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FILED

APR 09 2009

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

14 HONORABLE ELIZABETH HALVERSON,
15 District Judge, Eighth Judicial District
16 Court, County of Clark, State of Nevada,

Appellant,

v

18 COMMISSION ON JUDICIAL DISCIPLINE,

Respondent.

CASE NO. 52760

RESPONSE TO MOTION TO DISMISS APPEAL
AND TO IMPOSE SANCTIONS

25 NOW COMES the Appellant, ELIZABETH HALVERSON, who as and for her
26 Response to the Commission's Motion to Dismiss Appeal and to Impose Sanctions, states
27 as follows:

28 The Motion by Special Prosecutor to the Commission on Judicial Discipline is part
of what has become a pattern wherein said Prosecutor seeks to have this case aborted, based

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1 upon the Appellant's lack of financial resources, rather than having this matter determined
2 on its merits.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**
4

5 Appellant Elizabeth Halverson was the subject of judicial disciplinary proceedings
6 before the Nevada Commission on Judicial Discipline [hereinafter referred to as the
7 "Commission"]. During the time that she proceeded in hearings in August, 2008, she was
8 possessed of sufficient resources to be able to retain counsel and proceed with the matter
9 before the Commission on Judicial Discipline. Since the hearings, she has (a) been the
10 victim of a vicious, brutal attack upon her person by her husband, for which he is currently
11 serving 3-10 years in state prison and which resulted in her sustaining grievous physical
12 injuries. Since November 17, 2008, the date when she has been removed from judicial
13 office, she has not earned any income and has considerable medical expenses associated with
14 her husband's physical attack upon her.

15 Despite these problems, she has managed to file a complaint and to file an Appellant's
16 Opening Brief with this Court, which Brief sets forth, in the manner prescribed by the
17 Nevada Rules of Appellate Procedure, those items which she claims as a basis for reversing
18 the decision of the Respondent Commission on Judicial Discipline. What she has not been
19 able to do, as a result of her impecuniousness, is to make copies of those items which are
20 required if an Appendix must be furnished by her. She has not simply failed to include the
21 Appendix. Rather, given her financial circumstances, which did not exist at the time of the
22 original hearings in August, 2008 when her matter was heard by the Commission on Judicial
23 Discipline, she filed with the Commission a petition to proceed *in forma pauperis*.

24 The Special Prosecutor claims that *forma pauperis* proceedings are limited in the
25 Nevada Rules of Appellate procedure to *habeas corpus* proceedings. The Rule which is
26 involved, NRAP 24, states as follows:
27
28

1 a) Leave to proceed on appeal in forma pauperis from district
2 court to Supreme Court. A party to an action in a district court
3 who desires to proceed on appeal in forma pauperis shall file in
4 the district court a motion for leave so to proceed, together with
5 an affidavit showing, in the detail prescribed by Form 4 of the
6 Appendix of Forms, his inability to pay fees and costs or to give
7 security therefor, his belief that he is entitled to redress, and a
8 statement of the issues which he intends to present on appeal. If
9 the motion is granted, the party may proceed without further
10 application to the Supreme Court and without prepayment of
11 fees or costs in either court or the giving of security therefor. If
12 the motion is denied, the district court shall state in writing the
13 reasons for the denial.

8 Notwithstanding the provisions of the preceding paragraph, a
9 party who has been permitted to proceed in an action in the
10 district court in forma pauperis, or who has been permitted to
11 proceed there as one who is financially unable to obtain an
12 adequate defense in a criminal case, may proceed on appeal in
13 forma pauperis without further authorization unless, before or
14 after the notice of appeal is filed, the district court shall certify
15 that the appeal is not taken in good faith or shall find that the
16 party is otherwise not entitled so to proceed, in which event the
17 district court shall state in writing the reasons for such
18 certification or finding.

14 If a motion for leave to proceed on appeal in forma pauperis is
15 denied by the district court, or if the district court shall certify
16 that the appeal is not taken in good faith or shall find that the
17 party is otherwise not entitled to proceed in forma pauperis, the
18 clerk shall forthwith serve notice of such action. A motion for
19 leave so to proceed may be filed in the Supreme Court within
20 thirty (30) days after service of notice of the action of the district
21 court. The motion shall be accompanied by a copy of the
22 affidavit filed in the district court, or by the affidavit prescribed
23 by the first paragraph of this subdivision if no affidavit has been
24 filed in the district court, and by a copy of the statement of
25 reasons given by the district court for its action.

21 b) Reserved.

22 (c) Form of briefs, appendices and other papers. Parties allowed
23 to proceed in forma pauperis may file briefs, appendices and
24 other papers in typewritten form, and may request that the
25 appeal be heard on the original record **without the necessity
26 of reproducing parts thereof in any form.** [Emphasis
27 supplied.]

25 While NRAP 24 is grouped in Article IV along with NRAP 22 and NRAP 23 which
26 apply to *habeas corpus* matters, the Title of the Article [Habeas Corpus; Proceedings in
27 Forma Pauperis] does not limit *in forma pauperis* petitions to matters in which *habeas corpus*
28 relief is sought. Moreover, a review of the language of NRAP 24 does not include any

1 limitation to *habeas corpus* matters at all. Accordingly, the Special Prosecutor's claim [for
2 which she cites no authority] is without foundation.

3 Moreover, the import of the Special Prosecutor's claim concerning the *in forma*
4 *pauperis* relief sought by the Appellant is that if a party to a quasi-criminal proceeding [see
5 *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)] has sufficient financial
6 resources to provide a meaningful defense at the trial level, but becomes impecunious
7 thereafter and is financial unable to pay for the copying costs necessary to produce an
8 Appendix for an appeal, the appeal should be dismissed and the Appellant denied review by
9 this Court based upon a lack of financial ability to pay for such copying. Needless to say, it
10 would be incredulous to believe that this Court would countenance such a violation of one's
11 due process rights and deny justice on the ability to pay.

12 "The basic right to....access to judicial processes in cases criminal or 'quasi criminal
13 in nature'....turn on **ability to pay**." [Emphasis in original]. *M.L.B. v S.L.J.*, 519 U.S. 102,
14 124; 117 S.Ct. 555, 568; 136 L.Ed.2d 473, 492-493 (1996). As has been noted, this matter
15 is a quasi-criminal case.. *Ruffalo, supra*. In *M.L.B.*, the United States Supreme Court
16 specifically held that an indigent in a quasi-criminal matter could not be denied the right of
17 an appeal by virtue of the fact that said indigent could not afford to pay for the costs of
18 reproducing transcripts and other materials needed for an appendix to an appeal. 519 U.S.
19 at 106; 117 S.Ct. At 559; 136 L.Ed.2d at 481.

20 The Special Prosecutor would have this Court engage in a violation of Appellant's due
21 process and equal protection rights, acts which are incompatible with this Court's role as the
22 supreme house of justice in Nevada.

23 The Special Prosecutor's citation to *Mosely v Commission on Judicial Discipline*, 117
24 Nev. 371, 22 P.3d 655 (2001) is inapposite to these proceedings. NRAP 24, by its very
25 language, requires that a "party to an action in a district court (the trial court) who desires to
26 proceed on appeal in forma pauperis shall file in the district court a motion for leave so to
27 proceed, together with an affidavit showing, in the detail prescribed by Form 4 of the
28 Appendix of Forms, his inability to pay fees and costs or to give security therefor, his belief

1 that he is entitled to redress, and a statement of the issues which he intends to present on
2 appeal.”

3 Unlike the matter in *Mosely*, the Appellant’s impecuniousness did not manifest itself
4 until after she had lost her position as a judge, since she was receiving salary and benefits
5 until November 17, 2008, when she was removed. She could not legitimately request *forma*
6 *pauperis* status while she still had financial resources at her disposal to proceed with her
7 defense. Had she filed for *forma pauperis* status while she was still receiving her judicial
8 salary, as the Special prosecutor appears to be claiming should have been done, it can be
9 expected that the Special Prosecutor would have claimed not only that such should have been
10 denied for the reason that the Appellant was receiving salary and benefits at that time, but
11 also that the affidavit which is required in connection with such petition would have been
12 perjurious. Thus, the Special Prosecutor wishes to have it both ways—with the net result that
13 the Special Prosecutor seeks denial of Appellant’s ability to appeal based upon an
14 inappropriate basis—Appellant’s inability to pay for the copying of materials needed for an
15 Appendix.

16 The Special Prosecutor’s suggestion that *pro hac vice* counsel should pay for the costs
17 of copying documents is unreasonable. Appellant and her counsel agreed that he was to be
18 paid fees for his time and for his work on the case, but that all costs and disbursements were
19 to be borne by her. It is rather presumptuous for the Special Prosecutor to suggest that it is
20 Appellant’s counsel’s “responsibility” to pay for the copying charges for production of an
21 Appendix. The fact that counsel has been paid to provide services for the appeal, does not
22 include paying for costs and disbursements associated with the appeal. Presumably, the
23 Special Prosecutor would be rather taken aback were she to be paid for her fees and then be
24 required to pay for costs and disbursements of producing an Appendix, out-of-pocket, with
25 no reimbursement, particularly if her agreement with her client specifically placed sole
26 responsibility for such costs and disbursements on the client. The Special Prosecutor’s
27 statement that “[e]ven if Judge Halverson is now penniless, her co-counsel has been paid to
28 represent her and he should be held responsible for reproduction costs in the case on which

1 he is working” is fundamental wrong and impertinent.¹ This Court has established Rules
2 which provide for *in forma pauperis* treatment for those who do not have the financial means
3 to produce an appendix. In fact, under NRAP 24, the indigent who proceeds *in forma*
4 *pauperis* is not required to reproduce any part of the original record.

5 There is no reason why Appellant herein should not be treated as any other indigent,
6 in accordance with the principles set forth in *M.L.B.*, *supra*.

7 Additionally, the Special Prosecutor appears to have records which were not the
8 subject of subpoenæ or notices, copies of which were served on the Appellant. There is a
9 “Beneficiary Designation” from 1998, attached to the instant motion as Exhibit “2,” which
10 presumably is not a public record which is available to anyone who might request a copy of
11 the same. The Appellant does not know how the Special Prosecutor came into possession
12 of a copy of this 11-year old document, given that there was no notice to the Appellant of the
13 attempt by the Special Prosecutor to obtain the same and no opportunity for the Appellant
14 to challenge the efforts of the Special Prosecutor to obtain such document from her personnel
15 file.

16 Finally, there is the effort by the Special Prosecutor to have sanctions imposed on the
17 Appellant, claiming that the Appellant has violated the Rules concerning the Appendix, even

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19 Appellant’s counsel was paid to perform an extraordinary amount of work in preparation for
20 the hearings before the Commission on Judicial Discipline on very short notice. He was
21 required to be out of his home state—Michigan—for over a week in preparation and trial of
22 the case. He was required to review thousands of pages of documents within a very short
23 period of time and to develop a trial strategy and become thoroughly familiar with the facts
24 and circumstances concerning the 14 counts contained in the Formal Statement of Charges.
25 Specifically, his fee was for his work and his retainer agreement with his client, the
26 Appellant, specifically required that she pay for all costs and disbursements as they are
27 incurred, including, but not limited to court reporter transcripts, travel expenses for attorneys
28 or investigators, copying charges, telephone calls and any other expenses which were
necessary for the proper defense of the case. It was never the responsibility of counsel to pay
for copying charges or other costs associated with the production of the Appendix. That
always was the responsibility of the Appellant. Her present indigence does not shift the
burden of reproduction costs to her attorney.

1 though the Special Prosecutor is fully aware that the Appellant has sought *in forma pauperis*
2 status, based upon her financial impecuniousness, to dispense with the production of the
3 Appendix. [See the Emergency Motion to Proceed *In Forma Pauperis*, appended to this
4 Response as Exhibit "A."] It appears not only that the Special Prosecutor wishes to deny the
5 Appellant the right to have her appeal heard based upon her inability to pay for production
6 of an Appendix, but that she also seeks to have what little money the Appellant has to her
7 name to be stripped away from her to pay for sanctions which are highly inappropriate. Such
8 conduct by the Special Prosecutor is far more in keeping with the inequities perpetrated by
9 a character out of a Dickens novel than it is for one who is the position of a minister of
10 justice who is charged with the responsibilities of one who upholds and enforces the laws of
11 our State and country.

12 If anyone should be sanctioned, it is the Special Prosecutor for having sought to act
13 in a manner to deprive the Appellant of the due process, equal protection and fundamental
14 fairness which are guaranteed to all citizens, and by continuing to violate the very ethical
15 standards that she is sworn to uphold.

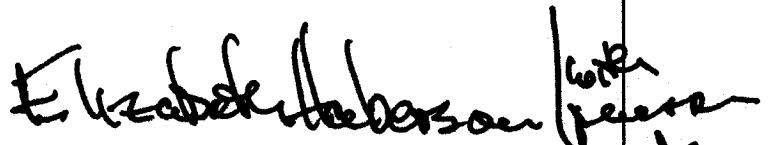
16 CONCLUSION

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18 The Motion by the Special Prosecutor should be denied in its entirety.

19 Dated: April 6, 2009

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Pro Hac Vice
Attorney for Respondent

STATE OF NEVADA

CASE NO. 0801-1066

Respondent.

NOW COMES the Appellant (previously styled as "Respondent"), ELIZABETH HALVERSON, who as and for her Emergency Motion to Proceed in *Forma Pauperis*, states as follows:

1. On November 17, 2008, this Commission entered an order immediately removing the Appellant from her judicial office, thereby immediately cutting off Appellant's salary and benefits.

Exhibit "A"

1 2. Prior thereto, on September 4, 2008, the Appellant was brutally assaulted by
2 her husband, Ed Halverson, who struck her repeatedly with a cast iron skillet which caused
3 catastrophic injuries to her head and body.

4 3. As a result of such attack, the Appellant was hospitalized for an extended
5 period of time and she is still suffering from the physical effects of the assault and shall
6 continue to suffer into the foreseeable future, which shall require continued medical care at
7 significant expense to her.

8 4. In connection with the apprehension of her husband, who is currently serving
9 a term of imprisonment of 3-10 years for such assault, the documents which the Appellant
10 had in her possession in connection with the above-captioned matter have been lost,
11 destroyed or otherwise not susceptible of retrieval.

12 5. The Appellant does not have the resources to obtain the assistance of persons
13 to provide help to her in locating all of the documents which are necessary to include in the
14 appendices to the Nevada Supreme Court in connection with an appeal which she has filed
15 with respect to her removal from judicial office in the above-captioned matter, and she is
16 physically hampered from doing so herself.

17 6. The Appellant has not had any earned income for the past four (4) months and
18 she has been drained of financial resources to pay for reproduction of said documents for
19 appendices even if she were able to locate all of the same.

20 7. As is shown by the attached affidavit, the Appellant cannot afford to pay for
21 the reproduction costs of documents which are part of the record in order to provide
22 appendices with her Opening Brief to the Nevada Supreme Court.

23 8. The Appellant's Brief has been prepared and is due to be filed with the Nevada
24 Supreme Court on March 17, 2009.


25 9. Appendices, which the Appellant cannot afford to provide, must be filed with
26 the Appellant's Opening Brief on or before March 17, 2009.


27 10. Without this Commission's granting Appellant's Motion to Proceed in *Forma*
28 *Pauperis*, the Appellant will be denied the right to proceed with her appeal due to her

1 impecuniousness, which will deny her the right to litigate the appeal of her removal from
2 office because she lacks the financial ability to pay for copies of documents which already
3 have been created (i.e., the transcripts of proceedings) and already in the repository of the
4 Nevada Supreme Court or in the possession of this Commission and are part of the record
5 of this case.

6 11. Appellant is entitled to redress and appended hereto are a statement of issues
7 which the Appellant intends to present on appeal.

8 WHEREFORE, it is respectfully requested that this Honorable Commission enter an
9 order immediately which grants the Appellant leave to proceed in *forma pauperis* with
10 respect to the appeal of this Commission's order removing Appellant from her judicial office.

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1 Thousand Dollars (\$1000.00) in a checking account because I have not yet paid my Cobra insurance
2 in the amount of \$550.58.
3

4 4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property
5 (excluding ordinary household furnishings and clothing)? I have a 1996 Toyota Avalon. My home
6 was quit claimed on July 1, 2008 to pay the attorney fees in this case.
7

8 5. List the persons who are dependent upon you for support and state your relationship to
9 those persons. None
10

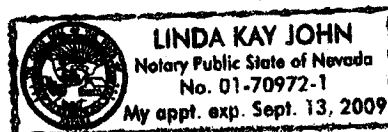
11 I understand that a false statement or answer to any question in this affidavit will subject me
12 to penalties for perjury.
13

14 Elizabeth H. Alvarado
15

16 SUBSCRIBED AND SWORN to before me this 15 day of March, 2009
17

18 Linda Kay John
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20 Notary Public in and for said
21 County and State
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STATEMENT OF ISSUES

1. May a disciplinary prosecutor amend a Formal Statement of Charges after disciplinary hearings have commenced and after the judge, who is the subject of charges, has given testimony?
2. May a tribunal make the introduction of evidence of a judge's physical disability, which is key to the defense of disciplinary charges, contingent on the judge's submitting to a psychiatric examination, where there are no issues in the Formal Statement of Charges concerning psychiatric disability and where the judge has not raised any claims of psychiatric disability?
3. May a tribunal disregard evidence of a physical illness, from which a judge suffers, in considering evidence of misconduct where the physical illness provides an explanation and defense to allegations contained in the Formal Statement of Charges?
4. Is the use of profane language by a judge in chambers, out of the hearing of litigants and jurors, *ipso facto*, judicial misconduct?
5. Is it judicial misconduct for a judge to commit judicial error by mistake where there is no evidence that the judge acted intentionally or with improper?
6. Is it judicial misconduct for a judge to request that a staff member perform personal services where there is no threat of retaliation by the judge if the staff member declines to perform such services?
7. Does yelling in chambers, outside of the hearing of litigants or jurors, constitute judicial misconduct, *per se*?
8. If a judge is not put on notice that it is a violation of the Code of Judicial Conduct or the rules of a court to bring private security personnel into her chambers, can the judge be found guilty of judicial misconduct for doing so?
9. Does a judge's making a public statement about another judge, which does not impugn the judge's character, integrity, trustworthiness, or fitness as a judge, implicate the Code of Judicial Conduct or constitute judicial misconduct?
10. When a judge's staff member is terminated, is the judge, on pain of judicial discipline, required to participate in locating that staff member's personal belongings?
11. Is it prosecutorial misconduct for a disciplinary prosecutor to represent a witness in the very disciplinary matter which she is prosecuting against a judge?

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- 12. Is it error for the Commission on Judicial Discipline to preclude a judge from obtaining evidence needed for her defense?
- 13. Is it a violation of principles of fundamental fairness and due process for the same entity which, prior to the filing of a Formal Statement of Charges, suspended a judge based upon allegations which became incorporated in the subsequent Formal Statement of Charges?
- 14. Is it a violation of due process for a judge to be subject to disciplinary proceedings wherein the right to present evidence is governed by arbitrary time restrictions?
- 15. Was the discipline imposed excessive?

CERTIFICATE OF SERVICE

I certify that on March 15, 2009, I caused the foregoing document entitled EMERGENCY MOTION TO PROCEED IN *FORMA PAUPERIS*, to be served as follows:

☐ by placing a copy of the same for mailing in the United States Mail, certified return receipt requested, with first class postage prepaid thereon addressed as follows; and/or

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

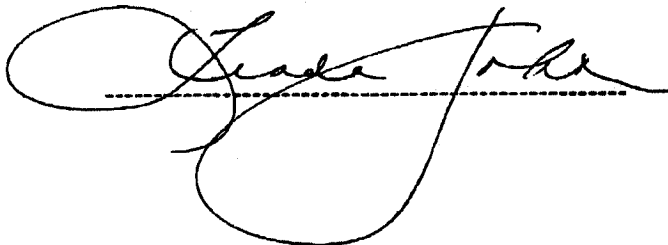
XXX by causing a copy to be sent via facsimile at the number(s) listed below; and/or

☐ by hand-delivering a copy to the party or parties as listed below:

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

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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b)(4), I certify that on April 6, 2009, I served a true and accurate copy of the appended Appellant's response to Motion to Dismiss Appeal by causing the same to be placed in the United States Mails, with pre-paid first-class postage affixed thereto, and also by causing a copy to be sent by facsimile transmission at the number listed below. addressed to:

Dorothy Nash Holmes, Esq.
Fahrendorf, Vilorina, Oliphant & Oster, LLP
P.O. Box 3677
Reno, NV 89505
(775) 348-0540



Michael Alan Schwartz