

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
HONORABLE ELIZABETH
HALVERSON, DISTRICT COURT
JUDGE, EIGHTH JUDICIAL
DISTRICT, COUNTY OF CLARK,
STATE OF NEVADA.

No. 52760

THE HONORABLE ELIZABETH
HALVERSON, DISTRICT COURT
JUDGE, EIGHTH JUDICIAL
DISTRICT, COUNTY OF CLARK,
STATE OF NEVADA,
Appellant,
vs.
NEVADA COMMISSION ON JUDICIAL
DISCIPLINE,
Respondent.

FILED

JUL 01 2009

TRACIE J. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER RESOLVING MOTIONS AND
DIRECTING TRANSMISSION OF RECORD

This is an appeal from a decision by the Nevada Commission on Judicial Discipline to remove appellant Elizabeth Halverson as a district judge. Currently before this court are several motions, which are addressed in turn.¹

¹The Commission also filed documents, entitled "Request for Submission," for each of its motions. Such a document, while required under the local rules for certain district courts, see, e.g., WDCR 12(4), is not necessary or proper under the Nevada Rules of Appellate Procedure. See generally NRAP 27. Accordingly, we direct the clerk of this court to strike these documents, filed on March 18, March 19, (original of the March 18 request, which was filed via facsimile), and April 6, 2009.

First, the Commission has filed a motion seeking this court's declaration as to whether Halverson is competent to represent herself and to serve as local counsel for her out-of-state attorney. Halverson opposes the motion, maintaining that she is capable of prosecuting this appeal and assisting her counsel. We deny the Commission's motion.² Although Halverson has been removed from her judicial position, she remains a licensed attorney in this state. If the Commission believes that the injuries Halverson received last year render her incapable of practicing law, it may ask the appropriate State Bar of Nevada Disciplinary Board to file a petition seeking her transfer to disability inactive status. See SCR 117(2).

Next, the Commission has filed a motion to dismiss this appeal on the basis that Halverson's opening brief and appendix are deficient under NRAP 28, NRAP 28A, and NRAP 30. In addition to opposing the Commission's motion to dismiss,³ Halverson has filed a motion seeking to proceed in forma pauperis and asking this court to direct the Commission to transmit the complete record of the discipline proceedings to this court.

Halverson's appendix consists of two documents: the Commission's final decision and her application to the Commission for in forma pauperis status, which was filed after the discipline matter

²In light of our disposition of the Commission's motion, we direct the clerk of this court to file appellant's opening brief and appendix, provisionally received on March 18, 2009.

³We deny as moot the Commission's motion for an order shortening time for Halverson to file her opposition.

concluded. Her opening brief, however, refers extensively to the transcripts of the disciplinary hearing. The Commission asserts that the brief and appendix therefore violate NRAP 28(e), requiring that factual assertions in a brief be supported by a citation to the appendix, and NRAP 30(b), listing documents that must be included in the appendix. Halverson admits that her appendix is insufficient, but she maintains that she cannot afford to reproduce the transcripts and other papers to prepare the appendix.

Having reviewed the motion to dismiss, the motion to proceed in forma pauperis, and the oppositions thereto, we conclude that Halverson has sufficiently established her indigence. And while NRAP 24 does not expressly apply to judicial discipline matters,⁴ we conclude that judicial efficiency and economy would be served by applying this provision by analogy to the instant appeal.⁵ See NRAP 3D(f) (applying the NRAP to judicial discipline appeals unless inconsistent or inapplicable); see also

⁴We reject as wholly without merit the Commission's argument that NRAP 24 applies only in habeas corpus proceedings. By its plain language, the rule is not so limited.

⁵Also, while a judicial discipline proceeding is not precisely a "civil action" governed by NRS 12.015, see Goldman v. Nevada Comm'n on Judicial Discipline, 108 Nev. 251, 263 n.10, 830 P.2d 107, 115 n.10 (1992) (stating that judicial discipline proceedings are neither civil nor criminal), superceded by rule on other grounds as stated in Whitehead v. Nevada Comm'n on Judicial Discipline, 111 Nev. 70, 141-42, 893 P.2d 866, 910 (1995), the Commission's own rules routinely provide for the application of civil standards to its procedures. See, e.g., Commission Procedural Rule 24 (applying the rules of evidence for civil proceedings to a formal hearing before the Commission); Commission Procedural Rule 37 (incorporating the Nevada Rules of Civil Procedure concerning time computation).

NRAP 2 (providing that for good cause, this court may suspend the application of the rules).⁶ In such cases, this court may direct the fact-finding tribunal to transmit the complete record before it to this court for our review. NRAP 24(c) (permitting a party proceeding in forma pauperis to request that the matter be heard on the original record). Moreover, in light of this court's de novo review of the penalty imposed by the Commission, see In re Assad, 124 Nev. ___, ___, 185 P.3d 1044, 1053 (2008), review of the complete record is appropriate. Cf. SCR 105(3)(b) (requiring the state bar, in lawyer discipline matters, to transmit the complete record to this court for its de novo review).

Accordingly, we deny the motion to dismiss and grant Halverson's motion for in forma pauperis status. We direct the Commission to transmit to the clerk of this court a certified copy of the record of the formal judicial discipline proceedings concerning Halverson within 30 days from the date of this order. Cf. NRAP 11(a)(2) (providing that the complete record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the fact-finding tribunal, as well as any previously prepared transcripts of the proceedings).

Finally, although respondent did not include a request for an extension of time to file its answering brief in any of the papers filed with this court, we nevertheless conclude that an extension is warranted.

⁶Consequently, the Commission had jurisdiction to rule on Halverson's motion for in forma pauperis status. In the interest of efficiency and to expedite this appeal, however, and since the Commission indicated its inclination to deny the motion if it had jurisdiction, we decline to remand this matter to the Commission for the purpose of ruling on the motion.

Respondent shall have 60 days from the date of this order to file and serve its answering brief. Appellant shall thereafter have 30 days from service of the answering brief to file and serve a reply brief, if any.

It is so ORDERED.

Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Pickering, J.
Pickering

cc: Schwartz, Kelly & Oltarz-Schwartz, P.C.
Elizabeth Halverson
Fahrendorf, Vilorio, Oliphant & Oster, LLP
Nevada Commission on Judicial Discipline