

# STATE BAR OF NEVADA

March 25, 2015

## LETTER OF REPRIMAND

David Olsen, Esq.  
PO Box 61006  
Boulder City, NV 89006



Re: Grievance File No. SG14-0254/ Thomas Finn

Dear Mr. Olsen:

A Screening Panel of the Southern Nevada Disciplinary Board (Panel) recently convened to consider the above-referenced grievance against you. The Panel concluded that you violated the Rules of Professional Conduct (RPC) warranting a Letter of Reprimand. The relevant facts follow.

At all relevant times to this case, you have been the City Attorney for Boulder City, Nevada. Thomas Finn (Finn) was formerly the Police Chief for Boulder City. Mr. Finn's grievance followed his termination from Boulder City.

Mr. Finn was appointed Chief of the Boulder City Police Department on March 22, 2006, and later terminated from that position on April 15, 2013. Mr. Finn has an ongoing civil suit, in which you are one of several defendants, citing wrongful termination.

The grievance file contains allegations lodged by Mr. Finn against you stemming from two distinct matters, one of which is dismissed and one of which is the basis for this reprimand. Each is addressed separately below.

### 1. YOUR DUTY TO FINN AS COUNSEL FOR THE CITY.

This concern has two subparts summarized as follows:

You failed to provide Finn with certain advice which later became germane to a subsequent criminal investigation against Finn by the Nevada Attorney General.

The gravamen of this complaint is your alleged advice to Mr. Finn regarding destruction of police department emails. Mr. Finn states he asked you if it would be proper for his office to order the police department to delete any and all emails pertaining to a motorcycle rally incident and that you allegedly advised him the *Donrey* exception applied. See *Donrey v Bradshaw* 106 Nev. 630 (1990) (exception for law enforcement to protect confidential sources or investigative techniques). Finn states he relied on this advice to his detriment.

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In November 2012 the Boulder City Council convened and voted to refer Mr. Finn to an independent investigator to determine whether Finn's direction to destroy emails related to the rally was in violation of NRS 239.310 and/or NRS 239.320 and this matter was subsequently referred to the Attorney General's Office and Investigator Kotlarz (Kotlarz).

In February 2013 Kotlarz referred his findings to the Clark County District Attorney, who declined to prosecute the case. Ultimately Kotlarz was unable to prove whether Finn's statements about your specific advice was true and the State Bar's independent investigation did not find clear and convincing evidence on this point either.

Based on the foregoing, the Panel does not find clear and convincing evidence of a related violation of your duty of confidentiality under the Rules of Professional Conduct on this issue.

You improperly disclosed FMLA protected information concerning Mr. Finn during a television interview.

The State Bar reviewed the interview in question in its entirety. It was disclosed by the news station that Mr. Finn was on medical leave before you gave the interview. Further, absent some finding of fact by a court of competent jurisdiction or the NLRB of FMLA violations by you, it is not the jurisdiction of this Panel to arbitrate FMLA violations.

Based on the foregoing, the Panel does not find clear and convincing evidence of a related violation of your duty of confidentiality under the Rules of Professional Conduct regarding FMLA.

The complaint is therefore dismissed as to the allegations discussed above.

2. **YOUR ACTING AS AN EXPERT WITNESS FOR YOUR SON IN AN ACTION AGAINST YOUR CLIENT.**

Your son was arrested in a case originating from a Henderson Police Department investigation. However, Boulder City Police took him into custody because he was at your house, ostensibly at your direction.

This case was referred to the Clark County District Attorney's Office for prosecution. On April 1, 2010, Chief Deputy District Attorney Ronald Bloxham denied the charges specifically opining that "the facts do not meet the elements of NRS 200.604." After the charges were dismissed, your son retained Nevada attorney Cal Potter to file suit against the City of Henderson and Boulder City amongst others alleging civil rights violations and unlawful arrest. In the course of the litigation, you signed an affidavit as an expert witness on the validity of the underlying charges against your son and assisting in his litigation. You received no remuneration for your activities

and advice. At the time you were the Boulder City Attorney and actively working on behalf of your son in the role of expert witness in litigation against Boulder City.

On February 25, 2014, Mr. Finn filed a complaint with the Nevada Commission on Ethics in this matter. Pursuant to a Stipulated Settlement Agreement with that Commission, you agreed that you willfully (1) failed in your commitment to avoid conflicts between your personal interests and your public duties (NRS 281A.020); (2) used your position in government to secure unwarranted privileges, reference, exemptions or advantages for your son (NRS 281A.400(2)); (3) used information acquired through his position as city attorney that is not generally available to the public to further the pecuniary interest of his son (NRS 281A.400(5)); (4) used government time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer (NRS 281A.400(7)); and (5) failed to abstain from acting on a matter in which abstention is required (NRS 281A.420(3)). You also paid a \$1,500 fine.

In this matter, the Panel finds by clear and convincing evidence you have violated RPC 1.7(a)(2), which states in relevant part:

*Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:*

...

*There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*

Noting that this matter has been the subject of a fine levied by the Nevada Commission on Ethics, the panel declined to award further sanctions or fees against you; however, your agreement to act as an expert witness in connection with your son's suit against your own client, Boulder City, created an impermissible conflict of interest. You are hereby Privately Reprimanded for violation of RPC 1.7(a)(2).

Sincerely,



Candace Carlyon, Esq.  
Screening Panel Chair  
Southern Nevada Disciplinary Board

CCC/jrd/km