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

Case 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.

Appeal from Nevada Commission on Judicial Discipline's Order of Removal and Bar on Subsequent Elections

RESPONDENT'S ANSWERING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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STATEMENT OF THE CASE

In a 5-day hearing over two weeks time, the Commission on Judicial Discipline (hereafter "the Commission") heard 18 prosecution witnesses and 20 defense witnesses, including Judge Elizabeth Halverson (hereafter "the judge"). The Commission admitted 15 prosecution exhibits and seven offered by Judge Halverson. The Special Prosecutor presented her case in 11 hours, 22 minutes and 18 seconds; the judge presented her case in 18 hours, 4 minutes and 5 seconds.[1] TR. Vol. VII 1869.

The misconduct found was: sleeping on the bench; improper contact with deliberating juries and improper public statements afterwards; misconduct regarding Bailiff Johnnie Jordan; misconduct involving her Judicial Executive Assistant Ilene Spoor; misconduct by hiring private bodyguards outside the court's security system; misconduct by making false public statements about three judges trying to help her; and impeding the administrative functions of Chief Judge Kathy Hardcastle by refusing to communicate with her, refusing to cooperate with the Court Administrator, and making a 911 call to Metro Police reporting false information to create chaos.

ISSUES PRESENTED FOR REVIEW

While the penalty is reviewed *de novo,* the Nevada Constitution does not permit a *de novo* review of the Commission's factual findings; the Supreme Court's role on appeal in a judicial discipline case is limited to determining whether evidence in the record provides clear and convincing support for the Commission's findings (Matter of Varain, 114 Nev. 1271, 969 P.2d 305 (1998)), even if it could also be reasonably reconciled with contrary findings. In re Assad, 124 Nev. Adv. Op. 38, 185 P.3d 1044 (2008); Matter of Mosley, 120 Nev. 908, 912, 102 P.3d. 555, 558-559 (2004). Findings of fact and conclusions of law, supported by substantial evidence, will not be set aside unless they are clearly erroneous. Herup v. First Boston Financial, 123 Nev. Adv. Op. 27 (2007); Sheehan & Sheehan v. Nelson Malloy & Co., 121 Nev. 481, 486, 117 P.3d 219 (2005). This Court must determine if there is clear and convincing evidence as to each count sustained. Evidence is "clear and convincing" if it persuades the trier-of-fact that the

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[1] *See* Reporter's Hearing Transcript (hereafter "TR.") Vol. VII 1869. Respondent will cite hearing testimony to the Reporter's Transcript and all other documents to the record provided to the Court by the Clerk of the Commission.

truth of the contention is highly probable." Garrison v. CC Builders, Inc., 179 P.3d 867 (Wyo. 2008). The facts cited hereafter demonstrate that there was substantial clear and convincing evidence, if not overwhelming evidence, warranting removal of the judge on the seven counts identified by the Commission, and its findings and conclusions were in no way erroneous.

Appellant claims that the Commission erred in two procedural rulings: 1) permitting an amendment to the charging document; and 2) refusing to allow the judge to present evidence of her physical disabilities. The facts and argument relevant to those issues will show there was no abuse of discretion in either of those rulings.

The judge's "shotgunned" barrage of other claimed errors (Opening Brief 27-29) should not be reviewed or addressed by this Court at all. The Court should also strike the emergency "pauper" motion and additional "Statement of Issues" attached in Appellant's Appendix as the motion has already been decided and they are not proper matters in this appeal. NRAP 30(b).

Finally, this Court should determine if removal was the appropriate action for the Commission to take, or if doing so abused its discretion. In this case, there was no abuse of discretion and removal was mandated by substantial evidence and a need to protect the judiciary and the public.

FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW

A. Count Two—Sleeping in court.

Bailiff Johnnie Jordan testified that the judge slept during civil and criminal trials, including *State v. Sotomayor*, she took naps in the courtroom. He heard her snoring; he tried to awaken her by slamming doors and making noise; he enlisted help from others in trying to wake her up. TR. Vol. I 71-79; 185-189. Deputy District Attorney Lisa Luzaich Rego testified regarding the judge's sleeping while a witness was testifying during *State v. McDaniel*, a 23-count sexual assault trial. She knew the judge was sleeping because she saw her "flinch" when she awoke. TR. Vol. I 232-234. Chief Judge Hardcastle received numerous reports of Judge Halverson sleeping on the job and spoke to her about it. TR. Vol. II 353-354. Court Clerk Kathy Streuber saw the judge sleeping and snoring during her first civil trial; she, too, made noise to try to awaken her. She also saw her sleep during *McDaniel* and another case. TR. Vol. II 494-497. John Lukens, plaintiff's counsel in Judge Halverson's first civil trial, *Mentis v. Silver State/Republic Services*, saw the judge sleeping; her eyes were closed and her body posture

(slumping) and deeper breathing pattern told him she was asleep. He saw her staff try to awaken her. TR. Vol. III, 707-711; 714-715; 720:14-16; 721-723; 725-727.

The judge's Judicial Executive Assistant (JEA) Ilene Spoor saw her sleeping and "snoring away" on more than one occasion. She was called into the courtroom by Johnnie and she shook her and called her name in an effort to awaken her. TR. Vol. I 891-893; 965-967. Kathy Streuber would email Ms. Spoor to tell her whenever the judge was sleeping. *Id.* 920. The facts prove this count.

B. Count Three—Contact with deliberating juries and public statements afterward.

The sexual assault trial of Armando Sotomayor took place in February 2007. Exhibit 1 was the Eighth District Court's ""Blackstone"" record of the entire case and showed the timeline and proceedings. Judge Halverson went into the jury room to determine how the deliberations could be concluded without a unanimous verdict. Special Prosecutor's Exhibit 4 contained a copy of the JAVS[2] video for both the *McDaniel* jury encounter when Judge Halverson was having dinner and chatting with them in her courtroom, and the *Sotomayor* incident. The JAVS record shows at 5:38:07 that it was Judge Halverson herself who initiated the idea of going to look at the jury form when she was informed that the jury had reached a verdict but was not unanimous. Judge Halverson said "I wonder if I should go look at their jury form." The Deputy DA responds by asking "Pardon me?" The judge replies, "I'm wondering if I should just go look at their verdict form to correct their misperception." Public Defender Scott Waite[3] says "We should bring them in" and then they spent much time trying to persuade the judge to check on the verdict problem in some other non-prejudicial way, but the judge was undeterred, saying at 5:39 "That's why I need to see the verdict form." The JAVS was viewed in the hearing and watched by the Commission. TR. Vol. III 779.

Judge Bell testified that he had watched it previously, alone with Judge Halverson after it happened, and he did not agree with the judge's claim that the lawyers tricked her into talking to the jury. After watching it yet again in the hearing, Judge Bell reiterated that "they [the lawyers]

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[2] The Eighth Judicial District Court's videotaping system by which all court hearings are recorded.

[3] Deputy Public Defender Scott Waite did not testify because he died in an accident before the hearing.

were asking her [Judge Halverson] to call the jury into the courtroom and inquire whether further deliberation would be worthwhile...." TR. Vol. III 742:12-25. Judge Bell counseled Judge Halverson to avoid problems like that in the future, and although she appeared to "take that to heart" she wouldn't admit to any error and wanted him to agree that the lawyers had talked her into it. TR. Vol. III 743:2-19. Judge Bell testified that the attorneys did not goad or entice Judge Halverson into the mistake; she did that herself. TR. Vol. III 767-783:3.

The testimony of Deputy Public Defender Violet Radosta about the *Sotomayor* jury encounter, offered by the Special Prosecutor, was cut short because the video itself was watched during the hearing and the panel was going to watch it again in deliberations. TR. Vol. III 856-857. Radosta did testify, however, that Judge Halverson came out after her jury contact and also mentioned that she had talked to the jurors "about felonies and gross misdemeanors," both of which were involved in the *Sotomayor* case. TR. Vol. III 860:23-25, 861:1-10. Judge Halverson denied that she had talked to the *Sotomayor* jury about the specific charges, but it clearly shows on the JAVS video at 5:48 that she said, "They asked me about felonies and gross misdemeanors." Radosta also testified that she filed a motion for a new trial because of Judge Halverson's jury contact. That resulted in a plea bargain whereby her client pled and was convicted of a gross misdemeanor instead of the felony verdict that the jury returned. TR. Vol. III 862:19-25 to 864.

The Vada McDaniel sexual assault jury trial took place in March 2007. Exhibit 2 is the ""Blackstone"" record of the McDaniel case. Judge Halverson's *McDaniel* jury contact is also shown in the JAVS video, Exhibit 4, which was introduced with the testimony of Prosecutor Lisa Luzaich Rego. TR. Vol. I 235-238. The video started with a joke by Judge Halverson about the jury "not wanting to have dinner with her again tonight," indicating she had eaten dinner with them the previous night, on Thursday. TR. Vol. I 248:9-16. The DDA testified about what was wrong in the judge talking to jurors about "how a case gets there;" or quantums of evidence ("a scintilla"); a case where the victim is a minor and there is involvement of family court (which was the situation with the McDaniel family) (TR. Vol. I 248-249); similarities to the facts of her case and the judge's conversation with the jury, and how jurors should treat testimony by minors (TR. Vol. I 251-254); and whether or not the jury had to reach a verdict at all. (TR. Vol. I 254-56). The prosecutor also testified that the "Blackstone" Minutes reflected that weeks later the

clerk had removed from the Minutes all record of the judge's conversations with the jury. TR. Vol. I 260:6-18. After Judge Halverson's jury chat on those topics, the jury found "not guilty" on 10 counts and "hung" on 13 counts of sexual assault and was followed by a Motion for Mistrial. TR. Vol. I 247:3-16. The Commission watched the JAVS video. TR. Vol. I 243-244. Judge Halverson admitted dining with the jury "family style" in her courtroom and found nothing wrong with that. TR. Vol. II, 627:5-25, 628:1-14. These facts prove Count 3(a) and (d).

Judge Halverson's media comments:

Exhibit 1 shows that Defendant Sotomayor pled to the reduced charge on March 7, 2007. Exhibit 20 is a newspaper article published March 19, 2007, describing the jury-contact incidents in the two cases and it contains quotes from Judge Halverson criticizing the Sotomayor defense attorneys and claiming they insisted she go in and talk to the jury. It also condemns their motion for a new trial. Those comments were made while the case was still pending, because the defendant was not sentenced until April 19, 2007. These facts support the findings on Count 3(c).

The newspaper article (Exhibit 20) quoted Judge Halverson also discussing the *McDaniel* case while it was still pending. The DA's Office had already decided to re-try the defendant on the counts for which the jury reached a "hung" verdict, and that trial had still not yet occurred in August 2008 at the time of the Halverson discipline hearing. TR. Vol. I 247:20-23, 248:1-8. Judge Halverson also had a radio interview with KNPR on May 16, 2007 and discussed the cases; that, too, was heard live by Luzaich Rego, who said Judge Halverson's statement about the case were inaccurate. TR. Vol. I 260-261:1-13. The audio of the interview was in Exhibit 4 and the written transcript of it was Exhibit 15. Additionally, Judge Halverson again talked to the media in September 2007, and media reports are found in Exhibits 17 and 18. The *McDaniel* retrial had not yet occurred so the case was still pending when the judge talked about the case in the media in March, May and September of 2007. These facts support the findings on Count 3(b).

C. Count Five—Misconduct and behavior in the presence of Bailiff Johnnie Jordan.

Johnnie Jordan testified extensively, and very emotionally, about his treatment by Judge Halverson. He was embarrassed to swear in court but testified to her profanity in calling other bailiffs "by B... for B-i-t-c-h." TR. Vol. I 88, 107. He testified that she said "I'm sick of your

ass" and she frequently used the word "fuck" or "dumb fuck" in different variations. *Id. at* 91-92, 112:21-22; 113:1-2. He also testified to her use of other expletives. This was corroborated by Ileen Spoor (see next section). In the context of telling how demeaning she was to him, the bailiff testified that the judge ridiculed him at a formal dinner by giving him a $20 bill and telling him to "go play with the bailiffs." TR. Vol. I 92, 94:13-17.

Mr. Jordan also testified that the judge made him rub and massage her feet and neck (TR. Vol. I 70:2-18; 21-25; 71:1-4; 125:19-20) and get on his knees to put on her shoes for her (*Id.*126:6-10). Ileen Spoor also saw this. TR. Vol. IV 911:1-17. Judge Halverson admitted that she got Mr. Jordan's help to change her shoes but her version was that she had to "fight him off daily" because he always wanted to touch her. (TR. Vol. IV 1183:25-1185). She denied he rubbed her neck or massaged her, but she admitted that once she asked him to "hit her to get rid of a crick in her neck." *Id.* 1185:14-25, 1186. The facts proved all parts of this count.

D. Count Six—Behavior in the presence of JEA Ilene Spoor.

Ilene Spoor was a JEA with 11 years employment for the Eighth Judicial District Court, eight of which were with Judge Michael Cherry before he was elected to the Supreme Court. TR. Vol. IV, 888:15-25. She was JEA to Judge Halverson for five months. TR. Vol. IV 884-885. She helped the judge obtain her first support staff. TR. Vol. IV 887-891. The judge quickly found fault with her JEA work and ordered Ms. Spoor to stop communicating with attorneys because she was too incompetent to do so. TR. Vol. IV 894:21-25, 895:1-15. Ms. Spoor testified extensively because Judge Halverson was attempting to deflect attention from her own misconduct by blaming the JEA with "ticket fixing," a defense clearly and appropriately rejected by the Commission.

Ms. Spoor testified regarding the judge's mistreatment of other staff members. She corroborated their testimony and told what she personally observed. This count involved the judge yelling at staff in her presence and using profanity around her. She testified that the judge repeatedly called her own husband "a fucking idiot," "a bitch" and a "pain in the ass," using such language daily. TR. Vol. IV 900:4-8. Kathy Streuber, who quit the judge's employ because of her "verbal acts towards myself and other employees," heard the judge call her JEA "an idiot" (TR. Vol. II 479:13) and call her husband a "stupid bitch" in an agitated voice. TR. Vol. II 485-1-8.

Ms. Spoor described the judge as "a yeller" (TR. Vol. IV 911:18-25); screaming at Johnnie if he was not quick enough (*Id.* 912:18-25) or if her lunch was not hot enough (*Id.*914:1-8) [Jordan also testified to this (TR. Vol. I 125:20-24; 128-129)]; or if he was out of her sight too long (*Id.* 914:21-25 and 915:1-2). This was corroborated by Kathy Streuber who said the judge yelled at her and Dick Kangas. TR. Vol. II 483:8-20. The JEA told other staffers they did not need to continue to put up with the judge's abuse. TR. Vol. IV 917:14-24. Ms. Spoor testified that "Elizabeth [Judge Halverson] said that her houseguest was a fucking Mick." *Id.* 1070:15-17 and 1071:1-2.

Judge Halverson admitted that she yelled at Ileen Spoor. TR. Vol. IV1097:19-22; 1192:9-14; 1197:19-25. She denied yelling at her Recorder, Dick Kangas, but she admitted being frustrated because he could not do a playback in the JAVS system quick enough (which was the reason her employees said she yelled at him). *Id.* 1207:1-4. She denied yelling at Johnnie about her lunch but admitted that "since he was kind enough to say he'd heat it up and bring it to me, you know, 'Johnnie, I'd like it a little hotter.'" *Id.* 1178:3-9. She admitted she might have used foul language in talking about her husband with Ileen Spoor. *Id.*1192:21-25. When asked for details, she then invoked "marital privilege" even though the Presiding Commissioner explained to her that her conversations with others about her husband were not subject to the privilege. *Id.* 1193-1196. This count was totally proved.

E. Count Eleven—Hiring of personal bodyguards.

This count involved Judge Halverson bypassing the court system and bringing two private bodyguards into the courthouse to protect her. The judge brought Nick Starling and Stephen Fortune into the Regional Justice Center. The two men were not authorized to work as bodyguards because they didn't work for a company licensed by Nevada's Private Investigators Licensing Board, nor were they registered with the Board for that kind of work, according to Board Executive Director Mechele Ray. TR. Vol. III 688-690,700:21-24. The judge admitted she never asked them if they were properly licensed and claimed not to know that was a requirement. TR. Vol. IV 1144 [In another incredible display of her misunderstanding of the law and general confusion regarding the Fifth Amendment, Judge Halverson objected to the testimony of Ms. Ray on the grounds that she (the judge) had a right to counsel for a telephone

conversation the judge herself initiated with the Licensing Board Office, saying that Ms. Ray somehow violated that right. TR. Vol. III 687-688.]

Capt. William Minor, a 19-year Metro police officer, testified that he was summoned to the courthouse on a call of two unauthorized individuals in a judge's chambers. TR.Vol. III 808. He went there and found two men protecting her and acting as bodyguards. Judge Halverson explained how she hired them because other members of the court were out to get her or had threatened her. *Id.* 809:1-13, 811-815. Exhibit 7 was Judge Halverson's letter notifying the court that she had hired the men. According to Chief Judge Kathy Hardcastle, Judge Halverson bypassed the normal hiring process. TR. Vol. II 423:13-20; 424:7-25; 425:1-6. The court would make security arrangements if judges told them of problems (*Id.* 373:22-25 and 374:1-4) and there were other bailiffs available to her from the court system at the time. *Id.* 432:1-10.

Chief Judge Hardcastle testified about this incident and why it violated court protocol and presented a danger to everyone in the building. TR. Vol. I 311-316; 336-340; 371:4-6. This was an issue because one of the men had a Baton when he entered the building the first day. TR. Vol. III 811:9-11. Judge Halverson herself admitted that. TR. Vol. IV 1209:7-13. The Chief Judge said the court policy was that if a person did not have a card on file authorizing them to come into the building, the person had to go through security, and if Judge Halverson needed help from someone to get herself into the building, she had to notify the court administration of who her helper was. TR. Vol. II 418:11-24; 419. Judge Hardcastle notified Judge Halverson by letter that her private guards were not allowed, and invited her to a meeting to discuss it. *See* Exhibit 8. Judge Halverson did not attend and responded through the Metro officers that she had a right to her private bodyguards and would not have them leave the building. Judge Hardcastle, other judges, and the Metro officers then discussed the security problems Judge Halverson had caused, and to avoid further trouble, decided to wait until the judge and her bodyguards left the building to change the locks so they could not come in again. TR. Vol. II 336-339. Judge Halverson provided absolutely no cooperation with court administration in resolving the problem of the unauthorized private bodyguards. *Id.* 340:8-11.

Court Administrator Chuck Short said the judge had the services of other bailiffs, yet hired her own outside of the court policy and practice, something he'd never seen occur before.

TR. Vol. IV 1087-1089. She did not discuss it with court administrators or the Chief Judge. She did not get the bodyguards the proper paperwork or court personnel badges; in fact, she purported to hire them as her replacement bailiff and JEA before they'd even filled out employment applications with the court personnel system. TR. Vol. II 433-434. Judge Halverson's own testimony made it abundantly clear that she hired them at her own expense (TR. Vol. IV 1143:21-25) and did not tell anyone in the court system about it. *Id.* 1209-1210. Having created sufficient chaos, Judge Halverson withdrew her hiring of the two men 12 days later. TR. Vol. IV 1130:1-14. *See* Exhibit 22. This count was proved.

F. Count Thirteen—False public statements to the media regarding other judges.

Judge Stewart Bell, one of three judges asked by the Chief Judge to help Judge Halverson, testified in great detail about their efforts to do that. TR. Vol. III 743:20-25, 744-751. He said none of the three was angry or yelling at Judge Halverson in their April 6th meeting. *Id.* 749:2-9. Exhibit 17 was a news article from the September 18, 2007 edition of the *Las Vegas Review-Journal*. Exhibit 18 was a newspaper column written at the same time by Jane Ann Morrison. Both authors attended Judge Halverson's meeting with the Editorial Board and recounted her claims regarding the April 6th meeting. Judge Bell had read both news accounts when they were first published. TR. Vol. III 757:16-25. He re-read them in the hearing, then testified about them. TR. Vol. III 767:14-24. Judge Halverson told the Editorial Board and reporter that, at her meeting with the panel, Judge Bell was yelling at her "We're going to get rid of you right away." The news report also reported Halverson as saying Judge Sally Loehrer was equally vocal and Judge Arthur Ritchie was throwing his hands in the air. The other exhibit reported Judge Halverson claiming that Judge Bell and Judge Loehrer were both screaming at Judge Halverson, but Judge Loehrer was not as loud as Judge Bell. TR. Vol. III 768. Judge Bell testified that none of that occurred in their meeting; no one was yelling or flailing or waving their hands at Judge Halverson. TR. Vol. III 769:1-16. He said they were polite and professional and were simply trying to help her, at the Chief Judge's request.

When Judge Bell denied everything Judge Halverson had claimed about himself, Judge Ritchie and Judge Loehrer, Judge Halverson provided no rebuttal. Judge Halverson's co-counsel tried to get Judge Bell to agree that Judge Halverson just had a different recollection about the meeting, but Judge Bell said her version was not even a reasonable interpretation of what had

occurred and was "revisionist history diametrically opposed to what occurred." TR. Vol. III 786:2-7. This count was proved.

G. Count Fourteen—Impeding court administration.

Count Fourteen (a) alleged that Judge Halverson impeded the administrative functions of the court system by refusing to talk to the Chief Judge and insisting that all communication take place with her hired counsel, Robert Spretnak. Exhibit 6 is the letter that Judge Halverson sent to Chief Judge Hardcastle saying that. The Chief Judge testified to the series of events from Judge Halverson firing Ileen Spoor, to her bringing in her private bodyguards, and also issuing Exhibit 6 and refusing all personal communication, as well as the court staff videotaping Mr. Short's attempt to retrieve Ms. Spoor's personal property from her office. TR. Vol. I 307-316.

Count Fourteen (c) alleged that Judge Halverson impeded the administrative functions of the court by refusing to communicate or cooperate with Court Administrator Chuck Short as he was carrying out orders from the Chief Judge. The Commission watched a videotape of the event. *See* Exhibit C. Mr. Short gave testimony about the event. TR. Vol. IV 1076-1977; 1084-1086; 1184:13-23. It is related to Count Fourteen (d) in that while Judge Halverson had locked herself in her office and was refusing to deal with Chuck Short, she was placing a call to 911 Metro Police claiming unauthorized strangers were trying to break in and assault her. (This relates to Count Eleven, too.)

Judge Halverson had fired JEA Spoor, who was on vacation. The Chief Judge wrote Judge Halverson a letter telling her she had to return Ms. Spoor's personal property. Exhibit 5. Administrator Chuck Short was directed by the Chief Judge to get Ms. Spoor's belongings from Judge Halverson's chambers; Mr. Short tried to get Judge Halverson to cooperate, but she would not. TR. Vol. I 310:11-17. Judge Halverson's response to Exhibit 5 was to send Exhibit 6 to Chief Judge Hardcastle, telling her "don't talk to me, except through my attorney." TR. Vol. I 311:6-11. Mr. Short took some bailiffs and went up to get Spoor's things, videotaping the event. Instead, Judge Halverson barricaded herself in her office then placed a bogus 911 call to Metro Police, (TR. Vol. II 337:15-19) claiming assailants were trying to break into her chambers.

Regarding the 911 telephone call, it was also proved by the testimony of Judge Hardcastle (TR. Vol. I. 312-313:2-14; 337:17-19) and Police Captain William Minor. Capt. Minor testified that Judge Halverson said to him "where were you yesterday when I needed you,

when I called 911?" (TR. Vol. III 811:18-19) and she then explained the call to him (*Id. at.* 813:3-13). Judge Halverson herself admitted making the 911 call because of "a warrantless search by armed bailiffs." Judge Halverson testified to the "warrantless search" by Chuck Short and the 911 call and giving a TV interview about it. TR. Vol. IV 1141-1144. Judge Halverson herself offered Exhibit C, which is the videotape of Chuck Short and bailiffs going to chambers and the JEA office to pick up Ms. Spoor's belongings and Judge Halverson refusing to come out or give the items to them. The judge's own testimony corroborates all of the allegations to Count Fourteen. All parts of this count were proved.

Judge Halverson's antics impeded overall court functioning, too. Court Administrator Chuck Short testified to the huge cost of retrying a criminal case -- $10,000 per day. TR. Vol. IV 1090:8-23. He presented charts showing statistics his staff prepared detailing all the peremptory challenges, and resulting civil case re-assignments, from January through June of 2007, occurring because of attorneys trying to get Judge Halverson off their cases. TR. Vol. IV 1089-1103. *See* Exhibit 16. He said that 199 of 406 challenges in a six-month period were directed at Judge Halverson and required case re-assignments. Chief Judge Hardcastle also testified that she was repeatedly disturbed about Halverson issues while she was working at the Legislature on behalf of her court, and that court staff spent an inordinate amount of time handling problems Judge Halverson caused. TR. Vol. II 345:19-25, 346:1-19.

ARGUMENT

I. THE MISCONDUCT FOUND VIOLATED JUDICIAL CANONS AND THERE WAS SUBSTANTIAL, CLEAR AND CONVINCING EVIDENCE PRESENTED.

The Commission is a constitutionally-established court of judicial performance. Whitehead v. Nevada Commission on Judicial Discipline, 110 Nev. 128, 158, 906 P.2d 230 (1994), *dec. clarified in den. of reh'g*, 110 Nev. 380, 873 P.2d 946 (1994). The conduct prescribed for judges and justices is more stringent than conduct generally imposed on other public officials. In re Locatelli, 161 P.3d 252 (N.M. 2007). Judges must personally observe high standards of conduct to preserve public confidence in the integrity and independence of the judiciary. Denike v. Cupo, 926 A.2d 869 (N.J. 2007). The primary policy of the Nevada Code of Judicial Conduct is to promote public confidence in the judiciary. Millen v. Eighth Judicial Dist. ex rel. County of Clark, 122 Nev.1245, 148 P.3d 694 (2006).

The Special Prosecutor had dismissed some charges, or portions thereof, during the hearing and the Commission also dismissed some parts, pursuant to NRCP 52(c). The Commission then carefully scrutinized every section and subsection of the 14 counts and made findings and conclusions of misconduct on seven charges that most typified the outrageous behavior, demeanor and personality of this judge. This case is not like In re Assad, 24 Nev. 38, 185 P.3d 1044 (2008), where this Court found there was no willful misconduct, but rather an isolated incident; that there was significant mitigating evidence; and that there was no indication that the violation would be repeated. In fact, this case is just the opposite.

Counts 2, 3, 5 (c, j, s), 6 (a, b) 11, 13 and 14 (a, c and d) alleged violations of Canons 1, 2 and 3 of the Judicial Code. Those contain the basic requirements that a judge must act with integrity and propriety, demonstrating high standards and compliance with the rule of law, and perform in a manner that promotes the public's confidence in the judiciary. Clearly, those were violated in each of the counts proved during the hearing of this case. Canons 3 and 4 and their various sub-parts were charged because Judge Halverson did not perform her duties impartially, patiently, courteously, diligently, professionally, competently, cooperatively, in a dignified fashion, faithful to the law. She acted in a biased, discriminatory and totally improper manner, mistreating members of her staff. Nor did she protect the right to be heard by refraining from improper *ex parte* contacts with juries. She openly used her position as a judge to get media attention in which she improperly discussed pending cases and told falsehoods about lawyers and judges. She failed to work with fellow judges, her Chief Judge or court administrative personnel and repeatedly did things to impede the administrative function of the court. Overall, her conduct in seven months on the bench most certainly cast doubt upon her ability to act as a judge and it demeaned the very office. The applicability of these canons to the conduct of Judge Halverson cannot be disputed.

When a canon of the Code of Judicial Conduct is used to assess the conduct of a judge, the canon enjoys the status of law. Holmes v. State, 966 So.2d 858 (Miss. 2007). The Supreme Court assumes statutes are valid and the challenger has the burden to make a clear showing of unconstitutionality. Halverson v. Secretary of State, 124 Nev. Adv. Op. 47 (July 3, 2008). In this case, Appellant has not shown that the canons are unconstitutionally vague.

The issue is whether the judicial standards give fair notice to those to whom they are directed, i.e., whether an ordinary judge could understand and comply with them. In the Matter of the Honorable Elizabeth Halverson, 123 Nev. 48, 169 P.3d 1161 (2007) (hereafter "Halverson I"), *citing,* Comm'n for Lawyer Discipline v. Benton, 98 S.W.2d 425, 437 (Tex. 1998). The Code of Judicial Conduct establishes standards against which a judge's conduct is measured (Halverson I) and they are not unconstitutionally vague, and they sufficiently define the conduct that is regulated or prohibited. State v. Colclazier, 106 P.3d 138 (Okla. 2002), *citing,* Allen v. City of Oklahoma City, 965 P.2d 387 (Okla 1998); In re Ellison, 789 S. W. 2d 469 (Mo. 1990); and Dodds v. Commission on Judicial Performance, 906 P.2d 1260, 1266 (Cal. 1995). Canon 2 is not unconstitutionally vague. In re Assad, *citing,* Matter of Young, 522 N.E.2d 386, 387-88 (Ind. 1988); Miss. Comm'n. on Jud. Performance v. Spencer, 725 So.2d 171, 176 (Miss. 1998); In re Hill, 8 S.W.2d 578, 582-83 (Mo. 2000); In Re Disciplinary Action Against McGuire, 685 N.W.2d 748, 761-62 (N.D. 2004). Nor are canons that prohibit public commentary on a pending case unconstitutional. Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (7th Cir. 1975).

Contrary to the statements of Appellant, it is not accurate that the Commission can only discipline Judge Halverson if it found intentionally bad conduct. The relevant inquiry was into the intentional nature of the actor's conduct, and not whether the actor was acting out of malice or ill will. Matter of Fine, 116 Nev. 1001, 1021, 13 P.3d 400 (2000). NRS 1.4653 does recognize willful misconduct as one instance that warrants removal, censure or other forms of discipline. It also, however, provides that if one "willfully or persistently failed to perform the duties of [his] office," judicial discipline is also permitted. "Willful misconduct" is defined at NRS 1.4653 (4)(b)(2) as a "knowing or deliberate violation of one or more of the provisions of the Nevada Code of Judicial Conduct; or a "knowing or deliberate act or omission in the performance of judicial administrative duties that: (I) Involves...bad faith...or amounts to a public offense; and (II) Tends to corrupt or impair the administration of justice in a judicial proceeding. NRS 1.4653(4)(b)(3)."

"Willful misconduct" is also committed if a judge "knowingly or deliberately swears falsely in testimony before the Commission or in documents submitted to the Commission. *See* NRS 1.4653 (4)(b)(4). As the Commission noted, Judge Halverson did just that, repeatedly, in

her testimony during the hearing. These sections empowered the Commission to remove Judge Halverson from the bench.

Other states support Nevada's position. *See* In re Freeman, 995 So.2d 1197 (La. 2008) (An act need not be intentional to support judicial discipline); In re Lorona, 875 P.2d 795, 178 Ariz. 562 (Ariz. 1994) (willful misconduct is not required to support the suspension of a judge); In re Elloje, 921 So.2d 882 (La. 2006) (An act does not have to be intentional to support judicial discipline. No subjective intent is required; it can be negligence or ignorance not amounting to bad faith....If it is egregious, it can be found to be an act done in bad faith or as a pattern or practice of legal error.); In re Justice of the Peace Alfonso, 957 So.2d 121 (La. 2007) (An act need not be intentional to support judicial discipline; a lack of conscious intent may support disciplinary action...).

Judge Halverson's acts were intentional, especially in her mistreatment of her employees. She claims they were simply jokes or misunderstandings, or did not happen at all, or that she is the victim of a vindictive vendetta by all her employees against her. The evidence presented at the hearing proved otherwise. "Examination of judicial conduct depends not so much on the judge's motives but more on the conduct itself, the results thereof, and the impact such conduct might reasonably have upon knowledgeable observers." In re Complaint Against Kneifl, 351 N.W.2d at 696, 217 Neb. at 475, *citing* In re Stuhl, 233 S.E.2d 562, 292 N.C. 379 (N.C. 1977).

Under the "law of the case doctrine," when an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed. Hsu v. County of Clark, 123 Nev. Adv. Op. 60 (December 27, 2007). Several of the issues Judge Halverson raises in this appeal were already decided and are "law of the case" from Halverson I. Now this Court simply has more evidence of them. That includes:

- that persistent *ex parte* contact with deliberating juries, including dining with them while talking to them about legal issues pertinent to the matter before the jury, violates Canon 3(B)(11);

- that *ex parte* contact with juries violates Canon 3(B)(2) and impairs a judge's ability to conduct criminal trials;

- that abusive conduct toward court personnel, including incessant yelling at staff, vulgarities, using pejorative, racial, ethnic or religion terms and public humiliation of the bailiff violate Canon 3(B)(4) and (5);

- that a judge does not perform diligently by sleeping on the bench and falling asleep regularly without taking steps to remedy any underlying health problem causing such lethargy and it violates Canon 3;

- that failure to cooperate with court administration violates Canon 3(C)(1) when it interferes with a court's functioning;

- that the inability to conduct criminal jury trials in a proper manner interferes with court administration when it results in caseloads having to be re-distributed;

- that contact with juries that results in re-trials causes expense and delay that interferes with court administration;

- that retention of private bodyguards interferes with court administration;

- that making unwarranted 911 calls to local police can wreak havoc on a court system, interfering with court administration;

- that a district court judge has a duty to cooperate with other judges and court officials, pursuant to Canon 3(C); and

- that it does not violate Due Process when the Commission allocates specified times for case presentation to the Special Prosecutor and the Respondent Judge in a judicial discipline hearing, especially where the Special Prosecutor does not use more time than the Respondent Judge.

This Court has already stated that "an inattentive judge does not promote public confidence in the integrity and impartiality of the judiciary," citing Canon 2(A) and similar cases from Alaska and Massachusetts. *See* Paine v. State, 107 Nev. 998, 823 P.2d 281 (1991). *See also* Matter of Carpenter, 17 P.3d 91, 199 Ariz. 246 (Ariz. 2001). There can be no doubt that a judge snoozing or snoring or even nodding off repeatedly or regularly does not promote the public's confidence in the judiciary. A treatise entitled "The Case of 'Judge Nodd' and other Sleeping Judges—Media, Society and Judicial Sleepiness," by Dr. Ronald R. Grunstein, and others at the Royal Prince Alfred Hospital in Sydney, Austrialia, examined cases of judicial sleeping in 14 diverse settings all over the world, identifying the fitness-for-duty problems that arise from such cases. He concludes that "...judicial sleepiness is clearly seen by the community as undermining their confidence in the judicial process." S*ee* http://online.wsj.com/public/resources/documents/judicialsleepiness.pdf .

Pennsylvania found extreme misconduct when a judge repeatedly used racially and ethnically insensitive and inappropriate terms for minority members of the community;

repeatedly treated female staff in a demeaning manner; used indecorous behavior toward staff; corrected and criticized staff loudly in the presence of third parties; pounded fists in anger and slammed doors and threw files and engaged in loud, angry outbursts. In re Former Magisterial District Judge Wade J. Brown, 907 A.2d 684 (Pa. Ct. Jud. Disc 2006). In another case, In re Mathesius, 910 A.2d 594 (N.J. 2006), misconduct was found where the judge talked to juries in three cases (interestingly, in one named McDaniel, which also resulted in an acquittal); berated employees; criticized fellow judges; acted petulant, sarcastic, angry and arrogant; and ingratiated himself with the media writing "thank you" letters to editors.

It is reversible error in a criminal case where, among other things, a judge communicates with the jury answering questions on substantive matters (what would happen if the jury "hung" and could not decide; also sentencing issues) and the jury later deadlocks. Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003). Judge Halverson talked with the *McDaniel* jury twice while dining with them in her courtroom. She says it was not on substantive matters but in the second dinner chat that was recorded, she addressed the credibility of a child witness; the fact there was a concurrent Family Court case that might solve some of the matters; that the State only had to establish some things by a "scintilla of evidence;" and what could happen if the jury did not reach a verdict. In *Sotomayor*, Judge Halverson talked to them about "felonies and gross misdemeanors" but, because that part was behind closed doors and not recorded, it is unknown exactly what she said to them. The *McDaniel* jury hung on half the 23 counts; the *Sotomayor* jury acquitted on part of the serious charges. It cannot be assumed that Judge Halverson's conduct had no influence on the outcome of those cases.

Another similar case is In re Lokuta, 964 A.2d 988 (Pa. Ct. Jud. Disc. 2008). The judge was on a "war footing" with other judges and administrators and trusted no one. Her conduct in chambers was impatient, undignified and discourteous toward her staff, law clerks, interns and secretaries; she created a tense, stressful atmosphere in her chambers, and impaired the ability of her staff to properly perform their duties. She also instructed her staff to have no personal or professional relationships with other courthouse personnel. She had screaming personal arguments with her staff in front of court personnel, and berated her staff in front of other staff members and court personnel. Her conduct was found to warrant discipline.

This Court already found in Halverson I that failure to cooperate with court administration violates the canons when it interferes with court functioning. Failure to abide by administrative orders of the Chief Justice warrants removal from office. In re Walsh, 587 S.E.2d 356, 356 S.C. 97 (S. C. 2003). A judge violating court administrative operations "shows disrespect for the basic principle which underlies the judicial system: respect for judicial orders." In the Matter of George R. Robertson, No. 94, 647, Kansas Supreme Court, October 7, 2005. (This case can be accessed online at http://www.kscourts.org/kscases/supct/2005/20051007/94647.htm.)

Judge Elizabeth Halverson has committed substantial, repeated and egregious misconduct that warrants her removal from the judiciary. Any one of the acts which were alleged and proved by clear and convincing evidence, if taken alone, would not likely require that result, but the combination of them is overwhelming, and clearly does. These are not the simple mistakes of a "rookie judge." They illustrate a pattern of ignorance of the law and shocking professional incompetence; persistent and relentless verbal abuse of her employees; paranoia, suspicion and non-cooperation with her fellow judges and court staff; a demonstrated tendency to ridicule others and flaunt what she sees as her superiority; and a penchant for blaming others and lying to try to get herself out of trouble.

It is appropriate to consider Judge Halverson's actions in handling this matter overall, including her performance in the hearing, her failure to comply with discovery and her deceitfulness. *See* In re Franklin, 969 So.2d 591 (La. 2007). The public hearing gave this Commission, and all who participated in or observed it[4], a front-row seat into "Elizabeth Halverson's courtroom" with five days of watching this judge in action. The behavior of Judge Halverson was nothing short of astounding, and demonstrated a temperament ill-suited for the bench. Her actions corroborated the testimony of many witnesses. She supplied some of the prosecution's best evidence against herself. She perpetrated an astounding record of misconduct for so short an active tenure on the bench—seven months—and the fact that it began virtually at

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[4] Unfortunately, it was broadcast live on CNN and TRU-TV (formerly Court TV) and many portions of the hearing were posted on YouTube.

the inception of her judgeship, and continued throughout, shows that it is her nature, not her inexperience, that drove such behavior.

Judge Halverson used "ignorance" to excuse her actions. She explains her improper jury contacts as "not knowing her own authority." She says it was perfectly permissible for her to talk to the media about the *McDaniel* case because a different judge would handle the retrial. She claims it was permissible to talk to the media about *Sotomayor*, even before his sentencing in her court, because she was naïvely led astray by unethical attorneys. She testified it was okay for her to dine with a deliberating jury in her courtroom, claiming she'd seen Judge Don Chairez do it, a claim Judge Chairez denied. TR. Vol. VII, 1717:7-17. She repeatedly illustrated her ignorance of the law, but that does not excuse her misconduct or shelter her from discipline; it just makes her even more dangerous as a judge. "Ignorance of the law is even less of an excuse for a judge than a private citizen. A claim of ignorance of the duties of the office of a judge, as a defense to judicial misconduct, is tantamount to an admission by the accused judge that [she] does not possess the qualifications necessary to be a judge." Miss. Comm'n. on Jud. Performance v. Britton, 936 So.2d 898 (Miss. 2006).

In Miss. Comm'n. on Jud. Performance v. Boykin, 763 So.2d 872 (Miss. 2000), the Court ruled that a judge may, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration of justice, so as to bring the judicial office into disrepute and the result is the same, and sanctions are warranted, regardless of whether it was bad faith, negligence or ignorance. *Cf.* Miss. Comm'n. on Jud. Performance v. Thompson, 972 So.2d 582 (Miss. 2008). Judge Halverson's behavior and actions most definitely brought disrepute to Nevada's judiciary.

Myriad judicial discipline authorities have found that activity, language and staff treatment like the kind done by Judge Halverson was serious misconduct. *See* In re Lamdin, 948 A.2d 54 (Md. 2008) (repeated vulgarity); In re Sassone, 959 So.2d 859 (La. 2007) (rude, impatient and sarcastic treatment of others); Disciplinary Counsel v. Squires, 876 N.E.2d 933(Ohio 2007) (rude, disrespectful, hostile treatment of fellow judges, attorneys, defendants, court reporters, clerks, office staff, peace officers and other court personnel); In re District Justice Richard H. Zoller, 792 A.2d 34 (Pa. Ct. Jud. Disc. 2002) (judge was demeaning, impatient, undignified, used vulgar language and profanity, was loud, confrontational, and threw

a pen); In re Seitz, 495 N.W.2d 559, 441 Mich. 590, *reh'g den.* 503 N.W.2d 442, 442 Mich. 1247 (Mich. 1993) (unprofessional relationship with, and hostile attitude towards, employees and describing judicial colleagues and others in offensive and obscene terms); Matter of Disciplinary Proceedings against Buchanan, 669 P.2d 1248, 100 Wash.2d 396 (Wash. 1983) (verbal and physical sexual harassment and religious comments or slurs); and In re Inquiry Concerning Holier, 612 N.W.2d 79 (Iowa 2000).

A similar case in which a judicial disciplinary board found actionable misconduct is Disciplinary Counsel v. Parker, 876 N.E.2d 556 (Ohio 2007). In that case, a municipal court judge called 911 to try to create an emergency situation to deflect attention from his own misconduct. He, too, had created problems for himself in the courthouse by a pattern of rude remarks, coercive tactics, and insulting and belittling behavior against others. He engaged in threats and intemperate behavior to judges, lawyers, litigants and court personnel. He blamed others for his problems, saying they had political disputes with him. His actions and behavior were found to be misconduct under Canons 1, 2 and 4.

A complete review of the substantial, clear and convincing evidence in this case proves unequivocally that Judge Halverson committed repeated misconduct for the entire short tenure in which she sat on the bench in the Eighth Judicial District.

II. THE COMMISSION DID NOT ABUSE ITS DISCRETION WHEN IT PERMITTED THE SPECIAL PROSECUTOR TO AMEND THE PLEADING TO CONFORM TO PROOF PRESENTED IN THE HEARING.

A motion for leave to amend a pleading is left to the discretion of the trial judge, and that decision will not be disturbed on appeal, absent an abuse of discretion. Wheaton v. Sterling, 121 Nev. 662, 665, 119 P.3d 1241 (2005); University & Community College System v. Sutton, 120 Nev. 972, 988, 103 P.3d 8 (2004); Pierce Lathing Co. v. ISEC, Inc. 114 Nev. 291, 296, 956 P.2d 93, 96 (1998). An abuse of discretion occurs if the court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. Matter of Eric L., 123 Nev. Adv. Op. 4 (March 8, 2007). That did not occur in this case.

On September 24, 2008, the Special Prosecutor filed a Motion to Amend the Pleadings (Formal Statement of Charges) to Conform to the Evidence Presented at Hearing, to correct the name of the case Judge Halverson was talking about when she made public statements accusing

attorneys of "conning" her to engage in impermissible conduct. *See* Vol. 15:3003. The charging document said the *McDaniel* case when all the evidence presented indicated it was the *Sotomayor* case she was talking about in her radio interview. Both were sexual assault trials in which the judge erroneously met with jurors on her own. The cases were continually spoken of in tandem by the media, the witnesses and by the judge herself, in her various interviews. Exhibits 4, 15 and 20. There was never a doubt about the specific nature of the violation—the judge disparaging and blaming Violet Radosta and her team for misleading and tricking the judge into improper jury contact. Radosta handled the *Sotomayor* case.

In re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222 (1968), does not apply because Judge Halverson always had notice of the correct case name and she specifically litigated the facts of the charge in the hearing. As is shown in the motion, the judge was never in the dark about this charge; she discussed it in her own testimony, and on cross-examination, and in the context of discussing the two trials as well as the media contacts thereafter. She addressed it with regard to denying the witnesses' testimony. She had copies of the radio interview transcript (Exhibit 15) and audio tape (Exhibit 4) in which she made the comment as early as her suspension hearing, July 2007, more than a year before this hearing. There was no lack of notice to the judge; she litigated the correct facts during the hearing. Judge Halverson never objected during the hearing to any discussions of her blaming Radosta and/or Scott Waite in *Sotomayor* instead of in the *McDaniel* case; clearly, she knew the case in which she made those accusations and was never confused by the charging document. She was not prejudiced by this correction to a clerical error.

NRCP 15(b) says leave to amend should be freely granted, even as late as "after judgment." Amendments under this section of Rule 15 are granted with greater liberality than amendments under NRCP 15(a). Marschall v. City of Carson, 86 Nev. 107, 464 P.2d 494 (1970). This motion was made before either counsel had yet submitted Closing Arguments, nearly 2 months before judgment. NRCP 15(b) says "failure to amend does not affect the result of the trial on these issues." In other words, a court may render judgment consistent with the facts presented during the hearing. Clear and convincing evidence of this violation was shown and Judge Halverson would have been found culpable of making those comments, with or without the amended pleading. The amendment was done simply to clean up the record, and did

not prejudice her. The Commission did not abuse its discretion in granting the Special Prosecutor's motion.

III. THE COMMISSION DENIED THE JUDGE'S REQUEST TO PRESENT HER "PHYSICAL DISABILITIES" CLAIMS BECAUSE SHE FAILED TO COMPLY WITH DISCOVERY AND COMMISSION ORDERS.

Judge Halverson asserts Due Process/Fundamental Fairness violations because the Commission did not let her argue her physical disabilities. Judge Halverson was not allowed to argue her physical disabilities because she refused to comply with Commission orders to undergo physical and mental examinations, and to give Discovery, so that the issues could be fairly explored and litigated.

By way of background to this Court, prior to her suspension hearing Judge Halverson produced letters from her therapist, Patricia Delgado, and her physician, Michael Jacobs, to prove that she had no mental disabilities and was not physically incapable of working as a judge. Respondent's Appendix 1-2. The Commission ordered the judge to undergo physical and mental examinations. Respondent's Appendix 3-6. Judge Halverson refused to undergo the psychiatric evaluation ordered by the Commission in August 2007, during the investigatory phase of the case, when there was still plenty of time for the Commission to explore CJD Rule 30-32 psychological or psychiatric issues that possibly could have explained some of her actions.

The Special Prosecutor filed a Motion for Discovery on April 17, 2008, because the hearing date was approaching and the judge had failed to provide an iota of Discovery. Respondent's Appendix 7-10. She had asserted "physical disabilities" as her Affirmative Defense Eleven. Vol. 1:118-122. Instead of responding to the motion, Judge Halverson ran off her attorneys and took over the case herself. *See* Motion to Withdraw as Counsel, Vol.1:174-177.

Because she had still not complied after nearly a year, the Special Prosecutor also filed a Motion to Compel Psychiatric Evaluation and a Motion in Limine. Respondent's Appendix 11-25. On June 26, 2007, the Commission held a hearing that included resolving the Motion for Discovery, with Judge Halverson representing herself. *See* Transcript of Hearing, Vol.3:526. Judge Halverson never seemed to know how she wanted to argue "physical disabilities." Judge Halverson said, "I wouldn't say that I've raised an affirmative defense." Vol. 3, 540:1-2. She

said, "So that's not an affirmative defense. That's a fact of life." Vol.3, 540: 8-9. She said, "...and I'm telling you that this was a reasonable accommodation, that's not an affirmative defense." Vol.3, 540:20-22.

The Commission granted the Motion for Discovery and directed the judge to give the Special Prosecutor a list of witnesses by July 3rd; to notify the Special Prosecutor by that date if she intended to argue physical or mental disabilities, and if so, to undergo examinations and provide her medical records, saying that if she failed to do so, she'd be precluded from presenting such evidence. Vol. 3, 550-552; *See* Order filed after the hearing. Respondent's Appendix 32-45. Judge Halverson never complied with the Commission's orders from the June 26th hearing regarding Discovery or the physical or mental exams. She never even responded to the Special Prosecutor's Motion in Limine, so the Special Prosecutor filed another Motion in Limine Regarding Respondent's Case on July 31, 2008. Respondent's Appendix 46-59. When Mr. Schwartz began trying to question Johnnie Jordan about the judge's disabilities, the matter was argued at the Public Hearing. TR. Vol. 1:166-180. The Commission granted the Special Prosecutor's motions in limine, saying the judge could not argue medical issues because she had not undergone medical examinations or provided Discovery about it. *Id.* p.180:22-25, 181:1-5. There was no Due Process or Fundamental Fairness denial. The Commission correctly refused to allow Judge Halverson to engage in trial by ambush or to use "physical disabilities" as either "a sword or a shield" when she refused to engage in discovery about the matter and refused to comply with Commission orders.

IV. APPELLANT'S "OTHER MATTERS" SHOULD BE DISREGARDED AND DENIED.

Calling them "Other matters which warrant this Court's attention," the judge offered a two-page staccato rendition of conclusions on any and every other issue she wanted to argue, but had no legal or factual basis to raise. She did the same in attaching a "Statement of Issues" to her affidavit supporting her emergency "pauper" motion, which she should never have included in her Appellant's Appendix. None of the arguments cite to the record or to any law, a violation of NRAP 28(a)(4) and 28(e). The judge has argued facts not in evidence[5] and misstated the

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[5] An incredible example is found at Opening Brief, p.14.

evidence. The "Statement of Issues" is a blatant effort to "shotgun" more arguments without citation to facts or law, or even proper argumentation. The Nevada Supreme Court declines to consider an argument in a disciplinary matter where the judge fails to cite any legal authority in support of her argument. Matter of Fine, 116 Nev. 1001, 1023 (n.18), 13 P.3d 400 (2000). *Cf.* S.I.I.S. v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984); McKinney v. Sheriff, Clark County Nevada, 93 Nev. 70, 71, 560 P.2d 151 (1977). When an appellant fails to include necessary documentation in the record, this Court presumes that the missing portions support the unfavorable decision being appealed. NRAP 30 (b)(3); Cuzze v. Univ. & Cmty. Coll. Sys., 123 Nev. 598 , 172 P.3d 131 (2007). The Court also refuses to consider errors raised in conclusory arguments that fail to cite relevant authority. Ivory Ranch v. Quinn River Ranch, 101 Nev. 471, 705 P.2d 673 (1985). That same result should follow in this case, for Judge Halverson continually argues without citing facts or law to support her position. The Court should refuse to consider these arguments.

V. REMOVAL OF THE JUDGE WAS THE APPROPRIATE REMEDY.

The factors that militate in favor of the ultimate sanction of removal are Judge Halverson's broad array of misconduct; the repetitive acts; the pattern of similar mistreatment of many different people; her incredible ignorance of the law and procedure; her incompetence in handling matters; her temperament that makes her unsuitable for the judiciary; the accumulation of misconduct events in so short a time, indicating it is her nature that drives this behavior; her refusal to admit that she has any of these short-comings; her penchant to blame others; her failure to take responsibility for any of the situations that got her to this point, and her lying to the Commission. Lying to the Judiciary Commission in a sworn statement taken as part of an investigation into judicial misconduct is simply conduct which the Supreme Court cannot and will not tolerate. In re King, 857 So.2d 432 (La 2007). When a judge prevaricates in a case to save his own skin, he impairs his credibility to pass judgment on those who do likewise in cases over which he presides, thereby eroding the public's confidence in him and in the judiciary. In re Danikolas, 838 N.E.2d 422 (Ind. 2005).

In cases in other states, with facts similar to this one, removal was proper. *See* In the Matter of Carpenter, 17 P.3d 91 (Ariz. 2001) where the gravity, frequency and quantity of misconduct (14 counts charged) required removal. There was a similar result in In re Complaint

against Jones, 581 N.W.2d 876 (Neb. 1998). In the case of In re Inquiry Concerning a Judge (Mary Jean McAllister), 646 So.2d 173 (Fla. 1994), a new, inexperienced judge was removed for her misconduct. Her misconduct started within a month of her taking office. She screamed at people, berated them, harassed her legal staff and made them resign. She was abusive, made disparaging remarks to people, used unacceptable perjoratives, had *ex parte* contacts with prosecutors in two criminal cases, and ordered her judicial assistant to report to her any courthouse gossip about her. She argued that they were insufficient acts of misconduct to warrant her removal. The Florida Supreme Court said:

> "Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate the conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents, which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary."

A judge whose conduct on the bench demonstrates a blatant lack, not only of judgment but also of judicial temperament, and complete disregard of the appearances of impropriety inherent in his conduct should be removed from office, even if previously, his reputation was for honesty, integrity and judicial demeanor. Shilling v. State Comm'n. on Judicial Conduct, 415 N.E.2d 900, 434 N.Y.S.2d 909, *re-arg. Granted,* Matter of Schilling, 418 N.E.2d 694, 437 N.Y.S.2d 1030, *stay dism.* 51 U.S. 978, 101 S. Ct. 2301, 68 L.Ed.2d 834 (NY 1980).

The court in In re Franklin, 969 So.2d 591 (La. 2007) said that "especially in cases where incompetence is at issue, the proper focus in deciding whether removal is the appropriate solution depends not only on the magnitude of the violation, but also on the probability of the violation's recurrence. If the violation is likely to recur, removal is appropriate, *citing* Matter of Field, 576 P.2d 348, 354 (Ore. 1978). The consequences of a judge's conduct, past and future, are too grave and the likelihood of recurring harm to the judicial system and the public is too great, should she remain on the bench." Intemperate behavior and failure to abide by administrative orders of the Chief Judge warrant removal. In re Walsh, 587 S.E.2d 356 (S.C. 2003). The court in In re Hunter, 823 So.2d 325 (La. 2002) found that the respondent judge was too incompetent or too inexperienced to adequately perform her judicial duties.

It has been said that inexperience can be cured by experience, but poor judgment, incompetence and bad temperament cannot. Given the quick accumulation of horrible conduct,

the mistreatment of staff, the level of the judge's ignorance of the law and procedure, her refusal to cooperate with the administration and others, and her refusal to take any responsibility for her misconduct, it was proper and appropriate, and not an abuse of discretion, for the Commission to remove Judge Halverson. Inasmuch as history is the best indicator of future conduct (Halverson I), the Commission was justified in deciding that such misconduct would be repeated and the integrity of the judiciary and the protection of the public required Judge Halverson's removal. The object of judicial discipline is not vengeance or retribution, but to preserve the integrity of and public confidence in the judiciary, and sanctions should be imposed on judges where necessary to safeguard the bench from those who are unfit to serve. In re Kelly, 407 N.W.2d 182 (Neb. 1987).

CONCLUSION

The Commission has shown that there is substantial, clear and convincing evidence to warrant the permanent removal of Elizabeth Halverson from the judiciary. The Commission's procedural rulings were not an abuse of discretion so did not create error. The judge's other arguments are without merit and her requested relief should be denied.

Dated this 28th day of August, 2009.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of August, 2009.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that I served a copy of the foregoing RESPONDENT'S ANSWERING BRIEF and RESPONDENT'S APPENDIX on the parties listed below on the 28th day of August, 2009:

✓ By personal delivery to:

The Nevada Commission on Judicial Discipline
3476 Executive Point Way, Suite 15
Carson City, NV 89706

✓ By placing the same in the U. S. Mail with first class prepaid postage attached, addressed to:

Elizabeth Halverson, Esq.
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