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FILED

JAN 16 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 14-J-03438
14 JAMES BOLES,)
15 No. 141639,) AMENDED NOTICE OF DISCIPLINARY
16 A Member of the State Bar) CHARGES
17)
18) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of
19) State Bar, rules 5.350 to 5.354)

NOTICE - FAILURE TO RESPOND!

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
23 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
26 **AND THE DEFAULT IS SET ASIDE, AND;**
27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
28 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.



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The State Bar of California alleges:

JURISDICTION

1. James Boles ("respondent") was admitted to the practice of law in the State of California on August 21, 1989, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

2. On or about March 21, 2014, the Nevada Supreme Court ordered that respondent be disciplined upon findings that respondent had committed professional misconduct in that jurisdiction as set forth in the Findings of Fact, Conclusions of Law and Decision and the Order of Suspension. Thereafter, the decision of the foreign jurisdiction became final.

3. A certified copy of the final order of disciplinary action of the foreign jurisdiction is attached, as Exhibit 1, and incorporated by reference.

4. A copy of the statutes, rules or court orders of the foreign jurisdiction found to have been violated by respondent is attached, as Exhibit 2, and incorporated by reference.

5. Respondent's culpability as determined by the foreign jurisdiction indicates that the following California statutes or rules have been violated or warrant the filing of this Notice of Disciplinary Charges: Business and Professions Code §§ 3-110(A), 6068(m), 6068(d), 6068(j) and 6106 and Rules of Professional Conduct Rule 3-700(A)(2) and 3-700(D)(1).

ISSUES FOR DISCIPLINARY PROCEEDINGS

6. The attached findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state subject only to the following issues:

- A. The degree of discipline to impose;
- B. Whether, as a matter of law, respondent's culpability determined in the

proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of

1 California under the laws or rules binding upon members of the State Bar at the time the member
2 committed misconduct in such other jurisdiction; and

3 C. Whether the proceedings of the other jurisdiction lacked fundamental
4 constitutional protection.

5 7. Respondent shall bear the burden of proof with regard to the issues set forth in
6 subparagraphs B and C of the preceding paragraph.

7
8 **NOTICE - INACTIVE ENROLLMENT!**

9 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
10 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
11 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
12 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
13 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
14 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
15 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
16 RECOMMENDED BY THE COURT.**

17
18 **NOTICE - COST ASSESSMENT!**

19 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
20 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
21 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
22 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
23 PROFESSIONS CODE SECTION 6086.10.**

24
25 Respectfully submitted,

26 THE STATE BAR OF CALIFORNIA
27 OFFICE OF THE CHIEF TRIAL COUNSEL

28
DATED: 1/14/15

By: 
Sue Hong
Deputy Trial Counsel

STATE BAR OF NEVADA



600 East Charleston Blvd.
Las Vegas, NV 89104-1563
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

STATEMENT OF THE CUSTODIAN OF DISCIPLINARY RECORDS FOR THE STATE BAR OF NEVADA

IN RE: **James Andre Boles, Esq.**
Nevada State Bar No. 3368

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

The undersigned, in my capacity as custodian of disciplinary records for the State Bar of Nevada, hereby attest that the attached Findings of Fact, Conclusions of Law, and Decision is a true and correct copy of the original filed by the Office of Bar Counsel on July 8, 2013.

DATED this 28th day of April, 2014

CUSTODIAN OF RECORDS
STATE BAR OF NEVADA



Laura Peters
Paralegal
Office of Bar Counsel



FILED

JUL 08 2013

Case Nos. NG11-1513, NG11-1298, NG12-1241 & NG12-0645

STATE BAR OF NEVADA ~~STATE BAR OF NEVADA~~
BY: *[Signature]*

NORTHERN NEVADA DISCIPLINARY BOARD ~~OFFICE OF BAR COUNSEL~~

<p>STATE BAR OF NEVADA, Complainant, vs. JAMES ANDRE BOLES, ESQ. NEVADA STATE BAR NO. 3368, Respondent.</p>	<p><u>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</u></p>
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THIS MATTER came before a designated Formal Hearing Panel of the Northern Nevada Disciplinary Board (the "Panel"), for hearing on Monday, June 3, 2013, and continued on Tuesday, June 4, 2013. The Panel consisted of Dan R. Reaser, Esq., Chairman, Lay-member George Furman, Linda Nagy Daykin, Esq., Mary Kandaras, Esq. and Michael Large, Esq. The State Bar of Nevada (the "State Bar"), appeared and was represented by Deputy Bar Counsel, Patrick O. King, Esq. The Respondent, James Andre Boles, Esq., Nevada State Bar No. 3368 (the "Respondent" or "Boles"), appeared *in propria persona*.

FINDINGS OF FACT

Based upon the pleadings filed, the documentary evidence admitted as Hearing Exhibits A-D(1), D(3) -J and 1-8, 14-20, 27 and 30-35, and the testimonial evidence of the Respondent, Melvin Thompson ("Thompson"), Kaitlyn Miller ("Miller"), Bernice Encinas ("Encinas"), Laura Peters ("Peters"), Dennis Mallory ("Mallory"), Edward Salcido ("Salcido"), and Joseph Boles ("Joe Boles") presented at the hearing in these proceedings, the Panel makes Findings of Fact as follows:

1. Boles is an attorney licensed to practice law in the state of Nevada. The Respondent's principal office for the practice of law was located at 411 Mill Street, in the

1 city of Reno, county of Washoe, state of Nevada (the "Nevada Office Address"), until
2 on or about April 17, 2013. Commencing on or about April 17, 2013, to the present,
3 Boles' principal office for the practice of law became 10627 Almond Avenue, Oak View,
4 California 93022 (the "California Office Address"). See Hearing Exhibits G & H.

5 2. Boles was admitted to practice law on September 26, 1988. See Hearing
6 Exhibit H. Based on a ruling of the Panel Chair on a prehearing motion by Boles, for the
7 purposes of the proceedings in this case, the Respondent was determined not to have
8 been either adjudicated to have committed a disciplinary offense or the subject of
9 previous instances of public discipline by the State Bar of Nevada.¹ See State Bar of
10 Nevada v. James Andre Boles, Case Nos. NG11-1513, NG11-1298, NG12-1241 & NG12-
11 0645, *Transcript of Formal Hearing* at 9-15 (dated June 3-4, 2013)(the "Evidentiary
12 Transcript").

13 3. The State Bar and Boles stipulated that Count II of the Complaint be
14 dismissed with prejudice. Evidentiary Transcript at 250.

15 4. Respondent has been and still remains, on active status with the State Bar
16 of Nevada. He has not applied for Disability Inactive Status, but states that beginning
17 on January 28, 2011, he found it necessary to take a personally imposed medical leave
18 and drastically scale down his practice. See Evidentiary Transcript at 51-53, 62-63;
19 Hearing Exhibit 31.

20 5. The Respondent explained that he "didn't know how long [he] was going
21 to be on medical leave. I didn't even know what was going on." He testified that his
22 strategy was to just continue everything and he put off handling matters. Boles stated
23 that once he took medical leave, he "missed a lot of stuff for awhile." See, e.g.,
24 Evidentiary Transcript at 109 & 167.

25
26 ¹ Three days following the conclusion of these proceedings, the Supreme Court of Nevada
27 ordered Boles suspended from the practice of law for one year for multiple violations of RPC 1.3 and RPC
28 1.4. See *In Re Discipline of James Andre Boles, Esq.*, Case No. 61170 (Nev. Sup. Ct. filed Jun. 7, 2013). The
Panel did not have the benefit of the Court's order at the time it deliberated upon and formulated the
Panel recommendation in this decision.

1 The Thompson Grievance

2 6. Boles was engaged by the American Federation of State, County and
3 Municipal Employees (the "AFCME"), to represent union members employed by the
4 State of Nevada in connection with civil service administrative proceedings involving
5 employment discipline and termination ("State Civil Service Proceedings").
6 Evidentiary Transcript at 292-303. The AFCME would determine if a particular
7 employee was entitled to representation under applicable union membership rules and
8 federal labor law, and if eligible Boles would be assigned by the AFCME to represent
9 the employee at AFCME's cost. *Id.* at 292-311

10 7. Thompson was a member of the AFCME. *Id.* at 298-300. Boles was
11 assigned by the AFCME to represent Thompson in a Civil Service Proceeding
12 contesting Thompson's employment termination. Thompson did not prevail in the
13 administrative hearing in the Civil Service Proceeding and in June 2010 the AFCME
14 declined further legal representation for Thompson. Boles thereafter filed a petition for
15 judicial review of the administrative hearing officer's decision. The Respondent
16 testified that he repeatedly continued this matter with opposing counsel, he had no
17 record of any hearing dates and was never required to make any filings in the case *Id.*
18 at 54-55; Hearing Exhibits D(1)(b) & (e); *see generally*, NEV. REV. STAT. § 233B.130.

19 8. Thompson hired Boles on May 24, 2010, to represent him as a plaintiff in a
20 federal civil rights lawsuit against the State of Nevada claiming wrongful termination.
21 Respondent accepted the engagement in a one-page written agreement (the "Retainer
22 Agreement"), on a contingency fee basis with a Two Thousand Dollar (\$2,000.00) fee
23 retainer and Five Hundred Dollar (\$500.00) costs advance. The Retainer Agreement
24 unequivocally states and Boles asserted that \$2,500.00 once paid is non-refundable. The
25 Retainer Agreement provides that Boles' contract hourly rate is \$400.00. *See* Evidentiary
26 Transcript at 46; Hearing Exhibit D(1)(a). Boles admits in his Answer to the State Bar's
27 Complaint that this non-refundable fee provision does not allow him to retain an
28 unreasonable fee. *See* Hearing Exhibit C, at 4 (¶ 18); *id.* at 16 (¶ 18).

1 9. Boles prepared and filed a federal civil rights lawsuit on behalf of
2 Thompson in the United States District Court for the District of Nevada. See
3 Evidentiary Transcript at 50.

4 10. On or about August 15, 2011, the Respondent sent to Thompson a letter
5 indicating Boles was withdrawing as his counsel for reasons of medical leave.
6 Thompson received this letter a week after its stated date, or approximately August 22,
7 2011. Boles asserts that the letter instructed Thompson to seek new counsel for
8 upcoming proceedings. Thompson testified that Boles (i) did not advise him of any
9 pending court date or urgency in seeking substitute counsel; (ii) did not file a
10 substitution of counsel; (iii) failed to respond to Thompson's repeated requests for
11 copies of his files so he could provide information to new counsel; and, (iv) refused to
12 refund the \$2,500.00 retainer paid, which Thompson stated was the only source of funds
13 he had available to hire replacement counsel. See Evidentiary Transcript at 69-95;
14 Hearing Exhibit D(1)(d) & D(1)(e). Neither Boles nor the State Bar produced a copy of
15 Boles' withdrawal letter to Thompson.

16 11. On September 12, 2011, the State District Court held a hearing on the
17 judicial review petition. Thompson was not present or represented at that hearing. In
18 an order entered September 23, 2011, the Nevada District Court granted the State of
19 Nevada's *unopposed* motion to dismiss *with prejudice* the judicial review petition after an
20 evidentiary review. See Hearing Exhibit D(1)(b).

21 12. Boles testified that he filed the judicial review petition as counsel for
22 AFSCME and soon thereafter the Respondent's engagement with the union terminated.
23 Boles stated that Thompson's state court representation was undertaken by an in-house
24 attorney for AFSCME, who later decided not to proceed with the judicial review. Boles
25 further testified that Thompson's federal court civil rights case did not proceed because
26 of Thompson's failure to act or "follow-up." See Evidentiary Transcript at 61-63;
27 Hearing Exhibit D(1)(c).

28

1 13. Thompson testified that he believed the Retainer Agreement provided for
2 Boles to represent Thompson in both the federal civil rights case and the state court
3 judicial review proceeding. *See* Evidentiary Transcript at 72 & 84-88. Boles' testimony
4 on the scope of the engagement was inconsistent. He testified that based on the
5 Retainer Agreement he was hired for evaluating and filing a discrimination lawsuit in
6 federal court. *See* Evidentiary Transcript at 46-50. The Respondent also testified the
7 engagement included "carrying on with his appeal, his petition for judicial review," *see*
8 Evidentiary Transcript at 46, that there was no way to separate the federal case and the
9 judicial review matter, that the AFSCME took over the case, and that the AFSCME
10 never substituted in the state district court case to represent Thompson. *See*
11 Evidentiary Transcript at 46-48.

12 14. Boles testified that Thompson had the ability to communicate with the
13 Respondent by cellular telephone. Thompson testified Boles never answered his
14 cellular telephone and did not respond to messages. Joe Boles testified that he had
15 telephone conversations with Thompson about the status of his case, and characterized
16 Thompson as a demanding and needy client. *See* Evidentiary Transcript at 50-51, 79-82
17 & 319-340.

18 15. Thompson submitted a grievance to the State Bar. *See* Hearing Exhibit
19 D(1)(d); Evidentiary Transcript at 70-71. The State Bar asserts and Boles does not
20 contest that the State Bar commenced an investigation of Thompson's grievance on
21 October 31, 2011. *See* Hearing Exhibit C, at 3 (¶ 12); *id.* at 16 (¶ 12). Boles responded to
22 the Thompson grievance by letter dated November 9, 2011. In that letter, Boles states
23 that (i) he filed the judicial review petition as counsel for AFSCME and that Thompson
24 was informed the union would represent Thompson and that Boles representation of
25 Thompson was limited to the federal civil rights case. Boles also stated in this letter that
26 Thompson's "perceived problems were a result of my BEING on medical leave." *See*
27 Hearing Exhibit D(1)(c).

28

1 16. On December 14, 2011, Thompson provided a reply to Boles' letter of
2 November 9, 2011. *See* Hearing Exhibit D(1)(e). Thompson's reply was consistent with
3 his testimony before the Panel. *Compare id. with* Evidentiary Transcript at 70-95

4 *The Encinas Grievance*

5 17. Encinas, also a member of AFSCME, is a registered nurse employed by
6 State of Nevada Department of Corrections (the "NDOC"). Boles was recommended to
7 Encinas by the State of Nevada Employees Association ("SNEA"), and she
8 independently hired Boles to represent her in related State Civil Service Proceedings in
9 connection with (i) an employment discipline case brought by the NDOC, including a
10 related petition for judicial review; (ii) a State Inspector General's review of allegations
11 made by each of Encinas and NDOC against the other; and, (iii) a challenge to a
12 "retaliatory" forced duty station reassignment by NDOC (the "Reassignment
13 Challenge"). Boles' engagement also included representing Encinas in a professional
14 licensing discipline case brought by the Nevada State Board of Nursing (the "Nursing
15 Board"), arising from the same common facts as the State Civil Service Proceedings. *See*
16 Evidentiary Transcript at 185-189, 197 & 296-298.

17 18. Encinas testified that she entered a written engagement letter and paid
18 Boles Two Thousand Seven Hundred Dollars (\$2,700.00), in fees and One Hundred Fifty
19 Dollars (\$150.00) in costs for this engagement. *See* Evidentiary Transcript at 187 & 190-
20 192; Hearing Exhibit E. Neither the State Bar nor Boles produced the written retention
21 agreement for the scope of representation identified by Encinas.

22 19. The Respondent represented Encinas at two administrative hearings in
23 2007. The Inspector General and Nursing Board dropped the charges against Encinas.
24 *See* Evidentiary Transcript at 188-189; Hearing Exhibit D(4)(a). Beginning in December
25 2007, Boles filed and pursued on behalf of Encinas a state district court judicial review
26 of the Reassignment Challenge. In August 2010, the state district court entered an order
27 upholding the decision of an administrative hearing officer that the Reassignment
28 Challenge was without merit. *See* Evidentiary Transcript at 189.

1 20. Both Encinas and Boles testified about a meeting in Boles office following
2 the adverse decision of the state district court. The testimony was in agreement that a
3 topic of discussion at the meeting was taking an appeal to the Supreme Court of
4 Nevada. Encinas indicated that she believed based on this meeting that Boles was to
5 file papers in the Nevada Supreme Court to perfect an appeal and on cross-examination
6 she also explained that Boles failed to fully explain the costs and process related to such
7 an appeal. She also testified that she had told Boles at this meeting she disagreed with
8 Boles' decision to withhold certain evidence during the proceedings and he had lost the
9 case. Without contradiction, Encinas testified the meeting ended abruptly when Boles
10 walked out of the conference at which time she and her husband also left Boles' office.
11 During cross-examination Encinas convincingly contested Boles' suggestion that she
12 did not pursue the appeal because of the fees and costs associated with continuing the
13 litigation, as well as that the AFSCME was a concurrent client or otherwise responsible
14 for maintaining -- and had in fact maintained -- a duplicate of Boles' file for Encinas. See
15 Evidentiary Transcript at 204-213.

16 21. Encinas testified that thereafter Boles moved to California and in her view
17 essentially abandoned her cases before bringing the Reassignment Challenge to
18 conclusion. See Hearing Exhibit D(4)(a); see also Evidentiary Transcript at 239. Encinas
19 explained that she was trying to hire new counsel or have lawyers for the AFSCME
20 finish the work Boles left unresolved on the Reassignment Challenge. See Evidentiary
21 Transcript at 193-194. She further testified that in an effort to obtain her files from Boles
22 for this purpose, she contacted Boles' office on multiple instances by telephone and a
23 letter. See Evidentiary Transcript at 184-203. Joe Boles testified that Encinas' husband
24 contacted Boles' office on only a few occasions while Boles was on medical leave and
25 there was no urgency expressed in those conversations. *Id.* at 331-332.

26 22. Encinas had some sporadic discussions with Boles' office staff from which
27 she learned that the Respondent was out on medical leave. Boles never answered
28

1 Encinas' communication efforts by telephone, e-mail and at least one letter to secure the
2 case files. See Evidentiary Transcript at 184-203; Hearing Exhibit D(4)(a).

3 23. One such communication was sent by her to Boles at his California Office
4 Address on or about November 30, 2011. Encinas provided evidence that she identified
5 this address from publicly available information on the Internet. See Evidentiary
6 Transcript at 194-195; Hearing Exhibit F. Boles testified that *at the time* this was not his
7 SCR 79 office address, although he knew the location because it was the residence of
8 one of his brothers. See Evidentiary Transcript at 238.

9 24. Encinas complained about Boles to the State Bar. On August 23, 2012, the
10 State Bar of Nevada opened a grievance file and sent to Boles' Nevada Office Address a
11 copy of the grievance for his response. Boles did not reply and the State Bar sent
12 follow-up letters to the Respondent on this grievance on October 3, 2012, and December
13 3, 2012, to Boles Nevada Office Address and California Office Address, respectively.
14 See Hearing Exhibit D(4)(b).

15 25. Boles finally responded on January 1, 2013, in a letter that did not reply to
16 the grievance, but rather asked the State Bar what it had done to resolve Encinas'
17 complaint and why there had been a delay in getting information to him. See Hearing
18 Exhibit D(4)(c). Boles asserted he never received a copy of Encinas' grievance prior to
19 December 28, 2012. He testified that this was the fault of Bar Counsel who had failed to
20 send copies of correspondence as instructed by both certified and regular mail because
21 Boles did not regularly retrieve registered or certified mail. *Id.* at 227-239.

22 26. Boles testified that in his opinion, his engagement with Encinas ended
23 after the meeting at his office following the adverse ruling of the state district court in
24 August 2010. His memory of the meeting with Encinas was that he told her that she
25 could appeal to the Nevada Supreme Court, it would be costly and that she would not
26 prevail. See Evidentiary Transcript at 225-239 & 378. Boles admitted that he never
27 confirmed this advice or documented that no appeal would be taken in a writing to
28 Encinas. *Id.* at 229. Mallory, a former employee of the AFSCME, testified that the union

1 was representing Encinas in an ancillary capacity, he knew the general outcome of
2 Encinas' cases, that the AFSCME maintained some type of files on Encinas' cases, and
3 that the union knew Encinas had received a copy of the adverse state district court
4 decision . *Id.* at 296-312

5 *The Judge Navarro Referral*

6 27. On March 30, 2012, the United States District Court entered an order
7 imposing upon Boles sanctions under FRCP 11 for making false or misleading
8 statements and claims and related unreasonable conduct in the case of *Evans v Inmate*
9 *Calling Solutions*. See Hearing Exhibit D(3)(a) (*Evans v Inmate Calling Solutions,*
10 *Howard Skolnik, et al.*, Case No. 3:08-cv-00353-GMN-VPC, Order 2-4 (D. Nev. filed Mar.
11 30, 2012)(Document No. 237)(the "Sanction Order").

12 28. Pursuant to the Sanction Order, Boles was referred to the State Bar for
13 disciplinary investigation. See *id.* at 4.

14 29. On March 6, 2013, the United States District Court entered an order
15 denying a June 1, 2012, motion by Boles requesting relief from the Sanction Order.
16 Hearing Exhibit 1 (*Evans v Inmate Calling Solutions, Howard Skolnik, et al.*, Case No.
17 3:08-cv-00353-GMN-VPC, Order 1-3 (D. Nev. filed Mar. 6, 2013)(Document No. 262)(the
18 "Reconsideration Denial Order"); see also Hearing Exhibit D(3)(b).

19 30. Deputy Attorney General Miller testified as to the procedural history and
20 status of the *Evans* case, including the fact that the defense had sought and obtained a
21 second sanctions order against Boles. See Evidentiary Transcript at 113-161.

22 31. Boles introduced several documents, crossexamined Miller and testified
23 himself as to the need for the Panel to perform a *de novo* review of the Sanction Order to
24 determine whether (i) the United States District Court had denied Boles due process of
25 law; and (ii) the underlying factual conclusions of the United State District Court about
26 Boles misconduct were accurate. See Evidentiary Transcript at 127-184; Hearing Exhibit
27 1-8 & 14-20.

28 //

1 CONCLUSIONS OF LAW

2 Based on the foregoing Findings of Fact, the Panel hereby issues the following
3 Conclusions of Law:

4 (a) The Panel was designated by the Northern Nevada Disciplinary Board
5 Chair to adjudicate this case and has jurisdiction over the Respondent and the subject
6 matter of these proceedings. *See* NEV. SUP. CT. R. 99.

7 (b) Venue and jurisdiction in this matter are properly with the Northern
8 Nevada Disciplinary Board and in the county of Washoe, state of Nevada. NEV. SUP.
9 CT. R. 105.

10 (c) Boles received notice and a copy of the Complaint, notice of his right to
11 respond, as well as notice of the evidence and witnesses upon which the State Bar
12 intended to rely at a formal hearing. Notice of the formal hearing was served on
13 Respondent. Accordingly, the State Bar complied with the procedural requirements of
14 SCR 105. *See* Hearing Exhibit C, at 1-27; Evidentiary Transcript at 4-34.

15 (d) Count II of the Complaint is dismissed with prejudice.

16 (e) Submitted to the Panel for decision are claims by the State Bar in each of
17 Count I, III and IV that Boles violated each of Rules 1.3 and 1.4 of the Nevada Rules of
18 Professional Conduct ("RPC"). The State Bar submitted a claim that as to each of Count
19 I and III, Boles violated RPC 8.4. *See* NEV. R. PROF. CONDUCT 1.3, 1.4 & 8.4. The State
20 Bar has also submitted a claim in Count I as to Thompson, that Boles violated RPC 1.5.
21 *See* NEV. R. PROF. CONDUCT 1.5. As to the Encinas matter in Count IV, the State Bar
22 asserts claims that Boles violated RPC 8.1 and SCR 79. *See* NEV. R. PROF. CONDUCT 8.1;
23 NEV. SUP. CT. R. 79. The State Bar alleges the Respondent also violated RPC 3.3, 3.4 and
24 8.1 in connection with the claims in Count III of the Complaint relative to the Sanction
25 Order of the United States District Court for the District of Nevada in the *Evans* case.
26 *See* Hearing Exhibit C ¶ 39, at 7, lines 20-23 (State Bar of Nevada v. James Andre Boles,
27 Case Nos. NG11-1513, NG11-1298, NG12-1241 & NG12-0645, *Complaint* at 7 (filed Jan.
28 14, 2013)).

1 (f) The State Bar must prove by clear and convincing evidence that Boles
2 violated RPC 1.3, 1.4, 1.5, 3.3, 3.4, 8.1 and 8.4, as well as SCR 79. See NEV. SUP. CT. R.
3 105(2)(e); In re Stuhff, 108 Nev. at 633-634, 837 P.2d at 856; Gentile v. State Bar, 106 Nev.
4 60, 62, 787 P.2d 386, 387 (1990).

5 **Diligent Representation**

6 (g) RPC 1.3 states "[a] lawyer shall act with reasonable diligence and
7 promptness in representing a client." NEV. R. PROF. CONDUCT 1.3.

8 (h) The provisions of RPC 1.3 are identical to the American Bar Association's
9 Model Rule 1.3. The Comments to Model Rule 1.3 are instructive and provide in
10 relevant part:

11 [1] A lawyer should pursue a matter on behalf of a client despite . . .
12 personal inconvenience to the lawyer, A lawyer must also act with
13 commitment and dedication to the interests of the client and with zeal
in advocacy upon the client's behalf.

14 [2] A lawyer's work load must be controlled so that each matter can be
15 handled competently.

16 [3] Perhaps no professional shortcoming is more widely resented than
17 procrastination. A client's interests often can be adversely affected by
the passage of time or the change of conditions; in extreme instances,
18 as when a lawyer overlooks a statute of limitations, the client's legal
19 position may be destroyed. Even when the client's interests are not
20 affected in substance, however, unreasonable delay can cause a client
needless anxiety and undermine confidence in the lawyer's
21 trustworthiness.

22

23 [5] To prevent neglect of client matters in the event of a sole
24 practitioner's death or disability, the duty of diligence may require that
each sole practitioner prepare a plan, in conformity with applicable
25 rules, that designates another competent lawyer to review client files,
26 notify each client of the lawyer's death or disability, and determine
whether there is a need for immediate protective action.

27 See Model Rules of Professional Conduct, Rule 1.3 Comments [1], [2], [3] & [5] (ABA
28

1 2002 & 2010).

2 (i) A violation of the professional obligation of diligence has been found for
3 failure of the attorney to meet deadlines or undue delay in taking action to complete
4 matters. *See, e.g., Frazer v. Kentucky Bar Ass'n*, 860 S.W.2d 775 (Ky. 1993); Committee
5 on Professional Eth. & Conduct v. Freed, 341 N.W.2d 757 (Iowa 1983); In re Putsey, 675
6 N.E.2d 703 (Ind. 1997). Diligent representation includes the duty to prepare for trial or
7 hearing. *See, e.g., In re Johnson*, 32 P.3d 1132 (Kan. 2001).

8 (j) Prejudice or injury to the client is not necessary to establish a basis for
9 professional discipline under Rule 1.3. As articulated in Comment [3], although there is
10 not adverse substantive impact, "delay can cause a client needless anxiety and
11 undermine confidence in the lawyer's trustworthiness" which is a proper ground for
12 discipline. *See, e.g., In re Roche*, 678 N.E.2d 797 (Ind. 1997).

13 (k) An attorney's excessive workload, or evidence of addictions, disease or
14 other medical conditions, do not excuse the professional from the duty of diligent
15 representation through proper management of his or her practice. *See, e.g., In re*
16 Wolfram, 847 P.2d 94 (Ariz. 1983); In re Neal, 937 P.2d 1234 (Kan. 1997); In re Ripps, 228
17 A.D.2d 129 (N.Y. App. Div. 1997).

18 (l) The record clearly and convincingly establishes Boles did not diligently
19 represent Thompson. The evidence shows that Boles took personal medical leave
20 beginning January 28, 2011. Boles did not communicate with Thompson thereafter until
21 August 15, 2011, at which time Boles notified Thompson that he was withdrawing as
22 counsel less than a month before the State District Court hearing on the petition for
23 judicial review. Boles withdrawal was unsigned, and did not inform Thompson of the
24 imminent and ultimately dispositive hearing. There is no corroborating evidence
25 supporting Boles' assertion that an AFSCME attorney was assuming Thompson's
26 representation in the case. Mallory had no knowledge on this question, and Boles
27 explanation is belied by Thompson's testimony and the absence of a simple substitution
28 of counsel had that been the situation. Because of Boles' manifest neglect and lack of

1 diligence, Thompson did not know of his hearing and neither he nor a new counsel
2 were present to represent Thompson's interests.

3 (m) The record evidence likewise shows by clear and convincing evidence that
4 Boles did not diligently represent Encinas. Boles and Encinas corroborated one another
5 as to a critical meeting. At that meeting, which followed the adverse judicial review
6 decision of the State District Court, Boles and Encinas discussed that the only recourse
7 was an appeal to the Nevada Supreme Court. Based on the testimony and demeanor of
8 the witnesses, this was a difficult meeting and it ended abruptly because Boles handled
9 the exchange and client poorly by walking out on the client. Boles thought he had
10 washed his hands of the client. Encinas believed he should be pursuing an appeal. The
11 evidence clearly and convincingly showed that Boles left the issue of whether or not to
12 take an appeal unresolved and took no steps to confirm with the client after that
13 meeting that he was or was not undertaking the appeal. The appeal is now time barred.
14 This all occurred long before Boles' assertion of a medical condition as grounds for
15 failure to follow the dictates of RPC 1.3.

16 (n) We conclude that the record clearly and convincingly establishes Boles did
17 not act diligently in the *Evans* case. The Panel declines the invitation to conduct a *de*
18 *novo* review of the orders of the United States District Court. The Panel is not an
19 appellate court. The Sanction Order, which was sustained on review in the
20 Reconsideration Denial Order, identifies misconduct by Boles in which his lack of
21 diligence was a substantial factor. Boles sought and obtained reconsideration of the
22 Sanction Order, and after the Federal District Court examined Boles' assignments of
23 error, the Court resoundingly reaffirmed its decision.

24 (o) We need not find any other prejudice or injury to Thompson, Encinas or
25 Evans, and the excuses advanced by Boles do not legitimate the violations of RPC 1.3,
26 which the State Bar has shown by the required proof. The Panel observes, however,
27 that Boles' lack of diligence unquestionably prejudiced Thompson and Encinas by
28 depriving them of their right to seek and have the full and complete procedural

1 protections of judicial review and appellate review, respectively.

2 **Client Communication and Consultation**

3 (p) RPC 1.4 provides in relevant part:

4 (a) A lawyer shall:

5 (1) Promptly inform the client of any decision or circumstance
6 with respect to which the client's informed consent is required by these
7 Rules;

8 (2) Reasonably consult with the client about the means by
9 which the client's objectives are to be accomplished;

10 (3) Keep the client reasonably informed about the status of the
11 matter;

12 (4) Promptly comply with reasonable requests for information;
13 and

14 (5) Consult with the client about any relevant limitation on the
15 lawyer's conduct when the lawyer knows that the client expects
16 assistance not permitted by the Rules of Professional Conduct or other
17 law.

18 (b) A lawyer shall explain a matter to the extent reasonably
19 necessary to permit the client to make informed decisions regarding
20 the representation.

21 NEV. R. PROF. CONDUCT 1.4.

22 (q) RPC 1.4(a) and 1.4(b) are identical to the ABA's comparable Model Rule.

23 The Comments to subsections (a) and (b) of Model Rule 1.4 indicate:

24 [1] Reasonable communication between the lawyer and the client is
25 necessary for the client effectively to participate in the representation.
26

27 [2] If these Rules require that a particular decision about the
28 representation be made by the client, paragraph (a)(1) requires that the
lawyer promptly consult with and secure the client's consent prior to
taking action unless prior discussions with the client have resolved
what action the client wants the lawyer to take.
. . . .

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the
client about the means to be used to accomplish the client's objectives.
. . . .

[4] A lawyer's regular communication with clients will minimize the
occasions on which a client will need to request information

1 concerning the representation. When a client makes a reasonable
2 request for information, however, paragraph (a)(4) requires prompt
3 compliance with the request, or if a prompt response is not feasible,
4 that the lawyer, or a member of the lawyer's staff, acknowledge receipt
5 of the request and advise the client when a response may be expected.
6 Client telephone calls should be promptly returned or acknowledged.

7
8 See Model Rules of Professional Conduct, Rule 1.4 Comments [1], [2], [3] & [4] (ABA
9 2002 & 2010).

10 (r) An attorney has an *affirmative duty* to keep clients informed of the status of
11 their affairs. This duty is *personal* and a wholesale or unreasonable delegation and
12 reliance on intermediaries to discharge this *duty* violates Rule 1.4. The attorney who
13 delegates to others client communication duties remains personally responsible for
14 compliance with Rule 1.4 and must ensure that the intermediaries do not engage in the
15 unauthorized practice of law. See, e.g., In re Galbasini, 786 P.2d 971 (Ariz. 1990); Mays
v. Neal, 938 S.W.2d 830 (Ark. 1997); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); In re
Dreier, 671 A.d 455 (D.C. 1996); In re Farmer, 950 P.2d 713 (Kan. 1997).

16 (s) A lawyer's failure to promptly respond to a client's request for
17 information violates Rule 1.4. See People v. Damkar, 908 P.2d 1113 (Colo. 1996).

18 (t) The plain language of RPC 1.4 makes clear that an attorney must
19 "[r]easonably consult with the client about the means by which the client's objectives
20 are to be accomplished" and "explain a matter to the extent reasonably necessary to
21 permit the client to make informed decisions regarding the representation." These
22 duties of communication extend to informing clients that the lawyer is unable to carry a
23 matter forward promptly, see, e.g., Putsey, 675 N.E.2d at 703, and advising clients of
24 changes in the lawyer's status or limitations on his or her ability to discharge the
25 engagement. Cf. In re Cohen, 612 S.E.2d 294 (Ga. 2005)(attorney disciplined for failure
26 to notify clients of inactive status and retirement); Maryland Att'y Grievance Comm'n
v. Baker, 912 A.2d 651 (Md. 2006)(lawyer disbarred for failure to notify clients of
27 practice closing); LOUISIANA ETH. OP. NO. 05-RPCC-001 (2005)(lawyer must exercise
28

1 reasonable diligence to provide proper advance notice of closing of practice).

2 (u) The record clearly and convincingly demonstrates that Boles failed to
3 discharge his affirmative duty to communicate with Thompson and Encinas. The
4 Respondent's delegation of the communication duty, even if permissible, was not
5 accompanied by sufficient oversight and direction to discharge Boles' obligations to the
6 clients under RPC 1.4. Thompson and Encinas testified without credible contradiction
7 that their repeated efforts to obtain information about the progress of and requirements
8 for their cases, or to obtain their files for substitute counsel, went unanswered.

9 (v) The evidence of record reliably and undeniably shows that Boles' failure
10 to communicate with Thompson and Encinas deprived them of their right to effectively
11 direct and participate in their representations, to make informed decisions about their
12 legal matters and to consult on the means by which their objectives were to be
13 accomplished. Boles did not present any evidence to directly refute the specific
14 communication lapses cited by Thompson and Encinas. Instead, the Respondent
15 offered general evidence of the means by which these individuals and others could
16 communicate with Boles or his office staff, through his own testimony and that of Joe
17 Boles, Mallory, and Salcido. This testimony did not controvert the evidence given by
18 Thompson or Encinas, failed to address the particular subject matters of their
19 communications and in some instances related to irrelevant time periods.

20 (w) After taking medical leave, the Respondent made no affirmative effort to
21 inform Thompson that he would be indefinitely suspending his law practice and was
22 unable to carry his matter forward promptly. Instead, Boles waited until less than a
23 month prior to a critical and dispositive hearing affecting Thompson's substantial rights
24 before withdrawing. Boles had been able enough to have his staff secure enlargements
25 of time in this case; that same level of effort in communicating the status of the case was
26 undeniable due Thompson. If the Respondent did not immediately withdraw from
27 Thompson's representation for health reasons, Thompson was entitled to have Boles
28 inform him of the material limitations on his ability to represent him and to consult on

1 how that would impact the engagement. Thompson had the right to know the
2 advantages and disadvantages of remaining as Boles' client under the limitations
3 imposed (by Boles himself or by a physician) and what this would mean to the case.
4 Boles neither discharged that obligation directly or indirectly and this violated his duty
5 to Thompson under RPC 1.4.

6 (x) Boles cannot be excused from noncompliance with RPC 1.4 as to
7 Thompson because he was on a leave of absence for health reasons. If the Respondent
8 could not for health reasons personally discharge his client communication obligation,
9 there were other simple and reasonable options available. A telephone conversation
10 with the State Bar. A detailed letter to the clients. Engaging and associating another
11 attorney to perform the obligation for Boles. It was not an option to ignore the duty
12 because it was unpleasant, might cost money or could result in the loss of clients and
13 fees. The Respondent knowingly undertook a course of action, albeit apparently to
14 improve his health, that resulted in serious noncompliance with RPC 1.4. Boles alone
15 must shoulder the responsibility for his actions.

16 (y) Boles did not discharge his RPC 1.4 obligation to Encinas. The record
17 before the Panel establishes Boles failed to make certain that Encinas was knowingly
18 abandoning her only legal recourse of appellate review of the adverse ruling on judicial
19 review. Encinas credibly testified that Boles left this issue unresolved by abruptly
20 concluding a meeting without a final and definitive decision. Boles did not present
21 believable testimony or evidence to support his assertion that she intended to abandon
22 the appeal. The Panel found Boles less than credible in his very limited explanation of
23 this situation and the utter lack of documentation on the important subject of a client's
24 knowing decision not to pursue an appeal. Boles' medical leave beginning in January
25 2011 was not a factor whatsoever in this RPC 1.4 violation in August 2010 as to Encinas.
26 See Evidentiary Transcript at 229.

27 (z) We conclude that the State Bar did not establish by clear and convincing
28 evidence that Boles violated RPC 1.4 in the *Evans* case. Boles admits the allegations of

1 Paragraph 37 of the State Bar's Complaint. See Hearing Exhibit C ¶ 37, at 17. That
2 allegation states that Boles defended the Sanction Order in part on the grounds that
3 because his client Evans was an experienced attorney, Boles relied on Evans, the client,
4 to keep Boles, the attorney, apprised about the status of the matter. The State Bar's
5 theory of liability is unclear, but apparently is based on Boles admission being on its
6 face a violation of his obligation under RPC 1.4(a)(3). The record is otherwise devoid of
7 any facts concerning the nature, scope, frequency or adequacy of communications
8 between Boles and Evans.

9 **Reasonableness of Fees**

10 (aa) The pertinent provisions of RPC 1.5 state:

11 (a) A lawyer shall not make an agreement for, charge, or collect an
12 unreasonable fee or an unreasonable amount for expenses. The factors
13 to be considered in determining the reasonableness of a fee include the
14 following:

15 (1) The time and labor required, the novelty and difficulty of
16 the questions involved, and the skill requisite to perform the legal
17 service properly;

18 (2) The likelihood, if apparent to the client, that the acceptance
19 of the particular employment will preclude other employment by the
20 lawyer;

21 (3) The fee customarily charged in the locality for similar legal
22 services;

23 (4) The amount involved and the results obtained;

24 (5) The time limitations imposed by the client or by the
25 circumstances;

26 (6) The nature and length of the professional relationship with
27 the client;

28 (7) The experience, reputation, and ability of the lawyer or
lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

NEV. R. PROF. CONDUCT 1.5.

(bb) The State Bar asserts that Boles violated RPC 1.5 in connection with his
representation of Thompson. The evidence indicates that the Respondent undertook

1 Thompson's representation for a fee retainer of \$2,000.00 and costs advance of \$500,00,
2 with a contingency arrangement as to any recovery in the federal court civil rights case.
3 The record also shows that Thompson reasonably believed Boles was hired to file and
4 represent Thompson in the judicial review petition. Thompson's testimony on this
5 point was adamant, while Boles' explanation of the scope of the engagement was more
6 ambiguous. If Thompson's view were not the case, Boles would not have asserted as a
7 defense that the withdrawal letter terminated all representation of Thompson or that he
8 (Boles) had not earlier withdrawn because he was uncertain whether his medical
9 condition would prevent him from handling the matter. This was another example of
10 testimony by Boles that was situational and caused the Panel to conclude Boles was
11 unbelievable on several points.

12 (cc) Both the State Bar and Boles agree that a provision in an engagement letter
13 such as the Retainer Agreement, unequivocally stating that a retainer is nonrefundable
14 does not give an attorney a contractual right to keep an unreasonable fee. The State Bar
15 seems to suggest that the very existence of the provision in the agreement itself makes
16 the fee unreasonable. RPC 1.5, however, sets forth criteria to be evaluated in
17 determining the reasonableness of a fee. Looking to those criteria, and given the total
18 lack of any contrary evidence from the State Bar, the Panel concludes that the \$2,500.00
19 retainer was not unreasonable for preparing and filing the federal civil rights complaint
20 and the petition for judicial review. Thompson undoubtedly did not understand or
21 appreciate the Retainer Agreement. That is further evidence of Boles' failure in client
22 communication. But that does not render the fee unreasonable and this is especially so
23 where the State Bar failed to supply clear and convincing evidence otherwise that Boles
24 violated the standards under RPC 1.5 for determining the reasonableness of the fee.

25 **Candor to Tribunal**

26 (dd) The relevant language of RPC 3.3 states "[a] lawyer shall not knowingly
27 . . . [m]ake a false statement of fact or law to a tribunal or fail to correct a false statement
28

1 of material fact or law previously made to the tribunal by the lawyer . . .” NEV. R. PROF.
2 CONDUCT 3.3.

3 (ee) The Sanction Order finds as fact that Boles made on at least five instances
4 false or misleading statements and claims. The United States District Court denied
5 Boles’ request for relief from the Sanction Order. The Panel concludes that given the
6 Court’s findings of repeated instance of falsity or misrepresentation in the Sanction
7 Order as sustained by the Reconsideration Denial Order, the State Bar established a
8 violation of RPC 3.3 by clear and convincing evidence. The Panel recognizes the FRCP
9 11 decision of the Federal District Court need not be supported by clear and convincing
10 evidence. The Panel concludes, however, that the State Bar met its burden of proof
11 based on the compound nature of the infractions identified and the fact the Court
12 reexamined the sanctions after affording Boles an opportunity to establish error. The
13 documents and testimony presented by Boles to impeach the Sanction Order did not
14 establish otherwise.

15 **Fairness to Opponents**

16 (ff) RPC 3.4 provides:

17 A lawyer shall not:

18 (a) Unlawfully obstruct another party’s access to evidence or
19 unlawfully alter, destroy or conceal a document or other material
20 having potential evidentiary value. A lawyer shall not counsel or assist
21 another person to do any such act;

21 (b) Falsify evidence, counsel or assist a witness to testify falsely,
22 or offer an inducement to a witness that is prohibited by law;

22 (c) Knowingly disobey an obligation under the rules of a
23 tribunal except for an open refusal based on an assertion that no valid
24 obligation exists;

24 (d) In pretrial procedure, make a frivolous discovery request or
25 fail to make reasonably diligent effort to comply with a legally proper
26 discovery request by an opposing party;

26 (e) In trial, allude to any matter that the lawyer does not
27 reasonably believe is relevant or that will not be supported by
28 admissible evidence, assert personal knowledge of facts in issue except

1 when testifying as a witness, or state a personal opinion as to the
2 justness of a cause, the credibility of a witness, the culpability of a civil
litigant or the guilt or innocence of an accused; or

3 (f) Request a person other than a client to refrain from
4 voluntarily giving relevant information to another party unless:

5 (1) The person is a relative or an employee or other agent of
a client; and

6 (2) The lawyer reasonably believes that the person's
7 interests will not be adversely affected by refraining from giving such
information.

8 NEV. R. PROF. CONDUCT 3.4.

9 (gg) The only evidence of Boles' violating RPC 3.4 submitted by the State Bar
10 was the Sanction Order. The Sanction Order does not find that Boles obstructed access
11 to or falsified evidence, knowingly disobeyed obligations under the court rules,
12 engaged in discovery abuses or prevail on a non-client to withhold relevant
13 information. The State Bar has not presented clear and convincing proof that Boles
14 violated the standards under RPC 3.4.

15 **Attorney Conduct in Disciplinary Matters**

16 (hh) The State Bar alleges Boles violated RPC 8.1 which states "a lawyer in
17 connection with a . . . a disciplinary matter, shall not . . . [k]nowingly make a false
18 statement of material fact; or . . . knowingly fail to respond to a lawful demand for
19 information from . . . [a] disciplinary authority." NEV. R. PROF. CONDUCT 8.1.

20 (ii) The record does not contain evidence from which the Panel can conclude
21 Boles knowingly made a false statement of material fact to the State Bar. The State Bar
22 did present evidence that Boles failed to respond to the State Bar's inquiries on the
23 Encinas grievance. This evidence did not show clearly and convincingly that Boles
24 failure to reply to the State Bar was a product of "knowing" obstruction, but rather
25 resulted from the Respondent's lack of SCR 79 compliance, his extended absence from
26 his Nevada Office Address, and Boles' serious neglect of his practice management
27 obligations.
28

1 (jj) The State Bar did, without meaningful contradiction, prove that Boles
2 violated SCR 79 which requires "[e]very member of the state bar . . . provide to the state
3 bar, *for the purposes of state bar communications*, . . . a permanent mailing address; a
4 permanent telephone number; and a current e-mail address." NEV. SUP. CT. R. 79. Boles
5 did not timely follow the procedures to make changes to his Rule 79 information so that
6 the State Bar, the courts, and his clients could have real, timely and meaningful
7 communication with the Respondent.

8 (kk) The State Bar did present evidence indicating Boles may have engaged in
9 a course of conduct reasonably calculated to avoid the receipt of certified or registered
10 mail so that proof of service could not be proven while insisting the State Bar
11 communicate by regular mail over which he could contest receipt. Boles made
12 considerable effort in the hearing to establish that he had arranged some different form
13 of communication with the State Bar than provided by the rules. The State Bar did not
14 present sufficient proof to the Panel as to a lack of such an accommodation or that
15 proved dispositively that the Respondent was attempting to obstruct the disciplinary
16 process or proffer false information to the State Bar.

17 **Professional Misconduct**

18 (ll) The State Bar asserts that Boles also violated RPC 8.4(a), RPC 8.4(c), and
19 RPC 8.4(d). The relevant language of these rules provides that [i]t is professional
20 misconduct for a lawyer to . . . [v]iolate or attempt to violate the Rules of Professional
21 Conduct . . . [,] . . . [e]ngage in conduct involving . . . misrepresentation; [or] . . . that is
22 prejudicial to the administration of justice . . ." NEV. R. PROF. CONDUCT 8.4(a), (c) & (d).

23 (mm) The State Bar avers that as to each of Count I and Count III of the
24 Complaint, that Respondent violated RPC 8.4(a). These are in the nature of derivative
25 violations of the Rules of Professional Conduct. Accordingly, the lack of diligence
26 under RPC 1.3 with respect to Thompson is alleged by the State Bar to be also violate
27 RPC 8.4(a) and is prejudicial to the administration of justice under RPC 8.4(d) because
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1 Thompson was denied his day in court on the judicial review petition. Likewise, the
2 State Bar asserts that based on the Sanction Order, Boles' conduct found to lack candor
3 under RPC 3.3 violated RPC 8.4(a), involved misrepresentation of facts to the Court and
4 was, therefore, prejudicial to the administration of justice in violation of under RPC
5 8.4(c) and RPC 8.4(d), respectively.

6 (nn) In light of our conclusions as to Count I and Count III, we find the State
7 Bar has additionally established by clear and convincing evidence the violation of RPC
8 8.4(a) and 8.4(d) on Count I and violations of RPC 8.4(a), RPC 8.4(c), and RPC 8.4(d) on
9 Count III. The fact that Rule 11 sanctions were imposed on Boles in the *Evans* litigation,
10 does not necessarily prove by the required standard of proof conduct prejudicial to the
11 administration of justice. The State Bar, however, has provided clear and convincing
12 proof that Boles violated RPC 8.4(d) as to Count III based on his repeated submissions
13 to the Court of false statements and claims.

14 DECISION AND ORDER

15 In assessing the form of discipline to recommend, the Panel has accounted for a
16 number of aggregating and mitigating factors which must be considered. The Panel
17 finds that the State Bar has shown by clear and convincing evidence of six aggravating
18 circumstances consistent with the provisions of SCR 102.5(1).

19 First, the Respondent violated RPC 1.3 and 1.4 for a selfish motive. SCR
20 102.5(1)(b). Boles chose a course of action for his own personal reasons and benefit.
21 That conduct resulted in violations of RPC 1.3 and 1.4. The Respondent also decided
22 not to prevent or ameliorate the adverse impact of these violations because it was
23 unpleasant, might cost money or could result in the loss of clients and fees. *See, e.g.*, ¶¶
24 (l), (m) & (u)-(y), *supra*; Hearing Transcript at 408.

25 Second, Mr. Boles committed multiple violations of RPC 1.3 and 1.4, and
26 undertook a pattern of conduct that must be addressed. SCR 102.5(1)(c) & (d). *See, e.g.*,
27 ¶¶ (l), (m) & (u)-(y), *supra*; Hearing Transcript at 408. The Respondent suggests that
28 these are isolated instances and that they were only related to his health-related leave of

1 absence. In rebuttal to this claim, the State Bar convincingly established through the
2 Encinas grievance that this is a pattern of violation that predated the January 28, 2011,
3 bright-line date that Boles asserts was the watershed medical leave event. *See, e.g.*, ¶¶ 4
4 & (m), *supra*.

5 Third, the record shows that the Respondent cannot or will not fully
6 acknowledge and accept responsibility that he has failed to diligently represent these
7 clients or that he is not discharging his client communication duties. SCR 102.5(1)(g).
8 Instead, he endeavors to excuse his conduct or omissions for a variety of reasons. *See*
9 *e.g.*, ¶¶ (a) - (nn), *supra*; Hearing Transcript at 408.

10 Fourth, the Panel concludes that given he has been admitted to practice for over
11 twenty years, Mr. Boles has substantial experience in the practice of the law and should
12 be capable of grasping the duties of Rules of Professional Conduct. He has not done so
13 and his conduct is injurious to the profession and the public. SCR 102.5(1)(i). *See, e.g.*, ¶
14 2 & (a) - (nn), *supra*; Hearing Transcript at 408.

15 The Panel finds a lack of prior public discipline against Boles which is a
16 mitigating circumstance. SCR 102.5(2)(a). *See supra* ¶ 2; Hearing Transcript at 408.
17 Assuming the facts most favorably to Mr. Boles, Respondent's misconduct may be
18 related to a personal medical problem. SCR 102.5(2)(c). *See supra* ¶ 4; Hearing Transcript
19 at 408. The evidence of the Respondent's medical problem is his testimony, a document
20 he prepared, and statements of Joe Boles about his observations of the Respondent's
21 condition. Other statements about Boles medical condition was given little weight by
22 the Panel because it was hearsay testimony by Joe Boles, Mallory and Salcido relating
23 what they learned from the Respondent. This is not corroborating evidence of the
24 medical condition. Moreover, even assuming his condition were accepted as true, Boles
25 did not explain (i) how the health problem of January 28, 2011, mitigates conduct
26 preceding that date; and (ii) why once he placed himself on indefinite medical leave he
27 failed to take appropriate action to lessen the adverse consequences on Thompson.
28 These mitigating factors do not excuse the well established violations by the

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Respondent of RPC 1.3, 1.4, 3.3, 8.4 and SCR 79 and do not outweigh the aggravating circumstances established.

The Panel recommends that the Respondent be ordered:

(1) Suspended from the practice of law for a period of one year.

(2) Within three (3) days of the effective date of any suspension order, to demonstrate to Bar Counsel that he has served by certified mail receipt requested written notice of his suspension to each of his clients.

(3) Within fifteen (15) days of the effective date of any suspension order, demonstrate to Bar Counsel that he has placed all his Nevada clients with other counsel, otherwise concluded the representation, or with the assistance of Bar Counsel thereafter attempted to expeditiously aid any remaining client in finding new counsel.

(4) To pay the costs associated with these proceedings pursuant to SCR 120.

DATED and ENTERED this 5th day of July, 2013.

Dan R. Reaser
DAN R. REASER, ESQ., Chair
Northern Nevada Disciplinary Board Panel

Rule 1.3. Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.
[Added; effective May 1, 2006.]

MODEL RULE COMPARISON—2006

Rule 1.3 (formerly Supreme Court Rule 153) is the same as ABA Model Rule 1.3.

Rule 1.4. Communication.

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) Keep the client reasonably informed about the status of the matter;
- (4) Promptly comply with reasonable requests for information; and
- (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) **Lawyer's Biographical Data Form.** Each lawyer or law firm shall have available in written form to be provided upon request of the State Bar or a client or prospective client a factual statement detailing the background, training and experience of each lawyer or law firm.

(1) The form shall be known as the "Lawyer's Biographical Data Form" and shall contain the following fields of information:

- (i) Full name and business address of the lawyer.
- (ii) Date and jurisdiction of initial admission to practice.
- (iii) Date and jurisdiction of each subsequent admission to practice.
- (iv) Name of law school and year of graduation.
- (v) The areas of specialization in which the lawyer is entitled to hold himself or herself out as a specialist under the provisions of Rule 7.4.

(vi) Any and all disciplinary sanctions imposed by any jurisdiction and/or court, whether or not the lawyer is licensed to practice law in that jurisdiction and/or court. For purposes of this Rule, disciplinary sanctions include all private reprimands imposed after March 1, 2007, and any and all public discipline imposed, regardless of the date of the imposition.

(vii) If the lawyer is engaged in the private practice of law, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.

(2) Upon request, each lawyer or law firm shall provide the following additional information detailing the background, training and experience of each lawyer or law firm, including but not limited to:

- (i) Names and dates of any legal articles or treatises published by the lawyer, and the name of the publication in which they were published.

(ii) A good faith estimate of the number of jury trials tried to a verdict by the lawyer to the present date, identifying the court or courts.

(iii) A good faith estimate of the number of court (bench) trials tried to a judgment by the lawyer to the present date, identifying the court or courts.

(iv) A good faith estimate of the number of administrative hearings tried to a conclusion by the lawyer, identifying the administrative agency or agencies.

(v) A good faith estimate of the number of appellate cases argued to a court of appeals or a supreme court, in which the lawyer was responsible for writing the brief or orally arguing the case, identifying the court or courts.

(vi) The professional activities of the lawyer consisting of teaching or lecturing.

(vii) The names of any volunteer or charitable organizations to which the lawyer belongs, which the lawyer desires to publish.

(viii) A description of bar activities such as elective or assigned committee positions in a recognized bar organization.

(3) A lawyer or law firm that advertises or promotes services by written communication not involving solicitation as prohibited by Rule 7.3 shall enclose with each such written communication the information described in paragraph (c) (1)(i) through (v) of this Rule.

(4) A copy of all information provided pursuant to this Rule shall be retained by the lawyer or law firm for a period of 3 years after last regular use of the information.

[Added; effective May 1, 2006; as amended; effective November 21, 2008.]

MODEL RULE COMPARISON—2007

Rule 1.4 (formerly Supreme Court Rule 154) is the same as ABA Model Rule 1.4, except that the 2007 amendments include language in paragraph (c) that was previously part of repealed Rule 7.2A(a) through (d) and (f) (formerly Supreme Court Rule 196.5) which is Nevada-specific language and has no counterpart in the Model Rules.

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

[Added; effective May 1, 2006.]

MODEL RULE COMPARISON—2006

Rule 3.3 (formerly Supreme Court Rule 172) is the same as ABA Model Rule 3.3.

- Rule 8.4. Misconduct.** It is professional misconduct for a lawyer to:
- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (d) Engage in conduct that is prejudicial to the administration of justice;
 - (e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
 - (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[Added; effective May 1, 2006.]

MODEL RULE COMPARISON—2006

Rule 8.4 (formerly Supreme Court Rule 203) is the same as ABA Model Rule 8.4.

C. STATE BAR OF NEVADA

Rule 79. Disclosures by members of the bar.

1. Every member of the state bar, including active, nonresident active and inactive members, shall provide to the state bar, for the purposes of state bar communications, the following:

- (a) A permanent mailing address;
- (b) A permanent telephone number; and
- (c) A current e-mail address.

2. Every member of the state bar shall disclose to the state bar the following information:

- (a) Whether the lawyer is engaged in the private practice of law;
- (b) Whether the lawyer is engaged as a full-time government lawyer or judge, or is employed by an organizational client and does not represent clients outside that capacity, or is not currently representing clients; and
- (c) If engaged in the private practice of law, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.

3. Every member of the state bar shall inform the state bar of any change in any of the information disclosed under this rule within 30 days after any such change. The member shall report a change of address, telephone number or e-mail address online.

4. Every member of the state bar shall certify annually on a form provided by the state bar the information required under this rule.

5. The information submitted under this rule shall be nonconfidential, but upon request of a member, the state bar will not publicly disclose a member's e-mail address.

6. Any member who fails to provide the state bar with the information required by this rule shall be subject to a fine of \$150 and/or suspension upon order of the board of governors and/or the supreme court from membership in the state bar until compliance with the requirements of this rule and/or until reinstatement is ordered by the supreme court. A member may apply for a one-year hardship exemption from the e-mail provision on a form provided by the state bar. Supplying false information in response to the requirements of this rule shall subject the lawyer to appropriate disciplinary action.

7. The state bar shall provide the board of continuing legal education with an annual membership roster within 60 days of the due date for annual membership fees and registration forms.

[As amended; effective October 21, 2011.]

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-J-3438

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

AMENDED NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
 - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').
- By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
 Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
- By Electronic Service: (CCP § 1010.6) to:**
 Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
- (for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
 Article No.: 9414726699042010086871 at Los Angeles, addressed to: (see below)
- (for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
 Tracking No.: _____ addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy via US Mail to:
JAMES BOLES	James A. Boles Law Ofc James Andre Boles 10627 Almond Ave Oak View, CA 93022		
		CC via electronic address:	

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

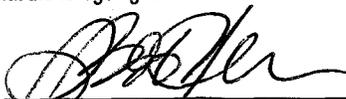
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: January 14, 2015

SIGNED: _____


 Arta Botosan Nercessian
 Declarant