ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH HALVERSON,

Appellant,

v

No. 52760

COMMISSION ON JUDICIAL DISCIPLINE,

Respondent.

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

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

A Formal Statement of Charges, containing fourteen (14) counts, was filed by the Respondent, Commission on Judicial Discipline [hereinafter referred to as the "Commission"], against the Appellant, Elizabeth Halverson, on January 7, 2008. The charges essentially claimed that Halverson engaged in several acts of judicial misconduct, including, *inter alia*, falling asleep during court proceedings; engaging in *ex parte* communications with deliberating juries; engaging in abusive behavior towards her staff; hiring and permitting private security personnel to be present in her chambers; seeking to breach the computer system of the Clark County District Court; making public statements about three judges which were not accurate; refusing to communicate with the chief judge of the court except through her attorney; refusing to participate in the retrieval of a terminated staff member's personal property from chambers; and making an erroneous statement to the Las Vegas Metropolitan Police Department that unauthorized persons were in her chambers.

On May 17, 2007, some eight (8) months prior to the filing of the Formal Statement of Charges, the Respondent, the Commission suspended Judge Halverson without notice or hearing and later affirmed the suspension in July, 2007. Thereafter, in August, 2008, the Commission conducted hearings on the Formal Statement of Charges. On November 17, 2008, the Commission issued its "Findings of Fact, Conclusions of Law and Imposition of Discipline." Of the 14 counts, 7 counts were dismissed in their entirety, and 3 counts were dismissed in part, with the balance of the charges being sustained. The Commission then ordered that Judge Halverson be immediately removed on a permanent basis from her elective office as a district judge, and forbidding her from seeking judicial office again in Nevada.

This matter is now on appeal to this Court, which will conduct a *de novo* review. *In re Assad*, ___ Nev. ___, 185 P.3d 1044 (2008).

Statement of Facts

Since Judge Halverson is appealing the order of removal, which is predicated on those counts which were sustained by the Commission, the Statement of Facts will be limited to those matters.

I. Count One was dismissed.

II. Count Two was sustained, finding that Judge Halverson was asleep on three occasions during her tenure, between January, 2007 and July, 2007.

A. ***Mentis v Republic Services***

John Lukens, Esq., testified that he represented the plaintiff, Mentis. He stated that he observed Judge Halverson asleep during the *Mentis* trial. [T., Vol. 3, p. 707.] He testified that "[h]er eyes were closed, and she appeared to be asleep." [T., Vol. 3, p. 708.] He stated that the period she was asleep "would not have been more than a few moments which I was aware of." [T., Vol. 3, p. 708.] Notably, Mr. Lukens' testimony that Judge Halverson momentarily closed her eyes notwithstanding, he admitted that "the trial was proceeding nicely." [T., Vol. 3, p. 711.] He never reported this purported behavior to anyone.

Jeff Braun, Esq., testified that he represented the defendant, Republic Services. [T., Vol. 3, p. 736.] Mr. Braun testified that he never developed the impression that Judge Halverson was asleep during the trial. [T., Vol. 3, p. 734.] He stated that he did not see anyone trying to awaken Judge Halverson. [T., Vol. 3, p. 735.] He said that there was nothing out of the ordinary concerning Judge Halverson's conduct of the trial. [T., Vol. 3, p. 736.]

Judge Halverson testified that she did not fall asleep during the trial. [T., Vol. 3, p. 644.]

Thus, of the three witnesses who testified, Mr. Lukens said that, on a solitary occasion, Judge Halverson was asleep ***for a few moments*** whereas both Mr. Braun and Judge Halverson testified that she did not fall asleep.

B. ***State v Sotomayor***

It was claimed that Judge Halverson fell asleep during the *Sotomayor* trial. Violet Radosta, the Deputy Defender in the case, who was called as a witness by the Special Prosecutor, gave not one word of testimony—not one—to the effect that she observed Judge Halverson sleeping, even though she was present during the entire trial. [See T., Vol. 3, pp. 853-866.] Deputy District Attorney Tina Sedlock, who prosecuted the case, was not even called as a witness by the Special Prosecutor.

Thus, neither of the two attorneys who participated in the trial testified that Judge Halverson was sleeping during the trial. An inference can be made that had Deputy District Attorney Sedlock been called to the stand by the Special Prosecutor, she would not have supported the Commission's case.

Kathy Streuber, Judge Halverson's original court clerk, was asked the following questions and gave the following answers:

> Q. [By Ms. Holmes] Were you present during the criminal trial of State versus Sotomayor, a case prosecuted by Tina Sedlock and defended by Violet Radosta?
>
> A. Yes, I was.
>
> Q. Do you recall—and that was in February of 2007?
>
> A. Correct.
>
> Q. Do you recall if she [Judge Halverson] fell asleep during that case?
>
> A. I can't say for sure.

[T., Vol. 2, p. 497.]

Streuber testified with respect to her duties as court clerk, "[b]asically you are in the courtroom, a few feet away from the judge." [T., Vol. 2, p. 477.] Given the fact that she was present in the courtroom during all proceedings and trials [T., Vol. 2, p. 477], she most certainly should have been aware of whether the Judge was sleeping.

Johnnie Jordan, the bailiff, claimed to have seen Judge Halverson fall asleep during the *Sotomayor* trial. [T., Vol. 1, p. 76.] However, he also indicated that Judge Halverson said that her blood sugar was low and that she needed a candy bar or something in order to raise her blood sugar. [T., Vol. 1, pp. 77-78.]

Ileen Spoor, Judge Halverson's judicial assistant, could not identify *Sotomayor* as a case in which Judge Halverson was sleeping. However, she did mention that there was one occasion when she went into the courtroom to wake Judge Halverson and that the Judge mentioned that she had taken some medication and had closed here eyes for a moment. [T., Vol. 4, p. 893.] This again suggests a medical issue rather than sleeping.

Accordingly, of the witnesses who were in the courtroom, only Johnnie Jordan, a person of dubious credibility, claims that Judge Halverson was asleep. This is hardly the basis for finding charges sustained by clear and convincing evidence.

There was no testimony by anyone that the trial was in any manner adversely affected by the alleged sleeping. There was no testimony that any alleged sleeping occurred on more than one occasion during the *Sotomayor* trial. There was no testimony that such alleged sleeping had a duration which exceeded moments, as opposed to minutes or longer. There was no evidence to rebut the testimony from Judge Halverson that she suffered a hypoglycemic reaction which caused her momentary loss of consciousness and Jordan's testimony confirms rather than contradicts her testimony.

C. *State v McDaniel*

It was claimed that Judge Halverson fell asleep during the *McDaniel* case, at which Deputy District Attorney Lisa Luzaich Rego and Deputy Public Defender Jeffrey Maningo represented the parties.

Ms. Rego testified that she saw Judge Halverson sleeping during the trial. [T., Vol. 1, p. 232.] Ms. Rego's conclusion that the Judge was sleeping was based upon her claim that the Judge was "leaning back in her chair with her eyes closed. And shortly thereafter, her body flinched like that, and she woke up **or** opened her eyes." [T., Vol. 1, p. 232.]

Ms. Rego also claimed that Mr. Maningo, who represented the defendant in that case, was standing closer to Judge Halverson than she was located. [T., Vol. 1, p. 273.] However, she claimed that he was looking at the witness he was examining and as a consequence his back was to the Judge. [T., Vol. 1, p. 272.] It is apparent that Ms. Rego's observations were not, and could not have been accurate. Ms. Rego admitted that the witness was seated to the right of the judge. [T., Vol. 1, p. 272.] A view of the courtroom, which this Commission had an opportunity to see in video evidence in the other parts of the case, makes it clear that Mr. Maningo could not have had his back to the Judge while looking at the witness, since the witness seat is directly next to the judge.

In fact. John Lukens, one of the Special Prosecutor's own witnesses, testified as follows:

> Q. ...So, if you're looking at the witness, would your back be to the judge?
>
> A. No.

[T., Vol. 3, p. 713.]

As a result, Ms. Rego's powers of observation must be discounted and her claim on this point cannot be viewed as providing clear and convincing evidence.

Jeffrey Maningo testified that when he questioned witnesses, his back was not to the Judge, but rather "the Judge would have been in front of me and to the right, and the witness would have been directly in front of me..." [T., Vol. 7, p. 1863.]

Jeffrey Maningo also testified that he did not see Judge Halverson sleeping during the trial. [T., Vol. 7, p. 1863.]

The evidence concerning the alleged sleeping on the bench is remarkable for the reason that (1) there was no evidence that, if in fact Judge Halverson was sleeping, it was for more than a momentary period of time. In the *Mentis* case, the testimony from Mr. Lukens was that the sleeping was no more than a few moments on one occasion. In the *Sotomayor* case, the testimony from Johnnie Jordan was that she was asleep for an unstated period of time on one occasion, but that she indicated that it was the result of low blood sugar. In the *McDaniel* case, Ms. Rego stated that she was asleep for an unstated period of time, also on one occasion. Judge Halverson denied sleeping in any of these cases. [T., Vol. 2, p. 644.] No one testified that Judge Halverson was asleep for any extended period of time.

Even more importantly, even if one concludes that Judge Halverson may have fallen asleep at any point in any of the three cases, there was zero evidence that she did not attend to her duties and that any such sleeping was more than on a solitary, momentary occasion, in any of the cases. There is a strong indication that on one occasion, Judge Halverson may have suffered from a drop in blood sugar which may have caused her to lose consciousness. Finally, there is no evidence at all that any alleged sleeping caused any problem in any of the trials. There is no evidence that Judge

Halverson failed to make appropriate rulings on evidentiary objections or that she failed to perform any function pursuant to her judicial responsibilities. There is no evidence that any momentary snooze, if such actually occurred, had any actual effect of any kind on the administration of justice. There is no evidence from any juror that the jury observed Judge Halverson sleeping.

III. Count Three alleged improper *ex parte* communications with deliberating juries.

A. *Ex Parte* Communication With Jury in *State v McDaniel*

In this case, at the end of the week, Judge Halverson called a deliberating jury to the courtroom and, in open court, gave them some routine instructions regarding conduct when they were home and not together deliberating. She also answered some questions that jurors had concerning certain general issues. She did not make any statements regarding specific evidence in the case. This occurred in the absence of the parties' attorneys. Ileen Spoor, Judge Halverson's JEA, confirmed that Judge Halverson told her to call the attorneys prior to the jury's having been called into the courtroom. [T., Vol. 4, p. 997.] Spoor also confirmed that she did not tell the lawyers to come back to court. [T., Vol. 4, p. 997].

A video tape of that session was admitted into evidence and played for the Commission. In that tape, Judge Halverson can be heard stating that she had expected the attorneys to be present in the courtroom and she placed on the record that the attorneys, by failing to appear for reasons which she did not know (inasmuch as she testified that she believed that Ms. Spoor had telephoned them to be present in the courtroom), had waived their presence.

Judge Halverson was troubled by that and had the attorneys come to court the next business day and showed the attorneys the video recording of the *ex parte* discussion. She was open and forthright about everything.

B. Extra-Judicial Comments, re: *State v McDaniel*

Count 3(b) alleges that Judge Halverson made extrajudicial comments about the *McDaniel* case, while the case was pending. However, there was no evidence demonstrating that the comments might reasonably have been expected to affect the case's outcome or impair its fairness. Any

comments that may have been made were regarding court personnel or attorney conduct and not the case itself.

C. Post-trial Media Interview, re: *State v McDaniel*

The charge claims that Judge Halverson gave a post-trial interview wherein she stated that attorneys in the *McDaniel* case either "conned" her or encouraged her to engage in an impermissible *ex parte* contact with jurors.

There is no evidence that Judge Halverson engaged in such conduct. The Special Prosecutor, recognizing the same, has filed a motion to amend her Formal Statement of Charges to state that such conduct occurred in the *Sotomayor* case, which motion was granted by the Commission. Again, even if any comments were made they were regarding court personnel or attorney conduct and not the case itself.

D. *Ex Parte* Contact With Jurors in *Sotomayor*

The Commission viewed a video recording of the proceedings, admitted into evidence as Exhibit "B," wherein, on February 15, 2007, Judge Halverson engaged in colloquy with attorneys representing the parties in *Sotomayor*. The tape clearly reflects that Judge Halverson, on more than one occasion, suggested that the jury be brought into the courtroom and that enquiries be made of them in open court with everyone present. The tape also clearly shows that the attorneys rejected such an approach and that one of them, the late Scott Waite, Esq., suggested that Judge Halverson go into the jury room, alone, and speak with the jurors, to which the other attorneys agreed.

Judge Stewart Bell, a witness called by the Special Prosecutor, testified that he first became aware of the *ex parte* juror contact when Judge Halverson voluntarily brought it to his attention. [T., Vol. 3, p. 776.] Judge Bell indicated that his view of the incident was that this was a learning experience. As he testified:

> Q. Okay. And so realizing that she'd made a mistake, you wanted to let her know, and not only that she made a mistake, but she had obviously herself some concern because she wanted you to look at it and get your feedback, you then decided that you would look at it, and then you told her what you thought should be done so that she wouldn't have that

mistake repeated in the future, is that correct?

A. That's close to accurate.

Her slant was look, I've been accused of doing this, it wasn't my fault, the lawyers had sort of baited me into it.

And I did see where the lawyers asked her to communicate with the jurors, but it was pretty clear to me what their intent was. And I tried to explain to her what the appropriate procedure was so that this will not occur in the future, yes.

[T., Vol.3, pp. 777-778.]

Judge Bell's ultimate view of the incident was "lesson learned." [T., Vol. 3, p. 743.]

As is borne out by the video recording admitted as Exhibit "B," Judge Halverson reported to the attorneys the jury's statements in the jury room, so that they all would know what the jury said.

IV. Count Four was dismissed in its entirety.

V. All of Count Five was dismissed except for sub-charges (c), (j) and (s). This Count involves Johnnie Jordan, a bailiff whose credibility is highly suspect. During Mr. Jordan's testimony, he became vituperative, belligerent, evasive and obstreperous. His demeanor, to put it bluntly, was of an individual who, instead of coming to tell the truth, was determined to make self-serving statements, accompanied by theatrics and outbursts which were uncontrolled by the Commission.

However, Jordan's claims were refuted by a number of witnesses.

Whereas Jordan claimed that Judge Halverson had him perform services which he did not want to do, Bobbi Tackett, currently retired as a judicial secretary, testified that she had spoken with Jordan and that Jordan had told her that he appreciated that Judge Halverson had hired him and that he would do anything for her. [T., Vol. 7, p. 1564.] She also testified as follows:

Q. You say that Ileen—you said on cross-examination that Ileen Spoor told you that Johnnie Jordan was told by Judge Halverson that putting on her shoes was inappropriate?

A. Correct.

Q. Did she mention anything else that Judge Halverson said to Johnnie Jordan that she thought was inappropriate?

A. She said that Johnnie couldn't do enough to please Judge Halverson, that he tried to—she was laughing when she told me this, that he tried to rub her shoulders, that he—you know he—he was just at her beck and call he just wanted to be there for her.

Q. And when she said he tried to rub her shoulders, did she say what Judge Halverson's reaction was?

A. Judge Halverson said it's inappropriate, you need to—you know, this is not part of your job.

[T., Vol. 7, pp. 1596-1597.]

Pamela Humphrey, a court clerk in the Clark County District Court, testified that she was hired as a clerk in April, 2007 for Department 23, which was Judge Halverson's department. [T., Vol. 7, p 1635.]

She also testified as follows:

Q. Okay. Did you ever talk to Johnnie Jordan?

A. I did.

Q. Did Johnnie Jordan ever make any complaints about Judge Halverson?

A. He never made any complaints. There was a conversation I had with Johnnie Jordan and another courtroom clerk. We discussed our satisfaction in Department 23 and he appeared to be very happy working there. So I don't think that there was anything going on wrong in that department.

[T., Vol. 7, p. 1637]

Q. Okay. Now did you ever talk to Johnnie Jordan after he left the Department 23?

A. I did, maybe once or twice.

Q. All right. And did Johnnie Jordan ever say anything about Department 23 in that other conversation?

A. He did. I—I approached him because I hadn't seen him in the department for a while and wondered why I hadn't seen him. So I asked him why aren't you in Department 23 anymore? He said he was in POST, he was doing POST training. And so I said, well, are you going to come back? And he said yes, as soon as POST training is completed, I'll return to my—to Department 23, so—and then I just walked away.

[T., Vol. 7, pp. 1637-1638.]

Thus, while Jordan claimed during these hearings to be victimized by Judge Halverson, he told quite a different story to others.

Jordan testified that he thought some services he performed were"demeaning." However, he admitted that he did not tell Judge Halverson that he thought they were demeaning. [T., Vol. 1, p. 194.] Moreover, he did not immediately make a report to the court administration that he felt that he was being asked to perform services which were demeaning. [T., Vol. 1, p. 189.]

VI. Subsections c, (d)and (e) of Count Six were dismissed. The charges under (a) and (b) claim that Judge Halverson yelled at other employees and utilized "foul language" in Ileen Spoor's presence. The claim does not allege that any such conduct was directed at Spoor.

Ileen Spoor never testified that she found the work environment to be abusive. She never testified that she wanted to be moved to another department. In fact, she only left because she was fired by Judge Halverson when the latter discovered the ticket-fixing scheme which Spoor was conducting in the court's chambers. Further, Ms. Stuebner claimed that the only comment which offended her was that Ms. Spoor was like an elf.

Ileen Spoor never testified that yelling at other employees or the alleged use of "foul language" in her presence created a hostile work environment or that she was harassed on a religious or ethnic basis by said alleged yelling or utilization of foul language in her presence; neither did Ms. Spoor provide any evidence that yelling at employees, in her presence, or the utilization of foul language, in her presence, had any effect of any kind.

VII. Count Seven was dismissed in its entirety.

VIII. Count Eight was dismissed in its entirety.

IX. Count Nine was dismissed in its entirety.

X. Count Ten was dismissed in its entirety.

XI. Count Eleven charged that Judge Halverson brought private security personnel into her chambers.

Charles Short testified that he is the Court Executive Officer for the Clark County District Court, which he styled as being the equivalent of a CEO for the court. [T., Vol. 4, p. 1073.] He testified that there are no written rules or regulations telling judges what they may or may not do in bringing in bodyguards. [T., Vol. 4, p. 1129.] He also testified that there are no written rules or regulations telling judges how many security people they may provide on their own. [T., Vol. 4, p. 1129.] He further testified that he does not recall having any conversations with Judge Halverson regarding private security personnel that she may have supplied for her own chambers. [T., Vol. 4, p. 1129.] Mr. Short also indicated that it is generally within a judge's own discretion as to hiring and firing of his or her own staff. [T., Vol. 4, p. 1131.]

XII. Count Twelve was dismissed in its entirety.

XIII. Count Thirteen contains three sub-counts claiming that Judge Halverson made false statements to a ***newspaper*** about a meeting which she had with Judges Bell, Loehrer and Ritchie. The alleged false statements are (a) that Judge Bell yelled at her and said, "We're going to get rid of you right away;" (b) that Judge Ritchie kept throwing his "hands in the air;" and c) that Judge Loehrer was screaming.

It should also be noted that Count Thirteen does not claim that Judge Halverson made a knowingly false statement—it just claims that the statement was false. Additionally, it does not even claim that the statement was material to anything. Moreover, there is nothing in the statements which implicated the integrity or qualifications of Judges Bell, Loehrer or Ritchie. Nor did the charges claim that the statements made were false when originally made in a May, 2007, affidavit to this Court which was readily available to all on the Court's website. There was no evidence that the statements were *made under oath at the newspaper* or that Judge Halverson did not genuinely believe that the statements were true at the time that she made them.

XIV. Sub-Count (b) of Count Fourteen was dismissed during the course of the hearings. The three remaining sub-counts alleged that Judge Halverson impeded the administrative functions of Judge Hardcastle by (a) insisting that Judge Hardcastle or her designee communicate with her

through her retained attorney; (c) refusing to cooperate with the court administrator in retrieving a Rolodex claimed by Ileen Spoor as her personal property; and (d) making a bad-faith report to the Las Vegas Metropolitan Police Department that unauthorized persons were attempting to access her chambers on May 8, 2007.

Regarding Sub-Count (a), there was testimony concerning the historical acrimony between Judge Hardcastle and Judge Halverson. Judge Halverson decided that she would be best served by retaining an attorney. There is nothing improper about retaining an attorney or insisting that communications be directed to her attorney, especially in light of the fact that Judge Hardcastle sought to discipline Judge Halverson. The Special Prosecutor failed to demonstrate how such a procedure had any tangible effect on the administration of the court.

With respect to Sub-Count (c), there is no requirement that Judge Halverson do anything in connection with an effort by a court administrator to retrieve, on behalf of an individual, what that individual claimed to be personal property. The individual involved was Ileen Spoor, who had been fired by Judge Halverson for impropriety on the job.

It is, of course, questionable as to whether Mr. Short's efforts on behalf of an individual, to retrieve what she claimed as personal property, is official business. In any event, all that Judge Halverson did was to remain in her private room within her chambers during an armed warrant less search of her chambers. Nothing was introduced into evidence to show that she was required to come out of her room. There apparently is an issue as to whether the Rolodex, which is the same as is issued to all courtrooms, was really the property of Ms. Spoor. A video of the search was admitted into evidence at the trial. In any event, this charge is truly much ado about nothing.

Sub-Count (d) is even less meritorious. The charge claims that Judge Halverson made a report to the police that "unauthorized personnel were attempting to access [her] chambers." The only testimony on the point came from Captain William Minor of the Las Vegas Metropolitan Police Department. He stated that he responded to a call indicating that assistance was needed with respect to Judge Halverson's chambers. He stated that Judge Halverson indicated that she had called the day

before and indicated that armed bailiffs were trying to get into her private room in chambers. [T., Vol. 3, p. 813.] He further stated that there was no report of the incident filed with the police department. [T., Vol. 3, pp. 815-816.] In fact, the Special Prosecutor produced no such report and did not produce any evidence to support the charge that Judge Halverson made "the erroneous statement that unauthorized personnel were attempting to access her chambers."

ARGUMENT

A. VIOLATION OF DUE PROCESS IN ALLOWING AMENDMENT OF THE FORMAL STATEMENT OF CHARGES

These are quasi-criminal proceedings and the Formal Statement of Charges may not be amended after the hearings have commenced and the judge has testified. *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968). The Speical Prosecutor requested, after the hearings commenced and after Judge Halverson gave testimony, an amendment of Count Three, Sub-Count (b), which request was granted by the Commission. Such an amendment is in derogation of the United States Constitutional guarantee of proper notice in disciplinary proceedings. Count Three (b) must be dismissed.

B. THE COMMISSION'S REFUSAL TO ALLOW THE INTRODUCTION OF EVIDENCE OF JUDGE HALVERSON'S PHYSICAL DISABILITY WAS PLAIN ERROR

Prior to the commencement of hearings, the Commission issued an order which prohibited Judge Halverson from introducing any evidence as to her physical disbaility unless she subjected herself to a psychiatric examination. None of the charges in the Formal Statement of Charges alleges that she was suffering from any psychiatric disorder and Judge Halverson claimed no psychiatric infirmities. The NCJD's own July 2, 2008 Order stated that there was no rationale basis for such a requirement.[1] When Judge Halverson sought to introduce evidence of her obvious physical disability to establish a defense to certain charges, she was forbidden from doing so, despite her right to do so

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[1]. The Order states there is no probable cause for any psychiatric evaluation. Nor wee the procedures in the Commission own rules followed regarding disabilities and the appointment of counsel for an unrepresented judge. Commission Procedural Rule 31.

under the Americans with Disabilities Act. ("ADA").

Judge Halverson has significant physical disabilities which are obvious to anyone who sees her. Judge Halverson was employed with the Eighth Judicial Court for almost ten (10) years until August 2004, during which time she sustained a serious workers compensation injury which resulted in an eleven percent (11%) whole person disability rating. In fact, when she was first employed by the Court, she had already sustained injuries from an automobile accident which had restricted her ability to walk. On that basis, then employee Halverson, was allowed handicap parking in the Judge's lot. Subsequent injuries and cancer also resulted in work restrictions that were noticed to her then employer - the EJDC.[2] The physical injuries she sustained also added to her weight as well.

As a result of the aforementioned, Judge Halverson cannot walk for other than short distances and requires a motorized scooter. She also requires continuous oxygen and is virtually tethered to an oxygen tank. She cannot drive due to her industrial injury. She has diabetes and she occasionally experiences hypoglycemia which, at times, results in difficulty in maintaining consciousness. During *Sotomayor,* she complained that her blood sugar was low and she may have lost consciousness momentarily, which her bailiff mistakenly interpreted as sleeping on the bench. However, he did note that he had given Judge Halverson a candy bar on occasion as she was feeling ill. All of this information was given to the Commission, **at their request,** in a doctor's letter, prior the suspension hearing in July of 2007. [3]

As noted, judicial disciplinary proceedings are quasi-criminal in nature, affording judges many of the rights which criminal defendants enjoy. *Ruffalo, supra.* "[B]arring a defendant from presenting all evidence in support of a cognizable defense, or from challenging an element of the crime, is structural error." *United States v Smith-Baltiher*, 424 F.3d 913, 922 (9th Cir. 2005). Cases in which there is structural error involve "constitutional deprivations...affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. Without these basic

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[2] All of this should have been in the personnel file which the prosecutor had and used..

[3] Said doctor's letter has been published on this Court's website since 2007.

protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair." *Arizona v Fulminante*, 499 U.S. 279, 310; 111 S.Ct. 1246, 1265; 113 L.Ed.2d 302, 331 (1991). Such structural errors require reversal. *Sullivan v Louisiana*, 508 U.S. 275; 113 S.Ct. 2078; 124 L.Ed.2d 182 (1993).

Here, Judge Halverson's physical disabilities, which would have required that accommodations be made for her under the Americans With Disabilities Act, permeated a number of the charges which were levied against her. The Commission's refusal to allow her to present evidence regarding her physical disbaility infected the proceedings such as to undermine the framework of the proceedings. The ADA bars requiring information requesting medical informsation from Judge Halverson at all[4]. Such deprivation requires reversal.

C. THE COMMISSION'S REFUSAL TO CONSIDER JUDGE HALVERSON'S PHYSICAL DISABILITIES RESULTED IN AN ADJUDICATION WHICH DEPRIVED HER OF FUNDAMENTAL FAIRNESS

With respect to Count Two, the Commission's report claimed that the "the great weight of the evidence" supported the charges. As is noted in the Statement of Facts, there was no testimony in support of the charges from most of the people who were present in court and even the few who did claim that she was sleeping indicated that it was for an extremely small amount of time and that she had indicated that she had a reaction to medication and her blood sugar was low. While Judge Halverson indicated that she suffers from diabetes [5], the Commission's report is silent as to the same. Rather, the Commission made the following feeble remark:

> While we cannot conclude that she purposefully (willfully) slept, we can conclude she willfully failed to take preventive action to minimize

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[4] Motions were made in this regard and are in the possession of this Court in Judge Halverson's Emergency Writ for Stay for August 2008. All motions in this case to that date are attached to said writ and in the possession of this Court.

[5] In an apparent lapse in the prohibition against her referring to her medical problems, Judge Halverson was able to testify to her diabetes. Perhaps there was simply a momentary lack of vigilance in the enforcement in the order prohibiting the induction of evidence making reference to her disabilities or because Judge Halverson suffered a hypoglycemia attack during the trial.

the chance of a repeat occurrence.

Commission Findings of Fact, etc., p. 7;. despite having no medical testimony regarding how one would prevent diabetes, hypoglycemia or any other side effects of such a disease.

Of course, the Commission's order barring Judge Halverson from referring to her medical disabilities begs the question as to how she was supposed to present evidence concerning any efforts which she made to control her diabetes or even whether her low blood-sugar levels were susceptible to the type of control which the Commission presumed to be possible.

Moreover, while it is true that it is important for a judge to be attentive at trial, there was no testimony that she did not attend to her duties, make necessary rulings, and preside effectively in the three cases in question. Given the fact that the alleged sleeping was of *momentary* duration and the complete lack of evidence showing that there were any adverse effects on any trial, one cannot conclude that she violated Canon 2(A) of the Code of Judicial Conduct[6], which states as follows:

> A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Whether Judge Halverson was sleeping or not does not reflect on her integrity or her impartiality.[7] Sleeping implicates neither impartiality nor integrity. There never has been a claim that Judge Halverson unfairly favored any side in cases before her; neither has there been any claims that she was less than honest in dealing with litigants. One who is asleep does not communicate with others, nor is the sleeper capable during the sleep of engaging in favoritism or dishonest conduct. Yet no witness claimed that Judge Halverson did not attend to her duties. Leaning back and closing ones

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[6] The Commission found that the only part of the Code of Judicial Conduct violated with respect to Count Two was Canon 2(A).

[7] Without attempting to be facetious, no one can be more impartial than one who, whether sleeping or unconscious, is totally oblivious to events which are transpiring. It may also be noted that there is no honest or dishonest way of sleeping. Thus, there is no issue concerning integrity in connection with alleged sleeping.

eyes for a few moments cannot be misconduct for every Judge would be convicted of misconduct[8]. The Commission's findings are without any support in the record. A review of the other Canons cited in Count Two reveals that none of them apply to a situation involving an allegedly sleeping judge. Count Two must be dismissed.

D. JUDICIAL ERROR WHICH IS NOT THE PRODUCT OF INTENTIONAL WRONGDOING AND WHICH IS NOT PERFORMED WITH IMPROPER MOTIVE DOES NOT CONSTITUTE JUDICIAL MISCONDUCT

Count Three charges that Judge Halverson had *ex parte* communications with two juries. Before getting to that, the Commission reported that, by a majority vote, it allowed a post-hearing motion by the Special Prosecutor to amend her pleadings. The Commission cited Nevada Rules of Civil Procedure 15(b) in support of its decision. However, the United States Constitution, which prohibits such amendment in disciplinary cases, trumps the civil procedure rule. *Ruffalo, supra.* The Commission states that Judge Halverson never claimed that she was unable to defend, or denied due process until the Special Prosecutor filed her motion. Apparently, the Commission does not understand that defending against a charge which is flawed will not bring protestations from the person charged and that the due process violation does not occur until there is an attempt to amend after the hearings. The Commission never referred to *Ruffalo;* nor did it explain how an amendment which is unconstitutionally infirm should be allowed. The constitutional issues were simply ignored by the Commission. Clearly, Count 3(b) must be dismissed because the amendment is not constitutionally permissible.

With regard to Count 3(a)(d), Judge Halverson does not contend that *ex parte* contacts with jurors is a preferred procedure. She should not have engaged in *ex parte* contact with the juries. It should be noted that at the time she had not yet attended the judges' college in Reno and was an inexperienced judge. The Commission concedes that with respect to the first case, her conduct was not wilful. *Commissions's Findings of Fact, etc.*, p. 10. However, without explanation, the

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[8] Including Supreme Court Justice Ruth Bader Ginsberg who slept during oral arguments. Of course, it could be because she did not take enough precautions to avoid pancreatic cancer.

Commission found that the second incident was the product of wilfulness. *Id.* The Commission offered no reasoning for why they found the second incident to be wilful. Certainly, there was no indication of any improper motive on her part to engage in a wilfully improper act. In fact, with regard to the second incident, she sought the presence of the attorneys in court that day and she called in the attorneys on the next business day to show them the tape of the jurors in open court. There was no evidence of any improper intent on her part. She made a mistake. However, such does not constitute judicial misconduct. In fact, this Court had an opportunity to speak to this very issue recently regarding another judge of the Clark County District Court—the Hon. Joseph T. Bonaventure. In *Rudin v State*, 120 Nev 121, 86 P.3d 572 (2004), this Court held as follows:

> [W]e conclude that the district court's alleged improper ex parte conversations were not improper. While the district court did have ex parte conversations with Rudin **and with a juror, Canon 3 of Nevada's Code of Judicial Conduct specifically permits ex parte contacts when a "judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication," and the judge promptly notifies the "parties of the substance of the ex parte communication and allows an opportunity to respond."** Here, the district court's meeting with Rudin was initiated by the defense, placed on the record and followed by lengthy discussions with counsel for both parties. Nothing in the record suggests that either side was likely to gain an advantage as a result of Rudin's meeting with the district court. Similarly, the district court recorded its discussion with Juror Eleven and immediately disclosed the substance of the conversation to counsel for both parties, who offered no objections and no further comment on the matter. Moreover, there is no indication that Rudin was prejudiced by the district court's conversation with the juror because the district court decided not to discharge the juror who, we observe, apparently was the only juror favoring a not guilty verdict at that time. [Emphasis supplied.]

120 Nev. at 141; 86 P.3d at 585.

In the *Sotomayor* case, Judge Halverson had a discussion with lawyers for both sides prior to speaking with the jury. The attorneys were aware of the fact that she would have an *ex parte* discussion with the jury prior to its occurring, and, in fact, it was at the suggestion of the lawyers that Judge Halverson engaged in such contact with the jury. The discussions with the lawyers were video-taped and the Commission viewed the tape, which was admitted into evidence as Exhibit "B."

In the *McDaniel* case, Judge Halverson, having asked her Judicial Executive Assistant to call the lawyers for the parties and ask them to come into court, was under the good-faith impression that her JEA, Ileen Spoor, had asked the lawyers to be present in court. On the following business day, Judge Halverson summoned the lawyers into court and told them of the *ex parte* communications. Once again, there was a video-tape of the proceedings which the Commission viewed after admitting the same into evidence

Accordingly, in each case there was prompt disclosure to the lawyers (with the lawyers in *Sotomayor* actually initiating the suggestion that Judge Halverson meet with the jurors *ex parte*). In each case, the contact was for administrative purposes; Judge Halverson did not get into discussions of the merits of the case; and Judge Halverson reasonably believed that no party would gain a procedural or tactical advantage. Given this Court's holding in *Rudin*, the conduct of Judge Halverson does not constitute judicial misconduct.

With regard to the extrajudicial statements to the media, the Commission incorrectly stated the law, in claiming that "Canon 3(B) prohibits judges from commenting publicly about pending and impending cases." In fact, Canon 3(B)(9) states as follows:

> A judge shall not, while a proceeding is pending or impending in any court, make any public comment **that might reasonably be expected to affect its outcome or impair its fairness** or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity. [Emphasis supplied.]

There is nothing which Judge Halverson said which might reasonably be expected to affect the outcome of the case or impair its fairness. Explaining her own actions in the case as to court personnel or attorneys (non parties) to a case, cannot be so construed. Moreover, the Special Prosecutor failed to present any evidence to the contrary. Count Three should be dismissed in its entirety.

E. THE CANONS CITED IN COUNT FIVE WERE NOT VIOLATED BY JUDGE HALVERSON

Count Five claims that Judge Halverson violated Canons, 1, 2(A), 2(B), 3(B)(5), 3(C)(1), 3(C)(2) and 4(A). There is no evidence adduced by the Special Prosecutor which establishes that such Canons were violated.

Canon 2(A) speaks to "act[ing] at all times in a manner that promotes public confidence in **the integrity and impartiality of the judiciary**." [Emphasis supplied]. Canon 2(B) speaks to a judge's lending the prestige of his or her office to non-official matters. Canon 3(B)(5) addresses a judge's duty to perform his or her duties without bias or prejudice. Canon 3(C)(1) concerns discharging administrative responsibilities without bias or prejudice and maintaining professional competence in judicial administration. Canon 3(C)(2) requires a judge to see to it that staff and other court personnel act in conformity with the standards imposed on judges and to act without bias or prejudice in their duties. Canon 4(A) proscribes a judge from engaging in extra-judicial activities which are in conflict with his or her judicial obligations. None of these Canons are even arguably applicable to the charges in Count Five (c)(j)(s). The integrity and impartiality of the judiciary was not implicated in any of those charges; nor were concepts applicable to bias or prejudice. There was no evidence to establish that there was any racial animus by Judge Halverson in her dealings with the bailiff, Johnnie Jordan.

With respect to Canon 1, it requires that "a judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards .." What is the definition of "high standards of conduct?" The Canon does not provide any definition at all. The term "high standards of conduct" is literally in the eye of the beholder. What may be a "high standard of conduct" to one observer may not meet that threshold for another. The provision is a classic example of a term which is void for vagueness. The void for vagueness doctrine requires that laws imposing penalties be set forth with

> sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc., supra; Smith* v. *Goguen*, 415 U.S. 566 (1974); *Grayned*

> v. City of Rockford, 408 U.S. 104 (1972); *Papachristou* v. *City of Jacksonville*, 405 U.S. 156 (1972); *Connally* v. *General Construction Co.*, 269 U.S. 385 (1926). Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine -- the requirement that a legislature establish minimal guidelines to govern law enforcement." *Smith*, 415 U.S., at 574. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections."

Kolender v Lawson, 461 U.S. 352, 357-358; 103 S.Ct. 1855, 1858; 75 L.Ed.2d 903, 909 (1983).

Here we have the same infirmity as has been declared by the United States Supreme Court to be unconstitutionally invalid. Whatever "high standards" may mean in Canon 1 such is not set forth in a manner allowing an ordinary judge to know, in advance, what is prohibited, and which also fails to set forth minimal guidelines to govern enforcement with respect to such "high standards."

Accordingly, none of the charges contained in Count Five (c)(j)(s) can be sustained since either the cited Canons in support of the charges are inapplicable or, in the case of Canon 1, the language of the Canon does not alert the judiciary as to what is actually forbidden.

Count Five (c)(j)(s) must be dismissed.

F. YELLING AND THE UTILIZATION OF PROFANE LANGUAGE OUTSIDE THE PRESENCE OF LITIGANTS AND JURIES ARE NOT, *IPSO FACTO*, JUDICIAL MISCONDUCT

Count Six (a)(b) alleges that Judge Halverson yelled at others in the presence of Ileen Spoor and used "foul language" in her presence.

Ileen Spoor never testified that she found the work environment to be abusive. She never testified that she wanted to be moved to another department. In fact, she only left because she was fired by Judge Halverson when the latter discovered the ticket-fixing scheme which Spoor was conducting in the court's chambers.

Johnnie Jordan, in all of his theatrical testimony, never stated that he wanted to leave Judge Halverson's court. In fact, the idea that he should be removed came from the court administration.

The same Canons which were cited with respect to Count Five, to wit: Canons 1, 2(A), 2(B),

3(B)(5), 3(C)(1), 3(C)(2) and 4(A), are cited in connection with Count Six. For the same reasons that Canon Five C(j)(s) must be dismissed, so, too must Canon Six (a)(b).

G. THE HIRING OF PRIVATE SECURITY GUARDS IS NOT JUDICIAL MISCONDUCT IN THE ABSENCE OF ANY NOTICE TO JUDGE HALVERSON THAT SHE WAS NOT PERMITTED TO UTILIZE PRIVATE SECURITY

With respect to Count Eleven, as can be ascertained from the citations to the testimony of Chuck Short, Court Executive Officer for the Clark County District Court as set forth in the Statement of Facts, herein, the 8th District Court had no written rules or regulations prohibiting judges from hiring their own security personnel. Thus, Judge Halverson was not placed on notice that she was forbidden to hire private security personnel at her own expense. How was Judge Halverson placed on notice that she required authorization to hire such security personnel? How was she placed on notice regarding from whom she was to receive authorization? The record fails to establish how.

The Commision, in its Findings of Fact, stated that Judge Halverson brought two bodyguards into the court house "without obtaining proper authorization." *Commission Findings of Fact, etc*, p. 14. The Commission also stated that she "did nothing to obtain a new bailiff by going through the regular process of locating one already on the court's roster of qualified bailiffs." *Id.* What is there in the record of this case which shows that Judge Halverson was on notice, prior to her hiring the two individuals, that she was required to "go through the regular process" in order to obtain security personnel? Nothing, because at the time, and under statute, NRS 3.310, there was no requirement other than for the Judge to select any individual to serve as her bailiff. The Commission also claims that the bodyguards were allowed by Judge Halverson to enter the areas where her chambers and those of other judges were located "for a prolonged period of time." The "prolonged period of time" was less than two (2) days and occurred because of the actions of theft and violence by one of Court's clerk personnel.

Most disturbing is the Commission's comment that

> [t]here is no adequate explanation in the record as to the legal basis under which Judge Halverson purported to hire two individuals for security reasons when all other judges had just one bailiff whose time

> and talents were occasionally put to use doing security-related duties in other areas of the court. Moreover, there is no adequate explanation in the record from Judge Halverson as to why she needed to go about "hiring" and deploying the individuals in the manner that she did.

Commissions Findings of Fact, etc., p. 15.

Surprisingly, the Commission appears to misunderstand the nature of judicial disciplinary proceedings. It is not for the Judge to explain why she took certain measures. Rather, it is for the Speical Prosecutor to establish, by clear and convincing evidence, that the Judge violated provisions of the Nevada Code of Judicial Conduct. Rather than musing about Judge Halverson's reasons for seeking private security personnel (which was made amply clear by the unanimous, and uncontradicted testimony of all of Judge Halverson's then staff) the Commission should have focused on whether there was any rule or regulation in place which placed Judge Halverson on notice that hiring private security personnel to protect herself and her staff was forbidden, especially when she had no baliff. The Clark County Court Executive Officer, who testified that he was fully familiar with the rules and regulations of that District Court, stated that there was no publication of any rules prohibiting any visitors of any kind from Judge's chambers. Further, the CEO in responding to his subpoena stated that there was no written bar on anyone going to chambers. Under these circumstances, how can the Commission, consistent with constitutional principles of due process, find that Judge Halverson engaged in misconduct for violating a rule or regulation of which she was never placed on notice, either actually or constructively?

The Commission's rationale for sustaining the charges under Count Eleven is woefully deficient. It is a fundamental principle of constitutional law that one cannot be penalized for violating a regulation which does not exist, has not been made known and which thereby is the equivalent of no regulation at all. *A.B. Small Co. v American Sugar Refining Co.*, 267 U.S. 233, 239; 45 S.Ct. 295, 297; 69 L.Ed. 589, 593 (1925); *Boutilier v INS*, 387 U.S. 118; 87 S.Ct. 1563; 18 L.Ed.2d 661 (1967); *Association of International Automobile Manufacturers, Inc. v Abrams*, 84 F.3d 602, 614 (2d Cir. 1996); *Sheriff, Clark County v Luqman*, 101 Nev. 149, 155; 697 P.2d 107, 111 (1985). Here, there

were no standards inasmuch as the Clark County District Court had never published any.

Irrespective of this fundamental constitutional deficiency, the Commission found Judge Halverson to have violated Canons 1, 2(A), 3(C)(1), 3(C)(2), and 4(A). The void for vagueness infirmity of Canon 1 has been cited herein and the other Canons, on their face, are not applicable to a situation in which a judge engages in activity which is not the subject of notice as to what is prohibited. Furthermore, inasmuch as Judge Halverson, under the Commission's own findings, did not know that the two individuals were not licensed, she cannot be found liable for misconduct since there is no *scienter* by her to act in violation of state statute. Count Eleven must be dismissed.

H. INASMUCH AS JUDGE HALVERSON DID NOT IMPUGN THE INTEGRITY, CHARACTER, TRUSTWORTHINESS OR FITNESS OF ANY OF THE THREE JUDGES, THERE WAS NO JUDICIAL MISCONDUCT.

Judges do not lose their rights as Americans simply because they don judicial robes. They have the First Amendment freedom of speech. It is acknowledged that, as judges, their First Amendment freedoms may be somewhat different from that of the ordinary American. However, as the United States Supreme Court said in *Gentile v State Bar of Nevada*, 501 U.S. 1030; 111 S.Ct. 2720; 115 L.Ed.2d 888 (1991):

> We have held that "in cases raising First Amendment issues . . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'"

501 U.S. at 1038; 111 S.Ct. At 2726; 115 L.Ed.2d at 900.

In Count Thirteen, Judge Halverson is charged with stating to the media that, at a meeting in which three judges were discussing issues concerning alleged abusive behavior by her, Judge Stewart Bell yelled at her and said "We're going to get rid of you right away; Judge Sally Loehrer was screaming; and Judge Arthur Ritchie kept "throwing his hands in the air."

None of these statements implicate any of the three judges' integrity, honesty, character, qualifications, or fitness to serve in a judicial capacity. Nor at the time of the time of the alleged behavior where any of these Judges even acting in a judicial capacity. At best, these Judge's were

acting, very loosely, in an administrative capacity. The act of throwing one's hands in the air does not demonstrate any quality which would bring a court into disrepute. Screaming, in and of itself, is not conduct which reflects on the character of the screamer. Yelling and stating that "we" would cause someone to be removed from their position, in and of itself, has no connection with one's basic traits of integrity. In fact, there was no testimony that the publication of Judge Halverson's statements had any negative impact on any of the judges.

Accordingly, while the speech of Judge Halverson may not have been welcomed by the three judges, that does not provide a basis for penalizing the speaker.

> ....[W]e are convinced that the judgments below result in a curtailment of expression that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice. The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect

Bridges v California, 314 U.S. 252, 270-271; 62 S.Ct. 190, 197; 86 L.Ed.192, 207 (1941).

Further, the Commission seeks to find her guilty of a non existent charge. There is no such thing as perjury to a media outlet and there was no charge of perjury as to her May, 2007, sworn affidavit. Clearly, when reviewing the particular words which Judge Halverson is charged with speaking, measured against constitutional guarantees of free speech, and *In re Ruffalo*, supra, there has been no demonstration by the Special Prosecutor that the First Amendment does not insulate Judge Halverson from discipline for making the statements which she did. Count Thirteen should be dismissed.

I. A PERSON CAN UTILIZE THE SERVICES OF AN ATTORNEY WITHOUT PENALTY; A JUDGE IS NOT REQUIRED TO ENGAGE IN RETRIEVAL OF A FIRED EMPLOYEE'S ALLEGED PERSONAL ITEMS; CLAIMS, FOR

WHICH THERE IS NO EVIDENTIARY SUPPORT, CONCERNING A REPORT TO THE POLICE WHICH THE POLICE DID NOT FIND WARRANTING ACTION DO NOT CONSTITUTE A BASIS FOR DISCIPLINE

The charges in Count Fourteen are found in Sub-Counts (a)(c)(d) inasmuch as Sub-Count (b) was dismissed.

Regarding Sub-Count (a), there was testimony concerning the historical acrimony between Judge Hardcastle and Judge Halverson. Given that history, lockouts and the attempted punishment of, Judge Halverson, she decided that she would be best served by retaining an attorney. There is nothing improper about retaining an attorney or insisting that communications be directed to her attorney. The Special Prosecutor failed to demonstrate how such a procedure had any tangible effect on the administration of the court.

As to Sub-Count (c), there is no duty which required Judge Halverson to help retrieve alleged personal property of a terminated staff member. It is, of course, questionable as to whether the efforts of Mr. Short, the Court Executive Officer, on behalf of an individual to retrieve what she claimed as personal property, is official business. In any event, all that Judge Halverson did was to remain in her private room within her chambers. Nothing was introduced into evidence to show that she was required to come out of her room. The Rolodex in question, which is the same type issued by the Court to JEAs, and the "Quik Fix Ticket" file were not even proven to be items that should be in her possession. In fact the NCJD refused to allow said file into evidence yet they opine that Ms. Spoor's behavior in fixing tickets was not misconduct. This charge is truly much ado about nothing.

Sub-Count (d) is even less meritorious. The issue involved is not whether Mr. Short was entitled to be in the chambers, but whether he was permitted access to the Judge's private room within the chambers. There is a genuine issue as to whether Mr. Short had the right, under the Fourth Amendment to the United States Constitution, to enter that room, with the armed guards who accompanied him, in the absence of a search warrant. Judge Halverson certainly had a reasonable expectation of privacy while she was in that room with the door closed and locked.

There was no false police report and Captain William Minor of the Las Vegas Metropolitan

Police Department, who responded to the chambers, did **not** testify that Judge Halverson made a false report. He was unable to produce either a report or 911 call. As to the report, there was no testimony by anyone else that the report was false. Thus, it is clear that Judge Halverson did not engage in impropriety. Count Fourteen should be dismissed in its entirety.

* * * *

There are other matters which warrant this Court's attention

¶ *First, the proceedings were conducted literally by stop-watch.* The Special Prosecutor was granted a certain amount of time within which to present her case. Judge Halverson was given much less time. Clocks were set up in the hearing room to keep a running account of the time utilized by each party. The impression was that justice was being dispensed by a method similar to watching grains of sand falling out of an hour-glass. To limit litigants' rights to present evidence in support of their claim, or to examine witnesses who are opposed to them, smacks of improper curtailment of the right to defend.

¶ *Judge Halverson sought to obtain witnesses from the Clark County District Court and entered into an arrangement with an attorney for the Court, whereby the attorney would accept service of subpoenæ for the court personnel so they would attend the hearing as witnesses for the defense.* However, even though such an arrangement had been made, and even though the subpoenæ had been served on her, she failed to produce the vast majority of the witnesses. When the matter was brought to the Commission's attention, the Commission declined to enforce the subpoenæ and allowed said attorney to repeatedly call Judge Halverson a liar on the record. Judge Halverson was deprived of many witnesses and also of video tapes which would have shown that certain charges were untrue.

¶ *Judge Halverson's original lawyers withdrew approximately 2 months prior to the commencement of trial.* Having no experience in trying disciplinary cases, Judge Halverson sought to obtain new counsel. *Further, as the Commission was well aware, prior counsel had conducted no investigation, no discovery, had not provided their client with the discovery obtained from opposing*

counsel since prior to her suspension and had even failed to respond to two motions by the Special Prosecutor including one seeking discovery. She had literally thousands of pages of documents which were required to be reviewed for defense of the case. It took some time for her to locate an experienced disciplinary attorney and upon locating counsel, immediate steps were made to have him associated *pro hac vice*, since he was from out of state. A Motion to Associate Counsel was filed on July 21, 2008, (although Notice of the hiring and the name of counsel who was awaiting bar documents was provided to all parties on July 3. 2008) some two weeks prior to the scheduled commencement of hearings. Even though there was precious little time within which to prepare, the Commission insisted that the hearings commence on August 4, 2008, some eight (8) days before Judge Halverson was facing re-election, and specifically conditioned the granting of the Motion to Associate Counsel on a promise that no request for adjournment would be made. Counsel appeared and, as the Commission graciously noted, "[h]e arrived on the scene just days before the hearing began and he did an admirable job as an advocate." *Commission Findings of Fact, etc.*, p. 24, n. 16.

¶ *During the proceedings, the Special Prosecutor acted as attorney for witnesses who had been subpoenaed by Judge Halverson in an attempt to obviate both the witnesses' having to provide evidence and/or testimony.* This constitutes *prosecutorial misconduct* in seeking to prevent the defense from gaining access her defense records and witnesses. The NCJD contacted in a ex parte manner, counsel to act for certain of these witnesses. Motions were brought both regarding the prosecutorial misconduct and the request for the evidence. Both motions were denied..

¶ *The Commission which suspended Judge Halverson on charges which were not yet filed, then sat in judgment of her after the Formal Statement of Charges, were filed.* Having already decided, in July 2007, without charges or evidence (given that Judge Halverson was not allowed evidence to defend herself as required as constitutionally required), that Judge Halverson had engaged in improprieties warranting suspension from the bench, it can hardly have been expected that they would have come to the August, 2008 hearings, over a year later, with a fresh and non-biased outlook.(In fact, she was already suspended on May 17, 2007 without hearing or notice.) For, having

caused Judge Halverson to be suspended for over a year, it would have been anomalous for the same group to then reverse themselves and conclude that they had done Judge Halverson a terrible wrong by previously suspending her. This scenario wrongfully shifts the burden of proof to Judge Halverson who was required to convince the same people who suspended her without proper evidence, without charges and without due process, of her innocence. Their hostility to her was evident in that virtually every motion that she brought, virtually every piece of evidence she sought and even her initial. request for subpoenas were denied.

¶ *The Commission's attitude towards the Judge was unfair*. Without any foundation whatsoever, *the Commission discounted the testimony of the new staff members who praised Judge Halverson*, claiming that Judge Halverson had "an ulterior motive for behaving in a manner other than her normal manner." *Commision Findings of Fact, etc.*, p. 12. Normally, if a disciplinary authority finds a difference in behavior to the point where it represents a decided change for the good, it will find the same to constitute mitigation. However, the Commission, speculating without any foundation in fact, simply decided that it needed to chastise Judge Halverson at every opportunity. It is clear from the record, that Judge Halverson's new staff members whose tenures began before the Judge's suspension, such as Pam Humphrey (April 2), Denise Lopez, (April 15), Bobbi Tackett (January 2 and April 29 - May 6) and Sally Owen (April 29) all had nothing but praise for the judge Lee Bahr began work after the suspension but sought and received the position April 2007. Pam Humphrey testified that she worked with all of the old staff except for Kathleen Streuber whom she replaced and that she saw no mistreatment of anyone and had no idea that anything was amiss in Department 23. **(T-Vol 7, Pg 1635, 1636)** Judicial notice can be taken that April ALWAYS comes before May. NRS 47.130. What ulterior motive could Judge Halverson possess in April? Where is there clear and convincing evidence of this motive. Speculation does not constitute any evidence let alone constitutionally mandates clear and convincing evidence. Clearly, this is prejudicial and error..

¶ **Finally, the imposition of permanent removal with a lifetime bar on seeking election to judicial office in Nevada was Draconian, to say the least**. As it turns out, after the

hearings but prior to the issuance of the Commission's decision, Judge Halverson was brutally assaulted by her husband, almost killing her. She still suffers from the assault, with damage to her eyesight and possible permanent neurological damage. Her husband is now serving 3-10 years imprisonment. She is currently physically unable to work and her prospects for the future are unknown.

Given the fact that half of the original charges were dismissed and those that were not should have been, for the reasons set forth above, permanent removal was unduly harsh. Testimony at the hearings established that she took her job very seriously; she worked long hours; she cleaned up a backlog; she presided over more trials in the short time she was on the bench than the average judge; juries loved her; she kept her docket current. It may be true that she had personality conflicts with the chief judge and that certain members of her original staff. However, when those individuals left her new staff had only good things to say about her. If imprisoning innocent visitors to a courthouse does not warrant even a public reprimand, such as in the case of Judge Assad, how then can personality and political conflicts warrant a lifetime removal from the bench? This is especially true in light of the fact that ALL of the publicity in this case was generated by persons other than Judge Halverson. Judge Halverson was not permitted to introduce evidence of emails showing that the disgruntled employees sought media involvement.

RELIEF REQUESTED

It is respectfully requested that this Honorable Court reverse the findings of the Commission that Judge Halverson engaged in judicial misconduct, set aside the order of removal, and dismiss the Formal Statement of Charges with prejudice.

Dated: March 15, 2009

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Attorney's Certificate

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 N.R.A.P. 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....16th.....day of.March, 2009....

(Signature of Attorney)

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CERTIFICATE OF SERVICE

I certify that on March 17, 2009, I caused the foregoing document entitled ***APPELLANT'S OPENING BRIEF***, to be served as follows:

XXX 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 (Commission and Holmes)

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 (Schwartz only)

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

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

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