

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the
HONORABLE ELIZABETH HALVERSON,
District Judge, Eighth Judicial District
Court, County of Clark, State of Nevada,

CASE NO. 52760

Respondent.

**RESPONSE TO EMERGENCY
MOTION TO DETERMINE
APPELLANT'S CAPACITY FOR
SELF REPRESENTATION, TO
DETERMINE STATUS OF PRO
HAC VICE COUNSEL AND
ORDER SHORTENING TIME
FOR APPELLANT TO
RESPOND.**

ELIZABETH HALVERSON,
Appellant,

v

COMMISSION ON JUDICIAL DISCIPLINE,
Respondent.

FILED

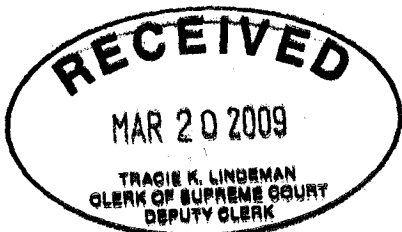
MAR 20 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**Attorneys for Appellant
The Honorable Elizabeth
Halverson:**

Elizabeth L. Halverson
Nevada Bar No. 4662
4173 Oxnard
Las Vegas, Nevada 89121
(702) 436-4521
(702) 450-9227 Fax
Appellant in Propria Persona

Michael Alan Schwartz
Schwartz, Kelly & Oltarz-Schwartz, P.C.
30300 Northwestern Highway, Ste 260
Farmington Hills, Michigan 48334-3218
(248) 785-0200
(248) 932-2801 Fax
Pro Hac Vice
Attorney for Appellant



1 NOW COMES the Appellant, ELIZABETH HALVERSON, who as and for her Response
2 to Emergency Motion for Court to Determine Appellant's Capacity for Self-Representation, Etc.,
3 states as follows:

4 The Motion by Special Counsel to the Commission on Judicial Discipline seeking, at the
5 eleventh hour, to prevent the Appellant from serving as resident attorney and to foreclose Appellant's
6 attorney from representing her before this Court is an incredible attempt to subvert Appellant's
7 rights.

8
9 **Statement of Facts**

10
11 Appellant Elizabeth Halverson was the subject of judicial disciplinary proceedings before
12 the Nevada Commission on Judicial Discipline [hereinafter referred to as the "Commission"],
13 commencing only a few months after she commenced her tenure as a Judge of the Eighth Judicial
14 District Court. In July, 2007, she was suspended by the Commission even though no Formal
15 Statement of Charges had yet been filed. In August, 2008, hearings were held in connection with
16 the Formal Statement of Charges. At those hearings, she was represented by Michael Alan
17 Schwartz, an attorney licensed in New York and Michigan who has over 33 years experience in the
18 field of legal ethics and professional responsibility, and who has served as Deputy Chief Counsel to
19 the Committee on Grievances of the Association of the Bar of the City of New York; Grievance
20 Administrator of the Michigan Attorney Grievance Commission; Adjunct Professor of Law at
21 Wayne State University School of Law, teaching courses in ethics and professional responsibility;
22 Adjunct Professor of law at the University of Detroit, teaching courses in ethics and professional
23 responsibility; and who has written extensively on legal ethics and has represented attorneys and
24 judges in disciplinary matters. [See Exhibit "A," appended hereto.]

25 Mr. Schwartz represented Appellant effectively in the disciplinary hearings under extremely
26 difficult circumstances, having a very limited time within which to prepare. The Commission, in
27 the report on discipline which it issued in connection with its resolution of the disciplinary charges,
28 acknowledged that Mr. Schwartz, "arrived on the scene just days before the hearing began and he did
an admirable job as an advocate." *Commissions Finding of Facts, etc.*, p. 24, n. 16.

1 On September 4, 2008, Appellant was subjected to a particularly vicious attack by her
2 husband, wherein he struck her repeatedly with a blunt instrument, almost killing her. She was
3 hospitalized for an extended period of time. She suffered injury to her eyesight and some
4 neurological damage, the full extent of which is not presently known.

5 On September 30, 2008, Mr. Schwartz served his written Closing Argument in connection
6 with the Commission's consideration of the charges. This was done after his having consulted with
7 Appellant as to the text of the Closing Argument and after she had input into the same.

8 On November 17, 2008, the Commission issued its order removing Appellant from her
9 judicial office.

10 Thereafter, appellate proceedings have been initiated by the Appellant. A Notice of Appeal
11 was filed as well as a Docketing Statement. Those documents were prepared by Mr. Schwartz after
12 having consulted with the Appellant, who took an active role in providing input.

13 On March 16, 2009, an Emergency Motion to Proceed in *Forma Pauperis* was filed by
14 Appellant. She fully drafted the affidavit to which she swore in connection with said Motion and
15 participated materially in the drafting of the Motion, itself.

16 Contemporaneous with the filing of this Response, Appellant is filing her Opening Brief.¹
17 Appellant participated in the editing of the original draft and made numerous revisions.

18 Now, after all of that has occurred, Special Counsel to Commission suggests that the
19 Appellant may be incapacitated to the extent that she may not be able to assist in her own defense
20 and she has further suggested that Michael Schwartz, who has excellent credentials in the conduct
21 of disciplinary proceedings, should be prohibited from representing the Appellant before this Court
22

23 Memorandum of Points and Authorities

24 It is curious that despite the very well publicized plight of Appellant at the hands of her
25

26 _____
1

27 The Opening Brief is being filed at this time in order to preserve Appellant's rights to her
28 appeal.

1 assaultive husband, the Special Prosecutor has waited for six (6) months to make a claim that
2 Appellant is so incapacitated as to be unable to serve as her own counsel. On Page 28 of the
3 Appellant's Closing Argument to the Commission, served by fax on the Special Prosecutor on
4 September 30, 2008, the following was stated:

5
6 Mr. Halverson was recently indicted for attempting to murder Judge
7 Halverson, who was severely injured and who was in the hospital for
8 some weeks for treatment of he injuries. She is still recuperating.

9 Given that the Special Prosecutor was placed on actual notice, in September, 2008, of
10 Appellant's severe injuries involving weeks of hospitalization, it is somewhat suspect that it should
11 have taken her until March 16, 2009, to file the instant motion, which not only seeks the possible
12 removal of Appellant as resident counsel, but which also suggests that Mr. Schwartz, who has done
13 "an admirable job as an advocate," who was highly effective in representing Appellant before the
14 Commission (over half of the Counts in the Formal Statement of Charges were dismissed in full, and
15 another 3 Counts were partially dismissed) should no longer be permitted to represent Appellant.

16 If, in fact, the Appellant is incompetent to the extent that she cannot represent herself in these
17 proceedings, why did not the Special Prosecutor request a stay of proceedings after having been
18 informed, in September, 2008, of Appellant's injuries. For, if the Appellant were incompetent to
19 represent herself, and if the adjudicatory authority before whom the Appellant was then appearing
20 (the Commission) should have conducted an inquiry as to her suitability to continue as resident
21 counsel, as the Special Prosecutor now suggests, the adjudication of November 17, 2008 should not
22 have occurred when it did, and the Appellant should have retained her salary and benefits through
23 December 31, 2008, when her term expired. There could be no proper service of the Order, if no one
24 could be served .as proscribed by the Nevada Rules of Civil Procedure. See *NRCP 4, et seq.*
25 Incompetent people must be served differently from others. Even if the Judge were currently
26 incompetent because of the brutality of the attack against her, that "incompetency" began on
27 September 4, 2008, long before any Order was issued in this case. Where then is the emergency?
28 Where is the proper service of this "incompetent" person? The Special Prosecutor's timing of her
motion was such that the removal could proceed as soon as possible and the Appellant's legal team

1 is subject to destruction just prior to the date for submission of the Appellant's Opening Brief.

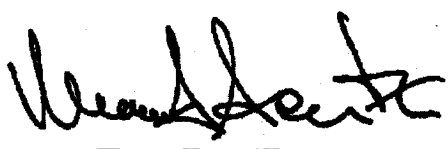
2 There is no basis for the instant motion. While, in conversation with the Special Prosecutor,
3 Mr. Schwartz did allow that the Appellant might need some assistance to travel to the Supreme
4 Court for oral arguments and might need some assistance in reading papers, at no time did he state
5 that she was unable to carry out her functions as resident counsel. In fact, Mr. Schwartz specifically
6 told the Special Prosecutor that Appellant was not incompetent, a statement with which the Special
7 Prosecutor stated she agreed. [See Affidavit of Michael Alan Schwartz, appended hereto.]

8 The Motion herein is an unfortunate example of a litigation tactic, seeking to destroy the
9 opposition's legal team, which should not be countenanced in a system of justice which prides itself
10 on being a paragon of fairness and the guardian of the rule of law in this State.

11
12 **CONCLUSION**

13 The Motion by the Special Prosecutor should be denied in its entirety. If granted, then the
14 Prosecutor must concede the lack of proper service of any Order and that the Order of the NCJD
15 cannot be effective against Judg Halverson until properly served. The Judge would not lose her right
16 to appeal due to the brutal attack by her husband, rather, time would not run until appropriate service
17 is made.

18 Dated: March 17, 2009

19
20
21 
22
23 **MICHAEL ALAN SCHWARTZ**
24 Schwartz, Kelly & Oltarz-Schwartz, P.C.
25 30300 Northwestern Highway, Ste 260
26 Farmington Hills, Michigan 48334-3218
27 Tel. (248) 785-0200

28
ELIZABETH L. HALVERSON
Nevada Bar No. 4662
4173 Oxnard Circle
Las Vegas, Nevada 89121
(702) 436-4521

1 5. I have argued numerous cases before appellate courts, including the Supreme
2 Court of the State of New York, Appellate Division, First Department; the Supreme Court
3 of the State of New York, Appellate Division, Second Department; the Michigan Court of
4 Appeals; the Michigan Supreme Court; and the United States Court of Appeals for the Sixth
5 Circuit.

6 6. Appended hereto is my *curriculum vitae*, which sets forth my qualifications and
7 experience.

8 7. I am aware that Judge Halverson was the subject of a brutal assault by her
9 husband on September 4, 2008.

10 8. After she was in the hospital for a few days, I was able to contact her by
11 telephone. At that time she had difficulty in speaking and she expressed that she was in
12 constant pain.

13 9. During the time that she was in the hospital, I prepared a Closing Argument
14 for submission to the Commission on Judicial Discipline [hereinafter referred to as the
15 "Commission"]; I spoke with Judge Halvorsen prior to submitting the same on September
16 30, 2008, and she provided input to the document.

17 10. In the Closing Argument, I made a statement concerning her injuries.

18 11. In the Findings of Fact, etc., issued by the Commission on November 17, 2008,
19 the Commission removed Judge Halvorsen from her judicial position.

20 12. Thereafter I discussed the Commission's report with Judge Halvorsen and I
21 was satisfied that she was aware of the legal issues involved. She authorized the filing of an
22 appeal.

23 13. Subsequently, I have had numerous discussions with Judge Halvorsen
24 concerning her appeal and she has participated fully in formulated legal argument to be
25 addressed to this Court on appeal.

26

27

28

1 14. Over the period of time from September, 2008 to March, 2009, Judge
2 Halvorsen's speech articulation has improved dramatically and she is fully intelligible. She
3 has received drafts of documents which were generated by me and she has edited the same
4 and made material revisions.

5 15. I have no doubt whatsoever that Judge Halvorsen has the ability to serve in the
6 capacity as resident counsel in the appeal fo the above-captioned matter.

7 16. Recently, I had a discussion with the Special Prosecutor, Dorothy Nash
8 Holmes, regarding the preparation of a Joint Appendix.¹

9 17. During that discussion, I alluded to the fact that Judge Halvorsen would need
10 assistance in getting to the Supreme Court for oral argument and that she probably needs
11 assistance in reading papers.

12 18. At the same time, I made it emphatically clear to the Special Prosecutor that
13 there was no basis to conclude that Judge Halvorsen was incompetent. The Special
14 Prosecutor stated that she agreed that Judge Halvorsen was not incompetent.

15 19. I also stated very clearly to the Special Prosecutor that I was aware of a number
16 of attorneys who had disabilities worse than Judge Halvorsen (i.e., blindness, total paralysis
17 of the arms and legs) who represented their clients well and that there was no reason why
18 Judge Halvorsen could not do so.

19 20. I further indicated to the Special Prosecutor that although I had great difficulty
20 communicating with Judge Halvorsen when she was first hospitalized in September, 2008,
21 my recent discussions with her were lucid and Judge Halvorsen responded immediately and
22

23

24

25 I then spoke with Judge Halvorsen, who informed me that she did not have sufficient financial
26 resources to pay for the production of an appendix. Moreover, she does not have in her possession
27 many of the documents required to be included in an appendix due to circumstances surrounding the
28 apprehension of her husband and her being confined to a hospital, as a result of which many of the
documents necessary for an appendix have been lost or destroyed.

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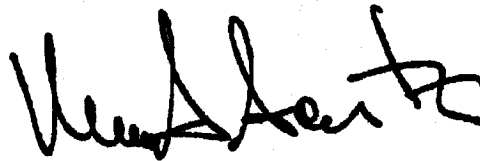
1 responsively to my questions and she had no difficulty at all in articulating her viewpoints
2 and in making herself understood.

3 21. Contrary to the assertions in the Special Prosecutor's affidavit, I did not state
4 that Judge Halvorsen was unable to "provide true input into her appeal at this time." To the
5 contrary, Judge Halvorsen has made significant revisions to the Appellant's Opening Brief
6 in order to include in that document matters which she believed to be of importance.

7 22. Based upon my discussions with Judge Halvorsen, as recently as March 17,
8 2009, I am satisfied to a certainty that Judge Halvorsen possesses her faculties to the degree
9 necessary to serve in the capacity as resident counsel.

10 23. In my opinion, having spoken with her personally, as indicated, it is my
11 personal observation that there is nothing to suggest that there is any reasonable basis to
12 believe that this Court needs to engage in any enquiry regarding Judge Halvorsen's ability
13 to serve as resident counsel in this case or to engage in an active role in defending herself in
14 an appeal to this Court.

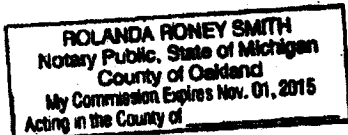
15 FURTHER DEPONENT SAITH NOT.

16
17
18 

19 MICHAEL ALAN SCHWARTZ

20 Sworn to before me this
21 17th day of March, 2009.

22 

23 

MICHAEL ALAN SCHWARTZ

PRESENT POSITION:

**SCHWARTZ & KELLY & OLTARZ-SCHWARTZ, P.C.
Farmington Hills, Michigan**

Partner, 2001 -

Attorney in private practice of law with emphasis in fields of attorney malpractice prosecution, professional disciplinary defense and white-collar criminal defense.

EDUCATION:

**J.D., Fordham University School of Law, 1972.
New York, New York**

**B.A., Long Island University, 1968.
Brooklyn, New York**

ADMISSION TO PRACTICE:

New York, 1973.

Michigan, 1980.

Supreme Court of the United States, 1976.

**United States Court of Appeals for the Second
Circuit, 1975.**

**United States Court of Appeals for the District of
Columbia Circuit, 1976.**

United States Court of Appeals for the Sixth Circuit, 1980.

United States Court of Military Appeals, 1976.

United States District Court for the Southern District of New York,
1974.

United States District Court for the Eastern District of New York,
1974.

United States District Court for the Eastern District of Michigan,
1980.

United States District Court for the Western District of Michigan,
1996.

LEGAL TEACHING POSITIONS:

Adjunct Professor of Law, University of Detroit,
1980-1987.

Adjunct Professor of Law, Wayne State University,
1983.

Guest Lecturer, University of Detroit, School of Law,
Professional Responsibility, 1985, 1986, 1987,
1988, 1989, 1990, 1991, 1992, 1993, 1996.

Judge, University of Detroit, School of Law, Final
Moot Court Appellate Competition, 1990, 1991.

Lecturer, Detroit/Wayne County Criminal Advocacy
Program, 1984, 1985.

Lecturer, Annual Conference of Prosecuting Attorneys
Association of Michigan, 1985.

Faculty Member, Michigan Judicial Institute, 1984.

Lecturer, New Attorneys Seminar, Detroit Chapter,

Federal Bar Association, 1983-1986.

Lecturer, Legal Malpractice Seminar, University of Bridgeport School of Law, 1982.

Mitchell Lecturer, University of Buffalo School of Law, 1979.

LECTURES

St. John's University School of Law
Jamaica, New York, 1997

"Physician-Assisted Suicide: Legal Rights in Life and Death"

Nebraska Medical Association
Lincoln, Nebraska, 1996

"The Kevorkian Defense: Elimination of Suffering"

Lecturer, Winter Meeting of National Organization of Bar Counsel
Baltimore, Maryland, 1996.

Connecticut Academy of Family Physicians
Waterbury, Connecticut, 1993

"Physician-Assisted Suicide"

University of Toledo School of Law
Toledo, Ohio, 1993

"Dr. Kevorkian and the Rights of Those Who Wish Assisted Suicide"

Forum for Medical Affairs
Held in Conjunction With Mid-Year Meeting of the American Medical Association
Nashville Tennessee, 1992

"Patient Suicide & Euthanasia - The Physician's Involvement"

Hospital Authority of the City of Petersburg and the
Southside Regional Medical Center
Petersburg, Virginia, 1992
Annual Harley Ross Hinton Lecture Series
"Dr. Jack Kevorkian and the Right to Die"

University of Michigan School of Law
Health Law Society
Ann Arbor, Michigan, 1991
"The Right to Die and the Kevorkian Case"

Lecturer, Annual Meeting of National Organization of
Bar Counsel,
Chicago, Illinois, 1990.

PREVIOUS EMPLOYMENT:

Fieger, Fieger, Schwartz & Kenney, P.C.
Southfield, Michigan

Partner, 1991 - 2001.

Attorney in private practice of law with emphasis in fields of
attorney malpractice prosecution, professional disciplinary
defense and white-collar criminal defense.

Charfoos & Christensen, P.C.
Detroit, Michigan

Attorney, 1988-1991

Attorney in private practice of law with emphasis in fields of
attorney malpractice prosecution, professional disciplinary
defense and white-collar criminal defense.

**State of Michigan, Attorney Grievance Commission
Detroit, Michigan**

Grievance Administrator, 1979-1988.

Chief disciplinary prosecutor and administrator of the prosecution arm of the Michigan Supreme Court for the regulation of the legal profession in Michigan. Staff exceeding 20 employees. During 9-year tenure, responsible for redrafting rules of discipline; discipline of more attorneys (over 750) than in the entire previous history of the State; revitalization of disciplinary system and recognition of Michigan as one of the national leaders in professional discipline. Personally prosecuted numerous notorious matters. Lectured at meetings of local bar associations throughout Michigan.

**Committee on Grievances, Association of the Bar of
the City of New York
New York, New York**

**Deputy Chief Counsel, 1978-1979
Associate Counsel, 1977-1978
Assistant Counsel, 1976-1977.**

Counsel to the oldest disciplinary agency in the United States, with responsibility for the investigation and prosecution of professional disciplinary matters. Participated in investigations of hundreds of grievances and prosecution of scores of disciplinary matters; administration of office.

**Office of the District Attorney, Kings County
Brooklyn, New York**

Assistant District Attorney, 1973-1976.

Criminal prosecutor in the third largest local office in the United States. Responsible for prosecution of misdemeanors and felonies. Several hundred preliminary hearings.

Hundreds of presentations to the Grand Jury. Over 100 non-jury trials and over 80 jury trials to completion.

New York City Board of Education
Brooklyn, New York

Teacher, 1968-1972.

WORKS PUBLISHED:

Books:

Michigan Rules of Professional Conduct and Disciplinary Procedure, ICLE: Ann Arbor, Michigan (1989) [Lawrence A. Dubin, co-author] and annual supplements 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997.

Articles:

Practical Reasons for Lifting Bans on Physician-Assisted Suicide, 12 St. John's Journal of Legal Commentary 626 (1997).

Lawyer Discipline: Defining its Role, 29:9 Trial 74 (1993).

Grievance Defense, 301 Laches 13 (1991).

Michigan Rules of Professional Conduct v. Michigan Code of Professional Responsibility, 35 Wayne Law Review 197 (1989) [Lawrence A. Dubin, co-author].
Annual Supplement (1990, 1991, 1992, 1993)

Extrajudicial Trial Publicity, 25:2 Trial 13 (1989).

Disciplinary Problems, 25:4 Trial 16 (1989).

Nonlawyers in the Law, 25:5 Trial 104 (1989).

Recent Changes in Michigan Disciplinary Procedure: A Job Unfinished, 66 Univ. of Detroit Law Review 411 (1989) [Lawrence A. Dubin, co-author].

From the Last 25 Years to the Next Millennium, 25:7 Trial 20 (1989).

A Dilemma, 25:8 Trial 92 (1989).

Direct Communication and the Government, 25:9 Trial 96 (1989).

Contingent Fees, 25:10 Trial 103 (1989).

Ethical Responsibilities of Defense Counsel in Defending Insureds, 64 Mich Bar Journal 290 (1985).

How to Avoid Grievances in Real Estate Practice, 11 Mich Real Property Review 482 (1984).

Michigan Disciplinary Procedure, 63 Mich Bar Journal 249 (1984).

Survey and Analysis of Michigan's Disciplinary System for Lawyers, 61 Univ. of Detroit Journal of Urban Law 1 (1983) [Lawrence A. Dubin, co-author].

Automatic Discipline---A Concept Whose Time Has Arrived, 1981 Detroit Coll L Rev 1 (1981).

Freedom of the Press and the Newsman's Privilege, New Dimensions in Legislation (Spring 1972) [Notre Dame Law School] [Allen Karen, co-author].

PROFESSIONAL SERVICES:

Mediator, Wayne County Mediation Tribunal, 1984-1988.

COMMUNITY ACTIVITIES:

West Bloomfield Township Board
West Bloomfield Michigan
Trustee, 1992 - 1996.

Environmental Protection Council of Oakland County
President, 1990 - 1993.

West Bloomfield Wetlands Review Board
West Bloomfield, Michigan
Commissioner,
1989 - 1992.

NFWB Youth Baseball League
Team Manager, 1986 - 1989.

Organizations United to Save the Township
Treasurer,
1987 - 1989.

Organization was named "Person of the Year" for 1988 in
West Bloomfield by the Observer-Eccentric Newspapers.

MILITARY SERVICE:

2d Lt., U.S.A.R., 1971-1973.

PERSONAL:

Born: Brooklyn, New York
January 26, 1948.

Married, Two Children.

1 CERTIFICATE OF SERVICE

2 I certify that on March 18, 2009, I caused the foregoing document entitled **RESPONSE TO**
3 **EMERGENCY MOTION TO DETERMINE APPELLANT'S CAPACITY FOR SELF**
4 **REPRESENTATION, TO DETERMINE STATUS OF PRO HAC VICE COUNSEL AND**
5 **ORDER SHORTENING TIME FOR APPELLANT TO RESPOND**, to be served as follows:

6 by placing a copy of the same for mailing in the United States Mail, certified return
7 receipt requested, with first class postage prepaid thereon addressed as follows; and/or (Commission and
8 Holmes)

9 XXX by placing a copy of the same for mailing in the United States mail with first class postage
10 prepaid thereon addressed as follows; and/or

11 XXX by causing a copy to be sent via facsimile at the number(s) listed below; and/or

12 XXX by hand-delivering an original and two (2) copies to the party or parties as listed
13 below:(Supreme Court only)

14 Nevada Supreme Court
15 Regional Justice Center
16 200 Lewis Avenue
17 17th Floor
18 Las Vegas, Nevada 89155

19 Commission on Judicial Discipline
20 P.O. Box 48
21 Carson City, NV 89702
22 Fax Number: (775) 687-3607

23 Dorothy N. Holmes, Esq.
24 Fahrendorf, Viloría, Oliphant & Oster
25 P.O. Box 3677
26 Reno, NV 89505
27 Fax Number: (775) 348-0540

28 Michael Alan Schwartz
Schwartz, Kelly & Oltarz-Schwartz, P.C.
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