowing
19 that your conduct and your abilities can have
20 life-changing consequences for the person seated next
21 to you.

22 So this third factor asks if alcohol or drug
23 use was a causative factor in the attorney's conduct.
24 I have to say the answer is yes, unfortunately. As I
25 testified earlier, I chose to start drinking in

1 response to work conditions. When I was betrayed by
2 the very firm I worked so hard for, my drinking
3 became out of control.

4 Now, the variable in all this was Wilson
5 Elser, my old firm. That variable is no longer
6 there. It's been removed from my life, and quite
7 frankly I can't foresee anything like this ever
8 happening again. I'm going to never allow a place
9 that I work to do that to me.

10 I miss being a lawyer. I miss the
11 challenges. I miss my association with fellow
12 lawyers. I miss seeing and talking to colleagues and
13 interacting with judges. I also miss mentoring
14 younger associates.

15 As you know, trials are getting increasing
16 rare. I always took an associate with me to every
17 single trial, and I made them sit at counsel table
18 with me and I make them take part and question at
19 least one witness, that way they can say they had
20 participated in a jury trial and they had one jury
21 trial under their belt.

22 They would learn firsthand how trials really
23 worked and how -- what it really takes to get ready
24 for a trial. And if we won, it just made the
25 experience so much better. I'm still in touch with

1 many of my former associates who have their own
2 practice now, and that's one of the things I'm most
3 proud of.

4 The fourth requirement of SCR 116.2 is,
5 quote, The attorney recognizes the wrongfulness and
6 seriousness of his misconduct resulting in the
7 suspension, end quote. I admit, acknowledge and
8 accept that my misconduct caused harm. My misconduct
9 hurt people in my old firm. It tarnished the
10 integrity and public perception of the legal
11 profession. It hurt me and my legal career.

12 If you Google search my name, you will come
13 across entry after entry after entry of national
14 legal publications and articles about me, but if you
15 do that, please don't click on any of them, it just
16 adds to the numbers.

17 It started with New York Law Journal, which
18 is like the New England Journal of Medicine. And I
19 had no idea what going viral is. I don't have any
20 social media, but the article about what I did with
21 the checks and Wilson Elser, it went viral.

22 After the New York Law Journal published it,
23 it went to like Bloomberg, AP, American Bar Journal,
24 Yahoo, Buzz Feed, Reuters, a whole host of other
25 national publications. And the articles would have

1 caricatures of a drunk lawyer holding a martini glass
2 stumbling around. I have friends and relatives in
3 Frankfurt, Berlin, Dubai, and Bangkok who saw these
4 things, these articles. As far as locally, everyone
5 seems to know what happened, and it's usually
6 embarrassing.

7 I've had time to think about my actions and
8 my misconduct. I realize and acknowledge my actions
9 constituted misconduct. I recognize what I did was
10 wrong. I am so sorry for what I did for my
11 misconduct. I also understand the seriousness of
12 this proceeding and the consequences of this panel's
13 recommendations.

14 I wrote in my affidavit that was attached to
15 the supplemental brief a couple of things I just want
16 to read into the record. It starts on Exhibit N,
17 page 21, paragraph 25 of my exhibits. I accepted and
18 continue to accept complete responsibility for my
19 previous actions, just like I did during my only
20 meeting with Bar Counsel that took place one day
21 after the grievance was filed. I sincerely regret
22 what I did. I'm sorry for my misconduct. I
23 acknowledge that my wrongful actions were the impetus
24 for the Bar action. Had I acted like I should have,
25 no Bar action would have ever been filed.

1 So regardless of my personal feelings and
2 opinions about the disciplinary process itself, and
3 those who participated in it, I acknowledge and admit
4 that my misconduct would have resulted in a Bar
5 action anyway, and that the Supreme Court would have
6 imposed some sort of discipline.

7 I realize that practicing law is a privilege
8 and that I abused that privilege. I had a
9 blemish-free legal career for 28 years, that is until
10 the first week of February of 2018. 28 years is a
11 long time to go without a single complaint from
12 anyone about my performance as a lawyer. Not a
13 single client, judge, lawyer or member of the public
14 ever complained about me to anyone. I've tried to
15 make the necessary changes in my life so something
16 like that will never happen again, and I think I've
17 done so.

18 The fifth requirement of SCR 116 is, quote,
19 The attorney has not engaged in other professional
20 misconduct, end quote. I have not engaged in any
21 other professional misconduct. I didn't practice
22 law. I had no connection with any legal profession
23 whatsoever during my suspension. I still don't.

24 The sixth requirement under SCR 116 is,
25 quote, Notwithstanding the conduct for which the

1 attorney was disciplined, the attorney has the
2 requisite honesty and integrity to practice law, end
3 quote. I believe my 28-year successful history of
4 practicing law with no complaints from anyone should
5 be factored into this equation and be considered by
6 this panel. If I weren't honest or if I lacked
7 integrity, I would not have had a 28-year successful
8 career.

9 Obviously during those years my clients
10 trusted me. They believed I was honest and had
11 integrity. They agreed with my legal recommendations,
12 sometimes at great risk. They trust me with their
13 cases. And that doesn't happen if a client doesn't
14 trust you.

15 Prior to this incident involving my former
16 employer in 2018, February, no client, judge,
17 attorney or member of the public had ever complained
18 about my performance or abilities as a lawyer. No
19 complaint, no letter, not even a single phone call.
20 No blown statutes, no malpractice, no attorney-client
21 issues, nothing. But during that one week in
22 February of 2018 it is clear I was not -- I was not
23 honest, and my misconduct caused harm for which I am
24 profoundly sorry.

25 I believe alcohol abuse should be considered

1 a mitigating factor here but not as an excuse for my
2 actions but to show temporary diminished capacity, a
3 temporary one, one that's been resolved and will not
4 be repeated in the future. I've had no brushes with
5 the law enforcement.

6 I'm a different person now than I was in
7 2018. I'm a better person. I had to hit rock bottom
8 for me to realize that. If you think about it, I was
9 at the pinnacle of my career. I lost everything. I
10 lost my job, I lost my career, lost all of my
11 clients. But as perverse as this may sound, looking
12 back it was probably a good thing it happened because
13 who knows what would have happened or what harm I
14 would have caused had I kept going in that downward
15 spiral.

16 The final requirement under SCR 116.2 is,
17 quote, The attorney has kept informed about recent
18 developments in the law and is competent to practice,
19 end quote. During my suspension, I kind of went
20 overboard. I subscribe to a legal service called
21 Justia, J-u-s-t-i-a. I have read every published
22 decision issued by the Nevada Supreme Court and the
23 court of appeals during this time.

24 I've read every published decision issued by
25 the United States Supreme Court, every published

1 decision issued by the Ninth Circuit Court of
2 Appeals, which encompasses most of the western United
3 States, every published decision issued by the Second
4 Circuit Court of Appeals, which is New York,
5 Connecticut and Vermont, every monthly edition of the
6 Nevada Lawyer, Clark County Communique.

7 I've read all notices and updates published
8 by the State Bar of Nevada, all notices, updates and
9 administrative orders issued by the Nevada Supreme
10 Court, all notices, updates and administrative orders
11 issued by the Eighth Judicial District.

12 I have not read so many court decisions
13 covering so many different areas of law since I was
14 in law school. It's been fascinating. I think I
15 actually know more now about new Nevada cases, laws
16 and court policies than I did when I was practicing.
17 I am quite confident that I have kept myself informed
18 about recent developments in the law and am competent
19 to return to the practice of law.

20 That was the last of the seven requirements
21 required for reinstatement under SCR 116. I believe
22 I have met my burden of proof for reinstatement by
23 clear and convincing evidence through my testimony,
24 my answers to the panel's questions, and evidence
25 admitted in this hearing.

1 About four years before I left Wilson Elser,
2 I received the firms pro bono lawyer of the year
3 award, which is given annually to the firm -- to the
4 attorney who demonstrated an outstanding commitment
5 to pro bono work. I was immensely proud of that
6 award.

7 I would like to give back. You know, I
8 could have just retired and not pursued this. I
9 didn't have to do that, but, like I said, I want to.
10 I feel like it would be a shame, I have this
11 knowledge and this experience and the desire to help
12 people. I don't think I'll ever go back to working
13 for a firm, but what I do want to do is help pro
14 bono, which of all the 900, thousand -- or a thousand
15 attorneys that one year, I was the one selected for
16 outstanding commitment to pro bono work, which I
17 enjoy.

18 And I've been following the difficulties of
19 people during the COVID-19, and there's a profound
20 need for pro bono attorneys. I would like to give
21 back, if allowed to do so by this panel.

22 You know what's interesting is I was on my
23 old firm's national CLE committee and I gave many
24 presentations, both inside and outside the firm where
25 people got credit. And I checked recently, I'm still

1 a member of the State Bar of Nevada's CLE committee.
2 I haven't participated naturally, but I found that
3 rather interesting. I think my term ends 2026.

4 I would like to give back to the community,
5 and I hope to do more pro bono work. There's a need
6 for that these days, but to be truly effective my
7 license needs to be reinstated, and I hope you give
8 me that opportunity. I thank you for your time and
9 consideration. And unless the panel members or
10 Mr. Pattee have any questions, that concludes my
11 testimony.

12 CHAIR PULLIAM: All right. Thank you,
13 Mr. Cushing.

14 Mr. Pattee, did you want to cross-examine
15 him now?

16 PETITIONER CUSHING: I'm sorry, I can't hear
17 you, Phil. I think you're muted.

18 CHAIR PULLIAM: You're muted, Phil.

19 MR. PATTEE: I was looking for the cursor.
20 It's spread over three different tabs.

21 CHAIR PULLIAM: Monitors?

22 MR. PATTEE: I have some questions for
23 Mr. Cushing, but with the panel's permission I'd like
24 to go through various exhibits and intersperse my
25 questions for him as we keep moving on and trying to

1 give an overview to this panel of how did we get here
2 and what's going on. I do have some questions for
3 him along the way, and depending on his answers, we
4 might be able to skip over some stuff, if that's okay
5 with the panel.

6 CHAIR PULLIAM: That's fine.

7 Mr. Cushing, do you understand that process?

8 PETITIONER CUSHING: Yes. That's perfect.

9 CHAIR PULLIAM: Kind of a hybrid really of
10 cross, and if there's any --

11 PETITIONER CUSHING: That's fine. That's
12 perfectly fine.

13 CHAIR PULLIAM: All right. Go ahead,
14 Mr. Pattee, or Phil.

15 EXAMINATION

16 BY MR. PATTEE:

17 Q. All right. Remembering this is not
18 personal, it's business. Looking at Rule 116,
19 subsection D, attorney recognizes the wrongfulness
20 and seriousness of the misconduct resulting in
21 suspension. When did you come to that conclusion?

22 A. When did I come to the conclusion that I --
23 well, I recognized the seriousness and the
24 wrongfulness of my misconduct the day after the
25 grievance was filed in regards to Wilson Elser that

1 next day when Bar Counsel called me into a meeting
2 for the first time, and actually you were at that
3 meeting.

4 And at that -- in fact, Phil, you wrote an
5 affidavit, which I want to thank you, by the way.
6 That affidavit is completely 100 percent correct.
7 And in that meeting I admitted what I did was wrong.
8 I accepted responsibility for that. I expressed
9 remorse. So in that regard it was the day after I
10 met with Bar Counsel.

11 In regard to I'm assuming you're referring
12 to things that occurred during the hearing, that took
13 a little bit longer. And I had some choices to make,
14 and I decided I don't want to deal with negativity.
15 I accept what happened. I take the blame for what
16 happened, everything. It's my fault. So that was --
17 that was a work in progress. Vis-à-vis Wilson Elser,
18 that was the next day. I admitted it, and you stated
19 that in your affidavit.

20 As for the other things, that was a work in
21 progress, but I would say maybe in the last year I
22 decided to let it go. It's not going to serve any
23 useful purpose for me to complain about what
24 happened. The findings of fact and the conclusions
25 of law are what they are. I tried, you know, I tried

1 my best to get the Supreme Court to see my way. It
2 was twice, and I lost, so I've accepted that. I have
3 to just chalk it up to experience and learn from
4 that.

5 I am sorry that I had issues, that it was so
6 acrimonious. I feel bad about that. I know if Phil
7 had been the person on the other side, it would have
8 been a totally different story, but anyway, it is
9 what it is. And I don't harbor any ill will or
10 feelings towards people. But the answer to your
11 specific question, the wrongfulness of my conduct I
12 recognized the day after I met with you guys.

13 And as far as the other issues, it took a
14 while, but I would say I got over it. Not "got over"
15 but I recognize it was wrong probably maybe a year
16 ago. It started, by the way, with the California
17 State Bar action, which came out of the blue. I
18 thought we were all done with everything, and I was
19 thinking about doing a petition and all of a sudden,
20 I think it was a year ago all of a sudden the
21 California State Bar popped up. I mean, they had the
22 case for like nine months to a year and did nothing,
23 so that sort of triggered that result. If that
24 answers your question.

25 Q. And the action with the State Bar of

1 California, that was a reciprocal action --

2 A. Correct.

3 Q. -- to this matter?

4 Okay. If I could direct everybody's
5 attention, just so we get on board with what's really
6 going on here and how we got here. Take a look at
7 State Bar's Exhibit 3, which is the actual order of
8 suspension. It was entered on January 31st of 2020.
9 It's an order of suspension which suspended
10 Mr. Cushing, Kym, for nine months.

11 And there it is. Thank you, Tiffany.

12 It it's a review of a Southern Nevada
13 Disciplinary Board hearing panel's recommendation
14 that he be suspended for nine months with conditions
15 for violations of RPC, Rule of Professional Conduct
16 3.4(c), fairness to opposing party and counsel,
17 disobeying an obligation under the rules of tribunal,
18 we'll get into that in a minute; 8.1(a), disciplinary
19 matters, that's providing false information during a
20 disciplinary matter; and 8.4(c), misconduct.

21 At the bottom basically the Supreme Court
22 held, our Nevada Supreme Court held that Mr. Cushing
23 wrote himself three checks from his law firm's
24 operating account and deposited them into his
25 personal account. When the law firm confronted him

1 about the checks, he lied and stated that he was
2 reimbursing himself for an expert witness and gave an
3 address for the expert which was property that he
4 actually was renting and he provided a phone number
5 for the expert.

6 A. If I can just interject as you go along
7 here, if that's fine. I stipulated to all of that in
8 the underlying hearing as part of the stipulation of
9 facts and I still agree with that.

10 Q. I understand. I just want to make sure the
11 panel understands what's going on. And I'm not going
12 to read the whole thing, but I'm concentrating on
13 buzz words like when the law firm confronted him
14 about his lies, that's a buzz word. He stated he
15 wrote checks to cover gambling losses. Later on he
16 admits in the next paragraph that he does not have a
17 problem with gambling and he said that only to save
18 his job.

19 The court ordered him into -- the State Bar,
20 what they did, what we did, was file a 102 petition
21 asking for a temporary suspension. The Supreme Court
22 denied that but ordered him into the NLAP program,
23 which stands for Nevada Lawyer Assistance Program.
24 And he entered the program but failed to comply with
25 the treatment recommendations.

1 Lastly he was dishonest with the State Bar
2 regarding various matters. Those are conclusions by
3 our Supreme Court, and the court said that we
4 established by clear and convincing evidence that he
5 violated those rules. He had made an argument that
6 the, or his attorney did in the objection to the
7 temporary restraining order, the temporary order of
8 suspension request, that 3.4(c), which is violating
9 an order of a court, did not apply to him because it
10 didn't involve the representation of a client. It
11 was just them ordering him into NLAP. And the
12 Supreme Court actually rejected that argument, so it
13 gave us a little bit of case law, so thank you for
14 that, Mr. Cushing.

15 The panel found that his mental state was
16 intentional, and the misconduct harmed the public and
17 the legal profession. And they found that -- in a
18 footnote they note that during the disciplinary
19 hearing Mr. Cushing conceded that involving his pro
20 bono client into an attempted coverup with the
21 fraudulent checks exposed his pro bono client to
22 potential harm.

23 Basically here I have no doubt that
24 Mr. Cushing had no grievances in past, but he did get
25 himself into trouble by trying to pass three checks

1 from his former firm.

2 The court found seven aggravating factors
3 pursuant to rule, Supreme Court Rule 102. They
4 included a dishonest or self motive, pattern of
5 misconduct, multiple offenses, bad faith obstruction
6 of a disciplinary proceeding by intentionally failing
7 to comply with rules or orders, submission of false
8 statements and other deceptive practices during the
9 disciplinary hearing, refusal to acknowledge the
10 wrongful nature of his conduct, and substantial
11 experience in the practice of law.

12 The Supreme Court of Nevada only found two
13 mitigating circumstances: Absence of a prior record,
14 and personal or emotional problems.

15 Now, the rules of profession -- I'm sorry,
16 the ABA standards for something like this calls for
17 disbarment, but there was a downward departure mostly
18 based on absence of prior disciplinary record,
19 personal and emotional problems. And so he received
20 the nine-month suspension with all the CLEs, which
21 are mentioned at the end, and it was signed by all
22 seven Supreme Court justices.

23 Now, if there are any questions, like if
24 Mr. Cushing wants to contest any of those, next is
25 Exhibits 5 of the State Bar of Nevada, which is the

1 findings and conclusions of law and recommendation.
2 And it shows that the disciplinary hearing was held
3 over two days in December of 2018. State Bar was
4 represented by Assistant Bar Counsel Janeen Isaacson,
5 that's spelled J-a-n-e-e-n, Isaacson,
6 I-s-a-a-c-s-o-n.

7 And I invite, if the panel wants to and has
8 any questions about the Supreme Court's order and the
9 facts underlying it from the panel, to take a look at
10 the findings of fact, because they cite back to the
11 transcript of this hearing, which is -- has been
12 admitted as State Bar's Exhibits 6A and 6B. Like I
13 said, we can going through the findings and then
14 refer back to the transcript, but I think it's all
15 self-explanatory and we don't really need --

16 A. Can I respond to something? Just, you know,
17 I don't know how long you're going to go and I don't
18 want to get so far down that -- I mean, it's up to
19 you, this is your cross.

20 Q. Go ahead.

21 A. Well, I just wanted to say that I admit that
22 2018 was not my finest year. It was an aberration,
23 and it was -- what I did was wrong. That first week
24 in February of 2018 with my old firm and the checks,
25 I admitted that, and I expressed regret. But I want

1 to note for the record though no money ever changed
2 hands, no money ever came to my account, and no money
3 ever left the firm. I made up those stories. I did
4 that, absolutely. I stipulate to that as part of the
5 underlying case. I did that. I was in a panic to
6 save my job.

7 And I realize and understand that the panel
8 are the finders of fact and they reach the
9 conclusions of law. I understand that and I accept
10 those. And I, you know, I have a right to defend
11 myself, and I did that in my Supreme Court
12 submissions when I challenged what happened.

13 For whatever reason, the Supreme Court
14 didn't agree with me. So I had a choice to, you
15 know, be mad at everybody for the rest of my life or
16 just accept it and move on, and I've accepted it and
17 tried to move on. This happened in a very narrow
18 period of time, but I accepted what happened and I
19 accept it today what happened, and I'm sorry for it.
20 I didn't have a gambling problem, but I made up all
21 these crazy stories.

22 And the final comment I'd like to make is
23 that none of this has to do with the actual practice
24 of law. These are personal, and that's probably the
25 most hurtful to me because it makes -- that's not a

1 good thing because lawyers are supposed to be above
2 all that, and I made some terrible mistakes. I own
3 them. I've never -- by the way, I've never backed
4 down for that.

5 When we had our meeting, Phil, the most
6 serious, in my opinion, of the crime, or not crimes,
7 of the issues were dealing with Wilson Elser, and I
8 admitted to every single one of those in that meeting
9 the next day with you and Miss Isaacson. I think
10 that's important. And I still admit that was wrong
11 and my actions were wrong. Thank you.

12 Q. The actions were wrong even though there was
13 no real client harm or harm to Wilson Elser --

14 A. Correct.

15 Q. -- you still did try and convert three
16 checks for thousands of dollars?

17 A. Absolutely, and I did not have the authority
18 to do so and I admitted that and it was wrong.

19 Q. Okay. Next we've got is Exhibit 11, which
20 is his petition for rehearing and reconsideration of
21 the Supreme Court's order. It goes on for about 16
22 pages, and it says the Supreme Court, who's going to
23 be reviewing this, overlooked procedural process
24 violation, overlooked clear evidence and serious
25 contact -- of prosecutorial misconduct, reiterates

1 that none of the three checks, this is on page five
2 of Exhibit 11, none of the three checks cleared
3 Wilson Elser's bank account. Wilson was not harmed
4 and no money was ever transferred, and that's
5 apparently a defense, which is somewhat auspicious.
6 And then that's 16 pages.

7 And then if you get over to Exhibit 12,
8 Mr. Cushing is absolutely correct that the Supreme
9 Court rejected his request for reconsideration
10 because on March 23 it looks like of 2020, they
11 entered a three-word order denying -- order denying
12 rehearing. Rehearing denied, all signed by all
13 seven.

14 Next is the petition for reinstatement. If
15 you folks have that in front of you, I believe it's
16 in your -- I believe it's in your packet. And if you
17 turn to page three, there is a -- there is a footnote
18 number two that Isaacson, the former Assistant Bar
19 Counsel, resigned from her position shortly after the
20 hearing. Her assistant who was involved in this
21 matter also resigned. It's understood the panel
22 chair of the disciplinary hearing, Robert Caldwell,
23 was removed from the list of potential panel members,
24 no longer participates in any hearing panels. And I
25 would ask Mr. Cushing what is the relevance of that?

1 A. First of all, let me answer that question by
2 saying I am not here today to relitigate the Bar
3 action. That's -- I don't think that's appropriate.
4 I mean, in fact, I'm sure, Phil, you're aware of a
5 case that came down from the Supreme Court recently
6 this year where an attorney, I forgot his name,
7 petitioned for reinstatement and the Supreme Court
8 denied it because the attorney spent most of the time
9 in the reinstatement hearing trying to relitigate the
10 case.

11 So I don't want to do that. I don't want to
12 be trapped into that. I'm not here to relitigate the
13 case. I accept what happened in the underlying
14 action. I've moved on. I mean, what better example
15 of moving on can you have than by me literally moving
16 on. There were things -- I mean, I could have
17 pursued a federal court action. I could have sued
18 the State Bar. I didn't. I accepted it.

19 So I don't want to get into relitigating the
20 underlying case. I don't think that's appropriate,
21 and I don't want to get set into a trap where the
22 Supreme Court uses that against me, like they did in
23 this other recent case where the petition for
24 reinstatement was denied because the attorney kept
25 trying to relitigate the case.

1 So the way I'll answer your question is at
2 the time I had a good faith reason for doing that,
3 and it was not made lightly and but I'm not going to
4 go into relitigating the case. That's not
5 appropriate in my opinion.

6 Q. Well, it goes to Supreme Court Rule 116,
7 reinstatement, in subsection F, which says that the
8 attorney has the requisite honesty and integrity to
9 practice law. And so the question is what is the
10 relevance on January 24th of this year to include a
11 statement that Miss Isaacson resigned right after
12 your hearing and Mr. Caldwell has been removed?

13 A. Well, the fact is Miss Isaacson did resign.
14 It occurred after my hearing. And it should be no
15 secret to anybody. My experience with the Nevada
16 disciplinary system was not a good one. That should
17 be no surprise to anybody. I don't think anyone who
18 goes through Nevada discipline is happy about it. I
19 thought things occurred that should never have
20 occurred, and I made my argument to the Supreme
21 Court.

22 The relevance of that is the players
23 involved were those two players. The fact is that --
24 and I didn't -- I was told by a source who used to
25 work in your office, by the way, that she resigned

1 following this hearing. And I just thought that was
2 important for everyone to know. I mean, that is such
3 a minor detail in the grand scheme of things, I don't
4 know why that it's been elevated to such a thing.
5 It's a fact. But the fact is both of them no longer
6 work at the State Bar. They resigned after my
7 hearing. I didn't say at what time, but it's a fact.

8 Q. Okay. Let's move on to Exhibit 19 please.
9 Tiffany.

10 This is a letter which was filed with the
11 State Bar of California about 11 months ago, maybe a
12 little bit less, 10 months ago. And it's a response,
13 California Bar Counsel's report to review department
14 regarding your resignation request. Do you recognize
15 that?

16 A. Yes.

17 Q. Okay. Let's turn to page 12, paragraph 13.
18 The panel chair, as we know from the findings which
19 have been admitted, was Robert Caldwell. You wrote
20 that the panel chair was completely unqualified to be
21 the panel chair. He lacked basic knowledge of how
22 trials or Bar hearings should be run. He lacked the
23 basic knowledge of the rules of evidence in civil
24 procedure, and he did not understand the distinction
25 between what a fact is and what an argument of a

1 counsel is. Here's the important sentence. The
2 panel chair was taken off the approved panel list not
3 long after my Bar hearing. Why did you write that?

4 A. Because I was told that by someone who used
5 to work in your office.

6 Q. Okay.

7 A. And, by the way, I can -- again, I'm getting
8 sucked into relitigating the case, which I don't want
9 to do. But if I can give you an example of without,
10 you know, going down the rabbit hole of what happened
11 during the hearing. Do you know how my hearing
12 started?

13 Q. That's not what we're talking about here.

14 A. No, but this goes to the qualifications of
15 my statement. How did the hearing start?

16 Q. With respect it goes to truthful statements
17 in documents which were submitted after your hearing
18 and after your suspension, and this one --

19 A. Okay.

20 Q. This one was last year. And subsection F
21 of --

22 A. Okay.

23 Q. -- 116 talks about honesty.

24 A. Right.

25 Q. And the question is, why would you say that

1 Mr. Caldwell was removed from the panel?

2 A. Because, first of all, I stand by those
3 statements. And without -- I stand by them. And I
4 can give you example after example to back them up,
5 but that would be going to relitigate the case. And
6 I was told that by someone who used to work in your
7 office. So I have a -- I was told that in
8 confidence.

9 So I don't back away from those statements,
10 but like I said earlier, these are not made up. And
11 if I am forced to do so, it's going to take three
12 days to go through the whole thing and I don't want
13 to do that. But I have a good faith basis for saying
14 those things.

15 Q. Okay.

16 A. I had the right to defend myself.

17 Q. Right. Let's turn on Exhibit 19 to page 15.
18 The second paragraph, You need to remember that
19 former Nevada Bar Counsel Janeen Isaacson was forced
20 to resign at the conclusion of my Bar hearing. Why
21 did you write that?

22 A. Because I was told that by someone who used
23 to work in your office in confidence. I didn't make
24 it up. And if you're going to ask me the name, I'm
25 not going to say because I don't want to breach that

1 confidence. But I was told that in confidence. And
2 this person also told me that my hearing was
3 instrumental in her decision.

4 Q. Miss Isaacson is standing by to appear by
5 Zoom, and our custodian of record is standing by with
6 a list of our panel members. And I can explain that
7 Mr. Caldwell is not off of our panel and has actually
8 conducted an initial case conference for me two days
9 ago in a formal hearing I'm assigned to.

10 A. If I am wrong, then I am wrong. I am
11 sure -- all I can tell you is is that I didn't make
12 this up. I was told this in confidence by someone
13 who used to work in your office. I just didn't make
14 it up. And if they -- if they claim otherwise, I
15 mean, there's nothing I can do about that.

16 Q. And you didn't -- you didn't recheck it
17 either? You just put it in pleadings and letters to
18 the California Bar?

19 A. Well, because the person who told me used to
20 work in your office, Phil. It wasn't someone off the
21 street. I thought that was important. But in the
22 grand scheme of things, because is this going to be I
23 said this and she says that I can't get my law
24 license back?

25 Q. Goes to your honesty.

1 A. Well, I'm being honest. I don't think -- is
2 there a question of -- I did not make this up.

3 Q. Did it go -- does it go to your diligence
4 that you didn't follow up and do due diligence to
5 find out if either of those statements were correct?

6 A. Well, I don't know if it goes to diligence
7 or not. I mean, how far do I have to go? I mean, I
8 was told this by someone who used to work in your
9 office, who worked in the State Bar of Nevada's
10 office. Why would I need further diligence when it
11 came from the source who was right there with you?

12 MR. PATTEE: Mr. Pulliam, we have a choice
13 here. I've got a custodian of record who's got the
14 list ready to go, and Janeen is waiting, has the Zoom
15 link, or you can let me make an offer of proof or you
16 can swear me and I can explain the departure of
17 Miss Isaacson from our office.

18 CHAIR PULLIAM: Okay.

19 PETITIONER CUSHING: If I may respond.

20 CHAIR PULLIAM: Hang on, Mr. Cushing. Hang
21 on one second.

22 Okay. So what you're saying, Phil, is that,
23 first of all, the custodian of records is going to
24 confirm that Caldwell is still on the list, correct?

25 MR. PATTEE: He's on the list and he still

1 is.

2 CHAIR PULLIAM: Okay. I'm going to take
3 judicial notice of that, only because based on your
4 representations, and I'm not even -- I'm not saying
5 that Mr. Cushing is making a deliberate untruth about
6 that, I just think that he just wasn't a hundred
7 percent certain, however, so we don't have to bring
8 in that person. And offer of proof for -- in other
9 words why Janeen Isaacson left the employ of the
10 State Bar, that's what you would be doing?

11 MR. PATTEE: I could.

12 CHAIR PULLIAM: All right.

13 MR. PATTEE: I've only known her for
14 12 years.

15 CHAIR PULLIAM: Pardon?

16 MR. PATTEE: I've only known her for
17 12 years.

18 CHAIR PULLIAM: Okay. All right.
19 Mr. Cushing, what's your position on that offer of
20 proof?

21 PETITIONER CUSHING: If that's what she's
22 going to testify to, it is what it is. I mean, we
23 have -- if that's her testimony, I don't think we
24 need it. I think it's extraneous. It's collateral
25 to what's going on here. I don't -- Phil seems to

1 think it goes to my honesty, but as you alluded to,
2 I'm still under oath. I'm still under oath and my
3 testimony is I didn't make this up. I was told this
4 by someone who worked in the office. So if that was
5 wrong, then I'm wrong. But --

6 CHAIR PULLIAM: Well, I think it's a
7 consideration up to this point because certain things
8 that were published in those other documents that
9 Phil has pointed out. So, Phil, go ahead. I'll
10 allow you to make this offer of proof. I guess I'll
11 put you under oath, okay.

12 Thereupon--

13 PHILLIP PATTEE
14 was called as a witness and having been first duly
15 sworn, testified as follows:

16 CHAIR PULLIAM: I guess -- I'm sorry,
17 Debbie.

18 Go ahead.

19 MR. PATTEE: Miss Isaacson left the State
20 Bar in or about January of, it would have been 2019.
21 She had been planning to move for years. She -- her
22 son got accepted to a very exclusive boarding school
23 near, I believe it was Fort Collins, Colorado. And
24 so she actually took the Colorado bar exam months
25 before Mr. Cushing's hearing and passed it. And

1 they -- and she and her husband actually moved to
2 Fort Collins.

3 And she was about to quit right after she
4 passed the bar exam, and instead of being forced out
5 of the State Bar, she was actually promoted to acting
6 Bar Counsel, and was still acting Bar Counsel when
7 she was, I believe when she did Mr. Cushing's
8 hearing. She was not forced out at all, everybody
9 knew she was leaving, and in early 2019 she did.

10 And she was gone for a while. She now
11 splits her time between the Las Vegas firm Lipson
12 Neilson and does civil law and personal defense and
13 runs Lipson Neilson's office in Colorado. She and
14 her husband split their time going back and forth.

15 Mr. Cushing's hearing had nothing to do with
16 her leaving. She was studying for the bar exam in
17 2018 I believe for months and months and months and
18 months and took time off to take it and luckily
19 passed it. Her son got into the exclusive boarding
20 school, and that's why she left. It had nothing to
21 do with Mr. Cushing's hearing and being forced out.
22 She was walking out the door.

23 And Kim Farmer, who's also got a Zoom link
24 that she can call in, could testify that not only was
25 Janeen not forced out, she was promoted to handle the

1 office until she decided to leave for Colorado with
2 her brand new Colorado law license.

3 CHAIR PULLIAM: All right. Phil, hang on.
4 I think I've heard enough about that. However, I
5 want to defer to the other panel members to ask them
6 if they have any additional information, or do they
7 want any additional information about Miss Isaacson's
8 departure from the State Bar.

9 Mr. Westbrook?

10 PANEL MEMBER WESTBROOK: No, I don't need
11 any additional information.

12 CHAIR PULLIAM: Dr. McBeath? You're on
13 mute, Doctor. Okay, so do you have any -- do you
14 need additional information from Mr. Pattee about her
15 departure?

16 PANEL MEMBER MCBEATH: Well, I'm not
17 concerned about her departure, I'm just only
18 concerned with any information relevant to the
19 interaction between the attorneys and what this was,
20 what this big to-do was about. We didn't receive any
21 of this in the data that I have.

22 CHAIR PULLIAM: Okay. Here's -- I think --
23 as the chairman, I'm going to make a decision here.
24 We've heard enough about that. I don't want to get
25 bogged down in the issues involved with her leaving.

1 I think it's been pretty well established that what
2 Mr. Pattee has said that the reason for her leaving.

3 Mr. Cushing, he had other information that
4 he doesn't want to disclose the source, so we're
5 going to have to just accept that as well. So I
6 don't want to relitigate the prior case either, so
7 let's -- can we move on now. And, Mr. Pattee, do you
8 have any additional information or presentation to do
9 here?

10 MR. PATTEE: Just a couple of questions of
11 Kym.

12 BY MR. PATTEE:

13 Q. The State Bar of California initiated a
14 reciprocal discipline, and didn't you offer to
15 resign?

16 A. Yes, I did. Yes, we had -- as I
17 indicated -- first of all, let me just state for the
18 record, if I'm wrong about Ms. Isaacson, I apologize,
19 and I apologize to her. It wasn't my intent. If I'm
20 wrong, I'm wrong. I don't have a problem saying
21 that.

22 In regards to the reciprocal action, this
23 came really late. And we had two settlement
24 conferences with Bar Counsel, and one of the
25 settlement conference judges told me that there's an

1 option that I could resign with charges pending.

2 And it's a reciprocal action. In other
3 words, what happened in Nevada is binding in
4 California. And both settlement conference judges
5 said in reciprocal actions, they call them J actions,
6 that you can't challenge the findings of fact and
7 conclusions of law. And to do so, which is hugely
8 expensive, I think it's like \$15,000 to do this, just
9 it would be 30,000 I think to go further.

10 And I, you know, I hadn't practiced law in
11 30 years in California. I let my license, my license
12 lapse because I was administratively suspended
13 because I didn't pay to keep my license active. I
14 had no desire to go back to California or reactivate
15 my license. I just wanted to resign and with charges
16 pending, which was an option. But the State Bar
17 wanted to continue on, and I didn't want to pay money
18 for a privilege that I was never going to use again,
19 so I just went into a default, which is one of the
20 reasons -- one of the options one of the settlement
21 judges gave me.

22 I just couldn't justify spending 15 or
23 \$30,000 in a futile effort to overturn or get a
24 different result when the result would be the same
25 and I would be suspended or whatever. I was just

1 wasting money.

2 Q. Welcome to the State Bar of California. My
3 Bar Number is about 5,000 after years.

4 A. It is? Well, I don't have a California Bar
5 Number anymore, so. It's 143335. That was mine.

6 CHAIR PULLIAM: Anything further,
7 Mr. Pattee?

8 MR. PATTEE: Yeah, your Bar number is 143335
9 over there.

10 Okay. I've got nothing further.

11 CHAIR PULLIAM: Okay. Thank you very much.
12 Do any of the panel members have questions of
13 Mr. Cushing? Actually, hang on. Let's do it this
14 way. Mr. Cushing, do you want to do some kind of a
15 rebuttal to what Mr. Pattee has presented? I mean,
16 you kind of did it throughout the process, but I want
17 to, for the record want to make sure that you have
18 nothing further to say in reference to what he's
19 testified -- or presented.

20 PETITIONER CUSHING: No, thank you. I think
21 that's why I asked to kind of do it as we go along so
22 we wouldn't have to get bogged down at the very end,
23 so I really have nothing further to add than what
24 I've already testified to.

25 CHAIR PULLIAM: Okay. Thank you. Now I'll

1 go to the panel members and see if they have any
2 questions. I'll start with you, Dr. McBeath. Do you
3 have any questions of either Bar Counsel or
4 Mr. Cushing?

5 PANEL MEMBER MCBEATH: No.

6 CHAIR PULLIAM: All right. Thank you. And
7 how about you, Mr. Westbrook. Do you have any
8 questions of either one?

9 PANEL MEMBER WESTBROOK: I'm satisfied.
10 Thanks, Mr. Pattee.

11 CHAIR PULLIAM: Okay. All right. And I
12 don't have any questions either. I do have one
13 question, though. Tiffany, where are you?

14 PETITIONER CUSHING: It looks like Dubai.

15 CHAIR PULLIAM: Yeah, or something. Is that
16 just a background or something?

17 MS. BRADLEY: Yes, it is. Technically it's
18 San Francisco, but I'm with you.

19 PANEL MEMBER WESTBROOK: I was going to say
20 San Francisco, however yours looks pretty good. Do
21 you actually have a green screen?

22 CHAIR PULLIAM: Okay. Well, I guess
23 closings now. Is there any further evidence to
24 present at this point?

25 PETITIONER CUSHING: Well, I was going to

1 call Steve Day, who is an attorney, to talk about my
2 integrity, and my wife to talk about changes in my
3 behavior. I don't really feel the need to go through
4 that. I think it's been addressed already. And, you
5 know, unless someone really wants me to, but I think
6 we've covered it in my testimony and in the evidence,
7 so I am going to forgo calling them. I'm sure that's
8 going to make my wife really happy, and I will rest
9 my case and submit it for your decision.

10 CHAIR PULLIAM: Okay. Thank you. And,
11 Phil, what's your thought? Do you have any final
12 words before you go into your closing argument?

13 MR. PATTEE: No, I don't.

14 CHAIR PULLIAM: Okay. All right. Well,
15 Mr. Cushing, why don't you go ahead and make whatever
16 closing argument you want to make.

17 PETITIONER CUSHING: Thank you. I mean,
18 I'll be brief. Thank you again for taking time out
19 of your schedules to hear my case. The evidence
20 which has been submitted as exhibits, as I indicated
21 earlier, was stipulated to by both parties. And the
22 evidence supports that I have fully complied with the
23 Supreme Court's order for reinstatement.

24 I think the evidence also is there in regard
25 to SCR 116 that I have met the requirements by clear

1 and convincing evidence that I should be able to
2 return to the practice of law. And with that I would
3 submit. That's the end of my closing.

4 CHAIR PULLIAM: All right. Thank you very
5 much, Mr. Cushing.

6 Mr. Pattee, do you have a closing you want
7 to present?

8 MR. PATTEE: Yes. We're right on the
9 middle. It happened a long time ago, four years give
10 or take. However, there is -- I do think that there
11 is an honesty problem in his statements in his
12 petition saying that Janeen's gone without checking,
13 and Mr. Caldwell is gone without checking. And then
14 he tells the State Bar of California the same thing
15 saying that Janeen was forced out, which are not
16 true.

17 And we can't forget the underlying acts
18 here. He attempted to steal money, thousands of
19 dollars from his, from his firm. It didn't work so
20 it's only attempted theft, but that's not a defense.
21 Also a long time ago.

22 And pursuant to the Supreme Court he made
23 false statements to the State Bar, which is RPC
24 8.4(a), and he also -- I'm sorry, that would be
25 8.4(b) I believe. And then he didn't follow the

1 Supreme Court order saying, State Bar, your
2 temporary -- your request for temporary suspension is
3 suspended -- or is denied, but he has to go to NLAP
4 and he didn't do that in violation of 8.4(c).

5 Those things did happen a long time ago. It
6 was so long ago that Supreme Court order, not trying
7 to be flippant, but it was January 31st of 2020,
8 which was right before the pandemic starts, which
9 seems like even ten years ago now. So, you know,
10 that should probably be taken into consideration.

11 But he seems to have covered the other
12 matters that are required by Supreme Court Rule 116.
13 So the State Bar is not going to take a position on
14 whether he should be reinstated. We're not going to
15 oppose but we're also not going to be in support of
16 and it's up to the panel in its infinite discretion
17 to make the correct decision on how we deal with
18 this.

19 If you want more information, I think he
20 pretty much admitted what he did, so, you know, I
21 don't think you need to go into the findings, which
22 Tiffany will provide, because they're all going to
23 the Supreme Court, but the panel's findings cite to
24 the two-day transcript. And if you want to get into
25 the weeds and do the findings on your own down the

1 road, you're more than welcome to do that or you can
2 make a decision based on what you know, and with that
3 we'd submit.

4 PETITIONER CUSHING: If I could just say
5 something in rebuttal.

6 CHAIR PULLIAM: Yeah, I was -- hang on just
7 one second, Mr. Cushing. Yes, I was going -- you'll
8 have the final comments here, so go ahead.

9 PETITIONER CUSHING: This is my petition for
10 reinstatement. Now, I don't want to relitigate the
11 case, but you have to realize that the Supreme Court
12 gave me the opportunity to apply for reinstatement
13 after nine months. The Supreme Court gave me the
14 opportunity. They could -- I mean, I could have been
15 disbarred. I could have been, you know, suspended
16 five years. Nine months. I waited those nine
17 months. I was suspended for nine months. I paid my
18 dues. I actually waited almost twice as long. But
19 the Supreme Court gave me an opportunity to come
20 back, which I want to do. And I hope you will let me
21 do that.

22 The things that we're talking about in
23 regard to honesty, that happened in 2018. That was
24 four years ago. That was not my best year. It was a
25 terrible year. I've admitted that and I'm sorry for

1 that. But I -- that's not going to happen again, and
2 I can assure you I'm going to act with the utmost
3 honesty and integrity if I'm allowed to resume my law
4 practice. I really hope I can do that. I did it for
5 28 years and I'd like to spend my remaining years
6 also in that occupation. Thank you.

7 CHAIR PULLIAM: Okay. Thank you very much.
8 I guess we're ready to close for our deliberations.
9 Tiffany, I guess you take it from here, right?

10 PANEL MEMBER WESTBROOK: Actually, Tiffany,
11 before we do that, could you send me just one
12 exhibit. I'd like to see the tax returns.

13 MS. BRADLEY: Mr. Pulliam, is that okay with
14 you? Do I disperse the tax returns to the panel?

15 CHAIR PULLIAM: That's fine.

16 MS. BRADLEY: It will take me a moment
17 because it's in amongst documents, so I'll have to
18 extract them and redact.

19 CHAIR PULLIAM: I'm sorry, who requested
20 that? Was that you, Mr. Westbrook?

21 PANEL MEMBER WESTBROOK: That was me, yeah,
22 David Westbrook requesting tax returns.

23 PETITIONER CUSHING: It's Exhibit O in my
24 set of exhibits.

25 PANEL MEMBER WESTBROOK: Yep. Just about to

1 say that.

2 MS. BRADLEY: Mr. Pulliam, would you like to
3 go to your separate rooms and I can send the exhibits
4 while you're in your deliberation?

5 CHAIR PULLIAM: Yes, that would be great.
6 Now, question. Mr. Davidson, will he be joining us
7 in there for his training?

8 MS. BRADLEY: That is up to you, Mr. Chair.

9 CHAIR PULLIAM: All right. Well, that's
10 fine. Let's -- since he's going to be -- might as
11 well go through the whole process.

12 PANEL MEMBER WESTBROOK: I think it's a good
13 idea, yeah.

14 CHAIR PULLIAM: Okay. But can we take a
15 short bathroom break?

16 PANEL MEMBER WESTBROOK: I actually do have
17 one question about that. You know, I work in the
18 jury system, and this is my first panel. Is there a
19 privacy issue as there would be with jury
20 deliberations now having a third party in witnessing
21 it?

22 CHAIR PULLIAM: Mr. Cushing, I'll let you
23 make that call.

24 PETITIONER CUSHING: I don't have a problem
25 with Mr. Davidson joining in. It's for training

1 purposes, and I trust that anything that happens
2 during your private deliberations will be kept
3 confidential.

4 PANEL MEMBER WESTBROOK: I mean, I've
5 reviewed all the rules. I don't see anything on
6 point, but I know it wouldn't be allowed in a jury
7 system, so...

8 PETITIONER CUSHING: I agree with you,
9 David, I don't think it would, it wouldn't, but I'm
10 not an expert in bar hearing procedures and policies,
11 but I don't think it's a problem here for me at
12 least.

13 CHAIR PULLIAM: Mr. Cushing, that's why I
14 asked you if you had an issue with it because I agree
15 with Mr. Westbrook about the comparison to a jury.

16 MR. PATTEE: I am an expert in --

17 CHAIR PULLIAM: What did you say, Phil?

18 MR. PATTEE: I am an expert in bar
19 procedures, and he's a member of the Southern Nevada
20 Disciplinary Board, and so training is not going to
21 be a problem. You know, just another fourth person.
22 We used to have five people and we used to have seven
23 people on these panels. So adding someone else to
24 get some training, especially when, Gary, you're
25 terming off in a few months, we're going to need

1 someone who knows what they're doing.

2 PANEL MEMBER WESTBROOK: Thanks, Phil. I
3 appreciate that. I didn't want to miss a rule that I
4 wasn't aware of. I've read them all I thought but I
5 didn't remember one, but you never know.

6 MR. PATTEE: Well, don't read the rules.

7 PETITIONER CUSHING: And I'm assuming that
8 Joshua is not going to be participating in the
9 deliberations.

10 CHAIR PULLIAM: No, he's strictly observing.
11 All right. So can I take my bathroom break now?

12 (A recess was taken.)

13 CHAIR PULLIAM: Okay. Let's go back on the
14 record then. All right.

15 PANEL MEMBER WESTBROOK: I have two mute
16 buttons. Sorry about that.

17 CHAIR PULLIAM: All right. We're going to
18 go ahead and close for deliberations. So,
19 Ms. Bradley, can you put us where you want to put us.

20 (A recess was taken.)

21 CHAIR PULLIAM: Let's go back on the record.
22 All right. We're reopening the hearing. The panel
23 members have deliberated on the petition for
24 reinstatement, and what we primarily focused on was
25 Rule 116 and the requirements for reinstatement,

1 specifically A through G, and I will -- we discussed
2 each one of them and determined whether or not
3 Mr. Cushing satisfied them and whether or not there
4 was evidence of it, whether or not his conduct was
5 such that he satisfied it. So I'll just take it one
6 at a time.

7 A, full compliance with the terms and
8 conditions of all prior disciplinary orders. We
9 determined that he has satisfied that element.

10 B, the attorney has neither engaged in nor
11 attempted to engage in the unauthorized practice of
12 law during the period of suspension. We agree that
13 he did that, and what we did, and Mr. Westbrook had
14 a -- we wanted to review the tax returns just to make
15 sure there was no entries of sources of income for
16 legal work and things of that nature. And I believe
17 we were satisfied that there was nothing that was a
18 red flag indicating he was trying to practice law.
19 So on that particular element we agree that he has
20 not done that.

21 C, any physical or mental disability or
22 infirmity existing at the time of the suspension has
23 been removed. If alcohol or other drug abuse was a
24 causative factor in the attorney's misconduct, the
25 attorney has pursued appropriate treatment, has

1 abstained from the use of alcohol or other drugs for
2 a stated period, generally not less than one year,
3 and is likely to continue to abstain from alcohol or
4 other drugs.

5 We all agree that based on Mr. Cushing's
6 presentation today, but also the documents that were
7 provided, that Mr. Cushing has in fact satisfied that
8 particular element. I think we're confident that he
9 will -- we weren't just getting a smokescreen from
10 him. We seriously believed that he will do it,
11 especially his track record so far up to this point
12 has indicated that his commitment to that program.
13 And obviously it's always a one-day-at-a-time thing
14 so we can't say that he's going to make, you know,
15 make the commitment forever, but the point is we
16 believe he has up to this point.

17 So, D, the attorney recognizes the
18 wrongfulness and seriousness of the misconduct
19 resulting in the suspension. We believe he has
20 satisfied that one as well. We discussed that as far
21 as like what he did, how he reacted to it. We
22 determined that he was just maybe having some sour
23 grapes about the process, and that's why sometimes he
24 seemed to be not quite as cooperative; however, we
25 think that he has recognized the wrongfulness and

1 seriousness of the misconduct and that would be the
2 resulting suspension, meaning the checks and the
3 misstatements that he was originally disciplined for.

4 All right. And so we agree that he, as far
5 as E goes, the attorney has not engaged in any other
6 professional misconduct since suspension. We have
7 all agreed that he has not done that. And so he
8 therefore satisfies that element.

9 F, notwithstanding the conduct for which the
10 attorney was disciplined, the attorney has the
11 requisite honesty and integrity to practice law. And
12 we discussed it basically that again his reaction in
13 the filings with the California Supreme Court in, you
14 know, the most recent past here, again we considered
15 that not necessarily being dishonest or lacking
16 integrity, it was kind of like we were talking about,
17 sour grapes. He wanted to present his side of the
18 story, and unfortunately the source of the story was
19 probably unreliable. Should he have maybe checked up
20 on it more? Yes, but is it that serious to affect
21 his integrity and honesty to practice law? We didn't
22 think so.

23 So and finally the attorney has kept
24 informed about recent developments in the law and is
25 competent to practice. And based on his

1 representations, and "he" being Mr. Cushing, that
2 the -- he's been keeping up with the different
3 Supreme Court decisions, what have you. I didn't
4 hear that he kept up on the workers' comp. decisions,
5 so but that's all right. So we said yes, he has done
6 that. Based on his representations, he obviously has
7 been doing a lot of reading.

8 So those are our findings. So basically
9 we've determined that he has met all the criteria in
10 Supreme Court Rule 116, so we would not necessarily
11 need to go to the nuclear option, Mr. Pattee, in H
12 because he has satisfied all the elements. Is that
13 correct?

14 MR. PATTEE: Looks like it.

15 CHAIR PULLIAM: Okay. All right. So
16 anything further then from the Bar?

17 MR. PATTEE: Would you like some help in
18 doing the findings or do you plan on doing them
19 yourself?

20 CHAIR PULLIAM: I think you know the answer
21 to that one. Could Tiffany do them for me?

22 MR. PATTEE: I'll take care of it.

23 CHAIR PULLIAM: Just let me know and I'll
24 review them and stuff.

25 Anything else from Mr. Cushing?

1 PETITIONER CUSHING: No. Just thank you
2 very much. I really appreciate this and I'm not
3 going to forget this.

4 CHAIR PULLIAM: So we're basically
5 recommending his reinstatement, okay. Is that
6 correct, other panel members?

7 PANEL MEMBER WESTBROOK: That's correct.

8 CHAIR PULLIAM: Dr. McBeath?

9 PANEL MEMBER MCBEATH: Yes.

10 CHAIR PULLIAM: Okay. And for me as well.
11 So it was a unanimous decision. Okay, so we can go
12 off the record. Mr. Pattee, so you guys will throw
13 those things together and I'll review them?

14 MR. PATTEE: Naturally.

15 CHAIR PULLIAM: All right. Anything else
16 from anybody?

17 PETITIONER CUSHING: Thank you very much.

18 CHAIR PULLIAM: All right. Good luck to
19 you, Mr. Cushing.

20 PETITIONER CUSHING: Thank you.

21 MR. PATTEE: Good luck, Mr. Cushing.

22 (Thereupon the proceedings
23 were concluded at 11:00 a.m.)

24 * * * * *

CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

I, Deborah Ann Hines, certified court reporter, do hereby certify that I took down in shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated; and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 2nd day of May, 2022.


Deborah Ann Hines, CCR #473, RPR

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