

# Bar Counsel Report

**In Re: BRIAN C. PADGETT**  
**Bar No.: 7474**  
**Case No.: 83347**  
**Filed: 05/19/2022**

## ORDER OF DISBARMENT

*This is an automatic review of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Brian C. Padgett be suspended from the practice of law for five years based on violations of RPC 1.15 (safekeeping property), RPC 5.1 (responsibilities of partners, managers, and supervisory lawyers), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct). The panel recommends that this five-year suspension run consecutively to the five-year suspension Padgett is currently serving for other violations. See In re Discipline of Padgett, No. 81918, 2021 WL 2070641 (Nev. May 21, 2021) (Order of Suspension). We first address Padgett's arguments that he contends warrant setting aside the panel's findings of fact, conclusions of law, and recommendation and providing him a new hearing on the underlying disciplinary complaint.*

Padgett first argues that the panel's findings of fact, conclusions of law, and recommendation should be set aside because the disciplinary proceedings did not afford him due process. Specifically, Padgett contends that the panel chair denied him the opportunity to exercise peremptory challenges, present evidence, and have his disciplinary hearing in-person. Having reviewed the record, Padgett has not shown that relief is warranted on these bases. First, after reviewing the record, we perceive no due process violation in Padgett's loss of any peremptory challenges. See *Burnside v. State*, 131 Nev. 371, 386, 352 P.3d 627, 638 (2015) (explaining that "there is no constitutional right to peremptory challenges"). Moreover, Padgett waived his opportunity to exercise peremptory challenges by failing to respond to the State Bar's complaint, resulting in the filing of a notice of intent to proceed on a default basis. See Nevada State Bar Disciplinary Rules of Procedure (DRP) 13(a). Despite that waiver, the record reflects that the panel chair afforded Padgett an opportunity to submit any peremptory challenges at the prehearing conference and Padgett did not do so. Second, any evidence precluded by the panel chair resulted from Padgett's unjustified failure to comply with the procedural rules governing disciplinary proceedings and the panel chair's orders. See NRCP 16.1(a)(1); NRCP 37(c)(1); see also DRP 17(a). Finally, considering the circumstances of the COVID-19 pandemic, conducting the disciplinary hearing via videoconferencing did not deny Padgett a fair hearing. See *Chaparro v. State*, 137 Nev., Adv. Op. 68, 497 P.3d 1187, 1191-92 (2021) (rejecting a due process challenge

to a criminal sentencing hearing held over Zoom due to the COVID-19 pandemic). And any issues that occurred during the hearing were the result of Padgett refusing to participate in good faith.

Turning to the remainder of the panel's decision, the State Bar has the burden of showing by clear and convincing evidence that Padgett committed the violations charged. See *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). We defer to the panel's findings of fact, SCR 105(3)(b), and will not set them aside unless they are clearly erroneous or not supported by substantial evidence, see *In re Discipline of Colin*, 135 Nev. 325, 329, 448 P.3d 556, 560 (2019). We review de novo a disciplinary panel's conclusions of law and recommended discipline. SCR 105(3)(b). The record shows that the State Bar presented substantial evidence that Padgett violated the rules referenced above by (1) failing to safeguard client documents, (2) failing to ensure a subordinate attorney conformed to the rules of professional conduct, (3) failing to fully respond to the State Bar's investigation, and (4) making multiple misrepresentations to the State Bar.

In considering the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). We must ensure that the discipline is sufficient to protect the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline).

Padgett knowingly violated duties owed to his clients (safekeeping property and responsibilities of partners, managers, and supervisory lawyers) and the legal profession (bar admission and disciplinary matters, and misconduct). The record supports the panel's conclusion that Padgett's misconduct resulted in actual injury to his clients and the legal profession.

Before considering aggravating and mitigating circumstances, suspension is the baseline sanction for Padgett's misconduct. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 6.12 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court[,] ... takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."). The panel found, and the record supports, eight aggravating circumstances (prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders, refusal to acknowledge the wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution), and no mitigating circumstances. Considering all the factors,

especially the fact that Padgett is already serving a five-year suspension for other offenses, we conclude that the scope of Padgett's misconduct and the aggravating circumstances warrant an upward deviation from the baseline sanction.

Accordingly, we disbar attorney Brian C. Padgett from the practice of law. Such disbarment is irrevocable. SCR 102(1). Further, Padgett shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days from the date of this order if he has not already done so.<sup>1</sup> The State Bar shall comply with SCR 121.1. It is so ORDERED.

**In Re: JEREMY T. BERGSTROM**

**Bar No.: 6904**

**Case No.: 84297**

**Filed: 06/09/2022**

## ORDER OF DISBARMENT

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Jeremy T. Bergstrom be disbarred from the practice of law in Nevada based on violations of RPC 5.5 (unauthorized practice of law) and RPC 8.1 (bar admission and disciplinary matters). Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).*

The State Bar has the burden of showing by clear and convincing evidence that Bergstrom committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, however, the facts and charges alleged in the complaint are deemed admitted because Bergstrom failed to answer the complaint and a default was entered.<sup>2</sup> SCR 105(2). The record therefore establishes that Bergstrom filed multiple lawsuits after being suspended from the practice of law.<sup>3</sup> He thus violated RPC 5.5, which prohibits the unauthorized practice of law. The record also establishes that Bergstrom failed to respond to the State Bar's inquiries into his unauthorized practice of law, thus violating RPC 8.1 (bar admission and disciplinary matters).

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

Bergstrom knowingly violated duties owed to the public and his clients (unauthorized practice of law) and the profession (bar admission and disciplinary matters). Bergstrom's clients suffered actual injury as he filed lawsuits on their behalf while suspended. And Bergstrom's failure to cooperate in the disciplinary hearing harmed the integrity of the profession, which depends on a self-regulating disciplinary system. The baseline sanction for Bergstrom's misconduct, before considering aggravating and mitigating circumstances, is disbarment. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 7.1 (Am. Bar Ass'n 2017) (recommending disbarment "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public or the legal system"); Standard 8.1(b) (recommending disbarment when a lawyer "has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession"). The panel found no mitigating circumstances and four aggravating circumstances: prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The record supports the panel's findings. Particularly relevant here is the aggravating circumstance based on prior disciplinary offenses. This court has suspended Bergstrom on four occasions based on misconduct that included failing to communicate with clients, failing to perform legal services or litigate cases resulting in judgments against his clients, failing to supervise an attorney, and failing to account for client funds. See *In re Discipline of Bergstrom*, No. 82359, 2021 WL 2328486 (Nev. June 7, 2021) (Order of Suspension); *In re Discipline of Bergstrom*, No. 82591, 2021 WL 2328472 (Nev. June 7, 2021) (Order Imposing Reciprocal Discipline and Suspending Attorney); *In re Discipline of Bergstrom*, No. 79205, 2019 WL 6042503 (Nev. Nov. 14, 2019) (Order Approving Conditional Guilty Plea Agreement); *In re Discipline of Bergstrom*, No. 77170, 2018 WL 6818537 (Nev. Dec. 21, 2018) (Order of Suspension). He then continued to practice law while suspended. Considering all the factors, we agree with the panel that there is no basis to depart from the baseline sanction. Disbarment is appropriate here. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing that the purpose of attorney discipline is to protect the public, the courts, and the legal profession).

Accordingly, we disbar attorney Jeremy T. Bergstrom from the practice of law in Nevada. Such disbarment is irrevocable. SCR 102(1). Further, Bergstrom shall pay the costs of the disciplinary proceedings, including \$3,000 under SCR 120, within 30 days from the date of this order if he has not already done so. The State Bar shall comply with SCR 121.1. It is so ORDERED.

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# Bar Counsel Report

**In Re: EDWARD E. VARGAS**  
**Bar No.: 8702**  
**Case No.: 84264**  
**Filed: 05/19/2022**

## ORDER OF SUSPENSION

*This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Edward E. Vargas. Under the agreement, Vargas admitted to violating RPC 5.4 (professional independence of a lawyer) and RPC 5.5 (unauthorized practice of law). He agreed to a six-month-and-one-day suspension, to run concurrent with the presently stayed three-month-and-one-day suspension from In re Discipline of Vargas, No. 80665, 2020 WL 2521792 (Nev. May 15, 2020) (Order Approving Conditional Guilty Plea Agreement).*

As part of his guilty plea agreement, Vargas admitted to the facts and violations included in the complaint and agreed to waive the procedural requirements for lifting the stay in Docket No. 80665, as he also admits to breaching that order. The record therefore establishes Vargas violated the above-listed rules by permitting his assistants/paralegals to accept a legal matter on his behalf for a client with whom he never met. Additionally, his assistants/paralegals worked with a contract lawyer to determine how to proceed with that matter and conveyed the contract lawyer's legal advice to the client, as that lawyer also never spoke with the client. Further, in Docket No. 80665, Vargas had agreed that if he committed any misconduct warranting a letter of reprimand or greater discipline during the two-year probationary period, the stayed portion of his suspension, three months and one day, would be imposed. Vargas admits his underlying misconduct is a breach of the probationary terms of his guilty plea agreement in Docket No. 80665.

The issue for this court is whether the agreed-upon discipline sufficiently protects the public, the courts, and the legal profession. See *In re Discipline of Arabia*, 137 Nev., Adv. Op. 59, 495 P.3d 1103, 1109 (2021) (stating the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Vargas knowingly violated duties owed as a professional (professional independence of a lawyer and unauthorized practice of law). His client, the public,

and the legal system were potentially injured. His client received incorrect information from Vargas's assistants/paralegals, which led the client to represent himself in the matter. The baseline sanction for his misconduct, before considering aggravating and mitigating circumstances, is suspension. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 7.2 (Am. Bar Ass'n 2017) ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."). The record supports the panel's findings of four aggravating circumstances (prior discipline, pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and one mitigating circumstance (full and free disclosure to disciplinary authority or cooperative attitude toward proceedings). Having considered the four factors, we agree with the panel that suspension is appropriate, and we agree that the stayed portion of the suspension from Docket No. 80665 should be imposed based on Vargas's breach of the probationary terms included in that order.

Accordingly, as to the underlying misconduct, we hereby suspend attorney Edward E. Vargas from the practice of law in Nevada for six months and one day commencing from the date of this order. Further, we vacate the stay in Docket No. 80665, and the underlying suspension shall run concurrently to the three-months-and-one-day suspension remaining in Docket No. 80665. Vargas shall also pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days of the date of this order. The parties shall comply with SCR 115 and 121.1.

It is so ORDERED.

## ENDNOTES:

1. In reaching this disposition, we have considered Padgett's other argument that the State Bar refused to negotiate a settlement and conclude it lacks merit.
2. The complaint and notice of intent to take default were served on Bergstrom through regular and certified mail at his SCR 79 address and emailed to his SCR 79 email address. The notice of intent to take a default was also sent to an alternate physical address. The State Bar also personally served Bergstrom with the filings at his alternate physical address.
3. This court suspended Bergstrom in two cases: *In re Discipline of Bergstrom*, No. 79205, 2019 WL 6042503 (Nev. Nov. 14, 2019) (Order Approving Conditional Guilty Plea Agreement), and *In re Discipline of Bergstrom*, No. 82359, 2021 WL 2328486 (Nev. June 7, 2021) (Order of Suspension).



**TIP**

**FROM THE BAR COUNSEL**

## Hate Networking?

**Most people have heard someone say that they “hate networking” once or twice in your life. Can you blame them though? Networking events can be like dating at times. You get dressed up to meet up with someone or a group of people (no judgment here), you talk about yourself just enough so that you don’t come off as narcissistic, and then you try to figure out whether the person you are having a conversation with is being genuine. Sometimes they are so great that you are already looking forward to the next time. Other times they are so bad that you begin to question your self-worth and contemplate completely giving up.**

Unless you are an extrovert who thrives on those types of social interactions, networking can be exhausting and sometimes daunting. Today, however, networking has become somewhat of a necessity. Thankfully, the State Bar of Nevada tries to make it as easy as possible for you to network without feeling like you are networking. As a Nevada-licensed attorney, you may be eligible to join a practice section, an affinity bar association, or even volunteer for a committee.

Practice sections are a fantastic way to meet other attorneys who practice in the same area as you. Did you know that the state bar has 26 different sections? From administrative law to

gaming law to tax law – chances are, there is a section for you! When, where, and how often each section meets varies, and annual dues typically range between \$20-\$50. For more information on all the practice area sections, visit the state bar’s website: <https://nvbar.org/for-lawyers/bar-service-opportunities/join-a-section/>.

Another fantastic way to meet other attorneys is to join one of the state bar’s affinity bar associations. Some of these bar associations even have exclusive offers on sporting events or discounts on products and services for their members. For more information on the affinity bar associations, visit the state bar’s website: <https://nvbar.org/for-lawyers/bar-service-opportunities/affiliate-nevada-bar-associations/>.

If you are looking to become more involved than simply joining a practice area section or bar association, consider volunteering for one of the state bar’s committees. If you miss the thrill of being on law review, then maybe the *Nevada Lawyer* Editorial Board can help you re-live your glory days. If you loved participating in mock trial in high school or college, check out the Mock Trial Committee. If you open your monthly *Nevada Lawyer* magazine and immediately go to the discipline section to see who has gotten into trouble and have always been curious of how the disciplinary process works, apply to join the Northern or Southern Disciplinary Boards. For more information on committees, visit the state bar’s website: <https://nvbar.org/for-lawyers/bar-service-opportunities/volunteer-for-a-committee/committee-list/>.

Networking does not always have to be a scary experience. Let the state bar help you network without feeling like you are networking and follow the links above.