

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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.

**MOTION TO DISMISS APPEAL  
and TO IMPOSE SANCTIONS**

**FILED**

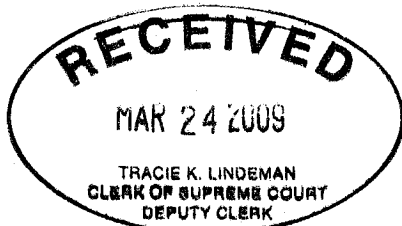
**MAR 24 2009**

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

COMES NOW, Respondent, NEVADA COMMISSION ON JUDICIAL DISCIPLINE,  
by and through its appellate counsel, Dorothy Nash Holmes, Esq. of Fahrendorf, Viloria,  
Oliphant & Oster, L.L.P., who hereby files this Motion to Dismiss Appeal, pursuant to NRAP  
31(c) and to impose sanctions on appellant for violating the Court's rules regarding the Opening  
Brief and Appellant's Appendix and for falsely certifying in her Attorney's Certificate that her  
papers were proper and in full compliance. Also filed herewith is a separate Motion for Order  
Shortening Time to Respond to this motion. This motion to dismiss the appeal and to impose  
sanctions is based upon the following Memorandum of Points and Authorities, the affidavit and  
exhibit attached hereto, and all documents and pleadings on file in this case.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### Introduction

Eighth Judicial District Judge Elizabeth Halverson, *pro se* Appellant herein, is appealing the decision and ruling of the Nevada Commission on Judicial Discipline (hereafter "the Commission") permanently removing her from her judicial office. See Docketing Statement for the instant case, filed by Ms. Halverson with this Court on or about January 23, 2009.<sup>1</sup> Apparently, Ms. Halverson filed her Opening Brief, with a document entitled "Appellant's Appendix" attached to it, in the Las Vegas Drop Box for this Court on March 17, 2009<sup>2</sup>. Her Appendix is totally inadequate to support her brief. Neither the Appendix or Opening Brief conform to the requirements of this Court and therefore, Respondent herein moves this Court for an Order dismissing the appeal of Elizabeth Halverson as a consequence of her failure to file a proper Opening Brief and Appendix, pursuant to NRAP 31(c), and also seeks an Order from this Court to impose sanctions on Appellant and her associate *pro hac* vice co-counsel for their failure to comply with this Court's appellate rules. NRAP 28 (a), NRAP 28A (b) and NRAP 30(g).

### Appellant's appendix and brief do not comply with appellate rules.

The Nevada Rules of Appellate Procedure are specific and detailed in setting forth the manner in which an appellate brief (NRAP 28) and appendix (NRAP 32) must be filed. First, an appendix must be filed and it must contain all the documents required by the Court to address the issues raised, whether those be motions and their responses, court orders, transcripts of hearings, or even court exhibits. The appendix requirements are listed in NRAP 30(b)(2) and its sub-parts. They include the Complaint; all Answers; Pretrial Orders; Findings of Fact/Conclusions of Law; all judgments or Orders appealed from; the Notice of Appeal, and proofs of service showing all

<sup>1</sup> The Commission is cognizant that this Court wants file-stamped court documents presented to it, but Respondent's Counsel did not receive a file-stamped copy of the Docketing Statement from appellant.

<sup>2</sup> Respondent's copy simply says "Received" and has no file-stamp from the Court on it.

1 of those have been served on all parties in the case. The rule encourages the parties to confer in  
2 an attempt to agree upon a Joint Appendix, *see* NRAP 30(a), and also provides that Appellant  
3 shall initially bear the cost of providing the Joint Appendix. NRAP 30 (h). The rules also permit  
4 each party to file a separate appendix. NRAP 30 (a).

5 Appellant's Appendix is totally out-of-compliance with appellate rules. It is not bound  
6 separately. NRAP 30 (c). It contains only one official document, the Findings of Fact,  
7 Conclusions of Law and Imposition of Discipline order, entered by the Commission on  
8 November 17, 2008. It contains no charging document or answer thereto. It contains no pretrial  
9 orders or court orders appealed from, yet there are several pre-trial motions and rulings appellant  
10 challenges in her Opening Brief. *See* Appellant's Opening Brief, Arguments B (pp. 13 -15) and  
11 C (p.15 – 17) and the seven "other matters which warrant this Court's attention." *See* Opening  
12 Brief, pp. 27 -30. It does not even contain the Notice of Appeal. It does not list the documents  
13 included, by chronological order by filing date (NRAP30(c)(1)); it does not have a table listing  
14 and identifying each document with reasonable definiteness and indicating where in the  
15 Appendix it is located (NRAP 30(c)(2). Appellant's Appendix is not really an appendix at all. It  
16 contains none of the required documents, its format is defective and it does not support this  
17 appeal in any way. This Court should return it to the Appellant, treat it as if it has not been filed  
18 at all, and dismiss the appeal because no appellate review is possible from Appellant's Appendix.  
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22 In addition, the transcripts of the disciplinary hearing held August 4 - 15, 2008 have  
23 neither been ordered by Appellant from the Court Reporter, pursuant to NRAP 9(a)(1), nor  
24 provided in Appellant's Appendix, even though both Judge Halverson and her co-counsel,  
25 Michael Alan Schwartz from Michigan, received individual copies of the hearing transcript from  
26 Western Reporting Services after the end of the hearing (August 15, 2008) so they could prepare  
27 and file their Closing Argument with the Judicial Discipline Commission by the deadline of  
28

1 September 30, 2008. *See* Affidavit attached hereto as Exhibit 1 and incorporated by reference  
2 herein.

3       There are myriad other problems with the Opening Brief, beginning with appellant  
4 providing no Statement of the Issues; while it is listed in her Table of Contents, there is no page  
5 "v" in the copy served on Respondent. The Statement of the Case (*see* Opening Brief p.1) and  
6 certain arguments (*see* those cited in previous paragraph) are devoid of references to the record,  
7 required by NRAP 28(a)(3) and (4), and many cite to no authorities, either statutory or case law.  
8 NRAP 28(a)(3) and (4). Appellant presents "evidence" that was not presented anywhere in this  
9 case, saying in a footnote "All of this should have been in the personnel file which the prosecutor  
10 had and used." *See* Opening Brief, p.14 and footnote 2. It references exhibits not provided on  
11 appeal nor offered in the disciplinary hearing. *See* Opening Brief, p.14:16-17 discussing "a  
12 doctor's letter." It references documents "in the possession of this Court in Judge Halverson's  
13 Emergency Writ for Stay for August 2008" (Opening Brief footnote 4, p.15), in violation of the  
14 spirit of the rule against incorporating matters from other proceedings. NRAP 28(e). The  
15 Opening Brief is so out-of-compliance with appellate rules that this Court should reject and  
16 return it, deem it not to have been properly filed at all, and dismiss this appeal. NRAP 31(c).

17       **Appellant's Appendix contains a "fugitive document" which should be stricken.**

18       Appellant's Appendix includes a "fugitive document" entitled "Emergency Motion to  
19 Proceed *in Forma Pauperis*" which was ostensibly filed with the Judicial Discipline  
20 Commission. It seeks "*in forma pauperis*" recognition for Ms. Halverson so she can get someone  
21 else to obtain case documents and pay for their reproduction for her Appendix. It should not have  
22 been accepted or filed in the Judicial Discipline Commission and it is not filed at all as a motion  
23 in this Court. It should be stricken from the record in this matter.

24       According to the fax machine imprint on the copy of the motion faxed to Respondent,  
25 Appellant apparently faxed her "emergency motion" to the Commission on Sunday evening,  
26  
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1 March 15, 2009.<sup>3</sup> Obviously, no one from the Commission was working on Sunday night to  
2 receive prior notification that a document is being faxed to the Commission for filing, as is  
3 required by the Commission's Judicial Discipline Procedures 2(a). Therefore, even its  
4 presentation to the Commission was flawed.

5 In conversations Respondent's counsel had with Mr. Schwartz, between March 11 and  
6 13, 2009, the week before the Opening Brief was due, Mr. Schwartz explained to this counsel  
7 that Appellant was required to first seek pauper status with the lower court [the Commission]  
8 before she could request it in the appellate court. See Exhibit 1 hereto. However, the only section  
9 of the Nevada Rules of Appellate Procedure dealing with *in forma pauperis* status is found in  
10 NRAP 24, which applies to *habeas corpus* proceedings so it is inapplicable in this matter.

11 Surely, if Judge Halverson thought she had a basis to seek financial assistance to obtain  
12 her record in this matter, she would have filed a motion in this Court, and she would have done it  
13 sooner than two days before her Opening Brief was due to be filed. This is obviously an after-the  
14 fact ploy to get someone else to do the work required by Appellant and her co-counsel for her  
15 appeal. Appellant was attacked on September 4, 2008 so presumably, she would have known at  
16 that time, or shortly thereafter, if her documents or files were damaged or unusable. Her Notice  
17 of Appeal was filed three months later, on December 2, 2008. She had ample time to file a  
18 motion in this Court explaining the situation and seeking reproduction of the record for her  
19 Appendix. The fact that she waited until 2 days before her Opening Brief was due makes her  
20 claims less credible and makes her motives suspect. This "fugitive document" is now being  
21 offered to divert attention from, and to excuse, Appellant's lack of timely preparation of her  
22 appellate documents; it should be stricken from this case.

26 ///  
27 ///

28 <sup>3</sup> It was faxed to Respondent's counsel approximately mid-day on March 16, 2009.

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1           **The Commission has no jurisdiction to act on the “fugitive document” while this**  
2 **appeal is pending.**

3           The Judicial Discipline Commission has no jurisdiction to act on a case that is pending in  
4 the Nevada Supreme Court. A properly filed Notice of Appeal vests jurisdiction in the Supreme  
5 Court and thereafter a lower court is without jurisdiction to act on any matters relevant to that  
6 appeal. Mack-Manley v. Manley, 122 Nev. 849, 138 P.3d 525 (2006); Smith v. Emery, 109 Nev.  
7 737, 856 P.2d 1386 (1993); Rust v. Clark County School District, 103 Nev. 686, 688, 747 P.2d  
8 1380, 1382 (1987).

9           This is not a situation, like in Mosley v. Comm’n on Judicial Discipline, 117 Nev.371, 22  
10 P.3d 655 (2001) wherein the state’s highest court is being asked to intercede in not-yet-  
11 completed disciplinary matters by granting extraordinary relief in the form of a writ of  
12 mandamus, certiorari, prohibition, quo warranto or habeas corpus. *Id.* at 377. Instead, it is the  
13 reverse situation wherein Appellant appears to be asking the Commission to take away a case  
14 from Nevada’s highest court, albeit temporarily, to grant her a reprieve from the Nevada Rules of  
15 Appellate Procedure. NRAP 30(h) clearly provides that “Each party, initially, shall bear the cost  
16 of preparing its separate appendices. The appellant shall, initially, bear the cost of preparing a  
17 joint appendix...” The procedures to be followed for appeals, and variances therefrom, are  
18 matters relevant to an appeal and they are within the purview of the Nevada Supreme Court, not  
19 the Judicial Discipline Commission. The Nevada Supreme Court construes its own Rules of  
20 Appellate Procedure (NRAP 1 (c)) and Supreme Court Rules (SCR 5). The Commission on  
21 Judicial Discipline has no authority to rule on a motion that seeks a variance from Nevada’s  
22 appellate rules or procedures. Therefore, it is ridiculous for Ms. Halverson to file a late-night  
23 faxed “emergency motion” to the Commission explaining her “impecuniousness.”  
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1           **Appellant's "fugitive document" does not set forth a basis for the relief she requests.**

2           Furthermore, as shown hereafter, the contents do not support the request Appellant makes  
3 in this "fugitive document." Elizabeth Halverson includes as part of her "emergency motion,"  
4 her own affidavit<sup>4</sup> stating that she has no money to reproduce any documents for her appeal.  
5 That is questionable because, when Respondent's counsel was working as the Special Prosecutor  
6 in the misconduct case, she reviewed and obtained copies of Elizabeth Halverson's personnel file  
7 from the Clark County District Court system. Among the documents contained in that file were  
8 two indicating she has the Elizabeth A. LaMacchia Trust Fund, and naming her trust as her  
9 beneficiary. See Exhibit 2 attached hereto and incorporated by reference herein. Respondent  
10 does not know if said trust still exists, or if it has been depleted, but suggests that one ordinarily  
11 only forms a trust when there are substantial assets to protect.  
12

13           In her "emergency motion" to the Commission, Ms. Halverson asserts: "In connection  
14 with the apprehension of her husband...the documents which the Appellant had in her  
15 possession... have been lost, destroyed or [are] otherwise not susceptible of retrieval." That  
16 vague, conclusory statement does nothing to establish why she now has no court documents. At  
17 the disciplinary hearing, Judge Halverson had no less than a Costco-sized flatbed cart, stacked  
18 about 4' tall with plastic bins full of boxes of documents from this case beside her at counsel  
19 table each day. She trucked them in and out of the hearing for two weeks, often delaying the  
20 start of proceedings until they could be hauled in from her car and towed into the hearing room.  
21 She had received the files of her three fired attorneys and she had other documents she generated  
22 in representing herself for three months before the hearing. She had copies of thousands of  
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28           <sup>4</sup> It is interesting to note that the signatures on the final page of her "emergency motion," which she signed for herself and her co-counsel, bear no resemblance to the one on her affidavit in support of her motion, dated March 15<sup>th</sup>; it appears that a stamp of the judge's signature was used on her affidavit.

1 pages of Discovery provided by the Commission and she had all the motions documents litigated  
2 in the month immediately preceding the disciplinary hearing.<sup>5</sup> See Exhibit 1 hereto.

3 Nothing in the various news reports indicate that Ed Halverson resisted being taken into  
4 custody. See Exhibit 2 attached hereto and incorporated by reference herein. There was no  
5 reason for police to get search warrants and ransack the Halverson residence because Judge  
6 Halverson called and asked them to come get her husband, and they immediately did that. Ms.  
7 Halverson does not claim that blood was spattered about during the battery, and provides no  
8 other claim or proof that each and every single piece of paper in the morass of plastic boxes was  
9 destroyed. No one has said what is "lost" or how it could have become lost as a result of the  
10 apprehension of Ed Halverson. In the conversations with this counsel held the week before  
11 Appellant's Opening Brief was due, Ms. Schwartz never mentioned at that time that any of her  
12 records were destroyed or "lost" or otherwise unusable. Mr. Schwartz did state, however, that he  
13 had no records of the pretrial documents because Judge Halverson kept everything in Las Vegas.  
14 See Exhibit 1 hereto.

15  
16  
17 Mr. Schwartz telephoned Respondent's undersigned counsel on March 11, 2009 inquiring  
18 for the first time about a Joint Appendix, incredulous that Nevada could actually require re-  
19 copying and re-submitting of some documents that might already be in the possession of the  
20 Nevada Supreme Court from other proceedings involving the appellant. See Exhibit 1 hereto.  
21 This counsel told him it was necessary to provide new copies in his Appendix, so everything was  
22 in one place and easily accessible to the reviewing court. This counsel also told him that he also  
23 had to attach documents related to rulings, if a court order was being challenged in the appeal,  
24 and he scoffed at that statement, as well. Given the timing of Mr. Schwartz' first telephone call  
25 to Respondent's counsel on March 11<sup>th</sup>, it is obvious that Appellant and her co-counsel only  
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27

28 <sup>5</sup> She personally filed more than a dozen motions in the month before the hearing and they were all responded to, replied to and ruled upon; some had transcripts for in-person or telephonic hearings, as well.



1 started to think about their Appendix the week before their Opening Brief was due. They should  
2 be held accountable for their delay.

3 In addition, during the March 11<sup>th</sup> phone call, Mr. Schwartz asked Respondent's counsel  
4 if the Judicial Discipline Commission had already filed the transcript of the hearing in this Court.  
5 This counsel informed Mr. Schwartz that it was Appellant's responsibility to make arrangements  
6 for the transcript of the hearing to be deposited with the Court under NRAP 9. She confirmed  
7 that with a telephone call to the Clerk of the Commission and the Clerk of the Supreme Court,  
8 and reported those conversations to Mr. Schwartz in a subsequent phone call. *See Exhibit 1*  
9 hereto. Mr. Schwartz himself could easily provide the transcript to this Court in Appellant's  
10 Appendix because he received his own copy of it to prepare the Halverson Closing Argument,  
11 which he filed September 30, 2008 with the Commission. There is simply no excuse for  
12 Appellant's failure to include hearing transcripts in her Appendix.  
13  
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15 Respondent's counsel also told Mr. Schwartz that the Commission had the entire case file  
16 and still had electronic records of pre-trial hearing transcripts, orders and any documents the  
17 Commission had provided to both sides during the case, and suggested he could contact said  
18 Clerk for copies to be emailed to him so he could include them in Appellant's Appendix. Mr.  
19 Schwartz declined, saying the reproduction costs were what Appellant was seeking. *See Exhibit*  
20 *1* hereto. Whether it is a Joint Appendix or a separate Appellant's Appendix, Elizabeth  
21 Halverson has the responsibility to provide the documents necessary for her appeal. NRAP 30.  
22 Even if the "fugitive document" were to be accepted and considered by this Court, it,  
23 nevertheless, is insufficient to relieve her of the responsibility to provide documents in support of  
24 her appeal, especially when there were means and methods to do so, like contacting the Clerk of  
25 the Commission.  
26

27 Regardless of whether Ms. Halverson lacks funds, she has paid her co-counsel to  
28 represent her and he has a responsibility to supply this Court with the documents needed to

1 support her appeal. In conversations about the appeal that Respondent's counsel held with  
2 Michael Schwartz, between March 11 and 16, 2009, Mr. Schwartz said that he "had been paid to  
3 stay on the case through the appeal." See Exhibit 1 to this motion. Presumably, an attorney who  
4 has been paid for an appeal is required to provide the documents necessary to that appeal. When  
5 an attorney is paid to represent a client and prepare court documents on her behalf to file in  
6 court, he is responsible for the cost of reproducing them. And even if some of the documents  
7 were damaged or rendered unusable in the fracas, which has not yet been proved, that does not  
8 explain the failure of her co-counsel to provide an Appendix containing copies of the documents  
9 he possesses from this case or his refusal to contact the Commission Clerk to obtain documents  
10 he does not personally possess. Even if Judge Halverson is now penniless, her co-counsel has  
11 been paid to represent her and he should be held responsible for reproduction costs in the case on  
12 which he is working.  
13

14  
15 Judge Halverson's Emergency Motion to Proceed in *Forma Pauperis* is not properly  
16 filed with the Commission and is not filed at all as a motion in this Court and it should not be  
17 included as part of Appellant's Appendix in this appeal. It should be stricken from this record.  
18 The filing of it does not supplant Appellant's duty to file a proper Appendix, nor does it obviate  
19 Appellant's responsibility to start thinking about and working on her Opening Brief and  
20 Appendix sufficiently in advance of the due date so that appropriate documents and pleadings  
21 can be obtained for the appeal. It is essentially a non-motion and has no place in this record and  
22 this Court should ignore the content of the motion, as well.  
23

24 This Court should return the Opening Brief and Appendix to Appellant because they  
25 were not properly prepared. NRAP 32(c). It should rule that Appellant has failed to file her  
26 Opening Brief and Appendix and dismiss the appeal under NRAP 31(c).

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**Sanctions are appropriate in this matter.**

Respondent additionally moves for sanctions to be imposed on Appellant and her associated co-counsel for their failure to comply with this Court's appellate rules, as specified in the arguments above. NRAP 28A (b) and NRAP 30(g). *See Thomas v. City of North Las Vegas*, 122 Nev. 82, 127 P.3d 1057 (2003); *Barry v. Lindner*, 119 Nev. 661, 81 P.3d 537 (2003); and *Smith v. Emery, Id.*

Furthermore, Judge Halverson, as the local and licensed Nevada attorney, signed the Attorney's Certificate attached to her Opening Brief and in it she swore that the Opening Brief and Appellant's Appendix fully complied with the Nevada appellate rules. Clearly, they do not and that makes Appellant's assertions false.

NRAP 30(g)(2) also provides that:

If an appellant's appendix is so inadequate that justice cannot be done without requiring inclusion of documents in the respondent's appendix which should have been in the appellant's appendix, or without the court's independent examination of portions of the original record which should have been in the appellant's appendix, the court may impose monetary sanctions.

This is an appropriate circumstance for this Court to impose sanctions under both rules. If Appellant is fully capable of representing herself on this appeal, she should be held responsible for knowledge of, and compliance with, all appellate rules. If Appellant's capacity to practice law is sufficient so that an out-of-state attorney can associate with her in this case, then that *pro hac vice* counsel, too, should be held to the same standards as a Nevada appellate attorney, responsible for knowing and complying with all appellate rules.

**Notice of Concurrently-filed Motion to Shorten Time to Respond**

Respondent has filed herewith, a separate motion asking this Court to shorten the time for Appellant to respond to this motion. Time is of the essence in this matter in that Respondent's

1 brief is due in 30 days and Respondent must know whether or not to respond to the Opening  
2 Brief and what to include in Respondent's Appendix. Until there is a resolution of this matter,  
3 Respondent is not in a position to do that.

4 **Conclusion**

5 Based upon the foregoing, this Court should return the Opening Brief and Appendix to  
6 Appellant because they were not properly prepared and it should dismiss this appeal. This Court  
7 should strike from this record the "fugitive document" included by Appellant. The Court should  
8 also enter an Order imposing monetary sanctions on Appellant, who is representing herself, and  
9 her associated co-counsel, due to their egregious violations of the appellate rules.

11 **Affirmation**

12 Pursuant to NRS 239B.030(4), the undersigned legal counsel hereby affirms that this  
13 document does not contain the social security number or any other personal information of any  
14 person.

15 Respectfully submitted this 2<sup>nd</sup> day of March, 2009.

17  
18 By

*Dorothy Nash Holmes*

DOROTHY NASH HOLMES, ESQ.

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*Counsel for Respondent*

**INDEX OF EXHIBITS**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>NUMBER OF PAGES</b>
1	Affidavit of Dorothy Nash Holmes	<u>3</u>
2	Documents reflecting Elizabeth LaMacchia Trust	<u>2</u>
3	News articles	<u>5</u>

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EXHIBIT 1

**AFFIDAVIT OF DOROTHY NASH HOLMES, ESQ.  
IN SUPPORT OF MOTION TO DISMISS APPEAL  
AND MOTION TO IMPOSE SANCTIONS**

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF WASHOE        )

Dorothy Nash Holmes, being first duly sworn under oath, according to law, deposes and says:

1. I am an attorney who has been licensed to practice law in Nevada since 1977.

2. I am Respondent's appellate counsel in the above-entitled action (Case No. 52760) and I also served as the Special Prosecutor for the Judicial Discipline Commission in the case of The Honorable Elizabeth Halverson of the Eighth Judicial District Court, Case No. 0801-1066.

3. I have personal knowledge of the matters stated herein, and those stated in the motion which this affidavit supports; I am competent to testify to the same, and, if called, would so testify.

4. I have provided the exhibits attached to said motion and they are accurate copies of the documents they purport to represent.

5. Between March 11<sup>th</sup> and 16<sup>th</sup>, 2009, I spoke by telephone with Michael Alan Schwartz, Elizabeth Halverson's *pro hac vice* associated co-counsel several times; Mr. Schwartz initially contacted me to discuss a Joint Appendix to the instant appeal and we had several conversations regarding the documents required. I told him it was his job to get the hearing transcript to the Supreme Court and that he had to include any Orders and relevant documents if he would be challenging them. I telephoned the Clerk of the Supreme Court to confirm for him what had to be provided in his appendix.

6. Prior to her filing her "emergency motion" with the Commission on March 16, 2009, Mr. Schwartz said nothing about Judge Halverson having no case files or documents, and to the contrary, he said she had most of the case files in Las Vegas. It was only after she filed her "emergency motion" that he said she did not have documents or could not access them but he did not know why or what happened to them.

1           7.       During our conversation on March 16th, Mr. Schwartz said Nevada appellate rules  
2 required that Judge Halverson first file a motion seeking pauper status in the district court before  
3 she could seek the same in the appellate court and he presumed that was what she was doing when  
4 Ms. Halverson prepared and filed her "emergency motion" with the Judicial Discipline  
5 Commission.

6           8.       During our conversation on March 16th, I told Mr. Schwartz that the  
7 Commission still had electronic records of pre-trial hearing transcripts, orders and any  
8 documents the Commission had provided to both sides during the case, and suggested he could  
9 contact said Clerk for copies; Mr. Schwartz declined, saying the problem was not getting  
10 access to the records but rather the cost of copying them.

11          9.       During my conversations with Mr. Schwartz between March 11 – 13<sup>th</sup>, he told me  
12 he "had been paid to stay on the case through the appeal."

13          10.      At Judge Halverson's disciplinary hearing, held between August 4 – 15, 2008,  
14 she had no less than a Costco-sized flatbed cart, stacked about 4' tall with plastic bins full of  
15 boxes of documents from this case beside her at counsel table each day; she trucked them in  
16 and out of the hearing for two weeks, often delaying the start of proceedings until they could  
17 be hauled in from her car and towed into the hearing room. She had received the files of her  
18 three fired attorneys and she had other documents she generated in representing herself for  
19 three months before the hearing. She had copies of thousands of pages of Discovery provided  
20 by the Commission and she had all the motions documents litigated in the month immediately  
21 preceding the disciplinary hearing.

22          11.      On March 23, 2009, the affiant spoke by telephone with Terri MacTaggart, the  
23 owner of Western Reporting Services, the court reporting company that reported and transcribed  
24 the Halverson misconduct proceedings; Ms. MacTaggart told me that her company had not been  
25 contacted by Judge Halverson or Mr. Schwartz to file the transcript of the case with the Supreme  
26 Court.

27          12.      Ms. MacTaggart said that both Judge Halverson and Mr. Schwartz separately  
28 received transcripts of the 2-week misconduct hearing back at the time the parties were preparing



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of  
FAHRENDORF, VILORIA, OLIPHANT & OSTER L.L.P., and that on the date shown below,

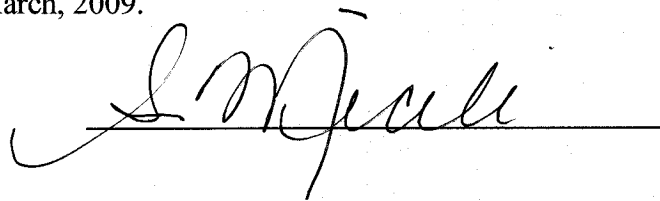
I caused service to be completed by:

- ☐ personally delivering
- ☐ delivery via Messenger Service
- ☐ sending via Federal Express or other overnight delivery service
- ☒ e-mailing as a pdf file to Michael Alan Schwartz, Esq.  
(phrog@schwartzlawyer.com)
- ☒ depositing for mailing in the U.S. mail with sufficient postage affixed thereto
- ☒ delivery via facsimile machine to Elizabeth Halverson fax no. (702) 450-9227

a true and correct copy of the attached document addressed to:

Elizabeth Halverson, Esq.  
4173 Oxnard  
Las Vegas, NV 89121  
(702) 436-4521  
(702) 450-9227 Fax  
  
Michael Alan Schwartz, Esq.  
Schwartz, Kelly & Oltarz-Schwartz PC  
30300 Northwestern Highway, Ste. 260  
Farmington Hills, MI 48334  
(248) 785-0200 ext. 273  
(248) 932-2801 Fax

**DATED** this 24th day of March, 2009.



ATTORNEYS AND  
COUNSELORS AT LAW  
Office: (775) 348-9999 Fax: (775) 348-0540  
P. O. Box 3677 ~ RENO, NEVADA 89505  
327 CALIFORNIA AVENUE ~ RENO, NEVADA 89519  
FAHRENDORF,  
VILORIA,  
OLIPHANT  
& OSTER LLP.

1 their Closing Arguments, which were filed with the Nevada Judicial Discipline Commission on  
2 September 30, 2008; Ms. MacTaggart said her office provided copies to Ed Halverson who  
3 picked them up on behalf of his wife and they shipped a copy to Michael Schwartz in Michigan.

4 13. In preparing for the misconduct hearing of Judge Halverson, I had occasion to  
5 review and obtain copies of the Personnel File of Elizabeth Halverson from the Clark County  
6 District Court; included in that file were retirement and beneficiary designation forms filled out by  
7 Elizabeth Halverson, naming the Elizabeth A. LaMacchia Revocable Trust as her beneficiary. I  
8 have attached as exhibits to this motion, true and accurate copies of two of such documents.

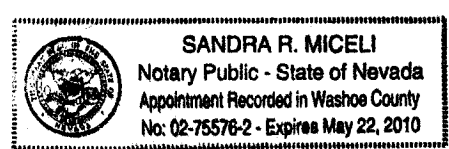
9 14. I have read the attached Motion to Dismiss Appeal and know the contents thereof;  
10 that the same is true of my own knowledge, except for those matters therein contained stated upon  
11 information and belief and, as to those matters, I believe them to be true.

12 DATED this 24th day of March, 2009.

13 Dorothy Nash Holmes  
14 DOROTHY NASH HOLMES, ESQ.

15 SUBSCRIBED AND SWORN to before me  
16 this 24th day of March, 2009.

17 Sandra R. Miceli  
18 NOTARY PUBLIC



FAHRENDORF,  
VILORIA,  
OLIPHANT  
& OSTER L.L.P.

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EXHIBIT 2

**BENEFICIARY DESIGNATION  
UNDER NRS 281.155**

Nevada State Law makes it possible for you to designate a beneficiary so that if you should die while employed by Clark County, the final payment of any and all compensation due you can be given directly to that beneficiary rather than to your estate.

This law was intended to make money immediately available to your beneficiary to meet ongoing expenses pending the receipt of insurance benefits, retirement, etc.

To designate a beneficiary for this purpose, complete this form and forward it to your payroll representative to process for retention in your permanent personnel file in Human Resources.

Employee's Name: Elizabeth La Macchia Department: District Court  
(Print) (Print)

I hereby designate: The Elizabeth A. La Macchia Contingent: \_\_\_\_\_  
(Name) (Name—in the event of Beneficiary's death)  
Revocable Trust

C/O Elizabeth La Macchia Trust \_\_\_\_\_  
(Address) (Address)  
4173 Oxnard Circle \_\_\_\_\_  
(City, State, Zip) (City, State, Zip)  
Las Vegas, NV 89102 \_\_\_\_\_  
(Relationship) (Phone)  
436-4521

Employee's Signature: Elizabeth La Macchia

9-28-98  
(Date)

Witness Signature: Richard W.

9/28/98  
(Date)



ENROLL

PUBLIC EMPLOYEES RETIREMENT SYSTEM OF NEVADA  
693 W. Nye Lane, Carson City, NV 89703-1527  
(702) 687-4200

## MEMBERSHIP REGISTRATION FORM - REGULAR MEMBERS

## MEMBER INFORMATION:

Type or Print (If you print, please press hard using a ball point pen)

Name  
AddressElizabeth La Macchia  
4173 Oxnard Circle  
Las Vegas, NV 89121

SS #

DOB

mo day year

Married yes ☒ no ☐Male ☐ Female ☒

Spouse Name

Edward L. Halverson

DOB

M ☒ F ☐

List all unmarried children under age 18 who are issue of member or legally adopted. (Use additional sheet if necessary.)

Name

DOB

M ☐ F ☐

Name

DOB

M ☐ F ☐

Name

DOB

M ☐ F ☐

BENEFICIARY designation establishes person to receive refund of employee contributions upon death of member in the event no survivors are eligible for monthly benefits.

Beneficiary

The Elizabeth A. La Macchia ~~Revocable~~ Trust  
c/o Trustee

DOB

M ☐ F ☐

Address

4173 Oxnard Circle

City

Las Vegas

State NV

Zip

89121

List any previous names under which employed by a public employer in Nevada

List other Nevada public employers for whom you have worked (city, county, state, school, hospital, etc.).

## ELECTION OF RETIREMENT CONTRIBUTION PLAN (for members of applicable agencies only)

I have read the explanation of the contribution plans on the reverse side of this form and hereby elect by initialling my plan choice that my contributions to PERS be made under the:

employee/employer contribution plan

☒ employer-pay contribution plan

X MEMBER SIGNATURE

Elizabeth La Macchia

Date

10-7-98

## PUBLIC EMPLOYER CERTIFICATION

FOR PERS USE ONLY:

1. ☒ New enrollment, effective date 09/28/98 Elected Official

AUG MSA

OCC CODE

2. ☐ Return from ineligible status, effective date3. ☐ Transfer from (agency) effective date4. ☐ Change from police/fire member, effective date5. ☐ Change to employer pay, effective date

Member position title

Law clerk

Full-time

☒ Part-time

If school district, is position paid: 9 mo. 10 mo. 11 mo. 12 mo. If part-time, number of hours worked per day

I certify that this individual is employed in a position requiring half-time or more service according to employer's full-time work schedule.

X LIAISON OFFICER SIGNATURE

Monica Schmidt

Date

10-8-98

Agency Name

Clark County

Budget Account #

Employer # 303

FORM MF308 (Revised 1/94)

AGENCY

FAHRENDORF,  
VILORIA,  
OLIPHANT  
& OSTER L.L.P.

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EXHIBIT 3

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Sep. 05, 2008

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## **Judge Halverson hospitalized, husband jailed after attack**

Embattled District Judge Elizabeth Halverson is in the hospital after she was assaulted by her husband, Las Vegas police said this morning. Her injuries are not life threatening.

Police were called to her house late last night to respond to a domestic violence call. Police said her husband, Edward Halverson, 49, hit her with a frying pan.

Edward Halverson was booked into the county jail on one attempted murder, one count battery with substantial bodily harm and one count battery with a deadly weapon.

Elizabeth Halverson was suspended in July 2007 and recently lost a primary bid for re-election.

She's been awaiting a decision from the Nevada Commission on Judicial Discipline about whether she'll be permanently barred from the bench.

The disciplinary panel wrapped up two weeks of hearings last month on allegations that Halverson slept on the bench and belittled her bailiff.

### **Find this article at:**

[http://www.lvrj.com/breaking\\_news/27905854.html](http://www.lvrj.com/breaking_news/27905854.html)

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## Judge Halverson's Husband Jailed on Attempted Murder Charges

Updated: Sep 5, 2008 09:31 AM PDT



Suspended Judge Elizabeth Halverson is reported to be in the hospital.

The husband of suspended Nevada state Judge Elizabeth Halverson has been jailed on attempted murder and domestic violence charges after police say he attacked his wife with a frying pan.

Clark County jail records show 49-year-old Edward Halverson was being held Friday pending a court appearance on felony attempted murder, battery with a deadly weapon and battery with substantial bodily harm charges.

The arrest happened just before 11 p.m. Thursday. Halverson reportedly underwent surgery for her injuries. Police say she suffered severe injuries to her face, chest and upper arm area and told officers that he husband had tried to kill her.

"He took care of her, cooked for her, did everything for her," said Richard Isitt, who has known the couple for three years. He speculates that Edward Halverson just "snapped."



Edward Halverson is facing battery with a deadly weapon and attempted murder charges.

Elizabeth Halverson was suspended in July 2007 and recently lost a primary bid for re-election. She's been awaiting a decision from the Nevada Commission on Judicial Discipline about whether she'll be permanently barred from the bench.

The disciplinary panel wrapped up two weeks of hearings last month on allegations that Halverson slept on the bench and belittled her bailiff.

*(The Associated Press contributed to this report.)*



Edward Halverson's mug shot.



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Sep. 06, 2008

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## **DOMESTIC VIOLENCE ALLEGED: Halverson husband arrested**

### **Suspended judge undergoes surgery for beating injuries**

By DAVID KIHARA  
REVIEW-JOURNAL

The husband of suspended District Judge Elizabeth Halverson is known as a devoted, patient spouse who would cook, shop and dote on his wife.

But on Thursday night, Edward Halverson, 49, was arrested and accused of beating the judge with a frying pan.

Nicknamed "Evil Ed" by his wife, Edward Halverson was booked into the county jail on charges of attempted murder and battery with a deadly weapon and battery with substantial bodily harm.

Elizabeth Halverson, who suffered severe injuries to her face, chest and upper arms, was taken to Sunrise Hospital and Medical Center, authorities said.

A hospital spokeswoman declined to comment on her condition, but Las Vegas police said her injuries were not life threatening. News reports stated that she underwent surgery and was in the intensive care unit at the hospital.

"It looks like she had been beat pretty bad," one police officer said.

Elizabeth Halverson, 50, called 911 at 10:50 p.m. to report that her husband was beating her and threatened to kill her, according to the Metropolitan Police Department.

Police went to her house, in the 4100 block of Oxnard Circle near Tropicana Avenue and U.S. Highway 95, and forced their way inside. Edward Halverson was in the living room, and Elizabeth Halverson was found in a rear bedroom with severe injuries.

The judge told officers that Edward Halverson beat and tried to kill her, police said.

Police took a shirtless Edward Halverson into custody and transported the judge to the hospital. Edward Halverson is scheduled to appear in Las Vegas Justice Court on Tuesday morning.

Elizabeth Halverson's motorized scooter, which she uses to get around, sat in the driveway of the house early Friday morning. A bloody towel was in the scooter's seat.

Richard Isitt, a neighbor and family friend of the couple, said he was shocked to learn that Edward Halverson was accused of beating his wife. He and others who know the Halversons described Edward Halverson, an electrician with an extensive arrest history, as a dedicated husband. Isitt said Edward Halverson drove his wife everywhere because she can't drive and even served subpoenas on people in her behalf.

"We thought he was going for sainthood," he said.

Isitt, who has known the Halversons for three years and worked on Elizabeth Halverson's 2006 campaign, said the couple didn't fight and he never heard yelling or screaming from their house.

"They were as normal as everybody else, to tell you the truth," he said.

The Halversons have been married since 1998.

Edward Halverson has been arrested at least 10 times in three states on various charges, including cocaine possession and breaking into a house and stealing property. He was convicted of three felonies and served almost four years in prison.

Elizabeth Halverson has been suspended from the bench since July 2007 but continues to draw her \$130,000 yearly salary.

She recently lost her primary bid for re-election and is facing a Nevada Judicial Discipline Commission complaint that she mistreated staff, slept on the bench and improperly communicated with jurors.

She is awaiting a commission decision on whether she will be permanently barred from the bench.

People who worked with the judge testified at her August disciplinary hearing that Halverson screamed and berated her husband on the telephone in front of staff and said she wanted to kill him.

Her former bailiff, Johnnie Jordan, testified at the hearing that she said to her husband, "I am sick of your ass. Why don't you do what the (expletive) I tell you."

Elizabeth Halverson has said she suffers from diabetes, Crohn's disease, congestive heart failure and the after-effects of cancer. She has difficulty walking and uses oxygen to assist her breathing.

Michael Schwartz, a Michigan-based attorney who represents her in the disciplinary complaint, said he was stunned to hear that Edward Halverson was being charged with attempted murder.

"I am absolutely bewildered," he said. "I have no reason to believe anything like this would occur."

Isitt said he too was surprised by the arrest because Edward Halverson was so attentive to the judge's needs. Edward Halverson took time off from work to care for her and even cut back socializing with others because of her, he said.

"There's no doubt in my mind that he loves her to death," Isitt said. "I wouldn't have been able to put up with it."

Contact reporter David Kihara at [dkihara@reviewjournal.com](mailto:dkihara@reviewjournal.com) or 702-380-1039.

**Find this article at:**

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