

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF ROBERT BRUCE  
LINDSAY, ESQ.

No. 46559

**FILED**

DEC 26 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Smith*  
DEPUTY CLERK

ORDER APPROVING RECOMMENDATION AND  
ISSUING PUBLIC REPRIMAND<sup>1</sup>

When, in the underlying formal disciplinary proceedings, a Northern Nevada Disciplinary Board hearing panel noted concerns with, and found the evidence in conflict regarding, the extent that physical illness or mental impairment contributed to Lindsay's conduct leading to and during the disciplinary proceedings, the panel included a SCR 117(2) petition as part of its order following the proceedings. We then remanded this matter to the hearing panel that filed the petition and directed it to conduct an investigation and make a recommendation to this court.

The panel reviewed a report of a psychological evaluation of Lindsay and copies of Lindsay's treating physician's medical reports, and primarily based on those documents, supplemented with Lindsay's testimony, determined that Lindsay was competent to practice law and therefore not an appropriate candidate for further disability proceedings. The panel then filed its recommendation with this court.

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<sup>1</sup>We direct the clerk of this court to amend the caption on this court's docket to conform to the caption on this order.

After reviewing the panel's recommendation, and the physical and psychological reports and testimony on which it was based, we agree with the panel's recommendation. Accordingly, we declare Lindsay competent to practice law under SCR 117(2).

Additionally, in light of the panel's recommendation, the panel conducted supplemental disciplinary proceedings, and has further recommended to this court that Lindsay be publicly reprimanded and assessed \$1,000 in costs from the underlying disciplinary proceedings, based on its conclusion that Lindsay violated SCR 173(3) (fairness to opposing party and counsel: knowingly disobeying an obligation under the rules of a tribunal) and SCR 203(4) (misconduct: engaging in conduct prejudicial to the administration of justice).<sup>2</sup> Lindsay has not contested the panel's recommendation.

Lindsay represented David Middleton in his appeal from a district court order denying his post-conviction petition for a writ of habeas corpus.<sup>3</sup> But we never reached the merits of the appeal as a result of Lindsay's repeated failure to comply with this court's orders and procedural rules. Instead, because Lindsay's appellate conduct "eroded this court's confidence in Lindsay's representation of Middleton in the

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<sup>2</sup>The rules governing professional conduct were substantially revised after the state bar instituted the underlying proceedings against Lindsay. SCR 173(3) is now Nevada Rule of Professional Conduct 3.4(c), and SCR 203(4) is now Nevada Rule of Professional Conduct 8.4(d). The former rules apply. Nevertheless, no change other than renumbering was made to the provisions relevant to this matter.

<sup>3</sup>Middleton v. Warden, 120 Nev. 664, 98 P.3d 694 (2004).

proceedings before the district court,”<sup>4</sup> we vacated the district court’s order denying Middleton’s habeas corpus petition, removed Lindsay as post-conviction counsel, remanded for original proceedings,<sup>5</sup> and we referred Lindsay to the state bar for “disability or disciplinary proceedings regarding [Lindsay’s] performance” in connection with his appellate representation of David Middleton.<sup>6</sup>

Following the disciplinary proceedings, as noted, the hearing panel concluded that Lindsay violated SCR 173(3) and 203(4) and recommended that Lindsay be publicly reprimanded and assessed a portion of the costs from the proceedings. After reviewing the record, we conclude that clear and convincing evidence supports the panel’s recommendation.<sup>7</sup> In particular, we note that, although Lindsay’s conduct, as set forth in our opinion in Middleton, was egregious,<sup>8</sup> the record indicates that Lindsay accepts responsibility for his conduct and that he generally cooperated with the hearing panel throughout the disciplinary proceedings; he dealt with the panel in a straightforward manner and with significant candor. Further, the panel’s recommendation is coupled with discipline this court has already imposed on Lindsay.<sup>9</sup>

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<sup>4</sup>Id. at 668, 98 P.3d at 697

<sup>5</sup>Id. at 669, 98 P.3d at 698.

<sup>6</sup>Id. at 668, 98 P.3d at 697.

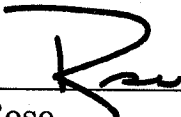
<sup>7</sup>See In re Stuhff, 108 Nev. 629, 837 P.2d 853 (1992).


<sup>8</sup>Id. at 665-68, 98 P.3d at 695-97.

<sup>9</sup>See id. at 668, 98 P.3d at 697.


Accordingly, we approve the panel's recommendation in its entirety. We issue the public reprimand attached hereto as Exhibit A. Lindsay shall pay \$1,000 in costs from the disciplinary proceedings.

It is so ORDERED.<sup>10</sup>

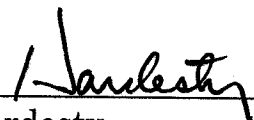
  
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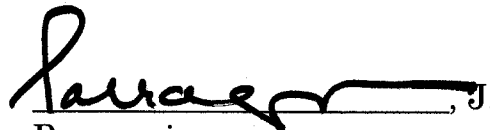
  
\_\_\_\_\_, J.  
Becker

  
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Maupin

  
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Gibbons

  
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Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Patrick V. Fagan, Chair, Northern Nevada Disciplinary Board  
Rob W. Bare, Bar Counsel  
Wayne Blevins, Executive Director  
Laub & Laub

<sup>10</sup>As regards Lindsay's and the panel's concern with the accuracy of this court's statement in Middleton that his opening brief contained "no supporting citations to the multiple appendices . . . provided," Id. at 668, 98 P.3d at 697 (emphasis in original), we note that, although Lindsay correctly pointed out to the panel that his opening brief contained numerous citations, as this court precisely stated, none of those citations referred to the multiple appendices Lindsay provided. He instead cited documents he either failed to provide this court or misidentified.

## EXHIBIT A

CASE NO. N04-23-234

STATE BAR OF NEVADA  
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA, COMPLAINANT  
VS.  
ROBERT BRUCE LINDSAY, ESQ., RESPONDENT

### PUBLIC REPRIMAND

TO: ROBERT BRUCE LINDSAY, ESQ.

You were appointed in 2000 by the Second Judicial District Court of the State of Nevada to represent at public expense David Stephen Middleton in post-conviction habeas corpus proceedings. Mr. Middleton was convicted of two counts of first-degree murder, two counts of first-degree kidnapping, one count of grand larceny, one count of fraudulent use of a credit card, and two counts of ex-felon in possession of a firearm. Mr. Middleton received two sentences of death. *See Middleton v. State*, 114 Nev. 1089, 968 P.2d 296 (1998). The District Court denied habeas corpus relief and your appointment continued in 2002 for the purpose of perfecting and prosecuting on behalf of Mr. Middleton an appeal of the collateral attack of his death sentences to the Supreme Court of Nevada.

The uncontroverted evidence establishes that you repeatedly violated numerous rules promulgated by the Supreme Court of Nevada for the efficient and just administration of cases under the Nevada Rules of Appellate Procedure. Specifically, you violated rules governing (i) timely documenting service of process, (ii) preparing and filing docketing statements, (iii) certifying as to the preparation and availability of lower court proceeding transcripts, (iv) filing and serving opening briefs, (v) the format and content of briefs, (vi) the manner of preparing appendices and (vii) in certain instances or contexts citation to the record. *See* NRAP 3(a)(1), 3(d), 9(a), 14, 25(d), 28 and 31. The record establishes by clear and convincing evidence that your violation of these rules was knowing and not inadvertent. Many of the rule violations occurred before the onset of an illness or after you returned to work and active trial practice. Likewise, the rule violations were not isolated to a limited period or to just the particular proceedings before the Nevada Supreme Court in the *Middleton* appeal.

Among your derelictions in the *Middleton* matter was lodging with the Supreme Court of Nevada an untimely and oversized opening brief which you were ordered to amend, file and serve with an appropriate appendix by a specific date consistent with the ruling in *Hernandez v. State*, 117 Nev. 463, 468, 24 P.3d 767, 770 (2001). The order of the Court included admonitions to you on the content, form and citation requirements for briefs and appendices in post-conviction capital cases. The Court's order concluded with a warning that you

would be removed from the case and referred to the State Bar of Nevada if, without good cause, the opening brief and appendix were not timely submitted.

To "technically comply" with the requirement of the Court's order that the opening brief not exceed eighty pages, you physically removed the last eight pages of the opening brief with scissors or some other cutting instrument and retyped or reformatted the last page of the brief to include the conclusion and attorney certification. This resulted in the brief "abruptly ending the discussion of one issue and completely omitting any discussion of four other issues listed in the brief's table of contents." See Middleton v. Warden, 120 Nev. Adv. Op. 74, at 4, 98 P.3d 694, 696 (2004). You did not immediately resubmit the opening brief as excised in this manner. Instead, you held the excised opening brief for a number of days and then refiled the opening brief as excised four days after the deadline set by the order of the Nevada Supreme Court. The record establishes that this incident was not "an act of protest to the Court's arbitrary ruling." You admitted this was an act of extreme anger. The facts also establish that your conduct was not a calculated effort to preserve for federal court habeas corpus review a due process claim or "an open refusal based on an assertion that no valid obligation exists" as that exception is intended in SCR 173(3).

The ultimate result of your course of behavior was the decision by the Nevada Supreme Court to vacate the District Court's decision denying the habeas corpus petition and remand the case to the District Court to appoint new counsel. To prevent the very real possibility that Mr. Middleton might be prejudiced by inadequate advocacy, the Supreme Court of Nevada concluded it was necessary to start anew the entire post-conviction proceedings thereby eliminating the efforts of many persons since 2000, with the concomitant waste of fiscal and judicial resources. The Court also entered an order that prohibits you from practicing before the Court in future cases without prior authorization.

Your conduct must be considered "intentional" unless you were unable because of physical illness or mental impairment to comply with the rules or to fully appreciate the deficiencies your own performance. While you were suffering from various physical illnesses during the course of your representation, there is no evidence of mental impairment and your actions were neither inadvertent nor accidental. You acknowledged that you should have removed yourself from the case when you were not physically able to discharge your professional obligations to the client and the Court.

You did prevent possible prejudice to other clients by withdrawing from other matters. You have been candid, forthright and cooperative in extended proceedings in this matter before the State Bar of Nevada.

Based on the forgoing, you are hereby Publicly Reprimanded for violations of then applicable Supreme Court Rule SCR 173(3) (Knowingly disobeying obligations under the rules of a tribunal) and SCR 203(4) (Misconduct: Engaging in conduct prejudicial to the administration of justice). You are also cautioned that given the restriction imposed on your right to practice before the Supreme Court of Nevada you are obligated to communicate to clients

limitations on the scope of your representation consistent with the requirements of Rules 1.2 and 1.4 of the Nevada Rules of Professional Conduct.

Dated this 11<sup>th</sup> day of August 2006.

Barry Breslow, Esq.  
Formal Hearing Panel Chair  
Northern Nevada Disciplinary Panel