

1 Case Nos.; OBC19-0604; OBC19-0798



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8 **STATE BAR OF NEVADA**  
9 **SOUTHERN NEVADA DISCIPLINARY BOARD**

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11 STATE BAR OF NEVADA, )  
12 Complainant, )  
13 vs. )  
14 BRIAN C. PADGETT, )  
15 STATE BAR NO. 7474 )  
16 Respondent. )

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

17 This matter involving attorney BRIAN C. PADGETT, Esq. (hereinafter  
18 "Respondent"), Bar No. 7474, initially came before a designated Formal Hearing Panel of  
19 the Southern Nevada Disciplinary Board (hereinafter "Panel") at 9:00 a.m. on Monday,  
20 June 8, 2020, at the office of the State Bar of Nevada in Las Vegas, Nevada. The Panel  
21 consisted of Chair Dana P. Oswalt, Esq., Farhan R. Naqvi Esq., and Peter Ossowski,  
22 Laymember. Assistant Bar Counsel, Gerard Gosioco, Esq., represented the State Bar of  
23 Nevada (hereinafter "State Bar"). Respondent was not present.  
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1 The State Bar presented materials consisting of pleadings and State Bar documents,  
2 which were admitted into evidence as Exhibits 1 through 36. *See* Transcript, pp. 8-9.

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

5 **FINDINGS OF FACT**

6 1. Respondent is an attorney licensed to practice law in the State of Nevada and  
7 was admitted to the State Bar of Nevada on or about December 28, 2000.

8 2. During the period in question, Respondent maintained a law practice in Clark  
9 County, Nevada.

10 3. OBC19-0604. On or about July 25, 2012, Bruce Familian (hereinafter “Mr.  
11 Familian”) retained Respondent to represent DKB, LLC, in an inverse condemnation case  
12 against Clark County. *See* Transcript, p. 10. On or about September 11, 2012, Respondent  
13 filed a Complaint initiating Case Number A-12-668136-C in the Eighth Judicial District  
14 Court. *Id.*

15 The case went to trial, and DKB was awarded \$116,508 by the jury. *Id.* Following  
16 trial, several post-judgment motions were filed regarding attorney’s fees and costs of  
17 prejudgment interest on the award. *Id.* An Order granting the prejudgment interest was  
18 filed on November 3, 2017, but the Court requested additional briefing regarding fees and  
19 costs. *Id.*

20 Mr. Familian then retained attorneys Dan Polsenberg and Joel Henriod (hereinafter  
21 “appellate attorneys”) to file an appeal of the inverse condemnation case as Mr. Familian  
22 was not satisfied with the amount awarded by the jury. *Id.* At 11. On or about June 12,  
23 2017, Mr. Familian’s appellate attorneys filed a Notice of Appearance. *Id.* On or about  
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1 November 8, 2017, Clark County deposited \$151,599.83 with the District Court  
2 representing the jury verdict plus interest. *Id.*

3 On or about June 8, 2018, Respondent filed a Motion on Order Shortening Time to  
4 Direct Disbursement of Funds on Deposit. *Id.* On or about June 12, 2018, an Order  
5 granting Respondent's Motion was filed. *Id.* Mr. Familian's appellate attorneys were not  
6 served with Respondent's Motion. *Id.*

7 On or about June 20, 2018, Mr. Henriod discovered that Respondent's Motion and  
8 an Order granting the same had been filed. *Id.* Mr. Henriod then contacted Respondent's  
9 office and expressed concern that they had withdrawn the funds without notifying Mr.  
10 Familian or his appellate attorneys. *Id.* Mr. Henriod stated that he believed withdrawing  
11 the funds might jeopardize Mr. Familian's case and notified Respondent that Mr. Familian  
12 did not authorize the withdrawal. *Id.*

13 On or about June 22, 2018, Mr. Familian emailed Respondent asking why the  
14 motion for disbursement was filed without his knowledge and why it had been done on  
15 shortened time. *Id.* at 11-12. The email requested the status of funds and an accounting  
16 explaining what happened to any funds received by Respondent. *Id.* at 12. Respondent  
17 replied that he did have the check in hand, but that in his opinion, retrieving the funds  
18 would not jeopardize Mr. Familian's rights on appeal. *Id.*

19 Respondent stated that he would send Mr. Familian a copy of his outstanding bill,  
20 which he can pay out of pocket or from the release of funds. *Id.* Mr. Familian then  
21 instructed Respondent to stop the process of withdrawing the funds and requested the  
22 current bill stating that he had not received one in over a year. *Id.* On or about June 29,  
23 2018, Respondent's office emailed Mr. Familian a copy of the invoice dated June 26, 2018,

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1 for \$69,945.73 for services that were rendered from November 2016 through May 2017,  
2 indicating that Mr. Familian had not been billed for any post-trial work. *Id.*

3 On or about October 16, 2018, the Court filed a decision and awarded DKB over  
4 \$400,000 in attorney's fees and costs. *Id.* That same day, Respondent filed a Notice of  
5 Filing of Attorney's Lien, but did not include an amount. *Id.* at 12-13. Respondent never  
6 filed a motion to enforce the attorney's lien as required by NRS 18.015. *Id.* at 13.

7 On or about October 25, 2018, Mr. Familian emailed Respondent and stated that he  
8 had no objection to him taking the approximately \$70,000 Mr. Familian owed from the  
9 attorney's fee award proceeds. *Id.* In addition, Mr. Familian specifically stated to  
10 Respondent that the funds on deposit with the Court for the judgment and interest should  
11 not be touched during the appeal. *Id.* However, Respondent had already received  
12 \$151,599.63 of the judgment funds from the Court on or about October 22, 2018. *Id.*

13 On or about June 19, 2019, Respondent attempted to obtain an additional  
14 \$13,845.45 from funds that Clark County deposited with the District Court by submitting  
15 a proposed order directly to the Court without copying any other parties or filing a motion.  
16 *Id.* The Court returned the proposed order to Respondent and provided copies to Mr.  
17 Familian's appellate attorneys. *Id.* at 13-14.

18 4. OBC19-0798. Ian Ritchie (hereinafter "Mr. Ritchie") was hired as the head  
19 of security for CWNevada (hereinafter "CWN"), a marijuana dispensary of which  
20 Respondent is the CEO, from approximately 2017 to March 26, 2019. *Id.* at 14. Prior to  
21 Mr. Ritchie's employment at CWN, he was employed as the Director of Sales for Pro-Tect  
22 Security. *Id.* While employed with Pro-Tect Security, Mr. Ritchie signed a non-compete  
23 agreement. *Id.* Despite the non-compete, Mr. Ritchie left Pro-Tect Security and founded  
24 Round Table Security. *Id.*

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1 In or around May 2015, Pro-Tect Security sued Mr. Ritchie for violating the terms  
2 of the non-compete. *Id.* Although Respondent was not counsel of record for Mr. Ritchie  
3 or Round Table Security, he advised Mr. Ritchie that he should agree to be jointly and  
4 severally liable for the judgment, and that Respondent, himself, would be paying the  
5 judgment. *Id.* Following Respondent's advice, the lawsuit was settled with Mr. Ritchie  
6 agreeing to be jointly and severally liable for payment to Pro-Tect Security along with  
7 Round Table Security. *Id.* Neither Respondent, Mr. Ritchie, or Round Table Security  
8 satisfied the settlement. *Id.*

9 In or around February 2017, Pro-Tect Security sued Mr. Ritchie for breach of  
10 contract. On or about March 12, 2018, Respondent entered his appearance on behalf of  
11 Mr. Ritchie. *Id.* at 14-15. On or about June 28, 2018, the Court entered summary judgment  
12 in favor of Pro-Tect Security and against Mr. Ritchie for \$129,999.92. *Id.* On or about July  
13 27, 2018, Respondent filed a Notice of Appeal with the District Court. *Id.* at 15. Respondent  
14 continued to communicate to Mr. Ritchie that Respondent would give him the money to  
15 pay off Pro-Tect Security. *Id.* Ultimately, Respondent withdrew as counsel from the  
16 appeal. *Id.* Mr. Ritchie was not able to secure new counsel, and his appeal was dismissed.  
17 *Id.* When the State Bar asked Respondent about this incident, he simply responded that  
18 he is "not permitted to advance funds to a client, nor would [he] have agreed to do so in  
19 Mr. Ritchie's case." *Id.*

20 5. On or about December 23, 2019, the State Bar filed a disciplinary Complaint.

21 6. On or about January 7, 2020, the State Bar filed a First Amended Complaint  
22 which charged Respondent with the following violations of the Rule of Professional  
23 Conduct ("RPC"): (1) RPC 1.2 (Scope of Representation and Allocation of Authority  
24 Between Client and Lawyer); (2) RPC 1.4 (Communication); (3) RPC 1.8 (Conflict of  
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1 Interest: Current Clients: Specific Rules); (4) RPC 1.15 (Safekeeping Property); (5) RPC 3.3  
2 (Candor Toward the Tribunal); (6) RPC 8.1 (Bar Admission and Disciplinary Matters); and  
3 (7) RPC 8.4 (Misconduct).

4 7. A return receipt provided to the State Bar showed that the First Amended  
5 Complaint was delivered to Respondent on or about January 14, 2020.

6 8. On or about February 26, 2020, Respondent provided a response to the State  
7 Bar's First Amended Complaint.

8 9. The response did not address any of the State Bar's allegations; rather,  
9 Respondent went on a tangent about how he is the owner of a cannabis firm, and that there  
10 is a conspiracy to take over his cannabis firm which included "damaging [his] standing in  
11 the practice of law."

12 10. On or about January 31, 2020, a Notice of Intent to Proceed on a Default  
13 Basis was filed.

14 11. On or about March 4, an Order Appointing Hearing Panel Chair was filed.

15 12. On or about March 18, 2020, an Initial Case Conference ("ICC") was held.

16 13. Respondent was not present during the ICC.

17 14. On or about March 24, 2020, an Entry of Default was ordered and filed.

18 15. On or about March 24, 2020, the State Bar filed its Initial Disclosure of  
19 Witnesses and Documents.

20 16. On or about April 3, 2020, an Order Appointing Formal Hearing Panel was  
21 filed.

22 17. On or about April 9, 2020, a Notice of Amended Formal Hearing Date was  
23 filed.

1 18. On April 10, 2020, and April 13, 2020, Judith Mae All (hereinafter "Ms. All")  
2 of Nationwide Legal Nevada, LLC, attempted to personally serve Respondent at 611 South  
3 6th Street, Las Vegas, Nevada, 89101, with all previously filed documents pertaining to this  
4 case, but to no avail.

5 19. On April 24, 2020, April 26, 2020, and April 29, 2020, Tyler Trewet  
6 (hereinafter "Mr. Trewet") of Nationwide Legal Nevada, LLC, attempted to personally serve  
7 Respondent at 1672 Liege Drive, Henderson, Nevada, 89012, with previously filed  
8 documents pertaining to this case, but to no avail.

9 20. On or about May 12, 2020, the State Bar filed its Final Disclosure of  
10 Witnesses and Documents.

11 21. On or about May 22, 2020, a Notice of Hearing was filed.

12 **CONCLUSIONS OF LAW**

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

- 15 1. The Southern Nevada Disciplinary Board has jurisdiction over Respondent  
16 and the subject matter of these proceedings pursuant to Supreme Court Rule ("SCR") 99.
- 17 2. Venue is proper in Clark County.
- 18 3. The State Bar must prove by clear and convincing evidence that Respondent  
19 violated any Rules of Professional Conduct. *See* Nev. Sup. Ct. R. 105(2)(f); *In re Stuhff*,  
20 108 Nev. 629, 633-634, 837 P.2d 853, 856; *Gentile v. State Bar*, 106 Nev. 60, 62, 787 P.2d  
21 386, 387 (1990).
- 22 4. The Panel unanimously finds that the foregoing findings of fact prove by clear  
23 and convincing evidence that:

1           a.     Respondent intentionally violated RPC 1.2 (Scope of Representation  
2           and Allocation of Authority Between Client and Lawyer) which caused injury to Mr.  
3           Familian. *See* Transcript, p. 38.

4           b.     Respondent knowingly violated RPC 1.4 (Communication) which  
5           caused injury to Mr. Familian and Mr. Ritchie. *Id.*

6           c.     Respondent knowingly violated RPC 1.8 (Conflict of Interest: Current  
7           Clients: Specific Rules) which caused injury to Mr. Familian and Mr. Ritchie. *See*  
8           Transcript, p. 38.

9           d.     Respondent knowingly violated RPC 1.15 (Safekeeping Property)  
10          which caused injury to Mr. Familian and Mr. Ritchie. *See* Transcript, p. 38.

11          e.     Respondent knowingly violated RPC 3.3 (Candor Toward the  
12          Tribunal) which caused injury to Mr. Familian and Mr. Ritchie. *See* Transcript, p.  
13          38.

14          f.     Respondent knowingly violated RPC 8.1 (Bar Admission and  
15          Disciplinary Matters) which caused injury to Mr. Familian and Mr. Ritchie. *See*  
16          Transcript, p. 38.

17          g.     Respondent knowingly violated RPC 8.4 (Misconduct) which caused  
18          injury to Mr. Familian and Mr. Ritchie. *See* Transcript, p. 38.

19          5.     The appropriate level of discipline must be determined considering “all  
20          relevant factors and mitigating circumstances on a case-by-case basis.” *State Bar of*  
21          *Nevada v. Claiborne*, 104 Nev. 11, 219, 756 P.2d 464, 531 (1988). We evaluate The  
22          American Bar Association Standards for Imposing Lawyer Sanctions’ four factors to be  
23          considered in determining the appropriate disciplinary sanction: “the duty violated, the  
24          lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and

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1 the existence of aggravating or mitigating factors.” *See In re Discipline of Lerner*, 124 Nev.  
2 1232, 1246, 197 P.3d 1067, 1078 (2008).

3 6. Pursuant to Standard 4.12 of the ABA Standard for Imposing Lawyer  
4 Sanctions, the appropriate baseline sanction for Respondent’s violation of RPC 1.15  
5 (Safekeeping Property) is suspension.

6 7. Pursuant to SCR 102.5(1), the Panel unanimously found the following  
7 aggravating factors exist:

- 8 a. A dishonest or selfish motive;
- 9 b. A pattern of misconduct;
- 10 c. Multiple offenses;
- 11 d. Bad faith obstruction of the disciplinary proceeding by intentionally  
12 failing to comply with rules or orders;
- 13 e. Refusal to acknowledge the wrongful nature of conduct;
- 14 f. Substantial experience in the practice of law; and
- 15 g. Indifference to making restitution.

16 8. Pursuant to SCR 102.5(2), the Panel unanimously found the following  
17 mitigating factors exist:

- 18 a. Absence of a prior disciplinary record.

19 **RECOMMENDATION**

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

- 22 1. Respondent be suspended for a period of five (5) years;
- 23 2. Respondent be required to retake the Nevada Bar Exam; and

1           3. Pursuant to SCR 120, Respondent shall pay a \$2,500 fee plus the actual costs  
2 of this proceeding, excluding Bar Counsel and staff salaries no later than the 30th day after  
3 the Supreme Court's Order in this matter or service of a Memorandum of Costs, whichever  
4 is later.

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6                                   DATED this 30 day of July, 2020.

7                                   *Dana P. Oswalt*

8                                   Dana P. Oswalt (Jul 30, 2020 11:22 PDT)

9                                   **Dana P. Oswalt, Esq., Chair**  
10                                  Southern Nevada Disciplinary Panel

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