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State of Nevada Clark County Public Defenders

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL MARTIN

Plaintiff,

vs.

**ROBERT MOOS; LAS VEGAS ATHLETIC
CLUB; GABRIEL VILLANNUEVA,
LVMPD; LAS VEGAS METRO POLICE
DEPARTMENT; INTERNAL AFFAIRS
POLICE OFFICER, (ASSIGNED
INVESTIGATOR); JAKE GULLO, CLARK
COUNTY PUBLIC DEFENDER; KATRINA
ROSS, CLARK COUNTY PUBLIC
DEFENDER; TONY WORTHMAN, CLARK
COUNTY PUBLIC INVESTIGATOR;
STATE OF NEVADA CLARK COUNTY
PUBLIC DEFENDERS; JUDGE MICHAEL
VILLIANE; KENT SOULE. HOSTILE
WITNESS.**

Defendant.

Case No: A-23-864256-C
Dept No: 21

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of March 2023, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the

1 above and foregoing **Defendants Jake Gullo, Katrina Ross, Tony Worthman, and State**
2 **of Nevada Clark County Public Defenders' Motion to Dismiss Plaintiff's Complaint and**
3 **Notice of Hearing** addressed as follows:

4
5 Russell Martin
6 5251 Lindell Rd. #103
7 Las Vegas, NV 89118
8 *Plaintiff Pro Se*
9 RussMartin1@StarSEO.us

10 /s/ Aisha Rincon

11 An Employee of the Clark County District
12 Attorney's Office – Civil Division
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15 Katrina Ross, Tony Worthman, and
16 State of Nevada Clark County Public Defenders

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18 **EIGHTH JUDICIAL DISTRICT COURT**
19
20 **CLARK COUNTY, NEVADA**

21 **RUSSELL MARTIN**

22 **Plaintiff,**

23 **vs.**

24 **ROBERT MOOS; LAS VEGAS ATHLETIC**
25 **CLUB; GABRIEL VILLANNUEVA, LVMPD;**
26 **LAS VEGAS METRO POLICE**
27 **DEPARTMENT; INTERNAL AFFAIRS**
28 **POLICE OFFICER, (ASSIGNED**
29 **INVESTIGATOR); JAKE GULLO, CLARK**
30 **COUNTY PUBLIC DEFENDER; KATRINA**
31 **ROSS, CLARK COUNTY PUBLIC**
32 **DEFENDER; TONY WORTHMAN, CLARK**
33 **COUNTY PUBLIC INVESTIGATOR; STATE**
34 **OF NEVADA CLARK COUNTY PUBLIC**
35 **DEFENDERS; JUDGE MICHAEL VILLIANE;**
36 **KENT SOULE, HOSTILE WITNESS.**

37 **Defendants.**

38 **Case No: A-23-864256-C**
39 **Dept No: 21**

40 **HEARING REQUESTED**

41
42 **DEFENDANTS JAKE GULLO, KATRINA ROSS, TONY WORTHMAN, AND**
43 **STATE OF NEVADA CLARK COUNTY PUBLIC DEFENDERS' MOTION TO**
44 **DISMISS PLAINTIFF'S COMPLAINT**

45
46 Defendants JAKE GULLO, Clark County Public Defender; KATRINA ROSS, Clark
47 County Public Defender; TONY WORTHMAN, Clark County Public Defender Investigator;

1 and STATE OF NEVADA CLARK COUNTY PUBLIC DEFENDERS (“Defendants”),
2 through their attorneys, Steven B. Wolfson, District Attorney, by Catherine Jorgenson,
3 Deputy District Attorney in the Civil Division of the District Attorney’s Office, and pursuant
4 to NRCP 12(b)(5) and the attached memorandum of points and authorities, hereby moves
5 this Court to dismiss Plaintiff’s Complaint. This Motion is based upon all the pleadings on
6 file herein, the Points and Authorities submitted herewith, and the oral arguments of counsel
7 at the hearing on this matter, if any.

8 POINTS AND AUTHORITIES

9 I. INTRODUCTION

10 Plaintiff RUSSELL MARTIN filed a Complaint on January 19, 2023 alleging that
11 Defendants violated his “constitutional rights to a state-funded public defense.” (Complaint,
12 p. 11, l. 242; p. 13, l. 271.) Further, Plaintiff alleges that the Defendants “violated the rules
13 of professional ethics with the intent to defraud Martin to plead guilty.” (Complaint, p. 16,
14 ll. 339-40, p. 17, ll. 360-61; *see also* Complaint, p. 16, ll. 351-52.) Regarding Defendant
15 STATE OF NEVADA CLARK COUNTY PUBLIC DEFENDERS, Plaintiff alleges that it is
16 “an organization that collects income on multiple levels for prosecuting and defending
17 defendants.” (Complaint, p. 17, ll. 370-71.) From language and context, Plaintiff’s claims
18 against Defendants appear to be grounded in tort and ethics.

19 The Complaint does not specifically identify the underlying criminal case. Upon
20 information and belief, Plaintiff is referencing *State of Nevada v. Martin*, Eighth Judicial
21 Court Case No. C-20-351363-1, an open case with trial scheduled July 2023.¹ In the
22 Complaint, Plaintiff does not allege that his criminal case has been concluded, that the
23 charges against him have been dismissed, or that he has been exonerated.

24 II. SUMMARY OF ARGUMENT

25 Plaintiff’s Complaint fails to state a claim against Defendants upon which relief can
26 be granted. First, Defendant STATE OF NEVADA CLARK COUNTY PUBLIC
27

28 ¹ “[T]he court may take into account matters of public record . . . when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted.” *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847 (1993).

1 DEFENDERS is not a legal entity capable of being sued. Second, Plaintiff has failed to
2 allege that his criminal case has been concluded in his favor, an essential element of the
3 types of constitutional and malpractice tort claims Plaintiff raises in the Complaint. Third,
4 any claims based on violation of rules of professional ethics is outside the Court's
5 jurisdiction. Accordingly, as a matter of law, Defendants should be dismissed from this
6 action.

7 III. STANDARD OF REVIEW

8 NRCP 12(b)(5) provides the mechanism by which a complaint may be dismissed for
9 failure to state a claim upon which relief can be granted. Specifically, and in pertinent part:

10 Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted
11 in the responsive pleading if one is required, except that the following defenses may
12 at the option of the pleader be made by motion: . . . (5) failure to state a claim upon
13 which relief can be granted.

14 To survive a motion to dismiss, the allegations in the complaint "must be legally sufficient to
15 constitute the elements of the claim asserted." *Munda v. Summerlin Live & Health Ins. Co.*,
16 127 Nev. 918, 923 (2011). In reviewing a motion to dismiss, the Court "accepts the
17 plaintiff's factual allegations as true," and "every reasonable inference is drawn in the
18 plaintiff's favor." *Id.* A "dismissal is valid only if it appears beyond a doubt that the
19 plaintiff could prove no set of facts entitling him or her to relief." *Knittle v. Progressive*
20 *Cas. Ins. Co.*, 112 Nev. 8, 10 (1996).

21 IV. ARGUMENT

22 A. Defendant STATE OF NEVADA CLARK COUNTY PUBLIC 23 DEFENDERS is not a legal entity capable of being sued.

24 An entity called "State of Nevada Clark County Public Defenders" does not exist. It
25 appears from the context of the Complaint that Plaintiff intended to name the Clark County
26 Public Defender's Office, a department of Clark County, as the entity defendant. Under
27 certain circumstances, Nevada has waived sovereign immunity otherwise accorded to the
28 State of Nevada and its political subdivisions, such as county governments. In *Wayment v.*
Holmes, 112 Nev. 232 (1996), the Nevada Supreme Court held that county departments may
not be sued. As the Supreme Court explained:

1 We conclude that the Washoe County District Attorney's Office is not a
2 suable entity because it is a department of Washoe County, not a political
3 subdivision. In the absence of statutory authorization, a department of the
4 municipal government may not, in the department name, sue or be sued.
5 The State of Nevada has not waived immunity on behalf of its departments
of political subdivisions, and the Washoe County District Attorney's office
has not been conferred the power to sue and be sued. NRS 41.031. *Id.* at
237-38 (internal citations and quotations omitted).

6 The Clark County Public Defender's Office is a department of Clark County and not a
7 political subdivision of the State of Nevada. It is not an entity capable of being sued and
8 should be dismissed from this case.

9 B. Plaintiff has not alleged that his criminal case has been concluded, that the
10 charges against him have been dismissed, or that he has been exonerated.

11 Plaintiff alleges that the individual defendants violated his constitutional rights. In
12 addition, his claims appear to encompass allegations of malpractice. Taking these
13 allegations as true, in accordance with the applicable standard of review, Plaintiff's claims
14 fail because he has not alleged that his criminal case has been concluded, that the charges
15 against him have been dismissed, or that he has been exonerated.

16 The Nevada Supreme Court has determined that a criminal defendant's § 1983
17 constitutional claim becomes actionable and the statute of limitation commences "upon final
18 termination of the original criminal proceeding in the claimant's favor." *Day v. Zubel*, 112
19 Nev. 972, 978 (1996). Similarly, a claim of malpractice based on a criminal case is not ripe
20 until the case is final and decided in the plaintiff's favor.

21 Criminal defendants claiming attorney malpractice are in a distinct
22 circumstance with regard to statutes of limitation in that their causes of action
23 do not accrue or become actionable until they are granted appellate or post-
conviction relief. Prior to gaining such relief, a cause of action for legal
malpractice lacks the essential elements of proximate causation and therefore
would not survive a motion for summary judgment or a motion to dismiss.
Clark v. Robison, 113 Nev. 949, 951-52 (1997) (internal citation omitted).

24 In his Complaint, Plaintiff has failed to allege that his criminal case has been concluded in
25 his favor. Without this essential element, Plaintiff can prove no set of facts that would
26 entitle him to relief.
27
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1 To the extent that Plaintiff's allegations that the Defendants violated rules of
2 professional ethics go beyond a constitutional or malpractice tort claim, a claim based on
3 rules of professional ethics cannot be properly brought before the Court. In accordance with
4 Nevada State Supreme Court Rule 99, "[e]very attorney admitted to practice law in Nevada .
5 . . is subject to the exclusive disciplinary jurisdiction of the supreme court and the
6 disciplinary boards and hearing panels created by these rules." *See also, Ramirez v. Harris*,
7 105 Nev. 219, 221 (1989) ("[T]he district courts lack jurisdiction to impose professional
8 discipline on any attorney in the state.").

9 V. CONCLUSION

10 Based on the foregoing, Defendants respectfully request that this Motion to
11 Dismiss be granted on grounds that Plaintiff has failed to state a claim upon which
12 relief can be granted.

13 DATED this 3rd day of April 2023.

14
15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY

17 By: /s/ Catherine Jorgenson
18 CATHERINE JORGENSEN
19 Deputy District Attorney
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23 Attorneys for Defendants Jake Gullo,
24 Katrina Ross, Tony Worthman, and
25 State of Nevada Clark County Public Defenders
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/s/ Aisha Rincon
An Employee of the Clark County District
Attorney's Office – Civil Division

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
4/5/2023 8:25 AM
Steven D. Grierson
CLERK OF THE COURT



Russell Martin, Plaintiff(s)

Case No.: A-23-864256-C

vs.

Robert Moos, Defendant(s)

Department 21

NOTICE OF HEARING

Please be advised that the Defendants Jake Gullo, Katrina Ross, Tony Worthman, and State of Nevada Clark County Public Defenders' Motion to Dismiss Plaintiff's Complaint in the above-entitled matter is set for hearing as follows:

Date: May 17, 2023

Time: 10:00 AM

Location: RJC Courtroom 14A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer
Deputy Clerk of the Court