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### Cohen v. Padda, 138 Nev., Adv. Op. 18 (Mar. 31, 2022)

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CONTRACT LAW: WHEN FEE-SHARING AGREEMENTS ARE ENFORCEABLE FOR  
SUSPENDED LAWYERS

**Summary**

In this appeal, the Nevada Supreme Court had to determine whether an attorney that enters into a fee-sharing agreement and is later suspended from the practice of law is still entitled to fees recovered in cases that the attorney has an expectancy interest in. The Court concluded that if the attorney completed all work on the cases before his/her suspension, and the suspension is unrelated to the attorney's conduct during the cases, the attorney can recover any fees in cases they had an expectancy interest in.

**Background**

In 2011, Ruth Cohen and Paul Padda formed a law practice. In 2014, Cohen and Padda dissolved their law practice and entered into a fee-sharing agreement. Under the fee-sharing agreement, Cohen was to receive a 33.333% share of attorney fees recovered in all contingency cases for which the former law practice had signed a retainer agreement prior to December 31, 2014. In 2016, Cohen and Padda entered into a buyout agreement under which Cohen exchanged her expectancy interest for \$50,000. However, Cohen became unhappy after signing the buyout agreement and contended that Padda engaged in a number of fraudulent acts, misrepresentations, and omissions regarding the buyout agreement.

In 2017, Cohen's law license was suspended until 2019. While still suspended, Cohen sent Padda a letter demanding payment of attorney fees in cases she had an expectancy interest in. Cohen argued that the buyout agreement was void because of Padda's fraudulent acts, misrepresentations, and omissions. This led to Cohen suing Padda for fraud, breach of fiduciary

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<sup>1</sup> By Michael Goutsaliouk.

duty, and breach of contract, among other things. Padda moved for summary judgement, arguing that her suspended license made her a “nonlawyer” and the fee-sharing was prohibited under RPC 5.4(a).<sup>2</sup> The district court granted Padda’s motion. Cohen countered by filing a motion to reconsider, which the district court denied. Padda then moved for attorney’s fees under NRCP 68, which the district court denied.<sup>3</sup>

## **Discussion**

*Cohen did not waive her legal arguments by raising them in the motion for reconsideration*

Padda contended that Cohen waived her legal arguments presented in the appeal because she raised them in her motion for reconsideration and the district court did not engage these arguments on the merits. Cohen responded that the Court could consider the argument because the motion for reconsideration is part of the record and the district court entertained the motion on the merits.

The Court looked at *Arnold v. Kip* in deciding the issue.<sup>4</sup> In that case, the Court found that a motion for reconsideration preserves arguments for appeal when: (1) the order denying reconsideration is entered before the notice of appeal was filed, such that the motion and order are part of the record on appeal and (2) the district court entertained the motion on the merits.<sup>5</sup> In this case, the Court found the *Arnold* test had been met. First, the order denying reconsideration was entered prior to the date when the notice of appeal was filed. Second, the district court entertained Cohen’s motion on the merits. This was illustrated by the fact the district court stated, “the authorities Ms. Cohen cites in her Motion do not apply” and then went on to explain its reasoning.

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<sup>2</sup> RPC 5.4.

<sup>3</sup> NRCP 68.

<sup>4</sup> *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007).

<sup>5</sup> *Id.* at 416-17, 168 P.3d at 1054.

*The Dissolution Agreement was enforceable because Cohen's suspension was unrelated to the cases in which she enjoyed an Expectancy Interest*

Cohen contended that the expectancy interest provision of the dissolution agreement was enforceable because the parties entered into it before her law license was suspended, and it did not require her to work on the cases in which she had an expectancy interest. Padda contended that Cohen's suspension prohibited her from receiving any legal fees.

While the Nevada Rules of Professional Conduct clearly prohibit a lawyer from sharing legal fees with a non-lawyer, whether a suspended attorney may receive compensation for work completed prior to and unrelated to a suspension was an issue of first impression. Therefore, the Court decided to look at approaches taken by outside jurisdictions.

First, the Court looked at *Lee v. Cherry*, where a Texas Court of Appeals determined that a referring lawyer that resigned his law license could collect a referral fee because he had completed his contractual duties prior to resigning his law license and the client approved the fee-sharing agreement.<sup>6</sup> Next, the Court looked at *West v. Jayne*, where the Iowa Supreme Court determined that a disbarred attorney that entered into a contingency-fee agreement with an associate at his firm was entitled to legal fees because he completed his services before his disbarment.<sup>7</sup> The *West* Court relied on *Sympson v. Rogers*, where a Missouri court ruled that a fee-sharing agreement entered into with knowledge that one of the attorneys was going to suspend his law license is enforceable.<sup>8</sup> Finally, the Court looked at state bar ethics opinions from Connecticut and New York. Both states found that disbarred attorneys could share fees for work completed

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<sup>6</sup> *Lee v. Cherry*, 812 S.W.2d 361, 364 (Tex. App. 1991).

<sup>7</sup> *West v. Jayne*, 484 N.W.2d 186, 190 (Iowa 1992).

<sup>8</sup> *Sympson v. Rogers*, 406 S.W.2d 26, 32 (Mo. 1966).

before the disbarment as long as the disbarment was unrelated to the matter in which the fees were earned.

Ultimately, the Court concluded that even though Cohen was a “nonlawyer” from 2017 to 2019 pursuant to RPC 5.4(a), Cohen was entitled to fees she earned in cases where she had an expectancy interest. This was due to the fact she had completed all her work on the cases before she was suspended, and her suspension was unrelated to her professional conduct in cases that she had an expectancy interest in. The Court stated a narrower construction of RPC 5.4(a), “would do serious damage to legitimate contract rights.”

The Court was unconvinced by any evidence present by Padda in favor of his position. Padda presented *Lessoff v. Berger*, where a New York appellate court stated that a suspended attorney is not allowed to share fees during the suspension.<sup>9</sup> However, the Court noted that this case did not discuss whether the fee-sharing agreement was entered into before the suspension and whether the suspended attorney had any further responsibilities in the case. Padda also introduced a number of Amici that relied on a Nevada State Bar Ethics Opinion. However, the Court noted reliance on this state bar ethics opinion was misplaced as it discussed the portion of a contingency fee to which a discharged attorney was entitled, and this case presented no client discharge issues.

Additionally, the Amici predicted a parade of horrors would occur if the court ruled in Cohen’s favor. They argued that attorneys would be incentivized to enter into fee sharing agreements even if they’re facing disbarment or suspension, attorneys would be rewarded for abandoning clients, and the public’s confidence would erode in the legal profession. However, the Court was unconvinced by the parade of horrors. The Court discussed how Cohen’s suspension was unrelated to her conduct in any cases she had an expectancy interest in, the facts of the case

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<sup>9</sup> *Lessoff v. Berger*, 2 A.D.3d 127, 767 (N.Y. 2003).

are categorically different than any doomsday scenario presented by the amici, and there's no reason to believe that this decision would somehow erode the public's confidence in the legal profession.

### *Conclusion*

The Court ruled that since Cohen had completed her work in cases where she had a fee sharing agreement with Padda, and her suspension had nothing to do with misconduct in any of these cases, the fee-sharing agreement was valid and enforceable. The Court reversed and remanded the district court's decision.