



STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

P.O. Box 48

Carson City, Nevada 89702

Telephone (775) 687-4017 • Fax (775) 687-3607

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FILED

MAR 10 2011

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

October 5, 2010

HAND DELIVERED

Honorable Ron D. Parraguirre, Chief Justice
SUPREME COURT OF NEVADA
201 South Carson Street
Carson City, NV 89701-4702

ADKT 0458

Re: STANDING COMMITTEE CONFIDENTIALITY RULE AMENDMENT PROPOSAL

Dear Chief Justice Parraguirre:

The purpose of this letter is to recommend that the Supreme Court of Nevada favorably consider amending the Rules Governing the Standing Committee on Judicial Ethics and Election Practices. Specifically, the Standing Committee suggests amending Rule 4(5) pertaining to confidentiality of election contest matters. This letter is submitted to the Court in accordance with Rule 6 of the Rules Governing the Standing Committee.

The Standing Committee does not have standing to petition the Court under Section 3.2 of the Rules of Administrative Docket and, therefore, requests the Court to act on this recommendation pursuant to the authority of the Court to *sua sponte* consider amendments to the Rules Governing the Standing Committee. In this regard, time is not of the essence and the Standing Committee suggests that the Court should process this request in due course and with an open hearing and deliberative process in place.

The Standing Committee recently concluded litigation in which it was named as a respondent in a mandamus action. The case concluded by way of a stipulation and neither party appealed. Accordingly, this is not an *ex parte* application governed by any procedural rule or practice or the code of professional conduct. Notwithstanding, in the event the Court places the matter on the administrative docket, the Standing Committee's Executive Director will notify the person who initiated the case so as to allow her an opportunity to express her position.

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OCT 06 2010
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

11-07477

NEVADA STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTIONS PRACTICES

Hon. Ron C. Parraguirre, Chief Justice
SUPREME COURT OF NEVADA
October 5, 2010
Page 2

PREMISES

A brief summary of the relevant litigation follows. We have included a copy of the entire district court file so that the Court can make its own, independent assessment of the proposed rule change. *See infra* Exhibit A.

Attorney Maria Maskall was a candidate for judicial office in 2008. She sought but did not win a seat in the Eighth Judicial District Court. During the course of the election, Ms. Maskall filed an election-related complaint with the Standing Committee, contending that one of her opponents did not meet the minimum statutory qualifications to run for that office. The panel that decided the matter concluded that the issue could not be resolved by the Standing Committee. A copy of Published Decision 08-1 is enclosed as Exhibit B.

Ms. Maskall then initiated litigation in the Eighth Judicial District Court against her opponent. Ms. Maskall included certain documents that had been made a part of the Standing Committee's initial file, including the opponent's response. The opponent then filed an election-related complaint against Ms. Maskall, contending that she had committed an ethical violation by using the aforementioned documents, contrary to Standing Committee Rule 4(5). The Standing Committee ruled that Ms. Maskall had not committed a violation of the Code of Judicial Conduct but that she violated the rules this Court enacted when it established the Standing Committee. A copy of Published Decision 08-2 is enclosed as Exhibit C.

On August 26, 2008, Ms. Maskall initiated a certiorari action against the Standing Committee, which was assigned to Judge Elissa Cadish. Ms. Maskall contended that the way in which the panel construed the rule was unconstitutional as well as strained construction of its language. Ultimately, Judge Cadish issued a ruling favorable to the Standing Committee. During the course of litigating Ms. Maskall's rehearing motion and the Standing Committee's Motion for Costs, the parties resolved the matter by way of stipulation. Copies of the relevant court orders and the stipulation are enclosed with this letter. The Standing Committee incurred fees and costs of \$25,336.22 to defend the rule in question.

PROPOSED RULE AMENDMENT

In order to avoid unnecessary and expensive disputes in the future and if the Court concludes that the record of proceedings in election contests should remain confidential, the Standing Committee recommends that the Court should amend Rule 4(5) pertaining to confidentiality of election contest matters. The most expedient amendment would be to just modify the language of Rule 4(5), so that it is substantial similar to the confidentiality provision

NEVADA STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTIONS PRACTICES

Hon. Ron C. Parraguirre, Chief Justice
SUPREME COURT OF NEVADA
October 5, 2010
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in Rule 5(5) that pertains to the confidentiality of advisory opinion files.

Rule 5(5) provides:

Confidentiality. Except for the opinions issued by the committee, all meetings, deliberations, materials considered, and work product of the committee shall be confidential.

Rule 4(5) currently states:

Confidentiality. All meetings of panels concerning unfair election practices are confidential. Any decision shall be signed by the chair or vice-chair and all decisions must be made public.

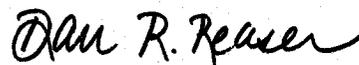
The Standing Committee suggest that Rule 4(5) be amended as follows:

Confidentiality. Except for the decisions issued by a panel of the committee, [A]ll meetings, deliberations, exhibits and materials considered, and work product of panels concerning unfair election practices are confidential. Any decision of such a panel shall be signed by the chair or vice-chair and all decisions must be made public.

CONCLUSION

Should the Court deem it appropriate to place the matter on its administrative docket, the Standing Committee and its staff will be at the ready to provide further oral and written information and support to the Court. Please contact me if you have questions or concerns about this submission. Thank you for your attention to this matter.

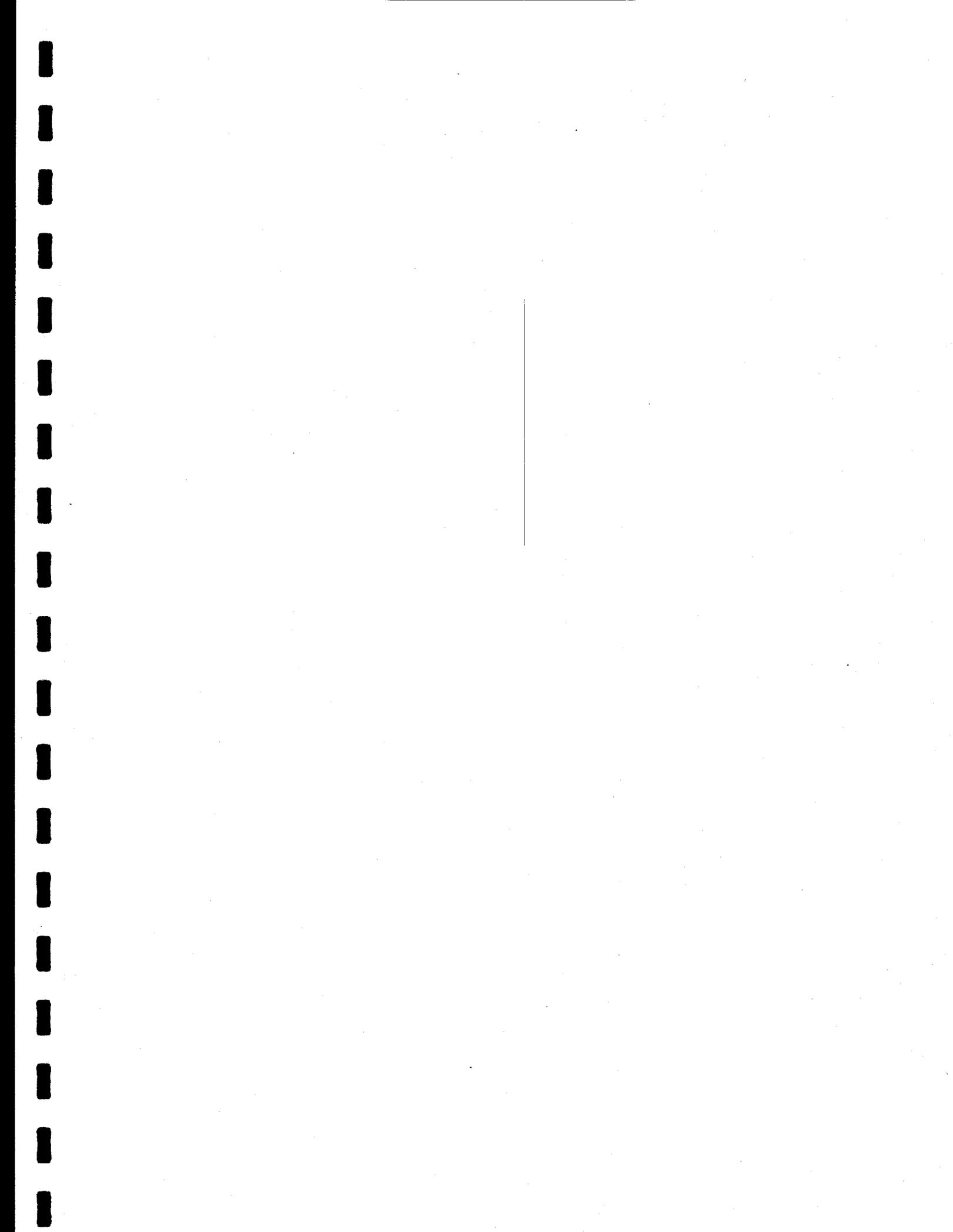
Sincerely,



Dan R. Reaser, Esq.

DR:DFS:dai

cc: Dennis Kennedy, Esq.
Kimberly McGhee, Esq.
Michael A.T. Pagni, Esq.



Maskall Lawsuit
A570442

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14. Stipulation and Order 06/23/10

ATTACHMENT 1

1 0121
2 THE DICKERSON LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 1745 Village Center Circle
6 Las Vegas, Nevada 89134
7 (702) 388-8600

8 LEE HERNANDEZ KELSEY BROOKS
9 GAROFALO & BLAKE
10 DAVID S. LEE, ESQ.
11 7575 Vegas Drive, Ste. 150
12 Las Vegas, Nevada 89128
13 (702) 880-9750
14 Attorneys for Plaintiff/Petitioner

FILED

AUG 26 4 27 PM '08

Cliff
CLERK OF THE COURT

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MARIA MASKALL,
14 Petitioner,
15 v.
16 STANDING COMMITTEE ON
17 JUDICIAL ETHICS AND ELECTION
18 PRACTICES,
19 Respondent.

CASE NO.: A570442
DEPT NO.: VI

Published Decision: 08-2

20 PETITION FOR WRIT OF CERTIORARI, OR,
21 ALTERNATIVELY, PETITION FOR WRIT OF REVIEW

22 COMES NOW, Petitioner, MARIA MASKALL ("Maria"), by and through her counsel, DAVID
23 S. LEE, ESQ., of the law firm of LEE HERNANDEZ KELSEY BROOKS GAROFALO & BLAKE,
24 and ROBERT P. DICKERSON, ESQ., of THE DICKERSON LAW GROUP, and, pursuant to NRS
25 34.020, hereby petitions this Honorable Court for a writ of certiorari, or, alternatively, petition for writ
26 of review (hereinafter referred to as "Petition") to review the Published Decision of the State of Nevada
27 Standing Committee on Judicial Ethics And Election Practices ("Standing Committee"), in *Brigid Duffy*
28 *v. Maria Maskall*, Case No. 08-2, dated August 12, 2008 ("Decision").

1 The issues presented in this Petition are of great concern, gravity, and importance to the public
2 and future candidates who file for judicial office. This Petition should be granted because the Decision
3 of the Standing Committee: (a) violates public policy; (b) violates the Rules of the Standing Committee;
4 (c) produces a manifestly unjust result; (d) contravenes Nevada's Constitutional and statutory scheme;
5 and (e) defies common sense.

6 The issues on appeal are:

- 7 (A) Whether the Standing Committee exceeded its authority and erred by concluding in its
8 Decision that Maria violated a Rule of the Standing Committee when the Standing
9 Committee is authorized only to make findings and conclusions regarding whether a
10 candidate has violated Canon 5 of the Judicial Code of Ethics.
- 11 (B) Whether the Standing Committee Rule, Rule 4.5, which provides that "[a]ll meetings of
12 panels considering unfair election practices are confidential" provides sufficient notice
13 that a written statement by a candidate is also to be considered confidential.
- 14 (C) Whether the Standing Committee erred in finding that a candidate's written statement
15 constituted a meeting of the Standing Committee panel under the Standing Committee's
16 Rules such that the use of the candidate's written statement inside litigation against the
17 opponent fell inside the confidentiality provision of the Standing Committee Rules.
- 18 (D) Whether the Standing Committee erred in ruling that the confidentiality provision of the
19 Standing Committee Rules was violated by using a candidate's written statement inside
20 litigation against that candidate.

21 This Court should grant this Petition for certiorari because of the negative repercussions that are
22 left in the wake of the Standing Committee's Decision. Namely, the Decision of the Standing
23 Committee:

- 24 (1) effectively abrogates a host of statutory provisions, including NRS 48.025, and NRS
25 49.015.
- 26 (2) disregards the Rules governing the Standing Committee which do not provide that the
27 Standing Committee is authorized to find a candidate in violation of its Rules:
28

1 (3) disregards legal precedent by disallowing the use of a written statement submitted to the
2 Standing Committee in litigation commenced on the precise issue that had been before
3 the Standing Committee originally;

4 (4) prevents litigants from being able to have a full and fair trial on the merits of the issue
5 by disallowing statements made by a party opponent which otherwise would be allowed
6 as statements against their interests in litigation.

7 Insofar as the Standing Committee's Decision departs significantly from both the spirit and letter
8 of the law, and insofar as such a departure produces manifestly unjust results and is contrary to public
9 policy, Maria respectfully petitions this Honorable Court to GRANT Certiorari, or, alternatively, to
10 GRANT review.

11 I. INTRODUCTION

12 On February 28, 2008, Maria, a duly qualified candidate for the position of District Court Judge,
13 filed a complaint with the Standing Committee against an opponent, Brigid Duffy ("Duffy"), challenging
14 Duffy's qualifications to run for judicial office under Judicial Canon 5A(3)(d)(ii). Maria earlier had
15 discovered that Duffy did not meet the statutory qualifications set forth in NRS 3.060 to run for judicial
16 office, Specifically, NRS 3.060(1)(c), requires that a candidate for district court judge must be "an
17 attorney **licensed and admitted** to practice law in the courts of this State, another state or the District
18 of Columbia **for a total of not less than 10 years at any time preceding his election** or appointment,
19 at least 2 years of which has been in this State." See NRS 3.060(1)(c) (emphasis added). As Duffy
20 would not have been an attorney licensed and admitted to practice law in the courts of this State, another
21 state of the District of Columbia for a total of not less than 10 years prior to the date of the general
22 election, Maria alleged that Duffy had knowingly misrepresented her qualifications in violation of
23 Judicial Canon 5A(3)(d)(ii).

24 On April 28, 2008, the Standing Committee issued a Published Decision, Case No. 08-1, in
25 which it found that, although there might still be a question concerning whether Duffy was qualified to
26 hold the office of District Court Judge should she win the election, she did not knowingly misrepresent
27 her qualifications in violation of Judicial Canon 5A(3)(d)(ii).

1 On April 29, 2008, Maria filed a Complaint against Duffy in the Eighth Judicial District Court,
2 seeking declaratory relief and a preliminary and permanent injunction. Maria's Motion for Declaratory
3 Relief and Preliminary and Permanent Injunction, filed on May 8, 2008, was ultimately denied by the
4 District Court on procedural grounds. The Court's Findings of Facts and Conclusions of Law held that
5 Maria had not complied with NRS 293.182's procedural requirement which effectively time-barred the
6 Court from determining whether Duffy was, or was not, qualified to be a candidate for the position of
7 District Court Judge as statutorily required in NRS 3.060.

8 On May 30, 2008, Maria filed a Motion for Reconsideration of the District Court's Findings of
9 Fact and Conclusions of Law. Attached to the Motion for Reconsideration was a written statement,
10 submitted by Duffy to the Standing Committee as her response to Maria's February 28, 2008, complaint
11 against her, which such statement was provided in the course of litigation to prove that Duffy knew,
12 prior to filing for candidacy, that there was an issue as to her qualifications to run for judicial office.

13 On June 10, 2008, Duffy filed a complaint against Maria with the Standing Committee, alleging
14 that, by submitting her written statement to the District Court, Maria had not maintained the dignity and
15 integrity expected of one running for judicial office in violation of Judicial Canon 5A(3)(a). Ultimately,
16 the Standing Committee found that Maria did not violate a Judicial Canon, but had violated Standing
17 Committee Rule 4.5, which provides as follows:

18 All meetings of panels concerning unfair election practices are confidential. Any
19 decisions shall be signed by the chair or vice-chair, and all decisions must be made
public.

20 Notably, neither Maria nor Duffy had attended any meetings of the Standing Committee panel.
21 Notwithstanding, the Standing Committee concluded that Maria violated the confidentiality provision
22 of the Standing Committee Rule 4.5 by publicly disclosing Duffy's response. See the Decision of the
23 Standing Committee, a copy of which is attached hereto as Exhibit "A."

24 Such conclusion: (a) violates public policy; (b) violates the Rules of the Standing Committee;
25 (c) produces a manifestly unjust result; (d) contravenes Nevada's Constitutional and statutory scheme;
26 and (e) defies common sense.

1 For these reasons, and those provided below, Maria respectfully requests this Honorable Court
2 to GRANT Certiorari, or, in the alternative, to GRANT review of this Decision.

3 **II. ARGUMENT**

4 **A. *This Court Has Jurisdiction To Grant A Writ Of Certiorari In This Case***

5 NRS 34.020 provides as follows:

- 6 1. This writ may be granted, on application, by the Supreme Court, a district court,
7 or a judge of the district court. When the writ is issued by the district court or a
8 judge of the district court it shall be made returnable before the district court.
- 9 2. The writ shall be granted in all cases when an inferior tribunal, board or officer,
10 exercising judicial functions, has exceeded the jurisdiction of such tribunal, board
11 or officer and there is no appeal, nor, in the judgment of the court, any plain,
12 speedy and adequate remedy.

13 Moreover, the "Commission on Judicial Discipline members are no less subject to having their
14 actions subjected to interlocutory judicial review than are judges of district courts." *Whitehead v. Nevada*
15 *Com'n On Judicial Discipline*, 110 Nev. 128, 906 P.2d 230 (1994), decision clarified on denial of
16 rehearing 873 P.2d 946, 110 Nev. 380. The Commission on Judicial Discipline is part of judicial branch
17 of government, subject to such rules as Supreme Court promulgates, and subject to appellate review by
18 Supreme Court. *See* The Nevada Constitution, Art. 6, § 21. *See also, Whitehead v. Nevada Com'n on*
19 *Judicial Discipline*, 110 Nev. 874, 878 P.2d 913 (1994). The Standing Committee is a committee
20 formed under the Commission on Judicial Discipline, so it should be regulated by the courts in the same
21 manner as the Commission on Judicial Discipline.

22 A petition for a writ of certiorari is properly granted when (1) an inferior tribunal has exceeded
23 its jurisdiction; (2) no means of appeal exists; (3) and no plain, speedy, and adequate remedy at law is
24 available. NRS 34.020(2). All three of these conditions must exist before a writ may be issued.
25 *Schumacher v. First Judicial District Court*, 77 Nev. 408, 410, 365 P.2d 646, 647 (1961). The Standing
26 Committee has exceeded its jurisdiction by entering a Decision which strays from its mandated
27 functions, which are as follows:

- 28 (1) Provide judicial candidates with a forum to resolve charges of false or unethical
advertising.
- (2) Decide whether judicial campaign practices are proper.

1 (3) Render non-binding advisory opinions on hypothetical questions regarding the
2 Nevada Code of Judicial Conduct.

3 (4) Assist the Nevada Supreme Court by studying and recommending additions to,
4 amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct
5 or other laws governing the conduct of judges and judicial candidates.

6 Nowhere in the Standing Committee's functions is it mandated with the authority to decide
7 whether litigation practices are proper. Yet, the Standing Committee's Decision at issue effectively
8 abrogates the right of a candidate to use a statement against interest written by a party opponent inside
9 litigation. No means of appeal exists and no plain, speedy, and adequate remedy at law is available.
10 Thus, this Court has jurisdiction to consider this writ.

11 **B. This Court Should Grant Certiorari, Or, In The Alternative, It Should Grant Review**

12 The Decision of the Standing Committee violates public policy, violates the Rules of the
13 Standing Committee, produces manifestly unjust results, contravenes Nevada's constitutional and
14 statutory scheme, and defies common sense.

15 **1. The Decision Of The Standing Committee Exceeds Its Jurisdiction, Violates
16 Public Policy, And Produces A Manifestly Unjust Result**

17 The Decision violates public policy and exceeds the Standing Committee's functions. The Rules
18 are fashioned as "Rules Governing The Standing Committee On Judicial Ethics And Election Practices."
19 See the Rules, a copy of which is attached hereto as Exhibit "B." A cursory review of the Rules reveals
20 that they are to govern the actions of the Standing Committee itself. Nowhere in the Rules does it state
21 that candidates are governed by the Rules. The Standing Committee receives its authority to determine
22 unfair election practices under Rule 4, which provides as follows:

23 *The committee shall have the authority to determine whether a candidate for judicial
24 office has engaged in an unfair election practice. An "unfair election practice" is any
25 practice or act which would violate Canon 5 of the Nevada Code of Judicial Conduct,
26 except that the committee has no authority to determine whether a candidate has made
27 pledges, promises or commitments that are inconsistent with the impartial performance
28 of the adjudicative duties of judicial office as prohibited by 5A(3)(a) and 5A(3)(d)(I).*

Emphasis added.

1 Additionally, relevant evidence is defined in NRS 48.025, which states as follows:

2 1. All relevant evidence is admissible, except:

3 (a) As otherwise provided by this title;

4 (b) As limited by the Constitution of the United States or
5 of the State of Nevada; or

6 (c) Where a statute limits the review of an administrative
7 determination to the record made or evidence offered
8 before that tribunal.

9 2. Evidence which is not relevant is not admissible

10 There is no statute which governs the confidentiality of proceedings before the Standing
11 Committee. Indeed, all that was available was contained in NRS Chapter 49 governing Review
12 Committees. Yet, NRS 49.117, which defines Review Committees, does not include in its definition
13 any legal review committee. Further, NRS 49.015 provides that no person has a privilege to "prevent
14 another from being a witness or disclosing any matter or producing any object or writing." Thus, the
15 production of Duffy's testimonial statement to a court of competent jurisdiction was proper and the
16 Standing Committee erred in concluding that the production was in violation of Rule 4.5.

17 3. *The Standing Committee's Decision Defies Common Sense*

18 The plain language of Rule 4.5 of the Standing Committee does not contemplate preserving the
19 confidentiality of written statements provided to the Standing Committee. Indeed, Rule 4.5 provides
20 only that "meetings of panels . . . are confidential." As noted in the Decision, "Candidates Duffy and
21 Maskall waived the need for a hearing." *See* the Standing Committee's Decision. Thus, neither Duffy
22 nor Maria attended a meeting of the panel. Accordingly, Maria could not have violated Rule 4.5 as she
23 did not disclose any discussions held in a meeting of the panel.

24 . . .

25 . . .

26 . . .

27 . . .

1 **III. CONCLUSION**

2 Without providing candidates with notice that the submission of a statement written by a party
3 opponent inside litigation, the Standing Committee unjustly found Maria to be in violation of a Rule of
4 the Standing Committee; specifically Rule 4.5. The Standing Committee further exceeded the
5 jurisdiction of its functions by holding Maria in violation of its Rules when it has authority only to
6 determine if a candidate violated Canon 5 of the Judicial Code of Ethics.

7 For these reasons, as well as those stated above, it is respectfully requested that the writ be
8 granted, or, in the alternative, that this Court grant review.

9 DATED THIS 26th day of August, 2008.

10 THE DICKERSON LAW GROUP

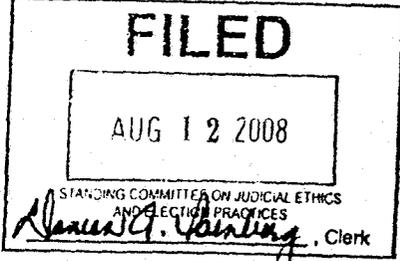
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12 ROBERT P. DICKERSON, ESQ.
13 Nevada Bar No. 000945
14 1745 Village Center Circle
15 Las Vegas, Nevada 89134
16 (702) 388-8600

Exhibit "A"

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STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES



IN RE UNFAIR ELECTION PRACTICE)
FILED BY JUDICIAL CANDIDATE BRIGID)
DUFFY AGAINST JUDICIAL CANDIDATE)
MARIA MASKALL; COMPLAINT UNDER)
NEVADA CODE OF JUDICIAL CONDUCT)
CANON 5A(3)(a)

PUBLISHED DECISION: 08-2

Clark County Family Court Division, Department "R", candidate Brigid Duffy brought a complaint against opponent Maria Maskall claiming violation of the Nevada Code of Judicial Conduct, Canon 5A(3)(a), for failing to maintain the dignity and integrity expected of one who may hold a judicial office. Candidate Duffy specifically alleged that that Ms. Maskall released a confidential Standing Committee ("Committee") document to the public.

CHRONOLOGY

On February 25, 2008, Candidate Maskall submitted a Judicial Election Complaint ("Complaint") against Ms. Duffy to the Committee in which she challenged Ms. Duffy's qualifications to run for public office under Judicial Canon 5A(3)(d)(ii). Citing the ten (10) year licensure rule in NRS 3.060(1)(c), Candidate Maskall alleged her opponent Duffy will not be licensed for the requisite number of years prior to the date of the general election and, thus, is not qualified to run for family court.

As provided for under Rule 4.1 of the Rules Governing the Standing Committee ("Committee Rules"), a panel considered Candidate Maskall's Complaint and issued Published Decision 08-1 on April 28, 2008. Stating there may still be a question under NRS 3.060(1)(c) if Brigid Duffy were to win the general election, the Committee did not find, however, that she knowingly misrepresented her qualifications in violation of Judicial Canon 5A(3)(d)(ii).

1
2
3 On April 29, 2008, Maria Maskall sued Brigid Duffy in the Eighth Judicial District Court for
4 Clark County. Ms. Maskall filed a Motion for Declaratory Relief and Preliminary and Permanent
5 Injunction on May 8, 2008. This Motion was ultimately denied by the Court. On May 30, 2008,
6 Attorney Robert P. Dickerson, on behalf of Candidate Maskall, filed a Motion for Reconsideration.
7 He attached as an exhibit a copy of the unpublished response Brigid Duffy filed with the Committee
8 in reply to Candidate Maskall's February 25, 2008 Judicial Election Complaint.

9 On June 10, 2008, Candidate Duffy filed a Judicial Election Complaint with the Standing
10 Committee. She alleged Maria Maskall violated Judicial Canon 5A(3)(a) by not maintaining the
11 dignity and integrity expected of one running for a judicial office, based on Maskall's release of the
12 unpublished response Duffy had filed with the Committee.

13 Candidates Duffy and Maskall waived the need for a hearing. In keeping with Committee
14 Rule 4.1, a panel considered Brigid Duffy's June 10 Complaint.

15 DECISION

16 While the Standing Committee does not question Candidate Maskall's right to take her case
17 to District Court after the Committee ruled on her February 25, 2008 Complaint, it does question the
18 information she supplied to the Court. The disclosure of Duffy's unpublished response to the
19 Committee is the crux of the issue. Thus, the question becomes one of potential violation of the
20 integrity of the Committee process, not one of breach of the Judicial Canon requiring a candidate to
21 act in a manner consistent with the "impartiality, integrity and independence" of the judiciary.

22 Rule 4.5 for the Standing Committee on Judicial Ethics and Election Practices provides:

23 All meetings of panels concerning unfair election practices are confidential.
24 Any decision shall be signed by the chair or vice-chair, and all decisions must
25 be made public.

26 The Committee concludes Candidate Maskall did not violate Judicial Canon 5A(3)(a) by
27 releasing the Duffy response to the Maskall Judicial Election Complaint. However, the Committee
concludes Ms. Maskall did violate the confidentiality provision of Committee Rule 4.5 by publically
disclosing the Duffy response.

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This Decision shall be published in accordance with Committee Rules 4.4 and 4.5.

August 11, 2008

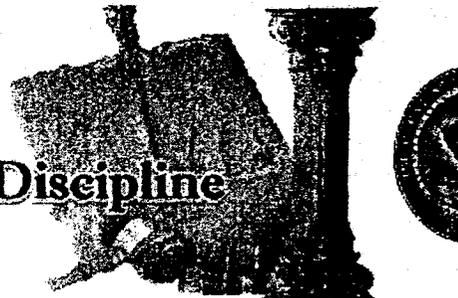
NEVADA STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES.


Kathleen M. Paustian, Esq.
Vice-Chair

Exhibit "B"



**State of Nevada
Commission on Judicial Discipline**



Tuesday, August 2

RULES GOVERNING THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

As revised by the Nevada Supreme Court effective June 15, 2006.

Rule 1. Creation and organization of the committee.

1. Creation and purpose.

The Standing Committee on Judicial Ethics and Election Practices is hereby created ~~to provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointment process.~~
provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointment process.

2. Organization of the committee.

The committee shall consist of twenty-eight members. Twelve shall be attorneys twelve shall be non-attorneys, and four shall be judges designated to serve on the ethics advisory committee as provided in Rule 5. In addition, every district and senior judge is an ex officio member of the unfair election practices panels, and may be asked by the chair to serve as a non-voting member of a panel as provided in Rule 4.

The Board of Governors of the State Bar shall appoint the attorney members, and the Governor may appoint the non-attorney members. If the Governor declines to appoint, then the Board of Governors of the State Bar and the Nevada Commission on Judicial Discipline shall each appoint six of the non-attorney members. The supreme court shall appoint two district judges and two judges serving either as municipal court judges or justices of the peace.

When appointing the non-attorney members, consideration shall be given to each appointee's experience in the areas of advertising and public relations, journalism regulatory bodies, politics and political campaigns, and also to the appointee's other

qualifications and experience as will ensure that diverse points of view are represented on the committee.

(a) Terms. Appointments or reappointments are for a 2-year term of office. The initial membership shall have staggered terms. No member shall be appointed to more than four, consecutive full terms.

(b) Removal. Committee members are not subject to removal by their appointing authority during their terms of office, except for cause. Cause includes unexcused failures to attend scheduled meetings, the number of which the committee shall set in an attendance policy.

3. Officers of the committee.

There shall be a chair and vice-chair. The Nevada Commission on Judicial Discipline shall appoint the chair and vice-chair from the attorney members of the committee for two-year terms.

4. Executive director of the committee.

The executive director of the Nevada Commission on Judicial Discipline shall act as the executive director of the committee.

Rule 2. Functions of the committee.

The committee shall:

1. Provide judicial candidates with a forum to resolve charges of knowing misrepresentation of the identity, qualifications, present position or other fact concerning the candidate or an opponent;
2. Decide whether a candidate has engaged in unfair election practices;
3. Render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct; and
4. Assist the supreme court by studying and recommending additions to amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 3. Conflicts of interest.

Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest which prevents them from participating. However, no action of the committee will be invalid where full disclosure of a potential conflict of interest has been made and the committee has decided that the member's participation was not improper.

Rule 4. Unfair Election Practices.

The committee shall have the authority to determine whether a candidate for judicial office has engaged in an unfair election practice. An "unfair election practice" is any practice or act which would violate Canon 5 of the Nevada Code of Judicial Conduct except that the committee has no authority to determine whether a candidate has made pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office as prohibited by 5A(3)(a) and 5A(3)(d)(i).

1. Panels.

Matters concerning unfair election practices shall be decided by panels of five members, such panels consisting of two attorneys, two non-attorneys, and one judge. A district judge, a justice of the peace or municipal judge, or a senior judge, justice of the peace or municipal judge, may serve as a member of the panel. The panels shall be chosen on a random basis by the chair. Four voting members shall constitute a quorum, and the vote of three members of any panel is necessary to take action.

(a) If requested to serve on a panel, a judge shall accept the appointment unless the judge is disqualified from serving under the provisions of Canon 3E of the Nevada Code of Judicial Conduct.

(b) The chair shall not request a judge to serve on a panel and a judge shall not serve on a panel if:

(i) The alleged unfair election practice involves a candidate for any judicial office within the judicial district in which the judge holds office or previously held office; or

(ii) The judge is a candidate for judicial office and he or she has an opponent who has officially filed a declaration of candidacy for the same judicial office.

2. Powers of the panel.

A committee panel may consider:

(a) Only matters referred to the committee by a candidate for judicial office; and

(b) Only incidents arising from actions of a candidate for judicial office or those working for a candidate's election; provided, however, that the committee panel shall have the authority to determine whether a person is, in fact, working for the election of a candidate.

3. Procedure for reviewing complaints.

(a) A complaint by a judicial candidate against another judicial candidate shall be submitted to the executive director of the committee in writing and must set forth the facts underlying the complaint.

(b) Upon receipt of the complaint, the committee chair or executive director shall immediately contact the candidate whose conduct is in question, advise him or her of the complaint, and ascertain whether the allegations are admitted or denied.

(i) If the accused candidate admits the truth of the allegations, then the matter

shall be referred to a panel of the committee for appropriate action. The accused candidate shall be invited to attend the meeting of the panel to explain his or her actions.

(ii) If the accused candidate denies the actions, the complaining candidate shall be advised to be present at the meeting of the panel and to bring forth proof of the matters alleged in the complaint. The accused candidate shall also be invited to attend and present a defense to the complaint.

(iii) During this entire procedure, neither the candidate nor any member of the committee or panel shall make any public reference to the fact that the matter is pending before the committee. Nothing in these rules, however, prohibits a candidate from making public charges of unfair election practices.

4. Resolution of complaint.

Once the committee or panel reaches a decision, the candidates will be advised of the decision and the intended remedy. All decisions shall be in writing, and shall be open for public inspection at the Commission's office.

(a) If the committee or panel finds unfair election practices, the committee or panel has authority to:

(i) Impose sanctions, including public censure, but excluding fines or civil penalties. If a public statement is made by the committee or panel, that statement may be used by the aggrieved candidate in the campaign.

(ii) Refer any matter to the appropriate body for professional discipline, and the committee's or panel's findings may be used as evidence in any disciplinary proceeding.

(iii) Respond publicly to any unauthorized public reference to the committee by a candidate.

(b) A public statement by the committee or panel of its findings may not always be appropriate. For example, an untrue statement may be corrected by a public retraction of the statement by the offending candidate; in the event that the group addressed by the offending candidate was relatively small, then a retraction directed to that particular group may be deemed sufficient.

5. Confidentiality.

All meetings of panels concerning unfair election practices are confidential. Any decision shall be signed by the chair or vice-chair and all decisions must be made public.

Rule 5. Ethics advisory committee.

The attorney members of the Standing Committee on Judicial Ethics and Election Practices and four judges appointed by the supreme court shall function as an ethics advisory committee. The committee has the authority to render non-binding advisory

opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct. The advisory opinions may also be issued by a panel of the ethics advisory committee.

1. Opinions.

Any opinion issued by the committee expresses the judgment of the committee and is advisory only. When it is determined that a request warrants a written opinion, the opinion shall:

(a) Set forth hypothetical facts of the ethical question presented in a general manner without identification of the requesting judge or judicial candidate or any details of the request which would permit such identification;

(b) Identify the judicial canons or other authorities relied upon;

(c) Include a discussion and conclusion;

(d) Be signed by the chair or vice-chair of the committee; and Conclude with the following statement:

"This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion."

2. Panels.

The ethics advisory committee may be divided into panels of eight members each. The chair or vice-chair, one district judge, and one municipal judge or justice of the peace shall be members of each panel.

3. Filing and delivery.

The formal advisory opinion shall be furnished by personal delivery or certified mail to the person requesting the opinion. The committee shall also file a copy of the opinion with the clerk of the supreme court. All formal advisory opinions shall be numbered and maintained on file at the committee's office, together with all materials considered by the committee in adopting the opinion, and shall be available to any member of the bench or bar upon request. A reasonable charge to defray the costs of reproduction of such opinions and postage may be collected.

4. Limitations.

The committee shall not act on requests for opinions when any of the following circumstances exist:

(a) There is a pending state bar or judicial discipline commission complaint investigation, proceeding, or litigation concerning the subject of the request.

(b) The request constitutes a complaint against a member of the judiciary.

(c) The request involves procedures employed by the judicial discipline commission in processing complaints against judges.

(d) The request involves activities, the propriety of which depends principally on a question of law unrelated to judicial ethics.

(e) Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.

(f) The committee has by majority vote determined that it would be inadvisable to respond to the request and has specified in writing its reasoning to the person who requested the opinion.

5. Confidentiality.

Except for the opinions issued by the committee, all meetings, deliberations materials considered, and work product of the committee shall be confidential.

Rule 6. Recommendations for revision or amendment of canons of judicial conduct and other laws governing judges or judicial candidates.

The committee shall study and submit recommendations to the supreme court regarding proposed changes to the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 7. Immunity.

The members of the committee and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules.

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ATTACHMENT 2

ATTACHMENT 2

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JUDICIAL DISCIPLINE

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9 Attorneys for Plaintiff/Petitioner

Edward H. ...
Edward H. ...

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MARIA MASKALL,
14 Petitioner,
15 v.
16 STANDING COMMITTEE ON
17 JUDICIAL ETHICS AND ELECTION
18 PRACTICES,
19 Respondent.

CASE NO.: A570442
DEPT NO.: V1
Published Decision No. 08-2

20 WRIT OF CERTIORARI / WRIT OF REVIEW

21 TO: THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES:
22 WHEREAS, is has been represented to this Court by the verified petition on file herein of
23 Petitioner, MARIA MASKALL, that the Standing Committee on Judicial Ethics and Election Practices
24 has exceeded its jurisdiction with regards to its Decision entered on August 12, 2008, in the case of
25 *Brigid Duffy v. Maria Maskall*, Case No. 08-2, and that there is no appeal, nor in their Decision, any
26 plain, speedy and adequate remedy, and

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WHEREAS, by an Order of this Court given and made in the above-entitled action, on the 23 day of ~~August~~ ^{Sept}, 2008, it was ordered that a writ of certiorari should issue to you;

WE THEREFORE COMMAND YOU that you certify and return to this, the Eighth Judicial District Court, State of Nevada, on the 24 day of ~~August~~ ^{Oct}, 2008, at 4:00 P.m., a full, true and complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2; to wit, all pleadings, documents, motions, orders, findings and records on file, to the end that the same may be reviewed by this Court and such actions taken thereon as of right and as according to law shall be taken and done, and that you then and there have this Writ, and in the meantime, we command and require you to desist from further proceedings in the matter to be reviewed.

DATED THIS 23 day of August, 2008.

Sept

ELISSA F. GADISH

DISTRICT COURT JUDGE

ATTACHMENT 3

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12 The Standing Committee on
13 Judicial Ethics and Election Practices

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 MARIA MASKALL,
17
18 Petitioner,

19 Case No.: A570442
20 Dept. No.: VI

21 v.
22 STANDING COMMITTEE ON JUDICIAL
23 ETHICS AND ELECTION PRACTICES,
24
25 Respondent.

26 **THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION**
27 **PRACTICES' RESPONSE TO WRIT OF CERTIORARI/WRIT OF REVIEW**
28 **AND MOTION TO SEAL A COURT RECORD**

Respondent Standing Committee on Judicial Ethics and Election Practices (the
"Committee") responds to the Writ of Certiorari/Writ of Review ("Order") issued by this Court.
First, Part VIII of the Supreme Court Rules – Rules Governing the Standing Committee on
Judicial Ethics and Election Practices ("Rules") – 4.5 makes all meetings of panels concerning
unfair election practices confidential. Accordingly, the Committee will comply with this
Court's Order; however, because the Supreme Court Rules explicitly state that the information
which is the subject of this Court's Order is confidential, the Committee concurrently moves for
an order, pursuant to the Nevada Rules for Sealing and Redacting Court Records, that the
complete transcript and the record and proceedings in the action of *Brigid Duffy v. Maria*

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E. J. [Signature]
CLERK OF THE COURT

1 *Maskall*, Case No. 08-2 be submitted for Court review under seal to protect the integrity of the
2 Committee's proceedings and to comply with the Supreme Court Rules.

3
4 I. INTRODUCTION

5 The Committee is an agency independently created by Supreme Court Rule (Nevada
6 Supreme Court Rules, Part VIII) and is not part of the State of Nevada Commission on Judicial
7 Discipline, as alleged by Petitioner. The Committee has historically interpreted its Rule 4.5 to
8 mean that the information filed and relied upon by the Committee in rendering its decisions is
9 confidential, and that the Committee is prohibited from releasing that information to the public.
10 Petitioner has challenged the Committee's interpretation, and this Court issued an Order
11 requiring the Committee to produce this information in order for the Court to determine whether
12 the Committee exceeded its jurisdiction. While the Committee intends to fully comply with this
13 Court's Order, the confidentiality provision which governs the Committee are at odds with this
14 Court's Order.

15 The confidentiality provision that governs the Committee is in place to protect the
16 integrity of the Committee, prevent abuse of its procedures and decisions in judicial campaigns,
17 prevent a loss of public confidence in the judiciary, and protect the reputations and privacy of
18 judicial candidates. A judicial candidate who takes advantage of the Committee's forum is put
19 on notice of Rule 4.5 and must acknowledge such confidentiality requirements upon filing a
20 Judicial Election Complaint Form. Rule 4.5 is narrowly tailored to protect the Committee's
21 proceedings and does not prohibit a complainant from airing his or her grievances in public – it
22 simply prohibits the public disclosure of the complaint and related materials filed and relied
23 upon by the Committee in rendering its decisions. For this reason, the Committee requests that
24 this Court uphold the Committee's interpretation of Rule 4.5 and issue an Order sealing the
25 complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria Maskall*,
26 Case No. 08-2.

26 ///
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28 ///

1 **B. The Committee's Decision**

2 The Committee found that Petitioner did not violate Judicial Canon 5A(3)(a) by
3 releasing Ms. Duffy's response to Petitioner's February 25, 2008 Judicial Election Complaint.
4 However, the Committee did conclude that Petitioner had violated the confidentiality provision
5 of Rule 4.5 by publicly disclosing Ms. Duffy's response.

6 **C. The Issue Presented Here**

7 Petitioner alleges in this action that the Committee's determination that she violated the
8 confidentiality requirement of Rule 4.5 was in excess of its jurisdiction. The Court has ordered
9 the production of the record and proceedings in the underlying case (*Duffy v. Maskall*).

10 **III. ARGUMENT**

11 **A. Committee Meetings and Materials Relied Upon are Confidential**

12 Rule 4.5 provides that "[a]ll meetings of panels concerning unfair election practices are
13 *confidential*." (Emphasis added.) Petitioner asserts that this confidentiality provision "violates
14 public policy, violates the Rules of the Standing Committee, produces manifestly unjust results,
15 contravenes Nevada's constitutional and statutory scheme, and defies common sense." (Petition
16 for Writ of Certiorari, or, Alternatively, Petition for Writ of Review ("Writ Petition") at 6:10-
17 12.) Petitioner's assertions were wrong.

18 1. Candidates are Governed by the Rules

19 Petitioner's assertion, based on her "cursory review of the Rules," that candidates are not
20 governed by the Rules defies logic. The Supreme Court expressly provided that the purpose of
21 the Committee is "to resolve ethical disputes arising in the course of campaigns for judicial
22 office, and to provide judges and aspirants to judicial office advisory opinions regarding ethical
23 matters that may arise in the ordinary course of judicial service, or in the elective or appointment
24 process." J. Ethics Comm R. 1.1. One of the functions of the Committee is to "[p]rovide
25 judicial candidates with a forum to resolve charges of knowing misrepresentation of the identity,
26 qualifications, present position or other fact concerning the candidate or an opponent." J. Ethics
27 Comm R. 2.1.

28 ///

1 A basic rule of statutory construction provides that a court should avoid an interpretation
2 that would result in an absurd or ridiculous conclusion. *See Forest Mktg. Enter., Inc. v. Dep't of*
3 *Natural Res.*, 104 P.3d 40 (Wash. App. 2005) (noting that courts "avoid interpreting statutes and
4 contracts in ways that lead to absurd results"); *see also ASP Properties Group v. Fard, Inc.*, 35
5 Cal.Rptr.3d 343, 351 (Cal. App. 2005) (noting that "[i]nterpretation of a contract 'must be fair
6 and reasonable, not leading to absurd conclusions.'"). Petitioner asserts that while she can
7 challenge (or be challenged by) a candidate in a specific forum (the Committee), the Rules that
8 govern that forum do not apply to her. This cannot be. The Rules were written and enacted to
9 permit those aspiring to judicial office to resolve issues that may arise between candidates.
10 While it is true that the Committee determines whether a candidate violated Canon 5 of the
11 Nevada Code of Judicial Conduct when engaging in his or her election practices, the Rules that
12 govern the forum for which a challenge is made, also apply to those parties who utilize the
13 forum – judicial candidates who challenge the qualifications of an opponent, such as Petitioner.
14 In other words, if the Committee proceedings are confidential, they must be kept confidential by
15 those who are involved in the proceeding.

16 2. Judicial Candidates are on Notice of the Confidentiality Provision

17 Rule 4.5 provides that "[a]ll meetings of panels concerning unfair election practices are
18 confidential. Any decision shall be signed by the chair or vice-chair, and all decisions must be
19 made public." Historically, the Committee has interpreted this Rule to mean that the only
20 information or documentation that it can release to the public is the Committee's final decision.
21 (Declaration of David Sarnowski ("Sarnowski Decl.") at ¶ 3, attached hereto as Exhibit 1.) The
22 Committee is charged with interpreting the Rules as promulgated by the Supreme Court and it is
23 the Committee's position that the Supreme Court can modify or alter the Rules in the event that
24 it disagrees with the Committee's interpretation – something that it has not done. (Sarnowski
25 Decl. at ¶ 4.)

26 Moreover, Petitioner, as a judicial candidate, availed herself of the Committee's forum
27 when she filed her February 25, 2008 Judicial Election Complaint. (Writ Petition at 3:12-14.)
28 That Judicial Election Complaint Form contains an acknowledgement that must be signed by the

1 filer and states "I have been provided with and have read the rules regarding election complaints
2 and their resolution, *including confidentiality requirements.*" (Blank Judicial Election
3 Complaint Form, attached as Exhibit 2 (emphasis added).) Therefore, complainants are on
4 notice of the confidentiality requirements and an assertion to the contrary should be disregarded
5 by this Court.

6 **B. The Prohibition on Disclosing a Response to a Judicial Election Complaint Does**
7 **Not Violate the First Amendment**

8 The Committee has no quarrel with Petitioner's First Amendment right to publicly
9 disclose factual information known by her, and the Committee's Rules do not purport to regulate
10 this activity; that is, the confidentiality provision in Rule 4.5 applies only to Committee panel
11 meetings, including the complaints and related material relied upon by the Committee. The
12 Rule does not prohibit Petitioner from publicly disclosing factual information, and such a
13 narrowing construction is appropriate to avoid constitutional questions. *See, e.g., Erznoznik v.*
14 *City of Jacksonville*, 422 U.S. 205 (1975).

15 However, there is a distinction between factual information known to an individual and
16 the disclosure of the actual complaint form or response which was filed with the Committee.
17 While the public disclosure of the former cannot be restricted, the public disclosure of the latter
18 can be.

19 In support of Petitioner's assertion that Rule 4.5 is not narrowly tailored to meet the
20 compelling interest of the State, Petitioner relies on *J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953 (Ky.
21 1991) and *Town of Lantana v. Pelezynski*, 290 So.2d 566 (Fla. App. 1974). However,
22 Petitioner's reliance on this authority is misplaced. In *J.C.J.D.* and *Town of Lantana* either a
23 supreme court rule or a city ordinance restricted the *content* of a party's speech as opposed to
24 the Committee's confidentiality Rule which is *content-neutral*. *J.C.J.D.*, 803 S.W.2d at 954;
25 *Town of Lantana*, 290 So.2d at 567-568.

26 "[L]aws that confer benefits or impose burdens on speech without reference to the ideas
27 or views expressed" are content-neutral. *In re Discipline of Schaefer*, 117 Nev. 496, 510, 25
28 P.3d 191, 200 (2001). Moreover, "[a] statute is neutral if it serves objectives that are not related
to the expression's content, even though it might unintentionally affect certain speakers or

1 messages." *Seres v. Lerner*, 120 Nev. 925, 936, 102 P.3d 91, 96 (2004). "A regulation is not an
2 invalid content-based restriction merely because one must review the speech's content in order
3 to determine whether the regulation has been violated." *In re Discipline of Schaefer*, 117 Nev.
4 at 510, 25 P.3d at 201.

5 Content neutral restrictions on speech "are subject to an intermediate level of scrutiny
6 thus they must further an important governmental interest that is unrelated to the suppression of
7 free speech and any incidental burden on free speech is no greater than necessary to further that
8 interest." *Seres v. Lerner*, 120 Nev. at 936, n.31, 102 P.3d 91, 96 (2004) (citing *Renton v.*
9 *Playtime Theaters, Inc.*, 475 U.S. 41 (1986)); see also *In re Discipline of Schaefer*, 117 Nev. at
10 510, 25 P.3d at 201 (a content neutral restriction on speech is constitutional "if it is within the
11 government's power, it furthers an important government interest unrelated to the suppression of
12 free expression, and the incidental restriction on free expression is no greater than necessary.").

13 The issue presented here – whether a complainant can be prohibited from publicly
14 disclosing a complaint and related materials filed with the Committee – is analogous to an issue
15 decided by the Second Circuit in *Kamasinski v. Judicial Review Council*, 44 F.3d 106, 109 (2d
16 Cir. 1994), where a Connecticut statute containing a confidentiality provision relating to
17 proceedings before the Connecticut Judicial Review Counsel ("JRC") was upheld against a
18 challenge on First Amendment grounds. The Second Circuit's analysis was the same as the
19 Committee's position here: the Committee agrees that Petitioner is free to publicly air the
20 personal grievances which formed the basis of her complaint, 44 F.3d at 110, but the Court
21 distinguished that act from the act of disclosing the fact that a complaint had been filed, that
22 testimony was given or from the prohibition of disclosing information gained through
23 interactions with the JRC. The prohibition of these latter acts, the Court held, "does not run
24 afoul of the First Amendment." *Id.* at 111.

25 While the restriction on speech at issue is subject to an intermediate level of scrutiny, the
26 prohibition in *Kamasinski* was found to be justified even under the more stringent "strict
27 scrutiny test," for the following reasons:

- 28 (i) the protection of the reputations of individual judges and the judiciary as a whole;

- 1 (ii) the prevention of a loss of public confidence in the judiciary;
- 2 (iii) the fear that, "armed with the ability to make the fact of a complaint public,
- 3 complainants will engage in a campaign of harassment," which might result in the "loss of
- 4 judicial independence as well as an overburdening of the JRC with frivolous complaints";
- 5 (iv) facilitation of effective investigations;
- 6 (v) protection of the judges' right of privacy; and
- 7 (vi) the protection of "the state's significant interest in encouraging infirm or
- 8 incompetent judges to step down voluntarily, a likelihood that is greatly reduced after
- 9 publication that complaints have been filed against them." *Id.* at 111.

10 For similar reasons, the Committee's confidentiality provision as issue here is

11 constitutional. First, the Rules are within the government's powers; both the Committee and its

12 Rules were created by the Nevada Supreme Court – acts indisputably within the Supreme

13 Court's power. Second, Rule 4.5 furthers the important interest of protecting the integrity of the

14 Committee, preventing abuse of its procedures in judicial campaigns, preventing a loss of public

15 confidence in the judiciary, and protecting the reputations and privacy of judicial candidates.

16 Thirdly, the incidental restriction on free expression is no greater than necessary to accomplish

17 those goals. Complainants are not prohibited from publicly disclosing factual information

18 underlying the complaint, just the complaint and the related materials themselves. Therefore,

19 the confidentiality provision is narrowly tailored and does not violate the First Amendment.

20 For the reasons stated above, Rule 4.5 is proper and the confidentiality provision

21 prohibits disclosure of the complaint and the related materials filed with the Commission and

22 used in rendering its decisions.

23 **C. The Committee Requests that the Materials Which are the Subject of this Court's**

24 **Order Be Filed Under Seal**

25 Nevada Rules for Sealing and Redacting Court Records ("SRCR") 3 provides that "[a]ny

26 person may request that the court seal or redact records for a case that is subject to these rules by

27 filing a written motion" SRCR 4 provides that "[t]he court may order the court files and

28 records, or any part thereof, in a civil action to be sealed or redacted, provided that the court

makes and enters a written finding that the specific sealing or redaction is justified by identified

1 compelling privacy or safety interests that outweigh the public interest in access to the court
2 record.” The Court may make such a finding if “[t]he sealing or redaction is justified or required
3 by another identified compelling circumstance.” SRCR 4(h).

4 For the reasons stated above, to protect the integrity of the Committee’s procedures and
5 to comport with the Supreme Court Rules, the Committee respectfully requests that it enter an
6 Order which provides that the complete transcript of the record and proceedings in the action of
7 *Brigid Duffy v. Maria Maskall*, Case No. 08-2 be submitted for Court review under seal. A
8 proposed Order sealing the complete transcript of the record and proceedings in the action of
9 *Brigid Duffy v. Maria Maskall*, Case No. 08-2 is attached hereto as Exhibit 3.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Committee requests that this Court uphold Rule 4.5 and
12 prevent the public disclosure of the complete transcript of the record and proceedings in the
13 action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2 and enter an Order sealing the same.

14 DATED this 24th day of October, 2008.

15 BAILEY ♦ KENNEDY

16
17 By: 
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24 Attorneys for Respondent
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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on the 24th day of October, 2008, a copy of the foregoing THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES' RESPONSE TO WRIT OF CERTIORARI/WRIT OF REVIEW AND MOTION TO SEAL A COURT RECORD was served by placing a copy in the U.S. Mail, postage prepaid and address as follows:

David S. Lee, Esq.
Lee Hernandez Kelsey Brooks Garofalo & Blake
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

Robert P. Dickerson, Esq.
The Dickerson Law Group
1745 Village Center Circle
Las Vegas, NV 89134


JoAnne Hubert, an employee of Bailey ♦ Kennedy

EXHIBIT 1

EXHIBIT 1

1 **DECLARATION OF DAVID F. SARNOWSKI IN SUPPORT OF THE STANDING**
2 **COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES' RESPONSE**
3 **TO WRIT OF CERTIORARI/WRIT OF REVIEW AND MOTION TO SEAL A COURT**
4 **RECORD**

5 I, David F. Sarnowski, declare as follows:

6 1. I currently serve as the Executive Director of the Standing Committee on Judicial
7 Ethics and Election Practices ("Committee") and have done so since March of 2002. I have
8 personal knowledge of and am competent to testify to the facts contained in this declaration. I
9 have made this declaration in support of the Committee's Response to Writ of Certiorari/Writ of
10 Review and Motion to Seal a Court Record.

11 2. In my capacity as Executive Director of the Committee, I am familiar with and
12 knowledgeable of the various rules which govern the conduct of business and proceedings of the
13 Committee.

14 3. Historically, the Committee has interpreted Part VIII of the Supreme Court Rules
15 – Rules Governing the Standing Committee on Judicial Ethics and Election Practices ("Rules")
16 – 4.5 to mean that the only information or documentation that it can release to the public is the
17 Committee's final decision.

18 4. The Committee is charged with interpreting the Rules as promulgated by the
19 Supreme Court and it is the Committee's position that the Supreme Court can modify or alter the
20 Rules in the event that it disagrees with the Committee's interpretation – something that it has
21 not done.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 EXECUTED on this 23rd day of October, 2008.

24 
25 DAVID F. SARNOWSKI

EXHIBIT 2

EXHIBIT 2

EXHIBIT 3

EXHIBIT 3

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Attorneys for Respondent
The Standing Committee on
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DISTRICT COURT
CLARK COUNTY, NEVADA

MARIA MASKALL,
Petitioner,

Case No.: A570442
Dept. No.: VI

v.

STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES,
Respondent.

**ORDER GRANTING THE STANDING COMMITTEE ON JUDICIAL ETHICS AND
ELECTION PRACTICES' MOTION TO SEAL A COURT RECORD**

Having considered the papers submitted in connection with Respondent Standing
Committee on Judicial Ethics and Election Practices' ("Committee") Motion to Seal a Court
Record and the papers on file in this action, the Court finds and determines that an Order sealing
the complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria
Maskall*, Case No. 08-2 is justified by identified compelling privacy interests that outweigh the
public interest in access to the court record. The sealing is justified to protect the integrity of the
Committee's procedures and to comply with the Supreme Court Rules. Therefore, based upon
the foregoing finding,

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IT IS HEREBY ORDERED that the complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2 be submitted for Court review under seal.

DATED this _____ day of _____, 2008.

DISTRICT JUDGE

Submitted by:



DENNIS L. KENNEDY
KIMBERLY R. MCGHEE
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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

ATTACHMENT 4

1 **I. INTRODUCTION**

2 The underlying facts in this matter are uncontested. During an election contest earlier this year,
3 Maria filed a complaint with the Standing Committee against an opponent, Brigid Duffy (“Duffy”),
4 challenging Duffy’s qualifications to run for judicial office under Judicial Canon 5A(3)(d)(ii). On April
5 28, 2008, the Standing Committee issued a Published Decision, Case No. 08-1 (“Decision”), in which
6 it found that, although there might still be a question concerning whether Duffy was qualified to hold
7 the office of District Court Judge should she win the election, she did not knowingly misrepresent her
8 qualifications in violation of Judicial Canon 5A(3)(d)(ii).

9 On April 29, 2008, Maria filed a Complaint against Duffy in the Eighth Judicial District Court,
10 seeking declaratory relief and a preliminary and permanent injunction. Maria’s Motion for Declaratory
11 Relief and Preliminary and Permanent Injunction, filed on May 8, 2008, was ultimately denied by the
12 District Court on procedural grounds. The Court’s Findings of Facts and Conclusions of Law effectively
13 held that Maria was procedurally time barred from bringing the declaratory relief action.

14 On May 30, 2008, Maria filed a Motion for Reconsideration of the District Court’s Findings of
15 Fact and Conclusions of Law. Attached to the Motion for Reconsideration was Duffy’s written
16 statement in response to Maria’s complaint filed with the Standing Committee. As previously stated,
17 Duffy’s written statement to the Standing Committee was provided in the course of the litigation before
18 the District Court to prove that Duffy knew, prior to filing for candidacy, that there was an issue as to
19 her qualifications to run for judicial office – (in her written response to the Standing Committee, Duffy
20 acknowledged that she knew there was an issue of whether she met the statutory qualifications to be a
21 district court judge should she win the election).

22 On June 10, 2008, Duffy filed a complaint against Maria with the Standing Committee, alleging
23 that, by submitting her written statement to the District Court, Maria had not maintained the dignity and
24 integrity expected of one running for judicial office in violation of Judicial Canon 5A(3)(a). Ultimately,
25 the Standing Committee found that Maria did not violate a Judicial Canon, but had violated Standing
26 Committee Rule 4.5, which provides as follows:

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1 All *meetings of panels* concerning unfair election practices are confidential. Any
2 decisions shall be signed by the chair or vice-chair, and all decisions must be made
3 public.

3 *See* Rule 4.5 (emphasis added).

4 On August 26, 2008, Maria filed the instant Petition with this Court seeking relief from the
5 Standing Committee's Decision, presenting the following issues:

6 (A) Whether the Standing Committee exceeded its authority and erred by concluding in its
7 Decision that Maria violated a Rule of the Standing Committee when the Standing
8 Committee is authorized only to make findings and conclusions regarding whether a
9 candidate has violated Canon 5 of the Judicial Code of Ethics.

10 (B) Whether the Standing Committee Rule, Rule 4.5, which provides that "[a]ll *meetings* of
11 panels considering unfair election practices are confidential" provides sufficient notice
12 that a written statement by a candidate is also to be considered confidential.

13 (C) Whether the Standing Committee erred in finding that a candidate's written statement
14 constituted "a meeting" of the Standing Committee panel under the Standing
15 Committee's Rules such that the use of the candidate's written statement in litigation
16 against the opponent fell inside the confidentiality provision of the Standing Committee
17 Rules.

18 (D) Whether the Standing Committee erred in ruling that the confidentiality provision of the
19 Standing Committee Rules was violated by using a candidate's written statement in
20 litigation against that candidate.

21 On or about October 27, 2008, the Standing Committee filed its Response to Maria's Petition.
22 For the reasons set forth below, the Standing Committee's arguments must fail and this Court should
23 grant to Maria the relief she seeks.

24 **II. ARGUMENT**

25 **A. *The Standing Committee Exceeded Its Jurisdiction***

26 Through its Response, the Standing Committee argues that "the Rules that govern the forum for
27 which a challenge is made, also apply to those parties who utilize the forum - judicial candidates who
28 challenge the qualifications of an opponent, such as Petitioner." *See* Response, Page 5, lines 11 through

1 13. Contrary to this allegation, the plain language of the Rules does not address candidates, but instead
2 addresses the creation, purpose, functions, powers, and parameters within which the Committee
3 Members are to operate and address issues which come before them¹. Indeed, these are the Rules
4 *Governing The Standing Committee on Judicial Ethics And Election Practices*. A copy of the Rules
5 is attached hereto as Exhibit "A" for the Court's convenience.

6 Rule 4 is the only Rule which grants to the Standing Committee its power to determine disputes
7 between candidates in election races. Rule 4 provides that "[t]he committee shall have the authority to
8 determine whether a candidate for judicial office has engaged in an unfair election practice. *An "unfair
9 election practice" is any practice or act which would violate Canon 5 of the Nevada Code of Judicial
10 Conduct*, except that the committee has no authority to determine whether a candidate has made pledges,
11 promises or commitments that are inconsistent with the impartial performance of the adjudicative duties
12 of judicial office as prohibited by 5A(3)(a) and 5A(3)(d)(i)." See Rule 4 (emphasis added).

13 As pointed out by the Standing Committee, Rule 2 governs the functions of the committee, and
14 states as follows:

- 15 1. Provide judicial candidates with a forum to resolve charges of knowing
16 misrepresentation of the identity, qualifications, present position or other fact
concerning the candidate or an opponent;
- 17 2. Decide whether a candidate has engaged in unfair election practices;
- 18 3. Render non-binding advisory opinions on hypothetical questions regarding the
19 Nevada Code of Judicial Conduct; and
- 20 4. Assist the supreme court by studying and recommending additions to,
21 amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct
or other laws governing the conduct of judges and judicial candidates.

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28 ¹ Moreover, as set forth in greater detail below, even if this Court found that Rule 4.5 applies to candidates, Rule 4.5 does not provide notice that submitting the written response of an opponent to a court of competent jurisdiction is a violation of the Rule.

1 Notably, deciding whether a candidate has violated a Rule of the Standing Committee is absent
2 from the Rules and is absent from the list of functions which the Standing Committee is authorized to
3 perform. Indeed, the Rule that the Standing Committee has charged Maria with having violated states:

4 All *meetings of panels* concerning unfair election practices are confidential. Any
5 decision shall be signed by the chair or vice-chair and all decisions must be made public.

6 Rule 4.5 (emphasis added).

7 Neither Maria nor Duffy attended any meeting of a panel and the contents of Duffy's written
8 Response clearly could not be considered to be a 'meeting of a panel.' The Standing Committee argues
9 that candidates are on notice of the confidentiality requirements because the Judicial Election Complaint
10 Form contains an acknowledgment which states "I have been provided with and have read the rules
11 regarding election complaints and their resolution, *including the confidentiality requirements.*" See
12 generally, Response, Page 5, line 28 through Page 6, line 5. As set forth in her Affidavit attached hereto,
13 Maria read the confidentiality requirement of Rule 4.5 and understood that to mean that she could not
14 disclose anything that was discussed in a meeting with the Standing Committee. There is nothing in
15 Rule 4.5 which indicates that written statements submitted by the candidates are included in the
16 confidentiality provision.

17 1. *Written Materials Are Not Included In The Confidentiality Provision*

18 The Standing Committee further argues that "Rule 4.5 applies only to Committee panel meetings,
19 including the complaints and related material relied upon by the Committee." See Response, Page 6,
20 lines 9 and 10. Curiously, Rule 4.5 omits *any* reference at all to "complaints and related materials relied
21 upon by the Committee" - much less that they are to be held confidential.

22 It appears that the Standing Committee desires to amend the language of Rule 4.5 to include its
23 interpretation of what it believes Rule 4.5 should say. However, this Court is charged with interpreting
24 the Rule as written. Rule 4.5, as written, omits any language requiring the written statements submitted
25 by candidates be held confidential. As such, a candidate is *not* placed on notice that Rule 4.5 includes
26 complaints and related materials relied upon by the Committee.

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1 As previously noted in the Petition, Rule 4.5 fails to provide candidates with notice of what
2 conduct is prohibited. Rule 4.5 in no way notified Maria that submitting a statement against the interests
3 written by a party opponent in litigation was in violation of the Rules governing the Standing
4 Committee. Thus, this Rule is overbroad and vague because it has an imprecise standard which has not
5 been narrowed by opinions of the State Supreme Court or by the Standing Committee, the agency
6 charged with enforcing the Rules. In sum, this Rule is not narrowly tailored to meet the compelling
7 interest of the State.

8 The Standing Committee relies heavily upon the Second Circuit case of *Kamasinski v. Judicial*
9 *Review Council*, 44 F.3d 106 (2d Cir. 1994) for its allegation that a restriction on speech is justified.
10 Through this argument, the Standing Committee would like this Court to extrapolate "meeting of panels"
11 to include "the complaints and related material relied upon by the Committee." See Response, Page 6,
12 line 10. (It is indeed puzzling how a candidate would be expected to know what these "related materials
13 relied upon by the Committee" would be if they are not included in the Rule – just like the written
14 statements.) Initially, it must be pointed out that the *Kamasinski* Court was charged with reviewing
15 Connecticut General Statute Annotated §51-51/, which prohibited the *discussion* of complaints filed with
16 the Connecticut Judicial Review Council. The statute at issue is extensive and clearly provides notice
17 as to what conduct is prohibited.² Unlike the *Kamasinski* Court, this Court is faced with reviewing a
18

19 ² Connecticut General Statutes Annotated §51-51/ provides as follows:

20 (a) Except as provided in subsection (d), the Judicial Review Council shall investigate every written complaint
21 brought before it alleging conduct under section 51-51i, and may initiate an investigation of any judge, compensation
22 commissioner or family support magistrate if (1) the council has reason to believe conduct under section 51-51i has occurred
23 or (2) previous complaints indicate a pattern of behavior which would lead to a reasonable belief that conduct under section
24 51-51i has occurred. The council shall, not later than five days after such initiation of an investigation or receipt of such
25 complaint, notify by registered or certified mail any judge, compensation commissioner or family support magistrate under
26 investigation or against whom such complaint is filed. A copy of any such complaint shall accompany such notice. The
27 council shall also notify the complainant of its receipt of such complaint not later than five days thereafter. Any investigation
28 to determine whether or not there is probable cause that conduct under section 51-51i has occurred shall be confidential and
any individual called by the council for the purpose of providing information shall not disclose his knowledge of such
investigation to a third party prior to the decision of the council on whether probable cause exists, unless the respondent
requests that such investigation and disclosure be open, provided information known or obtained independently of any such
investigation shall not be confidential. The judge, compensation commissioner or family support magistrate shall have the
right to appear and be heard and to offer any information which may tend to clear him of probable cause to believe he is guilty
of conduct under section 51-51i. The judge, compensation commissioner or family support magistrate shall also have the right
to be represented by legal counsel and examine and cross-examine witnesses. In conducting its investigation under this
subsection, the council may request that a court furnish to the council a record or transcript of court proceedings made or
prepared by a court reporter, assistant court reporter or monitor and the court shall, upon such request, furnish such record
or transcript.

1 Rule which does not clearly set forth the prohibited conduct. In this regard, Rule 4.5 does not place one
2 on notice that disclosing a written statement of a party opponent in litigation before a district court in
3 this State is a violation of the Rule. As Rule 4.5 does not provide that the disclosure of written
4 statements made by party opponents are to remain confidential, there can be no prohibition against such
5 disclosure.

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9 (b) The Judicial Review Council shall, not later than three business days after the termination of such investigation,
10 notify the complainant, if any, and the judge, compensation commissioner or family support magistrate that the investigation
11 has been terminated and the results thereof. If the council finds that conduct under section 51-51i has not occurred, but the
12 judge, compensation commissioner or family support magistrate has acted in a manner which gives the appearance of
13 impropriety or constitutes an unfavorable judicial or magisterial practice, the council may issue an admonishment to the judge,
14 compensation commissioner or family support magistrate recommending a change in judicial or magisterial conduct or
15 practice. If an admonishment is issued, the council shall (1) notify the joint standing committee of the General Assembly
16 having cognizance of matters relating to the judiciary that an admonishment was issued and provide said committee with the
17 substance of the admonishment, including copies of the complaint file, and (2) inform the complainant, if any, that an
18 admonishment was issued if the admonishment is the result of misconduct alleged in the complaint. Except as provided in
19 subdivision (1) of this subsection, the substance of the admonishment shall not be disclosed to any person or organization.

20 (c) If a preliminary investigation indicates that probable cause exists that the judge, compensation commissioner
21 or family support magistrate is guilty of conduct under section 51-51i, the council shall hold a hearing concerning the conduct
22 or complaint. All hearings held pursuant to this subsection shall be open. A judge, compensation commissioner or family
23 support magistrate appearing before such a hearing shall be entitled to counsel, to present evidence and to cross-examine
24 witnesses. The council shall make a record of all proceedings pursuant to this subsection. The council shall not later than
25 thirty days after the close of such hearing publish its findings together with a memorandum of its reasons therefor.

26 (d) No complaint against a judge, compensation commissioner or family support magistrate alleging conduct under
27 section 51-51i shall be brought under this section but within one year from the date the alleged conduct occurred or was
28 discovered or in the exercise of reasonable care should have been discovered, except that no such complaint may be brought
more than three years from the date the alleged conduct occurred.

(e) Notwithstanding the provisions of subsections (a) and (b) of this section, the council shall disclose any
information concerning complaints received by the council on and after January 1, 1978, investigations, and disposition of
such complaints to the legislative program review and investigations committee when requested by the committee in the
course of its functions, in writing and upon a majority vote of the committee, provided no names or other identifying
information shall be disclosed.

(f) On and after December 19, 1991, any judge, compensation commissioner or family support magistrate who has
been the subject of an investigation by the Judicial Review Council as a result of a complaint brought before such council
may request that such complaint, investigation and the disposition of such complaint be open to public inspection.

(g) Whenever a complaint against a judge, compensation commissioner or family support magistrate is pending
before the Judicial Review Council within the final year of the term of office of such judge, compensation commissioner or
family support magistrate, the Judicial Review Council shall designate such complaint as privileged and shall conduct an
expedited investigation and hearing so that its duties with respect to such complaint are completed in sufficient time to enable
the Judicial Review Council to make its recommendation concerning any such judge to the Judicial Selection Commission
and the Governor under section 51-51q in a timely manner.

1 C. ***The Decision Of The Standing Committee Exceeds Its Jurisdiction, Violates Public***
2 ***Policy, And Produces A Manifestly Unjust Result***

3 Through its Response, the Standing Committee fails to address where it receives authority to find
4 a candidate in violation of its Rules. As set forth above and in the underlying Petition, the Standing
5 Committee receives its authority to determine unfair election practices under Rule 4, which provides
6 only that “[t]he committee shall have the authority to determine whether a candidate for judicial office
7 has engaged in an unfair election practice. An **"unfair election practice" is any practice or act which**
8 **would violate Canon 5 of the Nevada Code of Judicial Conduct**, except that the committee has no
9 authority to determine whether a candidate has made pledges, promises or commitments that are
10 inconsistent with the impartial performance of the adjudicative duties of judicial office as prohibited by
11 5A(3)(a) and 5A(3)(d)(I).” See Rule 4 (Emphasis added.)

12 Accordingly, the Standing Committee has authority only to determine whether Maria violated
13 a provision of Canon 5 of the Nevada Code of Judicial Conduct. The Standing Committee has *no*
14 authority to determine if a candidate violated its Rules. The Standing Committee exceeded its
15 jurisdiction in finding that Maria violated Rule 4.5. Moreover, since Rule 4.5 does not place one on
16 notice of the prohibited act, a finding of a violation of that Rule produces a manifestly unjust result.

17 **III. CONCLUSION**

18 Not only are the functions of the Standing Committee void of any authority to decide whether
19 a candidate is in violation of its Rules, but the Rules do not even provide notice to a candidate of the
20 prohibited act. In this regard, Rule 4.5 of the Standing Committee provides no notice to a candidate that
21 disclosing in litigation a written statement made by a party opponent was a violation of that Rule. As
22 noted above, Rule 4.5 only provides that “all meetings of panels concerning unfair election practices are
23 confidential.” The Standing Committee’s Decision has produced a manifestly unjust result by holding
24 Maria in violation of an act for which she had no notice.

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1 Without providing candidates with notice that the submission of a statement written by a party
2 opponent in litigation before the courts of this State, the Standing Committee unjustly found Maria to
3 be in violation of a Rule of the Standing Committee; specifically Rule 4.5. The Standing Committee
4 further exceeded the jurisdiction of its functions by holding Maria in violation of its Rules when it has
5 authority only to determine if a candidate violated Canon 5 of the Judicial Code of Ethics.

6 For these reasons, as well as those stated above, it is respectfully requested that the writ be
7 granted, or, in the alternative, that this Court grant review.

8 DATED THIS 4th day of November, 2008.

9 Respectfully submitted by:

10 THE DICKERSON LAW GROUP

11
12 By: 

13 ROBERT P. DICKERSON, ESQ.
14 Nevada Bar No. 000945
15 1745 Village Center Circle
16 Las Vegas, Nevada 89134
17 (702) 388-8600
18 Attorneys for MARIA MASKALL
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AFFIDAVIT OF MARIA MASKALL

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

MARIA MASKALL, being first duly sworn upon oath, deposes and states as follows:

1. That I am the Petitioner in the above-entitled action; that I am over the age of majority, am competent to testify and have personal knowledge of the facts contained herein.

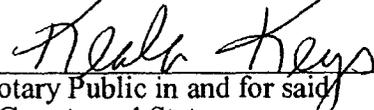
2. I read the Judicial Election Complaint Form, which contains an acknowledgment which states "I have been provided with and have read the rules regarding election complaints and their resolution, *including the confidentiality requirements.*" I further read the confidentiality requirement of Rule 4.5 and understood that to mean that I could not disclose anything that was discussed in a meeting of a panel with the Standing Committee.

Further Your Affiant Sayeth Naught,



MARIA MASKALL

Subscribed and sworn to before me
this 4th day of November, 2008.



Notary Public in and for said
County and State.

KEALA KEYES
Notary Public, State of Nevada
Appointment No. 94-1349-1
My Appt. Expires Jan. 13, 2010

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5.1, I hereby certify that on the 4th of November, 2008, a copy of the foregoing PETITIONER'S REPLY TO THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICS' RESPONSE TO PETITIONER'S WRIT OF CERTIORARI, OR, ALTERNATIVELY, PETITION FOR WRIT OF REVIEW was served by placing a copy in the U.S. Mail, postage prepaid and address as follows:

Dennis L. Kennedy
Nevada Bar No. 1462
Kimberly R. McGhee
Nevada Bar No. 9728
Bailey ♦ Kennedy
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

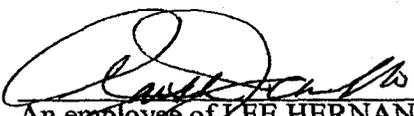
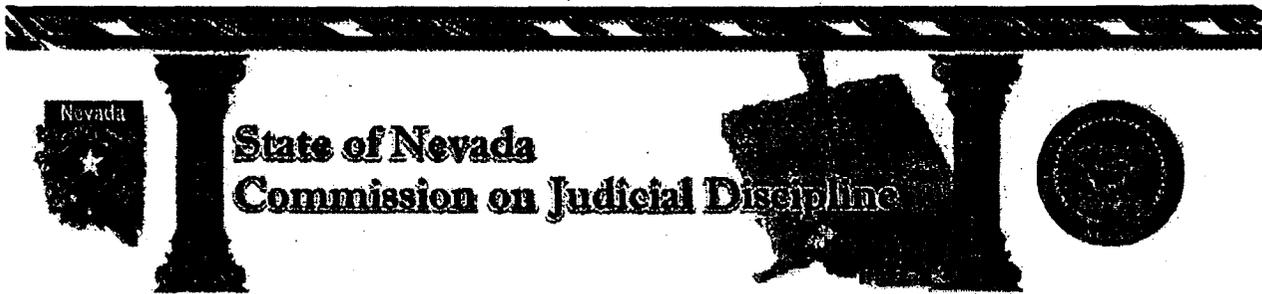

An employee of LEE HERNANDEZ KELSEY
BROOKS GAROFALO & BLAKE

Exhibit "A"



Tuesday, November 4, 2008

RULES GOVERNING THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

As revised by the Nevada Supreme Court effective September 10, 2008.

Rule 1. Creation and organization of the committee.

1. Creation and purpose.

The Standing Committee on Judicial Ethics and Election Practices is hereby created to resolve ethical disputes arising in the course of campaigns for judicial office, and to provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointment process.

2. Organization of the committee.

The committee shall consist of thirty members. Twelve shall be attorneys, twelve shall be non-attorneys, and six shall be judges designated to serve on the ethics advisory committee as provided in Rule 5. In addition, every district and senior judge is an ex officio member of the unfair election practices panels, and may be asked by the chair to serve as a non-voting member of a panel as provided in Rule 4.

The Board of Governors of the State Bar shall appoint the attorney members, and the Governor may appoint the non-attorney members. If the Governor declines to appoint, then the Board of Governors of the State Bar and the Nevada Commission on Judicial Discipline shall each appoint six of the non-attorney members. The supreme court shall appoint three district judges and three judges serving either as municipal court judges or justices of the peace.

When appointing the non-attorney members, consideration shall be given to each appointee's experience in the areas of advertising and public relations, journalism, regulatory bodies, politics and political campaigns, and also to the appointee's other qualifications and experience as will ensure that diverse points of view are represented on the committee.

(a) Terms. Appointments or reappointments are for a 2-year term of office. The initial membership shall have staggered terms. No member shall be appointed to more than four, consecutive full terms.

(b) Removal. Committee members are not subject to removal by their appointing authority during their terms of office, except for cause. Cause includes unexcused

failures to attend scheduled meetings, the number of which the committee shall set in an attendance policy.

3. Officers of the committee.

There shall be a chair and vice-chair. The Nevada Commission on Judicial Discipline shall appoint the chair and vice-chair from the attorney members of the committee for two-year terms.

4. Executive director of the committee.

The executive director of the Nevada Commission on Judicial Discipline shall act as the executive director of the committee.

Rule 2. Functions of the committee.

The committee shall:

1. Provide judicial candidates with a forum to resolve charges of knowing misrepresentation of the identity, qualifications, present position or other fact concerning the candidate or an opponent;
2. Decide whether a candidate has engaged in unfair election practices;
3. Render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct; and
4. Assist the supreme court by studying and recommending additions to, amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 3. Conflicts of interest.

Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest which prevents them from participating. However, no action of the committee will be invalid where full disclosure of a potential conflict of interest has been made and the committee has decided that the member's participation was not improper.

Rule 4. Unfair Election Practices.

The committee shall have the authority to determine whether a candidate for judicial office has engaged in an unfair election practice. An "unfair election practice" is any practice or act which would violate Canon 5 of the Nevada Code of Judicial Conduct, except that the committee has no authority to determine whether a candidate has made pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office as prohibited by 5A(3)(a) and 5A(3)(d)(i).

1. Panels.

Matters concerning unfair election practices shall be decided by panels of five members, such panels consisting of two attorneys, two non-attorneys, and one judge. A district judge, a justice of the peace or municipal judge, or a senior judge, justice of the peace or municipal judge, may serve as a member of the panel. The panels shall be chosen on a random basis by the chair. Four voting members shall constitute a quorum, and the vote of three members of any panel is necessary to take action.

(a) If requested to serve on a panel, a judge shall accept the appointment unless the judge is disqualified from serving under the provisions of Canon 3E of the Nevada

Code of Judicial Conduct.

(b) The chair shall not request a judge to serve on a panel and a judge shall not serve on a panel if:

(i) The alleged unfair election practice involves a candidate for any judicial office within the judicial district in which the judge holds office or previously held office; or

(ii) The judge is a candidate for judicial office and he or she has an opponent who has officially filed a declaration of candidacy for the same judicial office.

2. Powers of the panel.

A committee panel may consider:

(a) Only matters referred to the committee by a candidate for judicial office; and

(b) Only incidents arising from actions of a candidate for judicial office or those working for a candidate's election; provided, however, that the committee panel shall have the authority to determine whether a person is, in fact, working for the election of a candidate.

3. Procedure for reviewing complaints.

(a) A complaint by a judicial candidate against another judicial candidate shall be submitted to the executive director of the committee in writing and must set forth the facts underlying the complaint.

(b) Upon receipt of the complaint, the committee chair or executive director shall immediately contact the candidate whose conduct is in question, advise him or her of the complaint, and ascertain whether the allegations are admitted or denied.

(i) If the accused candidate admits the truth of the allegations, then the matter shall be referred to a panel of the committee for appropriate action. The accused candidate shall be invited to attend the meeting of the panel to explain his or her actions.

(ii) If the accused candidate denies the actions, the complaining candidate shall be advised to be present at the meeting of the panel and to bring forth proof of the matters alleged in the complaint. The accused candidate shall also be invited to attend and present a defense to the complaint.

(iii) During this entire procedure, neither the candidate nor any member of the committee or panel shall make any public reference to the fact that the matter is pending before the committee. Nothing in these rules, however, prohibits a candidate from making public charges of unfair election practices.

4. Resolution of complaint.

Once the committee or panel reaches a decision, the candidates will be advised of the decision and the intended remedy. All decisions shall be in writing, and shall be open for public inspection at the Commission's office.

(a) If the committee or panel finds unfair election practices, the committee or panel has authority to:

(i) Impose sanctions, including public censure, but excluding fines or civil penalties. If a public statement is made by the committee or panel, that statement may be used by the aggrieved candidate in the campaign.

(ii) Refer any matter to the appropriate body for professional discipline, and the

committee's or panel's findings may be used as evidence in any disciplinary proceeding.

(iii) Respond publicly to any unauthorized public reference to the committee by a candidate.

(b) A public statement by the committee or panel of its findings may not always be appropriate. For example, an untrue statement may be corrected by a public retraction of the statement by the offending candidate; in the event that the group addressed by the offending candidate was relatively small, then a retraction directed to that particular group may be deemed sufficient.

5. Confidentiality.

All meetings of panels concerning unfair election practices are confidential. Any decision shall be signed by the chair or vice-chair and all decisions must be made public.

Rule 5. Ethics advisory committee.

The attorney members of the Standing Committee on Judicial Ethics and Election Practices and six judges appointed by the supreme court shall function as an ethics advisory committee. The committee has the authority to render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct. The advisory opinions may also be issued by a panel of the ethics advisory committee.

1. Opinions.

Any opinion issued by the committee expresses the judgment of the committee and is advisory only. When it is determined that a request warrants a written opinion, the opinion shall:

(a) Set forth hypothetical facts of the ethical question presented in a general manner without identification of the requesting judge or judicial candidate or any details of the request which would permit such identification;

(b) Identify the judicial canons or other authorities relied upon;

(c) Include a discussion and conclusion;

(d) Be signed by the chair or vice-chair of the committee; and Conclude with the following statement:

"This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion."

2. Panels.

The ethics advisory committee may be divided into panels of eight members each. The chair or vice-chair, one district judge, and one municipal judge or justice of the peace shall be members of each panel.

3. Filing and delivery.

The formal advisory opinion shall be furnished by personal delivery or first class mail to the address provided by the requesting party. The committee shall also file a copy of the opinion with the clerk of the supreme court. All formal advisory opinions shall be numbered and maintained on file at the committee's office, together with all

materials considered by the committee in adopting the opinion, and shall be available to any member of the bench or bar upon request. A reasonable charge to defray the costs of reproduction of such opinions and postage may be collected.

4. Limitations.

The committee shall not act on requests for opinions when any of the following circumstances exist:

(a) There is a pending state bar or judicial discipline commission complaint, investigation, proceeding, or litigation concerning the subject of the request.

(b) The request constitutes a complaint against a member of the judiciary.

(c) The request involves procedures employed by the judicial discipline commission in processing complaints against judges.

(d) The request involves activities, the propriety of which depends principally on a question of law unrelated to judicial ethics.

(e) Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.

(f) The committee has by majority vote determined that it would be inadvisable to respond to the request and has specified in writing its reasoning to the person who requested the opinion.

5. Confidentiality.

Except for the opinions issued by the committee, all meetings, deliberations, materials considered, and work product of the committee shall be confidential.

Rule 6. Recommendations for revision or amendment of canons of judicial conduct and other laws governing judges or judicial candidates.

The committee shall study and submit recommendations to the supreme court regarding proposed changes to the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 7. Immunity.

The members of the committee and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules.

Last Updated: 09/12/08 11:40:33 AM

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ATTACHMENT 5

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KIMBERLY R. MCGHEE
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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

DISTRICT COURT
CLARK COUNTY, NEVADA

MARIA MASKALL,

Petitioner,

v.

STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES,

Respondent.

Case No.: A570442
Dept. No.: VI

**NOTICE OF ENTRY OF ORDER
GRANTING THE STANDING
COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES' MOTION
TO SEAL A COURT RECORD**

PLEASE TAKE NOTICE that an Order Granting the Standing Committee on Judicial
Ethics and Election Practices' Motion to Seal a Court Record was entered on December 3, 2008,
a copy of which is attached hereto.

DATED this 4th day of December, 2008.

BAILEY ♦ KENNEDY

DENNIS L. KENNEDY
KIMBERLY R. McGHEE
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302

Attorneys for Respondent, The Standing
Committee on Judicial Ethics and Election
Practices.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5, I hereby certify that on the 4th day of December, 2008, a copy of
3 the foregoing NOTICE OF ENTRY OF ORDER GRANTING THE STANDING COMMITTEE
4 ON JUDICIAL ETHICS AND ELECTION PRACTICES' MOTION TO SEAL A COURT
5 RECORD was served by placing a copy in the U.S. Mail, postage prepaid and address as
6 follows:

7 David S. Lee, Esq.
8 Lee Hernandez Kelsey Brooks Garofalo & Blake
9 7575 Vegas Drive, Suite 150
10 Las Vegas, NV 89128

11 Robert P. Dickerson, Esq.
12 The Dickerson Law Group
13 1745 Village Center Circle
14 Las Vegas, NV 89134

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JoAnne Hubert, an employee of Bailey ♦ Kennedy

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ORDR
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DISTRICT COURT
CLARK COUNTY, NEVADA

MARIA MASKALL,
Petitioner,

v.

STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES,
Respondent.

Case No.: A570442
Dept. No.: VI

FILED

DEC 3 4 53 PM '00

Ed [Signature]
CLERK OF THE COURT

**ORDER GRANTING THE STANDING COMMITTEE ON JUDICIAL ETHICS AND
ELECTION PRACTICES' MOTION TO SEAL A COURT RECORD**

Having considered the papers submitted in connection with Respondent Standing
Committee on Judicial Ethics and Election Practices' ("Committee") Motion to Seal a Court
Record and the papers on file in this action, the Court finds and determines that an Order sealing
the complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria
Maskall*, Case No. 08-2 is justified by identified compelling privacy interests that outweigh the
public interest in access to the court record. The sealing is justified to protect the integrity of the
Committee's procedures and to comply with the Supreme Court Rules. Therefore, based upon
the foregoing finding,

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IT IS HEREBY ORDERED that the complete transcript of the record and proceedings in the action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2 be submitted for Court review under seal.

DATED this 3 day of December, 2008.

~~ELISSA F. CADEN~~
DISTRICT JUDGE

Submitted by:



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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

ATTACHMENT 6

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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

DISTRICT COURT
CLARK COUNTY, NEVADA

MARIA MASKALL,
Petitioner,

Case No.: A570442
Dept. No.: VI

v.

STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES,
Respondent.

**THE STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION
PRACTICES' NOTICE OF LODGMENT OF DOCUMENTS FOR COURT REVIEW IN
RESPONSE TO WRIT OF CERTIORARI/WRIT OF REVIEW UNDER SEAL**

Pursuant to the Court's Order Granting Motion to Seal a Court Records, Respondent
Standing Committee on Judicial Ethics and Election Practices (the "Committee") hereby

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1 provides notice that on December 4, 2008, the Committee submitted the complete transcript and
2 the record and proceedings in the action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2 for
3 Court review.

4 DATED this 4th day of December, 2008.

5 BAILEY ♦ KENNEDY

6
7 By: *Kimberly R. McGhee*

8 DENNIS L. KENNEDY
9 KIMBERLY R. MCGHEE
10 8984 Spanish Ridge Avenue
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12 (702) 562-8820 Telephone
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14 Attorneys for Respondent
15 The Standing Committee on
16 Judicial Ethics and Election Practices
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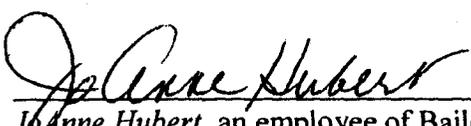
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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on the 4~~th~~ day of December, 2008, a copy of the foregoing NOTICE OF LODGMENT OF DOCUMENTS FOR COURT REVIEW IN RESPONSE TO WRIT OF CERTIORARI/WRIT OF REVIEW UNDER SEAL was served by placing a copy in the U.S. Mail, postage prepaid and address as follows:

David S. Lee, Esq.
Lee Hernandez Kelsey Brooks Garofalo & Blake
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

Robert P. Dickerson, Esq.
The Dickerson Law Group
1745 Village Center Circle
Las Vegas, NV 89134


JoAnne Hubert, an employee of Bailey ♦ Kennedy

ATTACHMENT 7

Alvin D. Shuman
CLERK OF THE COURT

1 **ORDR**
2 DENNIS L. KENNEDY
3 Nevada Bar No. 1462
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13 Attorneys for Respondent
14 The Standing Committee on
15 Judicial Ethics and Election Practices

DISTRICT COURT
CLARK COUNTY, NEVADA

16 MARIA MASKALL,
17
18 Petitioner,

Case No.: 08A570442
Dept. No.: VI

19 v.

20 STANDING COMMITTEE ON JUDICIAL
21 ETHICS AND ELECTION PRACTICES,
22
23 Respondent.

**ORDER DENYING PETITION FOR WRIT OF CERTIORARI, OR,
ALTERNATIVELY, PETITION FOR WRIT OF REVIEW**

24 Petitioner Maria Maskall's ("Petitioner") Petition for Writ of Certiorari, or,
25 Alternatively, Petition for Writ of Review ("Writ") came on for hearing before this Court on
26 February 25, 2010. Petitioner was represented by Robert P. Dickerson. Respondent Standing
27 Committee on Judicial Ethics and Election Practices (the "Committee") was represented by
28 Kimberly R. McGhee.

Having considered the Writ, the Committee's Response to the Writ, Petitioner's Reply,
the authorities cited therein, and the oral argument of counsel for the parties, the Court finds and
determines as follows:

1 FINDINGS AND CONCLUSIONS

2 1. The Committee has jurisdiction to enforce Part VIII of the Supreme Court Rules
3 - Rules Governing the Standing Committee on Judicial Ethics and Election Practices ("Rules").

4 2. Rule 4.5 (Confidentiality) does not violate the First Amendment as it is content-
5 neutral and an adequate state interest has been shown to allow the limited restriction on speech.

6 3. The Committee did not exceed its jurisdiction in finding that Petitioner violated
7 the confidentiality provision of Rule 4.5 by publicly disclosing Brigid Duffy's response to
8 Petitioner's February 25, 2008 Judicial Election Complaint.

9 ORDER

10 Based upon the foregoing findings and conclusions, the Court makes the following order:

11 IT IS ORDERED that Petitioner's Petition for Writ of Certiorari, or, Alternatively,
12 Petition for Writ of Review is DENIED.

13 ISSUED this 12 day of April, 2010, at the hour of 12:00 p.m.

14
15 Clayton F. Gadeik
16 DISTRICT COURT JUDGE pu

17 DATED this 19th day of March, 2010.

18 Respectfully submitted by:

19 Approved as to form ~~and content~~

20 BAILEY ♦ KENNEDY

21 THE DICKERSON LAW GROUP

22 By: Ky Mar

23 By: Robert P. Dickerson

24 DENNIS L. KENNEDY
25 KIMBERLY R. MCGHEE
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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

Attorney for Petitioner, Maria Maskall

Daneen Isenberg

From: Bonnie O'Laughlin [bolaughlin@baileykennedy.com]
Sent: Thursday, April 29, 2010 1:22 PM
To: David F. Sarnowski; Daneen Isenberg
Cc: Dennis Kennedy; Kimberly McGhee
Subject: Maria Maskall v. Standing Committee on Judicial Ethics and Election Practices; Case No. 08-A-570442

Attachments: NEO Denying Petition.PDF

Per Kim McGhee's instructions, I have attached the Notice of Entry of Order Denying Petition for Writ of Certiorari, or, Alternatively, Petition for Writ of Review in the above-referenced matter. Please acknowledge receipt.

Bonnie R. O'Laughlin
Litigation Assistant
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
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BOLaughlin@BaileyKennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system.

ATTACHMENT 8

1 April 12, 2010, a true and correct copy of which is attached hereto.

2 DATED this 15th day of April, 2010.

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BAILEY ♦ KENNEDY

By: *Ky M Cee*
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Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 15th day of April, 2010, a copy of **NOTICE OF ENTRY**
3 **OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI, OR,**
4 **ALTERNATIVELY, PETITION FOR WRIT OF REVIEW** was served by depositing a true
5 and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following last
6 known address:
7

8
9 Robert P. Dickerson, Esq.
10 THE DICKERSON LAW GROUP
11 1745 Village Center Circle
12 Las Vegas, Nevada 89134
13 *Attorneys for Petitioner*
14 *Maria Maskall*

15 Bonnie O'Laughlin
16 *Bonnie O'Laughlin, an Employee of*
17 **BAILEY ♦ KENNEDY**

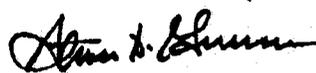
ATTACHMENT 9

1 0125
2 LEE HERNANDEZ BROOKS
3 GAROFALO & BLAKE
4 DAVID S. LEE, ESQ.
5 Nevada Bar No. 006033
6 7575 Vegas Drive, Ste. 150
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11 THE DICKERSON LAW GROUP
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18 bob@dickersonlawgroup.com

19 Attorneys for Plaintiff/Petitioner

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CLERK OF THE COURT

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 MARIA MASKALL,
15)
16) Petitioner,
17)
18) v.
19)
20) STANDING COMMITTEE ON
21) JUDICIAL ETHICS AND ELECTION
22) PRACTICES,
23)
24) Respondent.

CASE NO.: 08A570442
DEPT NO.: 6

Date of Hearing:
Time of Hearing:

21 **PETITIONER'S MOTION TO DENY OR RETAX COSTS AND DISBURSEMENTS**
22 **STATED IN RESPONDENT'S MEMORANDUM OF COSTS AND DISBURSEMENTS**

23 COMES NOW, Petitioner, MARIA MASKALL ("Maria"), by and through her counsel,
24 ROBERT P. DICKERSON, ESQ., of THE DICKERSON LAW GROUP, and DAVID S. LEE, ESQ.,
25 of the law firm of LEE HERNANDEZ BROOKS GAROFALO & BLAKE, and hereby submits her
26 Motion To Deny Or Retax Costs And Disbursements Stated In Respondent's Memorandum Of Costs
27 And Disbursements ("Motion").
28 ...

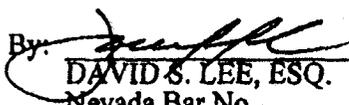
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This Motion is made and based upon the Points and Authorities herein, the papers and pleadings on file herein, and any arguments made by counsel for Maria at the hearing hereon.

DATED this 23 day of April, 2010.

Respectfully Submitted,

**LEE HERNANDEZ BROOKS
GAROFALO & BLAKE**

By: 
DAVID S. LEE, ESQ.
Nevada Bar No.
7575 Vegas Drive, Ste. 150
Las Vegas, Nevada 89128
(702) 880-9750
Attorneys for MARIA MASKALL

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NOTICE OF MOTION

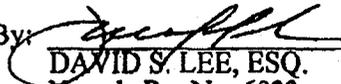
TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing **MOTION TO DENY OR RETAX COSTS AND DISBURSEMENTS STATED IN RESPONDENT'S MEMORANDUM OF COSTS AND DISBURSEMENTS** on for hearing before the Court at the courtroom of the above-entitled Court on the 27 day of MAY 2010, at 8:30 AM of said day, in Department 6 of said Court.

DATED this _____ day of April, 2010.

Respectfully Submitted,

**LEE HERNANDEZ BROOKS
GAROFALO & BLAKE**

By: 
DAVID S. LEE, ESQ.
Nevada Bar No. 6033
7575 Vegas Drive, Ste. 150
Las Vegas, Nevada 89128
(702) 880-9750
Attorneys for MARIA MASKALL

1 POINTS AND AUTHORITIES

2 I. FACTUAL BACKGROUND

3 On February 25, 2010, the parties appeared before the Court on the Writ of Certiorari, or,
4 Alternatively, Petition for Writ of Review ("Writ") filed on behalf of Petitioner, Maria Maskall
5 ("Maria"), the Response of the Standing Committee on Judicial Ethics And Campaign Practices
6 ("Standing Committee"), and Maria's Reply. The Court found that the Standing Committee had not
7 exceeded its jurisdiction, that Rule 4.5 was content-neutral, and that it was narrowly tailored such that
8 it did not violate the First Amendment.

9 On April 15, 2010, the Standing Committee filed its Memorandum of Costs and Disbursements
10 with this Court, claiming the sum of \$3,324.38 for costs associated with its defense of this case. For
11 the reasons set forth below, Maria respectfully requests that this Court deny the Standing Committee's
12 request for costs, or to retax the costs contained in the Memorandum of Costs and Disbursements filed
13 on April 15, 2010, by the Standing Committee to exclude each cost as the Standing Committee failed
14 to provide any documentation or itemization justifying such costs.

15 II. ARGUMENT

16 An adverse party may move the court to retax and settle the costs applied for by the moving
17 party. NRS 18.110(4). Nevada statute defines redeemable costs as the *reasonable* costs for photocopies,
18 long distance telephone calls, postage, computer legal research services, etc.. NRS 18.005. (emphasis
19 added).

20 *The Standing Committee's Request For Costs Should Be Denied As It Failed To Itemize Or*
21 *Provide Support For Each Of Its Costs*

22 With regard to a Memorandum of Costs, the Nevada Supreme Court has clearly held that counsel
23 must not only swear to the accuracy and necessity of the claimed costs, but *must* also provide supporting
24 supplemental documentation to the Memorandum with an *Itemization* and *Justification* of how such
25 costs were necessary to and incurred in the present action. See *Berosini v. People for the Ethical*
26 *Treatment of Animals*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998).¹ This is because, without
27

28 ¹ The Nevada Supreme Court specifically stated "[b]ecause of the lack of sufficient supporting documentation, we conclude that the district court abused its discretion in awarding costs." *Id.*

1 sufficient documentation, the Court is unable to determine the reasonableness of the award and any
2 award constitutes an abuse of discretion. *Id.*; see also, *Waddell v. L.V.R.V., Inc.*, 122 Nev. 15, 25 (2006)
3 (holding that the trial court did not abuse its discretion in denying costs that were not sufficiently
4 itemized.) The same standard applies in an administrative hearing. See *Gilman v. Nevada State Board*
5 *of Veterinary Medical Examiners*, 120 Nev. 263, 89 P.3d 1000 (2004). Thus, costs claimed which fail
6 to have sufficient supporting documentation should be denied by this Court. As set forth below, the
7 Standing Committee failed to provide *any* supporting documentation for any of its claimed costs and
8 each should be denied by this Court.

9 **A. *Legal Research Costs Should Be Denied For Failure To Itemize And Failure To***
10 ***Provide Any Documentation Justifying The Expense As Necessary And Related To***
 This Litigation

11 The Standing Committee's Memorandum of Costs and Disbursements fails to itemize *any* of its
12 costs and disbursements. For instance, the cost of \$2,912.99 for legal research fails to justify how this
13 charge was incurred and, when viewed against the actual Response filed in this matter, the charge
14 appears to be unreasonable. In this regard, the Standing Committee's Response contains reference to
15 eight (8) cases, which amounts to a charge of over \$364.00 per case. It is unknown what cases were
16 researched, when the researched was conducted, who conducted the researched, how long the researched
17 took to conduct, how many of the cases that were researched were actually used in the Standing
18 Committee's Response, and whether the entity using Westlaw has an account with Westlaw, and how
19 it is charged for research, much less that this research was made in connection with this particular case.
20 Without this information, it is impossible to determine if the charge is reasonable.

21 Only reasonable costs may be awarded. [quoting NRS 18.005] '[R]easonable costs' must
22 be actual and reasonable, 'rather than a reasonable estimate or calculation of such costs.'
23 " [quoting Bobby Berosini, 114 Nev. at 1352, 971 P.2d at 385-86 (quoting *Gibellini v.*
 Klindt, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994))] The district court did not abuse
24 its discretion in denying costs for computerized legal research because those costs were
 not sufficiently itemized.

25 See *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1166-67 (2006).

26 In the instant case, the Standing Committee did not provide insufficient itemization. It failed to
27 provide *any* itemization at all for its computerized legal research. Accordingly, this Court should deny
28 the Standing Committee's request for legal research charges and should retax its Memorandum of Costs
 and Disbursements accordingly.

1 **B. *Photocopy Charges Should Be Denied For Failure To Itemize And Failure To Provide***
2 ***Any Documentation Justifying The Expense As Necessary And Related To This***
3 ***Litigation***

4 The Standing Committee claims it incurred \$319.75 in photocopying expenses, but it fails to
5 provide any itemization of when the photocopies were made, how many pages were photocopied, what
6 the cost was per page for the photocopies, what was photocopied, if the photocopies were necessary and
7 related to this litigation. In the *Berosini* case, the Nevada Supreme Court held that the lower court
8 abused its discretion by allowing an award of costs when the prevailing party failed to provide sufficient
9 documentation justifying its costs as follows:

10 However, based on our review of the record on appeal, we note that PETA failed to
11 provide sufficient justifying documentation beyond the date of each photocopy and the
12 total photocopying charge. Moreover, PETA failed to provide any itemization with
13 respect to its request for long distance telephone costs. Because of PETA's insufficient
14 documentation, we are unable to determine the reasonableness of these cost awards.
15 Accordingly, the district court abused its discretion in awarding PETA such costs.

16 *Id.*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998).

17 Unlike PETA in the *Berosini* case, the Standing Committee provides absolutely *no*
18 documentation justifying any of its expenses, including its photocopy expenses. As such, this Court
19 should deny the Standing Committee's request for photocopy charges and should retax its Memorandum
20 of Costs and Disbursements accordin

21 **C. *Postage Charges Should Be Denied For Failure To Itemize And Failure To Provide***
22 ***Any Documentation Justifying The Expense As Necessary And Related To This***
23 ***Litigation***

24 The Standing Committee fails to provide any documentation justifying the expense related to its
25 postage charges. It is not known whether the postage was a "necessary" expense as required by statute,
26 what was sent, to whom it was sent, or when it was sent. Under the rulings of the Nevada Supreme
27 Court in the cases mentioned above, this charge should also be denied for lack of supporting itemization
28 and documentation.

29 **D. *Courier Charges Should Be Denied For Failure To Itemize And Failure To Provide***
30 ***Any Documentation Justifying The Expense As Necessary And Related To This***
31 ***Litigation***

32 The Standing Committee fails to provide any documentation justifying the expense related to its
33 courier charges as well. It is not known whether a courier was a "necessary" expense as required by
34 statute, who the courier was, on what date the courier was used, what the courier did, where the courier

1 went, or how the courier services are related to this action at all. Under the rulings of the Nevada
2 Supreme Court in the cases mentioned above, this charge should also be denied for lack of supporting
3 documentation.

4 **E. *Parking Charges Should Be Denied For Failure To Itemize And Failure To Provide***
5 ***Any Documentation Justifying The Expense As Necessary And Related To This***
6 ***Litigation***

6 Likewise, the Standing Committee fails to provide any documentation justifying the expense
7 related to parking. It is not known how parking relates to this action, or how it is a "necessary" expense
8 as required by statute. It is also unknown who incurred this charge, on what date, where, or why the
9 charge was incurred at all. Again, pursuant to the rulings in *Berosini* and *Waddell*, this Court should
10 deny this charge for failure to provide supporting documentation.

11 **III. CONCLUSION**

12 This Court should retax the Standing Committee's Memorandum of Costs and Disbursements
13 to exclude each of the above-mentioned costs because the Standing Committee failed to provide
14 supporting supplemental documentation to its Memorandum with an itemization and justification of the
15 entitlement of such costs.

16 DATED THIS 23 day of April, 2010.

17 Respectfully submitted by:
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19 **GAROFALO & BLAKE**

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DISTRICT COURT
CLARK COUNTY, NEVADA

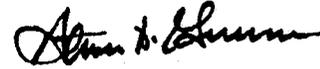
16 **MARIA MASKALL,**)
17 **Petitioner,**)
18 **v.**)
19 **STANDING COMMITTEE ON**)
20 **JUDICIAL ETHICS AND ELECTION**)
21 **PRACTICES,**)
22 **Respondent.**)

CASE NO.: 08-A570442
DEPT NO.: 6

Published Decision: 08-2

23 ///
24 ///
25 ///
26 ///
27 //
28 ////

ATTACHMENT 10



CLERK OF THE COURT

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12 Maria Maskall

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 MARIA MASKALL,

16 Petitioner,

17 v.

18 STANDING COMMITTEE ON
19 JUDICIAL ETHICS AND ELECTION
20 PRACTICES,

20 Respondent.

CASE NO.: 08A570442
DEPT NO.: VI

21
22 **PETITIONER'S MOTION FOR NEW TRIAL AND/OR REHEARING, AND/OR TO**
23 **ALTER AND AMEND; OR, ALTERNATIVELY, MOTION FOR**
24 **RECONSIDERATION**

24 COMES NOW Petitioner, MARIA MASKALL ("Maria"), by and through her counsel,
25 ROBERT P. DICKERSON, ESQ., of THE DICKERSON LAW GROUP, and DAVID S. LEE,
26 ESQ., of the law firm of LEE HERNANDEZ BROOKS GAROFALO & BLAKE, and hereby
27 respectfully submits her Motion For New Trial and/or Rehearing, and/or To Alter and Amend; or,
28 Alternatively, Motion For Reconsideration ("Motion") of this Court's Order Denying Petition for

1 Writ of Certiorari, or, Alternatively, Petition for Writ of Review entered in this action on April 14,
2 2010 ("Court's Order"). The Notice of Entry of the Court's Order that is the subject of this Motion
3 was served upon Maria by Respondent's counsel mailing such Notice of Entry to Maria's counsel
4 on Thursday, April 15, 2010. This Motion, therefore, is timely filed pursuant to NRCP 59 and
5 EDCR 2.24.

6 This Motion is made pursuant to NRCP 59 and EDCR 2.24, and is based upon all the
7 pleadings and papers on file in this action, the attached Points and Authorities, the Affidavit of
8 Maria Maskall attached to this Motion, and the argument of Maria's counsel presented at the time
9 of the hearing on this Motion.

10 DATED this 26th day of April, 2010.

11 THE DICKERSON LAW GROUP

12
13 By 

14 ROBERT P. DICKERSON, ESQ.
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16 1745 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Petitioner, Maria Maskall
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1
2 NOTICE OF MOTION

3 TO: STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES,
4 Respondent; and

5 TO: Dennis L. Kennedy, Esq., and Kimberly R. McGhee, and Bailey Kennedy, Attorneys
6 for Respondent

7 PLEASE TAKE NOTICE that the undersigned will bring the foregoing
8 PETITIONER'S MOTION FOR NEW TRIAL AND/OR REHEARING, AND/OR TO
9 ALTER AND AMEND; OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION
10 on for hearing before the above-entitled Court on MAY 27, 2010, at the hour of
11 8:30 A .m., or as soon thereafter as counsel may be heard.

12 THE DICKERSON LAW GROUP

13 By Robert P. Dickerson

14 ROBERT P. DICKERSON, ESQ.
15 Nevada Bar No. 000945
16 1745 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Petitioner, Maria Maskall
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1 **POINTS AND AUTHORITIES**

2 **I. BACKGROUND AND PROCEDURAL HISTORY**

3 The instant Motion presents the issues of whether the Court erred in the following two
4 respects:

5 (1) the Court failed to consider and rule upon Maria's Constitutional due process argument,
6 and thus the Court has erred in finding that the Standing Committee on Judicial and Election
7 Practices ("Standing Committee") did not exceed its authority by finding that Maria violated
8 Standing Committee Rule 4.5, which provides that "all meetings of a panel shall be confidential,"
9 when she provided a written statement of a party opponent (i.e., Brigid Duffy) to a judge of the
10 Eighth Judicial District Court in litigation pertaining to the same issue that previously had been
11 before the Standing Committee (the "District Court Litigation")¹; and

12 (2) in finding that Standing Committee Rule 4.5 is "content-neutral."

13 The Court may recall that the instant case before this Court arises as a result of Maria's use
14 of a written statement made by Brigid Duffy ("Duffy") in the District Court Litigation, and the
15 Standing Committee's subsequent finding that Maria had violated Standing Committee Rule 4.5
16 by her use of Duffy's written statement in the District Court Litigation. Specifically, on May 30,
17 2008, in the District Court Litigation, Maria filed a Motion for Reconsideration of the District
18 Court's Findings of Fact and Conclusions of Law.² Attached to the Motion for Reconsideration
19 was Duffy's written statement in response to Maria's complaint against Duffy that was filed with
20 ...

21 _____
22 ¹ The "District Court Litigation" referenced in this Motion is Case No. 08-A-562005-W, entitled
23 MARIA MASKALL, Plaintiff/Petitioner, v. HARVARD L. LOMAX, in his official capacity as CLARK
24 COUNTY REGISTRAR OF VOTERS, CLARK COUNTY ELECTION DEPARTMENT, ROSS MILLER,
25 in his official capacity as the SECRETARY OF STATE FOR THE STATE OF NEVADA, BRIGID
26 DUFFY, an individual, Defendants/Respondents. The District Court Litigation was assigned to the
27 Honorable Elizabeth Gonzalez of Department XI of the Eighth Judicial District Court, Clark County,
28 Nevada.

² Maria's Motion for Reconsideration requested that the District Court (in the District Court
Litigation) reconsider its decision on Maria's Motion for Declaratory Relief and Preliminary and Permanent
Injunction, filed with the Court on May 8, 2008, which ultimately was denied by the District Court on
procedural grounds. The District Court's Findings of Facts and Conclusions of Law effectively held that
Maria was procedurally time barred from bringing the declaratory relief action.

1 the Standing Committee³. As previously stated, Duffy's written statement to the Standing
2 Committee was provided in the course of the District Court Litigation to prove that Duffy knew,
3 prior to filing for candidacy, that there was an issue as to her qualifications to run for judicial office
4 –(in her written response to the Standing Committee, Duffy acknowledged that she knew there was
5 an issue of whether she met the statutory qualifications to be a district court judge should she win
6 the election).

7 On June 10, 2008, Duffy filed a complaint against Maria with the Standing Committee,
8 alleging that, by submitting her written statement to the District Court in the District Court
9 Litigation, Maria had not maintained the dignity and integrity expected of one running for judicial
10 office in violation of Judicial Canon 5A(3)(a). Ultimately, the Standing Committee found that
11 Maria did not violate a Judicial Canon 5A(3)(a) or any other Judicial Cannon. However, while
12 Duffy's complaint against Maria that was filed with the Standing Committee did not allege or make
13 any claim that Maria had violated any Rule of the Standing Committee, the Standing Committee
14 issued a decision (*i.e.*, Published Decision 08-2) concluding that Maria had violated Standing
15 Committee Rule 4.5, which provides as follows:

16 All *meetings of panels* concerning unfair election practices are confidential. Any
17 decisions shall be signed by the chair or vice-chair, and all decisions must be made
18 public.

18 See Rule 4.5 (emphasis added).

19 *At no time prior to the Standing Committee's decision was Maria placed on notice that*
20 *the Standing Committee was considering finding her in violation of a Rule and not a Judicial*
21 *Canon as Duffy had requested through the filing of her June 10, 2008 complaint. As a result*

22 _____
23 ³ The statement attached to Maria's Motion for Reconsideration in the District Court Litigation
24 was Ms. Duffy's statement provided to the Standing Committee and to Maria in response to Maria's
25 complaint against Duffy. Ultimately, on April 28, 2008, the Standing Committee issued a Published
26 Decision, Case No. 08-1 ("Decision"), in which it found that, although there might still be a question
27 concerning whether judicial candidate Duffy was qualified to hold the office of District Court Judge should
28 she win the election, she did not knowingly misrepresent her qualifications in violation of Judicial Canon
5A(3)(d)(ii). Shortly after the Standing Committee issued its Decision in Case No. 08-1, Maria initiated
the District Court Litigation for the purpose of obtaining a judicial decision on the issue of whether Duffy
was qualified to hold the office of District Court Judge, and if not, whether her name should be removed
from the election ballot.

1 *of such lack of notice to Maria, at no time did the Standing Committee give Maria an*
2 *opportunity to be heard on the issue of whether she violated Standing Committee Rule 4.5.*
3 *Thus, at no time was Maria given the opportunity to make the arguments to the Standing*
4 *Committee that she has been and is making to this Court. Because of such lack of notice and*
5 *opportunity to be heard, Maria's Constitutional due process rights to notice and opportunity to*
6 *be heard have been violated by the Standing Committee.*

7 Because of the Standing Committee's violation of Maria's Constitutional due process
8 rights, on August 26, 2008, Maria initiated this action (Case No. 08A570443, assigned to the
9 Honorable Elissa F. Cadish of Department VI of the Eighth Judicial District Court) by the filing
10 of her Petition for Writ of Certiorari, or, Alternatively, Petition for Writ of Review ("Writ
11 Petition"). By way of her Writ Petition filed with this Court, Maria requested the Court's review
12 of and relief from the Standing Committee's Decision. Maria's Writ Petition presented the
13 following issues:

14 (A) Whether the Standing Committee exceeded its authority and erred by concluding
15 in its Decision that Maria violated a Rule of the Standing Committee when Duffy's
16 complaint against Maria that was before the Standing Committee only alleged that
17 Maria had violated Canon 5A(3)(a) of the Judicial Code of Ethics, and only sought
18 from the Standing Committee its findings and conclusions regarding whether Maria
19 had violated Canon 5A(3)(a) of the Judicial Code of Ethics.

20 (B) Whether the Standing Committee Rule 4.5, which states that "[a]ll *meetings* of
21 panels considering unfair election practices are confidential," provides sufficient
22 notice to Maria that a written statement submitted by Duffy to the Standing
23 Committee is considered by the Standing Committee to fall within the
24 confidentiality of meetings provision of Rule 4.5.

25 ...
26 ...
27 ...
28 ...

1 (C) Whether the Standing Committee erred in finding that Duffy's written statement
2 constitutes "a meeting" of the Standing Committee panel under Standing
3 Committee Rule 4.5, and thus was confidential and could not be used by Maria in
4 the District Court Litigation pertaining to the same issue that previously had been
5 before the Standing Committee.

6 (D) Whether the Standing Committee erred in ruling that the confidentiality provision
7 of Standing Committee Rule 4.5 was violated by Maria using Duffy's written
8 statement in the District Court Litigation Maria had initiated against Duffy.

9 On or about October 27, 2008, the Standing Committee filed its Response to Maria's Writ
10 Petition, alleging that participants in proceedings before the Standing Committee should know that
11 "meetings of a panel" include statements because that is how the Standing Committee historically
12 has *interpreted* Rule 4.5. The Standing Committee also argued that the confidentiality provision
13 of Rule 4.5 is "content-neutral" to such an extent that it does not violate the First Amendment of
14 the Constitution of the United States.

15 On February 25, 2010, the parties appeared before this Court on Maria's Writ Petition. The
16 Court found that the Standing Committee had not exceeded its jurisdiction, that Rule 4.5 was
17 content-neutral, and that it was narrowly tailored such that it did not violate the First Amendment.
18 *The Court, however, did not address the issue of whether Maria's Constitutional due process*
19 *rights were violated as a result of the lack of notice provided to her by the Standing Committee*
20 *and the Standing Committee's failure to provide Maria with an opportunity to be heard on the*
21 *issue of whether she violated any Standing Committee Rule, when the issue before the Standing*
22 *Committee was whether Maria had violated Canon 5A(3)(a) of the Judicial Code of Ethics.⁴ For*

23
24
25 ⁴ As noted earlier, Duffy's complaint against Maria that was filed with the Standing Committee
26 sought a finding from the Standing Committee that Maria had violated Canon 5A(3)(a) of the Judicial Code
27 of Ethics. The Standing Committee correctly found that Maria did not violate Canon 5A(3)(a) of the
28 Judicial Code of Ethics. However, even though Duffy's complaint against Maria did not seek a finding that
Maria had violated any Rule of the Standing Committee, the Standing Committee issued a decision
(Published Decision 08-2) finding that Maria violated Rule 4.5 by her use of Duffy's written statement in
the District Court Litigation.

1 *the reasons set forth below, Maria respectfully requests this Court to reconsider its Order in its*
2 *entirety, or to grant a new trial or rehearing on the issues, and/or alter and amend its Order to*
3 *find that Maria's Constitutional due process rights were violated and that Rule 4.5 is*
4 *unconstitutionally vague and ambiguous as applied to this case.*

5 **II. LEGAL STANDARD**

6 **A. This Court Has Authority To Rehear and Reconsider Its Order**

7 Rule 2.24 of the Eighth Judicial District Court Rules permits this Court to rehear and
8 reconsider its prior decisions upon motion. The cases of *Masonry & Tile Contractors Ass'n of*
9 *Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486, 489 (1997); *Moore*
10 *v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244, 246 (1976); *Chowdry v. NLVH, Inc.*, 111 Nev.
11 560, 893 P.2d 385, 387 (1995); and *Achrem v. Expressway Plaza LP*, 112 Nev. 737, 917 P.2d 447,
12 450 (1996), comprise Nevada's current legal standard regarding reconsideration. These cases
13 provide the following guidelines for reconsideration of a Court's prior ruling:

- 14 1) The moving party cannot bring up new arguments or contentions as such arguments
15 are waived by the moving party's previous silence; and
- 16 2) The moving party's request must be based on either:
 - 17 a) new facts or evidence which emerged post-ruling, or
 - 18 b) a clear error by the Court.

19 *Masonry & Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev.
20 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244,
21 246 (1976); *Chowdry v. NLVH, Inc.*, 111 Nev. 560, 562, 893 P.2d 385, 387 (1995) (citing *Brandon*
22 *v. West*, 29 Nev. 135, 85 P. 449, 88 P. 140 (1906)); *see also Achrem v. Expressway Plaza LP*, 112
23 Nev. 737, 742, 917 P.2d 447, 450 (1996).

24 Good cause exists for the Court to reconsider its previous Order as the Court failed to
25 consider the Constitutional due process argument made by Maria. Accordingly, Maria respectfully
26 requests that this Court reconsider its previous Order and find that the Standing Committee's
27 Published Decision 08-2 against Maria must be rescinded, set aside, and vacated because it violated
28 Maria's Constitutional due process rights. Additionally, the Court should reconsider its finding

1 that Rule 4.5 is content-neutral, as more fully discussed in Section III(B) of these Points and
2 Authorities.

3
4 **B. This Court Has Authority To Grant a New Trial or to Alter and Amend Its Order**

5 Rule 59 of the Nevada Rules of Civil Procedure provides this Court with the authority to
6 grant a new trial and/or to alter or amend its previous Order. Rule 59(a) provides in pertinent part
7 as follows:

8 On a motion for a new trial in an action tried without a jury, the court may open the
9 judgment if one has been entered, take additional testimony, amend findings of fact
10 and conclusions of law or make new findings and conclusions, and direct the entry
11 of a new judgment.

12 As set forth more fully below, good cause exists for the Court to grant a new trial and/or
13 to alter and amend its previous Order. The Court erred when it failed to address Maria's
14 Constitutional due process argument (*see* Section III(A) below) and when it found Rule 4.5 to be
15 content-neutral (*see* Section III(B) below). The Court's findings should be altered or amended to
16 find that Maria's due process rights had been violated, that Rule 4.5 is vague and ambiguous, and
17 is a content-based regulation.

18 **III. ARGUMENT**

19 **A. The Court Erred By Failing To Address Whether The Standing Committee Exceeded Its Jurisdiction By Violating Maria's Due Process Rights**

20 During the February 25, 2010 hearing, the Court failed to address the Constitutional due
21 process argument propounded by Maria. Indeed, the Court commented that it could only address
22 whether the Standing Committee had exceeded its authority, and it later determined that the
23 Standing Committee had not exceeded its authority - without having addressed the issue of whether
24 Maria's Constitutional due process rights had been violated.

25 The Nevada Supreme Court has determined that an application for a writ of certiorari to
26 review the exercise of judicial functions by an inferior tribunal includes constitutional limitations.
27 Specifically, such review includes a review of one's due process rights. In the case of *Watson v.*
28 *Housing Authority of City of North Las Vegas*, 97 Nev. 240, 627 P.2d 405 (1981), concerning the

1 due process rights of a City Housing Authority employee, the Nevada Supreme Court held as
2 follows:

3 An application for a writ of certiorari to review the exercise of judicial functions by
4 an inferior tribunal shall be granted whenever that lower body exceeds its
5 jurisdiction. NRS 34.020(2). In this context, jurisdiction has a broader meaning than
6 the concept of jurisdiction over the person and subject matter: it includes
7 constitutional limitations. *See Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d
8 450, 20 Cal.Rptr. 321, 369 P.2d 937 (Cal.1962). *If the Housing Authority
9 Commission's approval of appellant's termination violated her due process
10 rights, the Commission exceeded its jurisdiction and the writ should have been
11 granted.*

12 *Due process is not a rigid concept: "due process is flexible and calls for such
13 procedural protections as the particular situation demands." Morrissey v. Brewer,*
14 *408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972); State ex rel.*
15 *Sweikert v. Briare, 94 Nev. 752, 588 P.2d 542 (1978). "As a minimum, these pre-*
16 *removal safeguards must include notice of the proposed action, the reasons therefor,*
17 *a copy of the charges and materials upon which the action is based, and the right to*
18 *respond, either orally or in writing, to the authority initially imposing discipline."*
19 *Shelly v. State Personnel Board, 15 Cal.3d 194, 124 Cal.Rptr. 14, 28, 29, 539 P.2d*
20 *774, 788, 789 (Cal.1975).*

21 *Id.* at 97 Nev. 240, 242, 627 P.2d 405, 406-07 (emphasis added).

22 Under *Watson*, this Court erred as it failed to consider whether Rule 4.5 provided the
23 necessary due process protections required to place one on notice of the prohibited act as an
24 integral part of its determination of whether the Standing Committee exceeded its jurisdiction.
25 Maria respectfully submits that, upon reconsideration, the Court should find that the Standing
26 Committee violated her due process rights and, therefore, exceeded its jurisdiction.

27 1. **Finding Maria In Violation Of Rule 4.5 Is In Violation Of Her Due
28 Process Rights As The Standing Committee Did Not Place Maria On
Notice Of Their Intent To Find Her Guilty Of Violating A Rule -
Which Such Relief Was Not Requested In The Underlying Complaint**

29 Maria was *not* placed on notice that the Standing Committee was contemplating
30 adjudicating her guilty of violating a Rule. Indeed, Duffy's complaint against her only requested
31 that Maria be found guilty of violating a Canon. Duffy did not request that Maria be found guilty
32 of violating Rule 4.5 – or any other Rule. The Standing Committee's Decision states as follows:

33 On June 10, 2008, Duffy filed a Judicial Election Complaint with the
34 Standing Committee. She alleged Maria Maskall violated Judicial Canon 5A(3)(a)
35 by not maintaining the dignity and integrity expected of one running for judicial
36 office, based on Maskall's release of the unpublished response Duffy had filed with
37 the Committee.

1
2 * * *

3 The Committee concludes Candidate Maskall did not violate Judicial Canon
4 5A(3)(a) by releasing the Duffy response to the Maskall Judicial Election
5 Complaint. However, the Committee concludes Ms. Maskall did violate the
6 confidentiality provision of Committee Rule 4.5 by publicly disclosing the Duffy
7 response.

8
9 *See Published Decision 08-2.*

10 It is clear from this Decision that Duffy had not requested the Committee to find Maria in
11 violation of a Rule. It is also clear that Maria was not placed on notice that the Committee was
12 contemplating finding her in violation of a Rule. Pursuant to the *Watson* case, Maria should have
13 received notice of the Standing Committee's determination to find her guilty of something that was
14 not requested in the underlying complaint and it should have provided Maria with the opportunity
15 to respond, either orally or in writing, prior to the final determination. Accordingly, the Standing
16 Committee exceeded its authority by failing to provide Maria with notice and an opportunity to
17 respond to the allegation that she had violated Rule 4.5, relief which had not been requested in the
18 underlying complaint.

19
20 **2. Rule 4.5 Is Vague And Ambiguous As It Does Not Provide Notice Of**
21 **The Prohibited Act**

22 As a matter of due process, "(n)o one may be required at peril of life, liberty or property to
23 speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State
24 commands or forbids. *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888,
25 890 (1939). The general test of vagueness applies with particular force in review of laws dealing
26 with speech." *See Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 620, 96 S.Ct.
27 1755, 1760 (1976). A statute is void for vagueness when it fails to sufficiently identify the conduct
28 that is prohibited. *See Grayned v. City of Rockford*, 408 U.S. 104, 104, 108-09, 92 S.Ct. 2294,
2298-99 (1972); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972). In order to
survive a challenge on the basis of vagueness, a statute's provisions must be specific enough to
"give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so
that he may act accordingly." *Grayned*, 408 U.S. at 108; *Kolender v. Lawson*, 461 U.S. 352, 103
S.Ct. 1855 (1983); *See also Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S.

1 489, 499 (1982); and *In re: Shaeffer*, 117 Nev. 496, 25 P.3d 191 (2001). In finding a Supreme
2 Court Rule impermissibly vague in the case of *In re: Shaeffer*, 117 Nev. 496, 25 P.3d 191 (2001),
3 our Nevada Supreme Court found as follows:

4 As stated by the United States Supreme Court in 1926, a statute or rule is
5 impermissibly vague if it "either forbids or requires the doing of an act in terms so
6 vague that men of common intelligence must necessarily guess at its meaning and
7 differ as to its application." This remains the test today. It is well-settled that, in
8 evaluating whether a statute is vague, judicial opinions construing the statute should
be considered. "[T]he touchstone is whether the statute, either standing alone or as
construed, made it reasonably clear at the relevant time that the ... conduct was
[prohibited]." *In addition, questions of vagueness must be more closely examined
where First Amendment rights are implicated.*

9 *Id.*, 117 Nev., at 511-512, 25 P.3d, at 201-202 (emphasis added).

10 In the instant case, Maria's Constitutional due process rights clearly are implicated and this
11 Court should closely examine the question of vagueness of Rule 4.5 to determine if sufficient
12 notice is provided such that "men of common intelligence" need not guess at its meaning. Again,
13 Rule 4.5 states as follows:

14 All *meetings of panels* concerning unfair election practices are confidential. Any
15 decision shall be signed by the chair or vice-chair and all decisions must be made
public.

16 *See* Rule 4.5 (emphasis added).

17 In determining whether Rule 4.5 provides sufficient notice, this Court should apply the
18 "Plain Meaning" doctrine for statutory interpretation. In *Diamond v. Swick*, 117 Nev. 671, 28 P.3d
19 1087 (2001), the Nevada Supreme Court held that "when there is no ambiguity in a statute, there
20 is no opportunity for judicial construction, and the law must be followed unless it yields an absurd
21 result" and "in construing a statute, this court must give effect to the literal meaning of its words."
22 The Court also held that "if the plain meaning of a statute is clear on its face, then [this court] will
23 not go beyond the language of the statute to determine its meaning." *Rosenquist v. Int'l Ass'n of*
24 *Firefighters*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002). If language is plain and unambiguous,
25 it must be given effect. *State v. State Employees Ass'n*, 102 Nev. 287, 720 P.2d 697 (1986); *State*
26 *Employees Ass'n, Inc. v. Lau*, 110 Nev. 715, 887 P.2d 531 (1994). There is nothing unambiguous
27 about the language of Rule 4.5. The plain meaning of Rule 4.5 is clear. It does not encompass a
28 written statement - much less Duffy's written statement.

1
2 **B. The Court Should Alter or Amend Its Order To Find Rule 4.5 To Be A**
3 **Content-Based Restriction On Free Speech**

4 On January 21, 2010, the United States Supreme Court concluded that “[l]aws that burden
5 political speech are “subject to strict scrutiny,” which requires the Government to prove that the
6 restriction ‘furthers a compelling interest and is narrowly tailored to achieve that interest.’”[citation
7 omitted]. See *Citizens United v. Federal Election Comm’n*, 130 S.Ct. 876, 898 (2010). Moreover,
8 “content-based” regulations restrict speech precisely because of the ideas of information that the
9 speech contains or because of its general subject matter whereas “content-neutral” regulations
10 involve an incidental interference with speech merely as a byproduct of the government effort to
11 regulate some evil unconnected with the content of the affected speech. The Supreme Court has
12 held as follows:

13 This Court has long held that regulations enacted for the purpose of restraining
14 speech on the basis of its content presumptively violate the First Amendment. See
15 *Carey v. Brown*, 447 U.S. 455, 462-463, and n. 7, 100 S.Ct. 2286, 2291, and n. 7,
16 65 L.Ed.2d 263 (1980); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 98-99,
17 92 S.Ct. 2286, 2289, 2291-2292, 33 L.Ed.2d 212 (1972). On the other hand,
18 so-called “content-neutral” time, place, and manner regulations are acceptable so
19 long as they are designed to serve a substantial governmental interest and do not
20 unreasonably limit alternative avenues of communication. See *Clark v. Community*
21 *for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d
22 221 (1984); *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789,
23 807, 104 S.Ct. 2118, 2130, 80 L.Ed.2d 772 (1984); *Heffron v. International Society*
24 *for Krishna Consciousness, Inc.*, 452 U.S. 640, 647-648, 101 S.Ct. 2559,
25 2563-2564, 69 L.Ed.2d 298 (1981).

26 See *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46-47, 106 S.Ct. 925, 928 (1986)
27 (emphasis added).

28 The instant Rule is a “content-based” restraint as it silences all speech entirely based solely
upon the content of the speech. Moreover, Rule 4.5 can not be viewed as having only a
“secondary” or “incidental” effect on speech, does not provide a time, place, and manner regulation
on the restriction, and does not provide alternative avenues of communication which are all
hallmarks of “content-neutral” regulations.

In an action brought challenging the constitutionality of a statute prohibiting the disclosure
of communications to the Judicial Inquiry and Review Commission, the Court held that the statute
was not “content-neutral,” and that the Court should have applied the exacting scrutiny test rather

1 than substantial interest test to determine the constitutionality of the statute. *See generally Baugh*
2 *v. Judicial Inquiry & Review Com'n (JIRC)*, 907 F.2d 440 (1990). The *Baugh* Court determined
3 that Section 2.1-37.13 of the Virginia Code required confidentiality of papers filed with and
4 proceedings before the Commission and provided in part:

5 All papers filed with and proceedings before the Commission, ... including the
6 identification of the subject judge as well as all testimony and other evidence and
7 any transcript thereof made by a reporter, shall be confidential and shall not be
8 divulged, other than to the Commission, by any person who either files a complaint
9 with the Commission, or receives such complaint in an official capacity, or
10 investigates such complaint, is interviewed concerning such complaint by a
11 member, employee or agent of the Commission, or participates in any proceeding
12 of the Commission, or the official recording or transcription thereof, except that the
13 record of any proceeding filed with the Supreme Court shall lose its confidential
14 character.

11 *Id.*, 907 F.2d 440, at 442.

12 Indeed, the above statute is what the Standing Committee argues it would like Rule 4.5 to
13 mean. In this regard, the Standing Committee has argued that "Rule 4.5 applies only to Committee
14 panel meetings, including the complaints and related material relied upon by the Committee⁵" and
15 that the only information or documentation that *it* can release to the public is the Committee's final
16 decision⁶," which necessarily loses its confidential character. Yet, even as written, Rule 4.5 cannot
17 be considered to be "content-neutral" as Rule 4.5 is aimed at controlling the *content* of the speech.
18 Rule 4.5, as written, controls the discussions held during the meetings of panels.

19 Likewise, in *Providence Journal Co. v. Newton*, 723 F.Supp. 846 (1989), the United States
20 District Court for the District of Rhode Island held that the confidentiality requirements of a Rhode
21 Island government ethics law which prohibited all public discussion of the existence or content of
22 an ethics complaint against a public official was a "content-based" restriction on political speech
23 and was, therefore, subject to strict scrutiny.

24 This Court does not question that requiring confidentiality regarding Ethics
25 Commission proceedings serves legitimate interests of the State of Rhode Island.
26 Nor is this Court blind to the costs associated with allowing free and open

27 ⁵ *See* the Standing Committee's Response, Page 6, lines 9 and 10.

28 ⁶ *See* Paragraph 3 of the Declaration of David Sarnowski, attached to the Standing Committee's
Response as Exhibit 1. (emphasis added.)

1 discussion of our political affairs. But the First Amendment, as Judge Learned Hand
2 eloquently explained, “presupposes that right conclusions are more likely to be
3 gathered out of a multitude of tongues, than through any kind of authoritative
4 selection. To many this is, and always will be, folly; but we have staked upon it our
5 all.” *United States v. Associated Press*, 52 F.Supp. 362, 372 (D.C.S.D.N.Y. 1943).
6 The question is thus not whether the State's concerns are legitimate, but whether
7 they are compelling enough to silence a citizen-critic of official conduct through the
8 imposition of civil and criminal sanctions. Supreme Court precedent makes it very
9 clear that the answer to this question must be a resounding no.

10 *Id.*, 723 F.Supp, at 857.

11 The clear precedent set by these cases, and confirmed by the Supreme Court in its January
12 21, 2010 decision in the *Citizens United* case, is that regulations upon political speech are subject
13 to strict scrutiny. In the instant case, Rule 4.5 provides that “[a]ll *meetings of panels* concerning
14 unfair election practices are confidential. Any decision shall be signed by the chair or vice-chair
15 and all decisions must be made public.” This Rule is aimed at controlling the content of political
16 speech.

17 Even if this Court is not convinced that Rule 4.5 is subject to strict scrutiny, the Standing
18 Committee had acquiesced in its Response, filed on October 24, 2008, that “the restriction at issue
19 is subject to an *intermediate level* of scrutiny.” See Response, Page 7, line 25 (emphasis added).
20 The Standing Committee further argued that the case of *Kamasinski v. Judicial Review Council*,
21 44 F.3d 106 (1994), should control this Court’s decision as the Standing Committee proffered that
22 the cases were similar. In *Kamasinski*, the Court agreed with the district court’s conclusion that
23 the restrictions were content-based, and therefore that the challenged regulations must be necessary
24 to serve a compelling state interest and be narrowly drawn to serve that end. The statute at issue
25 in *Kamasinski* read as follows:

26 Any investigation to determine whether or not there is probable cause that
27 [misconduct] has occurred shall be confidential and any individual called by the
28 council for the purpose of providing information shall not disclose his knowledge
of such investigation to a third party prior to the decision of the council on
whether probable cause exists, unless the respondent requests that such
investigation and disclosure be open, provided information known or obtained
independently of any such investigation shall not be confidential (amendments
emphasized).

Id., 44 F.3d 106, at 109.

1 As can readily be discerned from the above, the regulation placed the candidate on notice
2 of what conduct was prohibited - unlike the Standing Committee's Rule 4.5. Thus, when the
3 *Kamasinski* Court held that a compelling state interest was served by prohibiting the fact that a
4 complaint has been filed or that testimony has been given, it was against the backdrop of a statute
5 that provided adequate notice to a candidate of the prohibited act. Due process was not at issue.
6 Thus, the *Kamasinski* case is not controlling here.

7 In accordance with the above case law, this Court should alter or amend its Order to find
8 that Rule 4.5 is a "content-based" regulation or, alternatively, that it is subject to an intermediate
9 level of scrutiny.

10 **III. CONCLUSION**

11 The Court should grant a new trial and should alter or amend its findings because Rule 4.5
12 is a content-based regulation or, alternatively, it should find that it is subject to an intermediate
13 level of scrutiny. The Court should further reconsider its previous Order because it failed to
14 consider Maria's due process argument. Upon consideration of Maria's due process argument, this
15 Court should find that the Standing Committee exceeded its jurisdiction by violating Maria's due
16 process rights through failing to place her on notice of their intention to find her in violation of a
17 Rule instead of a Canon as such relief was not requested in the underlying complaint such that
18 Maria was not afforded the opportunity to respond. The Court should further find that the Standing
19 Committee exceeded its jurisdiction by finding Maria in violation of Rule 4.5 as Rule 4.5 is vague
20 and ambiguous. Rule 4.5 provides no notice to a candidate that disclosing a written statement is

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1 a violation of that Rule. The Standing Committee's Decision has produced a manifestly unjust
2 result by holding Maria in violation of an act for which she had no notice.

3 DATED THIS 26th day of April, 2010.

4 Respectfully submitted by:

5 THE DICKERSON LAW GROUP

6
7 By: 

8 ROBERT P. DICKERSON, ESQ.

9 Nevada Bar No. 000945

10 1745 Village Center Circle

11 Las Vegas, Nevada 89134

12 (702) 388-8600

13 Attorneys for MARIA MASKALL

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AFFIDAVIT OF MARIA MASKALL

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

MARIA MASKALL, being first duly sworn upon oath, deposes and states as follows:

1. That I am the Petitioner in the above-entitled action; that I am over the age of majority, am competent to testify and have personal knowledge of the facts contained herein.

2. I read the Judicial Election Complaint Form, which contains an acknowledgment which states "I have been provided with and have read the rules regarding election complaints and their resolution, *including the confidentiality requirements.*" I further read the confidentiality requirement of Rule 4.5, which states "[a]ll *meetings of panels* concerning unfair election practices are confidential. Any decision shall be signed by the chair or vice-chair and all decisions must be made public." I understood the plain language of this Rule to mean that I could not disclose anything that was discussed in a meeting of a panel with the Standing Committee.

Further Your Affiant Sayeth Naught,

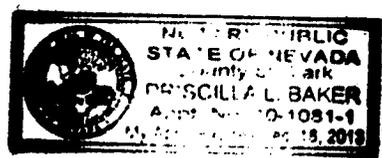


MARIA MASKALL

Subscribed and sworn to before me
this 26th day of April, 2010.



Notary Public in and for said
County and State.



1 COS
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9 Attorneys for Plaintiff/Petitioner

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 MARIA MASKALL,)
13 Petitioner,)
14 v.)
15 STANDING COMMITTEE ON)
16 JUDICIAL ETHICS AND ELECTION)
PRACTICES,)
17 Respondent.)

CASE NO.: 08-A570442
DEPT NO.: 6

Published Decision: 08-2

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of April, 2010, I served, PETITIONER'S MOTION
3 FOR NEW TRIAL AND/OR REHEARING, AND/OR TO ALTER AND AMEND; OR,
4 ALTERNATIVELY, MOTION FOR RECONSIDERATION; and PETITIONER'S MOTION
5 TO DENY OR RETAX COSTS AND DISBURSEMENTS STATED IN RESPONDENT'S
6 MEMORANDUM OF COSTS AND DISBURSEMENTS via U.S. Mail by placing a copy in a
7 postage paid stamped envelope addressed to the following counsel:

8
9 Dennis L. Kennedy, Esq.
10 Kimberly R. McGhee, Esq.
11 Bailey Kennedy, LLP
12 8984 Spanish Ridge Ave.
13 Las Vegas, NV 89148
14 Attorneys for Respondent

15 
16 An employee of LEE, HERNANDEZ, BROOKS,
17 GAROFALO & BLAKE

ATTACHMENT 11

1 **OPPN**
2 DENNIS L. KENNEDY
3 Nevada Bar No. 1462
4 KIMBERLY R. MCGHEE
5 Nevada Bar No. 9728
6 BAILEY ♦ KENNEDY
7 8984 Spanish Ridge Avenue
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9 (702) 562-8820 Telephone
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11 DKennedy@BaileyKennedy.com
12 KMcGhee@BaileyKennedy.com

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CLERK OF THE COURT

Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

DISTRICT COURT
CLARK COUNTY, NEVADA

12 MARIA MASKALL,
13
14 Petitioner,

14 v.

15 STANDING COMMITTEE ON JUDICIAL
16 ETHICS AND ELECTION PRACTICES,
17
18 Respondent.

Case No.: A-09-570442-C
Dept. No.: VI

**OPPOSITION OF RESPONDENT TO
PETITIONER'S MOTION TO DENY OR
RETAX COSTS AND DISBURSEMENTS
STATED IN RESPONDENT'S
MEMORANDUM OF COSTS AND
DISBURSEMENTS**

Date of Hearing: May 27, 2010
Time of Hearing: 8:30 A.M.

19 Respondent Standing Committee on Judicial Ethics and Election Practices (the
20 "Committee"), by and through its counsel of record, opposes Petitioner Maria Maskall's
21 ("Maskall") Motion to Deny or Retax Costs and Disbursements Stated in the Committee's
22 Memorandum of Costs and Disbursements, filed April 15, 2010 (the "Memorandum"). This
23 Opposition is made and based on the papers and pleadings on file herein, the following
24 memorandum of points and authorities and exhibits attached thereto, the declaration of Kimberly
25 R. McGhee, and any oral argument as may be heard by the Court.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On April 12, 2010, the Court entered an order denying Maskall's Petition for Writ of
4 Certiorari, or alternatively, Petition for Writ of Review (the "Petition"). (See generally Order
5 Den. Pet. for Writ of Cert., or Alternatively, Pet. for Writ of Rev., filed Apr. 14, 2010.) On
6 April 15, 2010, the Committee timely filed its Memorandum in accordance with NRS 18.110.
7 Maskall does not dispute in her Motion that the Committee *is statutorily entitled as the*
8 *"prevailing party" to recover its costs and disbursements* incurred in this action. Instead,
9 Maskall only attacks the reasonableness of the Committee's costs and disbursements on the
10 basis of a lack of supporting documentation and itemization. Because Maskall challenges
11 whether the Committee actually incurred reasonable costs and disbursements in this action, the
12 Committee is attaching supporting documentation to this Opposition, which itemizes the
13 Committee's costs and disbursements. As discussed more fully below, these costs and
14 disbursements are fully supported, actual and reasonable under the circumstances. Therefore,
15 the Court should award the Committee its costs and disbursements in the amount of two
16 thousand, nine hundred and twelve dollars and ninety nine cents (\$2,912.99).¹

17 II. ARGUMENT

18 A. Legal Standard.

19 NRS 18.020 enumerates specific instances where "[c]osts *must be allowed of course* to
20 the prevailing party against any adverse party against whom judgment is rendered[.]" NRS
21 18.020 (emphasis added); see also *Campbell v. Campbell*, 705 P.2d 154, 156, 101 Nev. 380, 383
22 (1985) ("Costs are awarded as a matter of course to the prevailing party in all actions listed in
23 NRS 18.020."). Although the statute mandates the recovery of costs to the prevailing party,
24 "[t]he determination of allowable costs is within the sound discretion of the trial court." *Bobby*
25 *Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1999).

26
27
28 ¹ The Committee discovered two (2) clerical errors in its Memorandum in preparing this Opposition, which reduced the total amount of costs and disbursements that it presently seeks to recover from Maskall. (See *infra* nn. 3-4.)

1 NRS 18.110, which governs the content of the memorandum of costs and disbursements
2 filed by a prevailing party, provides as follows:

3 The party in whose favor judgment is rendered, and who claims
4 costs, must file with the clerk, and serve a copy upon the adverse
5 party, within 5 days after the entry of judgment, or such further
6 time as the court or judge may grant, a memorandum of the items
7 of the costs in the action or proceeding, which memorandum must
8 be verified by the oath of the party, or the party's attorney or
agent, or by the clerk of the party's attorney, stating that to the
best of his or her knowledge and belief the items are correct, and
that the costs have been necessarily incurred in the action or
proceeding.

9 NRS 18.110(1); *see also Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117
10 P.3d 219, 227 (2005) ("The prevailing party must serve a memorandum of costs within five days
11 of the entry of judgment in the underlying case.")² The prevailing party must have actually
12 incurred the costs and disbursements that it seeks to recover from the opposing party. *Bobby*
13 *Berosini*, 114 Nev. at 1352, 971 P.2d at 385-86. Further, the costs and disbursements must be
14 reasonable, which is demonstrated through supporting documentation and itemization. *Id.* at
15 1353, 971 P.2d at 386. Thus, NRS Chapter 18 mandates the recovery of costs to the prevailing
16 party in specific instances, though a district court retains authority to scrutinize the
17 reasonableness of the costs incurred before awarding them to the prevailing party.

18 In this action, the Committee actually incurred the listed costs and disbursements. (*See*
19 *Decl. of Kim McGhee*, at ¶ 2, attached hereto as Exhibit A.) Specifically, the Committee seeks
20 to recoup the following reasonable costs and disbursements incurred in this action: (i) online
21 legal research, pursuant to NRS 18.005(17);³ (ii) photocopies, pursuant to NRS 18.005(12);⁴ (iii)

22
23
24 ² Maskall does not dispute in her Motion that the Declaration of Kimberly R. McGhee attached to the
Memorandum meets the requirements set forth under NRS 18.110(1).

25 ³ In the Memorandum, the Committee sought to recover two thousand, nine hundred and twelve dollars and
26 ninety nine cents (\$2,912.99) related to online legal research. In preparing this Opposition, the Committee
27 discovered a clerical error with respect to this amount, and determined that the actual charges amounted to two
thousand, four hundred and eighty three dollars and sixty one cents (\$2,483.61). (*See Transactions Report Listing*,
at 4, attached hereto as Exhibit A-1.)

28 ⁴ In the Memorandum, the Committee sought to recover three hundred and nineteen dollars and seventy five
cents (\$319.75) related to photocopies. In preparing this Opposition, the Committee discovered a clerical error with
respect to this amount, and determined that the actual charges amounted to three hundred and thirty four dollars and

1 postage, pursuant to NRS 18.005(14); (iv) courier charges, pursuant to NRS 18.005(17); and (v)
2 parking expenses, pursuant to NRS 18.005(17).⁵ As discussed more fully below, these actual
3 costs and disbursements were reasonably incurred by the Committee, supported by the attached
4 documentation, and should be awarded to the Committee by the Court as a matter of course.

5 **B. Online Legal Research Charges.**

6 This dispute originated in August 2008 through the filing of the Petition by Maskall.
7 The Petition stemmed from a decision issued by the Committee in the action of *Brigid Duffy v.*
8 *Maria Maskall*, Case No. 08-2, dated August 12, 2008 ("Underlying Action"). Maskall raised
9 multiple issues in her Petition, including the Committee's purported lack of jurisdictional
10 authority to interpret and enforce Part VIII of the Nevada Supreme Court Rules - Rules
11 Governing the Committee (the "Rules"), the constitutionality of Rule 4.5, and whether Maskall
12 violated Rule 4.5. Maskall cited to a number of cases and statutes in support of her Petition.
13 Maskall further argued that the Committee violated numerous statutory provisions, including
14 NRS 48.025 and NRS 49.015.

15 In responding to the Petition and justifying its decision in the Underlying Action, counsel
16 for the Committee had to research multiple areas of the law. (*See Ex. A*, at ¶ 3.) For example,
17 counsel for the Committee researched all of the following using Westlaw, an online legal
18 research service for lawyers:

- 19 • The Rules and binding and persuasive case law interpreting these Rules;
- 20 • The void-for-vagueness doctrine as applicable to facial challenges to the
21 constitutionality of a statute;
- 22 • Principles of statutory construction and interpretation; and
- 23 • Case law analyzing the First Amendment, including, without limitation:
 - 24 ○ The constitutional right to free speech;

25
26 seventy five cents (\$334.75), incurred through, though excluding, the date of filing of the Memorandum (April 15,
27 2010). (*See Ex. A-1*, at 1-2.)

28 ⁵ The Committee does not seek to recover its costs and disbursements incurred in this action related to
electronic filing fees. (*See Ex. A*, at ¶ 22; *Ex. A-1*, at 3.)

- 1 ○ Prior restraints;
- 2 ○ Permissive content-neutral or content-based prohibitions on certain forms
- 3 of speech or speech-related activity; and
- 4 ○ The different standards of scrutiny instituted by courts in determining
- 5 whether a statute or regulation violates a person's constitutional right to free speech. (*Id.*)

6 In addition to responding to the arguments raised by Maskall in her Petition, counsel for

7 the Committee expended time and resources to move to seal the transcript of the record and

8 proceedings in the Underlying Action (*see id.* at ¶ 4), which motion was granted by the Court on

9 December 3, 2008. (*See generally* Order Granting the Committee's Mot. to Seal a Court

10 Record.) These efforts required researching Part VII of the Nevada Supreme Court Rules –

11 Rules for Sealing and Redacting Court Records. (Ex. A, at ¶ 4.)

12 Documentation itemizing the online legal research charges is attached. (*See* Ex. A-1, at

13 4.) Counsel for the Committee conducted online legal research for this case almost entirely in or

14 around October 2008 when the Committee prepared and filed its Response to the Petition

15 (October 24, 2008), totaling two thousand, three hundred and eleven dollars and fifty five cents

16 (\$2,311.55). (*Id.*) A separate report reflects the actual time spent on Westlaw conducting legal

17 research, the number of transactions, the number of documents/lines of research, and the total

18 charges for the month of October 2008. (*See* October Account Report, attached hereto as

19 Exhibit A-2.) A small amount of additional online legal research was conducted in February

20 2010 by counsel for the Committee in advance of the February 25, 2010 hearing, totaling one

21 hundred and seventy two dollars and six cents (\$172.06). (*See* Ex. A-1, at 4.) A separate report

22 details the number of transactions conducted, the number of documents/lines of research, and the

23 total charges for the month of February 2010.⁶ (*See* February Account Report, attached hereto

24 as Exhibit A-3.)

25 Maskall wrongfully assumes that the full extent of the Committee's online legal research

26 is reflected in its Response to the Petition. (*See* Pet., at 5:12-15 (questioning the cost for legal

27 _____

28 ⁶ This particular report does not include actual time spent researching online using Westlaw because the research in this instance was conducted on a transactional—as opposed to hourly—basis. (*See* Ex. A, at ¶ 8.)

1 research when weighed against the number of cases cited in the Response to the Petition).
2 However, the Committee researched and reviewed far more than the eight (8) cases discussed or
3 referenced in its Response to Maskall's Petition to gain a full and complete understanding of the
4 sensitive legal issues raised in the case. (See Ex. A, at ¶ 9.) For example, there is an
5 unquestionable abundance of case law on First Amendment jurisprudence, and counsel for the
6 Committee spent significant time and resources narrowing its online legal research to the
7 particular First Amendment issues applicable to this case. However, this narrowed approach
8 still required extensive review of analogous cases to the facts and circumstances of this case.

9 Maskall also argues—without supporting authority—that the Committee did not disclose
10 each and every case it reviewed prior to drafting the Response, nor how long counsel for the
11 Committee spent time conducting legal research or what cases were omitted from the Response.
12 (See Pet., at 5:15-19.) However, the Committee is not required to divulge the full extent of its
13 counsel's work in responding to the Petition because any such disclosure would violate Nevada
14 R.P.C. 1.6(a) by revealing information related to the representation.⁷ Maskall further does not
15 support mandating that the Committee describe who conducted the legal research, when the
16 research was conducted, whether the person or entity conducting the research used Westlaw, and
17 how Westlaw charged for the research. (See *id.*) Nevertheless, as set forth in the accompanying
18 declaration from Kimberly R. McGhee, she conducted the research in or around October 2008
19 and February 2010 using Westlaw, which research was billed at Westlaw's standard hourly and
20 transactional rates. (Ex. A, at ¶¶ 3-4, 8-9.)

21 In order to competently and diligently represent the Committee pursuant to Nevada
22 R.P.C. 1.1 and Nevada R.P.C. 1.3, counsel for the Committee had to conduct extensive online
23 legal research, done as efficiently as possible. It would be unreasonable to rule that counsel for
24 the Committee should not have thoroughly researched the relevant case and statutory law in
25 responding to the Petition. The magnitude of the result—finding that the Committee has
26

27 ⁷ Nevada R.P.C. 1.6(a) provides as follows: "A lawyer shall not reveal information relating to
28 representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to
carry out the representation, or the disclosure is permitted by paragraphs (b) and (c)."

1 jurisdictional authority to enforce the Rules and that Rule 4.5 does not violate the First
2 Amendment—demonstrates how important the legal research was in responding to the Petition.

3 Charges for online legal research in this action totaled two thousand, four hundred and
4 eighty three dollars and sixty one cents (\$2,483.61). (*See* Ex. A-1, at 4; *see also supra* n.3.)
5 Because the online legal research charges through Westlaw were actually and reasonably
6 incurred by the Committee as set forth in the attached documentation, the Court should award
7 these costs to the Committee.

8 **C. Photocopy Charges.**

9 Maskall next challenges whether the Committee incurred reasonable photocopying
10 expenses in this action. (*See* Pet., at 6:3-6.) A detailed itemization specifying the date(s)
11 photocopies were made, the person(s) who made the photocopies,⁸ the matter or client ID
12 number,⁹ the narrative description for the charge(s), the number of copies (units), the cost per
13 copy, and total cost is attached. (*See* Ex. A-1, at 1-2.) Photocopies (also referred to as
14 document reproduction in the narrative descriptions) are a necessary component to litigation and
15 common practice of all attorneys and their support staff. (Ex. A, at ¶ 10.) For example, in this
16 case, photocopies were made of the following list of documents: (i) the transcript and record of
17 proceedings in the Underlying Action; (ii) the Rules; (iii) all relevant case law, as discussed
18 above; and (iv) all other papers related to this action.

19 Billing for photocopies in this case totaled three hundred and thirty four dollars and
20 seventy five cents (\$334.75). (Ex. A-1, at 1-2; *see also supra* n.4.) The Committee actually and
21 reasonably incurred these costs up through, though excluding, the date of the filing of the
22 Memorandum.¹⁰ (*Id.*) Accordingly, these costs should be awarded to the Committee.

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25 ⁸ "KS" refers to Kim Shields, and "BRO" refers to Bonnie O'Laughlin, both legal assistants employed with
the law firm of Bailey♦Kennedy. (Ex. A, at ¶¶ 11-12.)

26 ⁹ Bailey♦Kennedy's matter ID number for this particular case is 10349-001. (Ex. A, at ¶¶ 6-7.)

27 ¹⁰ The attached documentation also includes charges incurred by the Committee on and after the date of filing
28 of the Memorandum. (*See generally* Ex. A-1.) The Committee does not presently seek to recover these additional
costs and disbursements. (Ex. A, at ¶ 21.)

1 **D. Postage Charges.**

2 Maskall next challenges whether the Committee incurred reasonable postage expenses in
3 this action. (See Pet., at 6:19-24.) A detailed itemization specifying the date(s) the expenses
4 were incurred, the person(s) who incurred the expense,¹¹ the matter or client ID number, the
5 narrative description for the expense(s), the unit(s) of postage, the price for postage, and total
6 cost is attached. (See Ex. A-1, at 4.) Postage charges were a required, though reasonable,
7 expense incurred by counsel for the Committee in connection with serving Maskall via first
8 class mail with copies of all papers served in this action on the dates indicated in the attached
9 documentation. (Ex. A, at ¶ 16.)

10 Billing for postage in this action totaled eight dollars and sixty three cents (\$8.63). (See
11 Ex. A-1, at 4.) The Committee incurred these costs up through, though excluding, the date of
12 the filing of the Memorandum. (Id.) Accordingly, these costs should be awarded to the
13 Committee.

14 **E. Courier Expenses.**

15 Maskall also challenges whether the Committee incurred reasonable courier expenses in
16 this action. (See Pet., at 6:26 – 7:3.) A detailed itemization specifying the courier company
17 used by the Committee (Paradigm Attorney Service, Inc.), the person(s) who requested the
18 courier's services, the matter or client ID number, the narrative description for the charge(s), the
19 number of documents (units) provided for delivery by courier service, the cost for each specific
20 service requested, and total cost is attached. (See Ex. A-1, at 3.) In addition, attached are
21 invoices received from Paradigm Attorney Service, Inc., itemizing rush delivery of certain
22 documents to counsel for Maskall on two separate occasions. (See Paradigm Invoices, attached
23 hereto as Exhibit A-4.) Same-day delivery of certain documents to counsel for the adverse party
24 was necessary on October 26, 2008 for important time-sensitive delivery. (See Ex. A, at ¶ 18.)

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26 _____
27 ¹¹ "SLR" refers to Susan L. Russo, a legal assistant employed with the law firm of Bailey♦Kennedy. (Id. at
28 ¶ 13.) "JH" refers to JoAnne Hubert, a paralegal employed with the law firm of Bailey♦Kennedy. (Id. at ¶ 14.)
"ANO" refers to Alice O'Hearn, a legal assistant and administrator of the law firm of Bailey♦Kennedy. (Id. at ¶
15.)

1 Billing for courier service in this action totaled seventy six dollars (\$76.00). (See Ex. A-
2 1, at 3.) The Committee actually and reasonably incurred these costs in connection with this
3 action. (*Id.*) Accordingly, these costs should be awarded to the Committee.

4 **F. Parking Expenses.**

5 Finally, Maskall challenges whether the Committee reasonably incurred parking charges
6 in this action. (See Pet., at 7:6-10.) A detailed itemization specifying the date the charge was
7 incurred, the person imputing the charge into the transactions listing report, the matter or client
8 ID number, the narrative description for the charge, the cost and total value is attached. (See Ex.
9 A-1, at 4.) Further, attached is the parking receipt received, which evidences payment by
10 counsel for the Committee for the parking expense on February 25, 2010. (See McGhee
11 Parking, attached hereto as Exhibit A-5.) Parking at the courthouse was necessary for counsel
12 for the Committee to attend the February 25, 2010 hearing. (See Ex. A, at ¶ 20.)

13 Billing for parking in this action totaled seven dollars (\$7.00). (See Ex. A-1, at 4.) The
14 Committee actually and reasonably incurred this cost. (*Id.*) Accordingly, it should be awarded
15 to the Committee.

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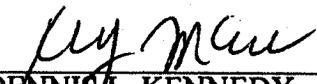
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III. CONCLUSION

The Committee actually incurred reasonable costs and disbursements in this action totaling two thousand, nine hundred and twelve dollars and ninety nine cents (\$2,912.99). These costs and disbursements are supported by documentation attached to this Opposition and the accompanying declaration from Kimberly R. McGhee. Maskall's Motion should be denied.

DATED this 19th day of May, 2010.

BAILEY ♦ KENNEDY

By: 
DENNIS L. KENNEDY
KIMBERLY R. MCGHEE
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 Telephone
(702) 562-8821 Facsimile

Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

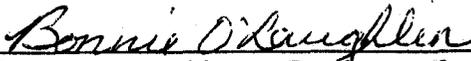
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2010, a copy of the foregoing OPPOSITION OF RESPONDENT TO PETITIONER'S MOTION TO DENY OR RETAX COSTS AND DISBURSEMENTS STATED IN RESPONDENT'S MEMORANDUM OF COSTS AND DISBURSEMENTS was served by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

David S. Lee, Esq.
Lee Hernandez Kelsey Brooks Garofalo & Blake
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, Nevada 89134

Attorneys for Petitioner
Maria Maskall



Bonnie O'Laughlin, an Employee of
BAILEY ♦ KENNEDY

Exhibit A

Exhibit A

1 Westlaw in connection with moving to seal the transcript of the record and proceedings in the
2 action of *Brigid Duffy v. Maria Maskall*, Case No. 08-2, dated August 12, 2008.

3 5. A true and correct copy of Bailey♦Kennedy's "Transactions Reporting List,"
4 which reflects all costs and disbursements incurred by Bailey♦Kennedy in this action on behalf
5 of the Committee up through and including May 11, 2010, is attached hereto as Exhibit A-1 (the
6 "Transactions Reporting List").

7 6. A true and correct copy of an account report reflecting Bailey♦Kennedy's online
8 activity using Westlaw for client # 10349-001 (the Committee) for date range October 1, 2008,
9 through and including October 30, 2008, is attached hereto as Exhibit A-2 (the "October
10 Account Report").

11 7. A true and correct copy of an account report reflecting Bailey♦Kennedy's online
12 activity using Westlaw for client # 10349-001 (the Committee) for date range February 1, 2010,
13 through and including February 28, 2010, is attached hereto as Exhibit A-3 (the "February
14 Account Report").

15 8. I conducted online legal research using Westlaw in October 2008 on an hourly
16 basis, and in February 2010 on a transactional basis.

17 9. I researched and reviewed far more than the actual number of cases discussed or
18 referenced in the Committee's Response to Maskall's Petition to gain a full and complete
19 understanding of the sensitive legal issues raised in the case.

20 10. Photocopies (also referred to as document reproduction in the narrative
21 descriptions in the Transactions Reporting List) are a necessary component to litigation and
22 common practice of attorneys and assistants at Bailey♦Kennedy.

23 11. "KS" refers to Kim Shields, a legal assistant employed with the law firm of
24 Bailey♦Kennedy.

25 12. "BRO" refers to Bonnie O'Laughlin, a legal assistant employed with the law firm
26 of Bailey♦Kennedy.

27 13. "SLR" refers to Susan L. Russo, a legal assistant employed with the law firm of
28 Bailey♦Kennedy.

1 14. "JH" refers to JoAnne Hubert, a paralegal employed with the law firm of
2 Bailey♦Kennedy.

3 15. "ANO" refers to Alice O'Hearn, a legal assistant and administrator of the law
4 firm of Bailey♦Kennedy.

5 16. Postage charges are a required, though reasonable, expense incurred by
6 Bailey♦Kennedy on behalf of the Committee in connection with serving Maskall via first class
7 mail with copies of all papers served in this action.

8 17. A true and correct copy of two (2) invoices received from Paradigm Attorney
9 Service, Inc., both dated October 26, 2008, for rush delivery of certain documents to counsel for
10 Maskall is attached hereto as Exhibit A-4 (the "Paradigm Invoices").

11 18. Same-day delivery of certain documents to counsel for Maskall was necessary on
12 October 26, 2008 for important time-sensitive delivery.

13 19. A true and correct copy of my parking receipt from the Lewis Center Garage,
14 which reflects the amount I paid to park as part of attending a hearing before the Court in this
15 matter on February 25, 2010, is attached hereto as Exhibit A-5 ("McGhee Parking").

16 20. It was necessary for me to pay for parking to attend the February 25, 2010
17 hearing on behalf of the Committee.

18 21. The Committee does not presently seek to recover costs and disbursements
19 incurred on or after the date of filing of the Memorandum of Costs and Disbursements.

20 22. The Committee does not seek to recover its costs and disbursements incurred in
21 this action related to electronic filing fees.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 EXECUTED this 19th day of May, 2010.

24
25 
26 _____
27 KIMBERLY R. MCGHEE
28

Exhibit A-1

Exhibit A-1

Bailey Kennedy, LLP
Transactions Listing Report

Search Description:

Search for: 10349-001 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Component: Copies						
10/31/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Photocopies	Copies	594.0000	0.2500	148.5000
11/30/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Photocopies	Copies	32.0000	0.2500	8.0000
11/30/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Photocopies	Copies	6.0000	0.2500	1.5000
12/31/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Photocopies	Copies	62.0000	0.2500	15.5000
12/31/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Photocopies	Copies	335.0000	0.2500	83.7500
1/20/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	6.0000	0.2500	1.5000
1/31/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	10.0000	0.2500	2.5000
1/31/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	42.0000	0.2500	10.5000
2/8/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	11.0000	0.2500	2.7500
2/24/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	6.0000	0.2500	1.5000
2/25/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	5.0000	0.2500	1.2500
2/28/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	18.0000	0.2500	4.5000

Bailey Kennedy, LLP
Transactions Listing Report

Search Description:

Search for: 10349-001 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
2/28/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	152.0000	0.2500	38.0000
3/8/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	4.0000	0.2500	1.0000
3/11/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	3.0000	0.2500	0.7500
3/18/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	7.0000	0.2500	1.7500
3/22/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	9.0000	0.2500	2.2500
3/25/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	13.0000	0.2500	3.2500
3/31/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	24.0000	0.2500	6.0000
4/15/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	19.0000	0.2500	4.7500
4/16/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	31.0000	0.2500	7.7500
4/30/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	72.0000	0.2500	18.0000
4/30/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Document Reproduction	Copies	55.0000	0.2500	13.7500
Component: Copies 1,516.0000						379.0000

Bailey Kennedy, LLP
Transactions Listing Report

Search Description:

Search for: 10349-001 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Component: Courier						
11/26/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Paradigm Attorney Service Invoice No. M51948: Delivery/Receipt of Copy to David S. Lee.	Courier	1.0000	38.0000	38.0000
11/26/2008	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Paradigm Attorney Service Invoice No. M51949: Delivery/Receipt of Copy to Robert P. Dickerson.	Courier	1.0000	38.0000	38.0000
			Component: Courier	2.0000		76.0000
Component: EF						
2/4/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Notice of Readiness.	EF	1.0000	6.0000	6.0000
2/4/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Order Setting Hearing.	EF	1.0000	6.0000	6.0000
2/17/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Notice of Entry of Order Setting Hearing.	EF	1.0000	6.0000	6.0000
4/14/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Order Denying Petition for Writ of Certiorari, or, Alternatively, Petition for Writ of Review.	EF	1.0000	6.0000	6.0000
4/14/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Notice of Entry of Order Denying Petition for Writ of Certiorari, or, Alternatively, Petition for Writ of Review.	EF	1.0000	6.0000	6.0000
4/15/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Electronic Filing Fee for Memorandum of Costs and Disbursements.	EF	1.0000	6.0000	6.0000
			Component: EF	6.0000		36.0000

Bailey Kennedy, LLP
Transactions Listing Report

Search Description:

Search for: 10349-001 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
Component: Parking						
2/25/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Courthouse parking for Kimberly R. McGhee to attend Hearing.	Parking	1.0000	7.0000	7.0000
			Component: Parking	1.0000		7.0000
Component: Postage						
10/13/2008	SLR	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	1.0000	1.1700	1.1700
10/24/2008	JH	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	2.0000	1.3400	2.6800
10/31/2008	ANO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	1.0000	2.6800	2.6800
1/28/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	2.0000	0.6100	1.2200
2/17/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	2.0000	0.4400	0.8800
4/15/2010	BRO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall Postage	Postage	2.0000	0.4400	0.8800
			Component: Postage	10.0000		9.5100
Component: Westlaw						
10/31/2008	ANO	10349-001 / Nevada Standing Committee on Judicial Maria Maskall On-line Legal Research	Westlaw	1.0000	2,311.5500	2,311.5500
2/28/2010	KS	10349-001 / Nevada Standing Committee on Judicial Maria Maskall On-line Legal Research	Westlaw	1.0000	172.0600	172.0600
			Component: Westlaw	2.0000		2,483.6100

Bailey Kennedy, LLP
Transactions Listing Report

Search Description:

Search for: 10349-001 Search by: Matter ID Stage: (all) Type: All costs

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value	
					GrandTotal	1,537.0000	2,991.1200

Exhibit A-2

Exhibit A-2

Account: BAILEY KENNEDY LLP, LAS VEGAS NV (1002016134)

Date Range: October 01, 2008 - October 30, 2008

Report Format: Summary-Account by Client

Account by Client

Database Time

Transactions

Docs/Lines

Connect Time

Charge

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Charge		
Account: 1002016134							
Totals for Client 10349-001	2,849	23	32,637	2,849	\$2,311.55		

Exhibit A-3

Exhibit A-3

Account: BAILEY KENNEDY LLP, LAS VEGAS NV (1002016134)

Date Range: February 01, 2010 - February 28, 2010

Report Format: Detail-Account by Client (Targeted)

Account by Client

Database Time

Transactions

Docs/Lines

Connect Time

Charge

Account: 1002016134

Client 10349-001

WESTLAW LINES

TRANSACTIONAL ONLINE FINDS

2,990

\$134.56

3

\$37.50

Report Totals

3

2,990

\$172.06

Exhibit A-4

Exhibit A-4

Paradigm Attorney Service, Inc.
 3157 N. Rainbow Blvd. #336
 Las Vegas, NV 89108



Invoice

Date	Invoice #
11/26/2008	M51948

Bill To
Bailey Kennedy, LLP 8984 Spanish Ridge Ave. Las Vegas, NV 89148-1302 JoAnne

Case Name:	File No.:
Maskale V. Standing	10349-001

Item	Description	Amount
Delivery Area C RUSH Messenger	Delivery/ROC to: David S. Lee, 7575 Vegas Dr., #150, LV, NV 89128 Same day Messenger Request	26.00 12.00

Calendared	
Scanned	<i>[Signature]</i>
To Client	

Make all checks payable to Paradigm Attorney Service, Inc. Tax ID#65-1252659

Total \$38.00

Balance Due \$38.00

Phone #	Fax #
(702) 385-7874	(702) 385-7875

Paradigm Attorney Service, Inc.
 3157 N. Rainbow Blvd. #336
 Las Vegas, NV 89108



Invoice

Date	Invoice #
11/26/2008	M51949

Bill To
Balley Kennedy, LLP 8984 Spanish Ridge Ave. Las Vegas, NV 89148-1302 JoAnne

Case Name:	File No.:
Maskall V. Standing	10349-001

Item	Description	Amount						
Delivery Area C RUSH Messenger	Delivery/ROB to: Robert P. Dickerson, 1745 Village Center Cr., LV, NV 89134 Same day Messenger Request	26.00 12.00						
<table border="1"> <tr> <td>Calendared</td> <td></td> </tr> <tr> <td>Scanned</td> <td><i>[Signature]</i></td> </tr> <tr> <td>To Client</td> <td></td> </tr> </table>		Calendared		Scanned	<i>[Signature]</i>	To Client		
Calendared								
Scanned	<i>[Signature]</i>							
To Client								
Make all checks payable to Paradigm Attorney Service, Inc. Tax ID#65-1252659		Total 338.00						

Balance Due	338.00
--------------------	---------------

Phone #	Fax #
(702) 385-7874	(702) 385-7875

Exhibit A-5

Exhibit A-5

LEWIS CENTER GARAGE
321 CASINO CENTER DR
LAS VEGAS, NV

Rcpt# 27256

02/25/10 09:14 LH 4 AM 4 Txn#108783

02/25/10 08:01 In 02/25/10 09:14 Out

VISA \$ 7.00-

XXXXXXXXXX3012

Approval No.:161746

Reference No.:0000011

PLEASE CALL FOR MONTHLY RATES

DOUGLAS PARKING

(702) 382-7988

VALET SERVICES AVAILABLE

ATTACHMENT 12



CLERK OF THE COURT

1 **OPPM**
2 **DENNIS L. KENNEDY**
3 **Nevada Bar No. 1462**
4 **KIMBERLY R. MCGHEE**
5 **Nevada Bar No. 9728**
6 **BAILEY ♦ KENNEDY**
7 **8984 Spanish Ridge Avenue**
8 **Las Vegas, Nevada 89148**
9 **(702) 562-8820 Telephone**
10 **(702) 562-8821 Facsimile**

11 **Attorneys for Respondent**
12 **The Standing Committee on**
13 **Judicial Ethics and Election Practices**

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 **MARIA MASKALL,**
17 **Petitioner,**

18 **Case No.: A-09-570442-C**
19 **Dept. No.: VI**

20 **v.**

21 **STANDING COMMITTEE ON JUDICIAL**
22 **ETHICS AND ELECTION PRACTICES,**
23 **Respondent.**

24 **OPPOSITION OF THE STANDING COMMITTEE ON JUDICIAL ETHICS AND**
25 **ELECTION PRACTICES TO PETITIONER'S MOTION FOR NEW TRIAL AND/OR**
26 **REHEARING, AND/OR TO ALTER AND AMEND; OR, ALTERNATIVELY, MOTION**
27 **FOR RECONSIDERATION**

28 **Respondent Standing Committee on Judicial Ethics and Election Practices (the**
29 **"Committee") opposes Petitioner, Maria Maskall's, ("Petitioner") Motion for New Trial and/or**
30 **Rehearing, and/or to Alter and Amend; or, Alternatively, Motion for Reconsideration**
31 **("Motion").**

32 **///**

33 **///**

34 **///**

35 **///**

1 This Opposition is made and based upon the papers and pleadings on file herein, the
2 following memorandum of points and authorities and any oral argument as may be heard by the
3 Court.

4 DATED this 19th day of May, 2010

6 BAILEY ♦ KENNEDY

7
8 By: 
9 DENNIS L. KENNEDY
10 KIMBERLY R. MCGHEE
11 8984 Spanish Ridge Avenue
12 Las Vegas, Nevada 89148-1302
13 (702) 562-8820 Telephone
14 (702) 562-8821 Facsimile

15 Attorneys for Respondent
16 The Standing Committee on
17 Judicial Ethics and Election Practices

18 **I. INTRODUCTION**

19 This matter arises from Petitioner failing to follow the rules of a forum of which she
20 availed herself in an attempt to disqualify her judicial opponent. The thrust of Petitioner's
21 challenge rests on her belief that the rules of the Committee do not apply to her or that she did
22 not have notice that the rules apply to her, and that those rules are therefore unconstitutional.
23 However, this Court, after extensive briefing and argument found that Part VIII of the Supreme
24 Court Rules – Rules Governing the Standing Committee on Judicial Ethics and Election
25 Practices ("Rules") – 4.5 is (i) constitutional, (ii) applies to Petitioner and (iii) that the
26 Committee has jurisdiction to enforce its Rules. Notwithstanding this Court's careful analysis of
27 the issues presented, Petitioner has nevertheless filed her Motion in an attempt to get a second
28 bite at the apple.

Petitioner has initially failed to meet the strict standards for reconsideration and/or a new
trial. In her Motion, Petitioner, for the first time, asserts that her due process rights were
violated by enforcement of Rule 4.5. While Petitioner's Petition for Writ of Certiorari, or,

1 Alternatively, Petition for Writ of Review ("Writ Petition") raised a lack of notice argument in
2 the context of vagueness in her challenge to the Constitutionality of Rule 4.5, Petitioner never
3 claimed that she was deprived of due process because she was not given an opportunity to be
4 heard. Because a party cannot raise on rehearing points or contentions not raised in the original
5 hearing, the due process argument should be entirely disregarded. Notwithstanding the failure
6 to raise the due process argument, Petitioner was afforded notice and an opportunity to be heard.
7 Specifically, Petitioner was on notice of the confidentiality provision, signed an
8 acknowledgement of the same and waived her right to a hearing on whether she improperly
9 disclosed a response filed with the Committee. Therefore, Petitioner was afforded all rights
10 conferred by the Due Process Clause of the United States and Nevada Constitutions.

11 Additionally, Petitioner's Motion should be denied because she has failed to present new
12 facts or identify clear error by the Court in its Order Denying Petition for Writ of Certiorari, or,
13 Alternatively, Petition for Writ of Review ("Order"). Indeed, Petitioner simply cites to
14 additional authority for the propositions of law previously set forth in her Writ Petition –
15 argument which is improperly presented on a motion for rehearing. However, even despite
16 Petitioner's procedural deficiencies, she has again failed to demonstrate that Rule 4.5 is vague –
17 since Petitioner's interpretation would lead to an absurd result – or that Rule 4.5 cannot meet a
18 strict scrutiny test – while the restricted speech is content neutral, it can still meet the strict
19 scrutiny test, thereby rendering Petitioner's argument that this Court erred in finding the
20 restricted speech content neutral futile.

21 **II. ARGUMENT**

22 **A. Petitioner Has Failed to Meet the Strict Standards for Reconsideration and/or a**
23 **New Trial**

24 1. Petitioner Failed to Demonstrate That Reconsideration is Permissible

25 EDCR 2.24, cited by Petitioner, states

- 26 a) No motions once heard and disposed of may be renewed in the
27 same cause, nor may the same matters therein embraced be
28 reheard, unless by leave of the court granted upon motion therefor,
after notice of such motion to the adverse parties.

1 "Points or contentions not raised in the original hearing *cannot* be maintained or
2 considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917
3 P.2d 447, 450 (1996); *see also Chowdhry, M.D., v. NLVH, Inc.*, 111 Nev. 560, 562, 896 P.2d
4 385, 387 (1995) (the Supreme Court "has previously stated that "points or contentions not
5 raised, or passed over in silence on the original hearing, cannot be maintained or considered on
6 petition for rehearing."); *Brandon v. West*, 29 Nev. 135, 85 P. 449, 450 (1906) ("It is the rule
7 that no new ground or position not taken in the argument submitting the case, or question
8 waived by silence, can be considered on petition for rehearing."). "The district court may
9 reconsider a previously decided issue if substantially different evidence is subsequently
10 introduced or *the decision is clearly erroneous.*" *Masonry and Tile Contractors Ass'n of S. NV*
11 *v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 490 (1997) (emphasis added);
12 *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very
13 rare instances in which new issues of fact or law are raised supporting a ruling contrary to the
14 ruling already reached should a motion for rehearing be granted."). As stated below, Petitioner
15 cannot raise arguments relating to an alleged violation of her due process rights for the first time
16 in her Motion.

17 Additionally, it is an abuse of discretion to entertain a motion for rehearing where no
18 new issues of law or fact are raised and the movant simply cites to additional authority for the
19 propositions of law previously set forth and ruled upon in a prior motion. *Moore*, 92 Nev. at
20 405, 551 P.2d at 246. Here, no changes in the law or additional facts have been presented to
21 support Petitioner's request that this Court entertain a motion for rehearing. This Court's ruling
22 was the result of thoroughly considered law and fact. It was not erroneous and Petitioner's
23 Motion should be denied.

24 2. Petitioner Failed to Demonstrate that a New Trial is Warranted

25 N.R.C.P. 56(a) provides

26 A new trial may be granted to all or any of the parties and on all or
27 part of the issues for any of the following causes or grounds
28 materially affecting the substantial rights of an aggrieved party:
(1) Irregularity in the proceedings of the court, jury, master, or
adverse party, or any order of the court, or master, or abuse of
discretion by which either party was prevented from having a fair

1 trial; (2) Misconduct of the jury or prevailing party; (3) Accident
2 or surprise which ordinary prudence could not have guarded
3 against; (4) Newly discovered evidence material for the party
4 making the motion which the party could not, with reasonable
5 diligence, have discovered and produced at the trial; (5) Manifest
6 disregard by the jury of the instructions of the court; (6) Excessive
7 damages appearing to have been given under the influence of
8 passion or prejudice; or, (7) Error in law occurring at the trial and
9 objected to by the party making the motion. On a motion for a new
10 trial in an action tried without a jury, the court may open the
11 judgment if one has been entered, take additional testimony,
12 amend findings of fact and conclusions of law or make new
13 findings and conclusions, and direct the entry of a new judgment.

14 It is well settled that "a verdict or other decision 'cannot be set aside where no
15 irregularity or error whatever is shown, and the verdict or decision is in accordance with and
16 justified by the evidence.'" *Scott v. Haines*, 4 Nev. 426 (1868); *see also Sierra Pacific Power*
17 *Co. v. Day*, 80 Nev. 224, 230, 391 P.2d 501, 504 (1964). As stated below, no error in law
18 occurred; therefore, no grounds for a new trial exist and the Motion should be denied.

19 **B. Petitioner's Due Process Argument Is Not Grounds For A Rehearing and/or New
20 Trial**

21 1. Petitioner Cannot Raise New Arguments – Violation of Due Process Rights –
22 For the First Time in a Motion For Rehearing and/or New Trial

23 Petitioner, for the first time, raises in her Motion a due process argument. (See Motion,
24 at 9:18:12:28.) In her original Writ, Petitioner presented the following issues:

25 (A) Whether the Standing Committee exceeded its authority and
26 erred by concluding in its Decision that Maria violated a Rule of
27 the Standing Committee when the Standing Committee is
28 authorized only to make findings and conclusions regarding
whether a candidate has violated Canon 5 of the Judicial Code of
Ethics.

(B) Whether the Standing Committee Rule, Rule 4.5, which
provides that "[a]ll meetings of panels considering unfair election
practices are confidential" provides sufficient notice that a written
statement by a candidate is also to be considered confidential.

(C) Whether the Standing Committee erred in finding that a
candidate's written statement constituted a meeting of the Standing
Committee panel under the Standing Committee's Rules such that
the use of the candidate's written statement inside litigation against
the opponent fell inside the confidentiality provision of the
Standing Committee Rules.

(D) Whether the Standing Committee erred in ruling that the
confidentiality provision of the Standing Committee Rules was
violated by using a candidate's written statement inside litigation
against that candidate.

1 (Writ Petition, at 2:7-20; *see also* Petitioner's Reply to the Standing Committee on Judicial
2 Ethics and Election Practices Response to Petitioner's Writ of Certiorari, or, Alternatively,
3 Petition for Writ of Review ("Writ Reply"), at 3:4-20.) Additionally, Petitioner alleged that the
4 Committee's decision "(a) violates public policy; (b) violates the Rules of the Standing
5 Committee; (c) produces a manifestly unjust result; (d) contravenes Nevada's Constitutional and
6 statutory scheme; and (e) defies common sense." (*Id.* at 4:24-26.)

7 In asserting that the Committee's decision "contravenes Nevada's Constitutional and
8 statutory scheme," Petitioner *only* argued that Rule 4.5 failed to provide notice to Petitioner
9 because it was overbroad and vague. (*Id.* at 7:14-19; Writ Reply, at 6:16-9:5.) Petitioner
10 limited her challenge to the Constitutionality of Rule 4.5 to a vagueness argument, requesting
11 that this Court find that Rule 4.5 was so vague that it failed to provide Petitioner adequate notice
12 that disclosing confidential information was a prohibited act. At no time did Petitioner argue
13 that her due process rights were violated and that she was not given an opportunity to be heard.
14 (*See* Writ Petition; *see also* Writ Reply.) Petitioner cannot now transform her argument from
15 vagueness to lack of notice and hearing simply because she mentioned the word "notice" in her
16 original Writ Petition. Failure to raise a due process violation argument in her Writ Petition
17 prohibits Petitioner from raising it on a motion for rehearing. *Achrem*, 112 Nev. at 742, 917
18 P.2d at 450.

19 2. Petitioner's Due Process Rights Were Not Violated

20 It is well-settled that "due process of law requires that a person shall have reasonable
21 notice and a reasonable opportunity to be heard before an impartial tribunal before any binding
22 decree can be passed affecting his right to liberty or property." *Schrader v. District Court*, 58
23 Nev. 188, 73 P.2d 493, 497 (1937). Here, Petitioner was afforded ample notice and an
24 opportunity to be heard.

25 The thrust of Petitioner's argument is that while she was given notice that her opponent –
26 Brigid Duffy – filed a complaint alleging that Petitioner violated a cannon of judicial ethics by
27 disclosing confidential information, she was not given notice that the Committee would actually
28

1 enforce the confidentiality rule that governs proceedings in the forum to which Petitioner had
2 availed herself. Such an argument is absurd.

3 It is indisputable that the Rules that govern the proceedings in a forum apply to those
4 parties who utilize the forum. Petitioner's assertion that she was not provided notice that the
5 Rules applied to her is disingenuous. As stated below, the confidentiality provision provides
6 adequate notice that the information relied upon by the panel in rendering a decision is to remain
7 confidential. Additionally, Petitioner signed an acknowledgement which states "I have been
8 provided with and have read the rules regarding election complaints and their resolution,
9 *including confidentiality requirements.*" (Blank Judicial Election Complaint Form, attached as
10 Exhibit 1 (emphasis added).) Because it is well-settled that a party is presumed to know the
11 rules that govern a forum, Petitioner's assertion that she was not given notice that the Committee
12 would enforce the forum's Rules should be disregarded. *See generally Attorney Grievance*
13 *Com'n of Maryland v. Pennington*, 387 Md. 565, 598, 876 A.2d 642, 662 (Md. 2005) ("every
14 lawyer is presumed to know and abide by the Rules of Professional Conduct"); *McCowan v.*
15 *U.S.*, 458 A.2d 1191, 1198 (D.C. 1983.) ("all attorneys are presumed to know the rules of the
16 court and are expected to abide by them"); *Wreyford v. Peoples Loan & Finance Corp. of Forest*
17 *Park*, 141 S.E.2d 216, 220 (Ga. App. 1965) (it is "the universal rule that persons are presumed to
18 know what the law requires and to abide by its requirements"); *Office of Disciplinary Counsel v.*
19 *Au*, 113 P.3d 203, 216 (Haw. 2005) ("[M]ere ignorance of the law constitutes no defense to its
20 enforcement.' 'This maxim holds particularly true for lawyers who are charged with notice of
21 the rules and the standards of ethical and professional conduct prescribed by the [c]ourt.'"
22 (Citations omitted.)).

23 Finally, contrary to Petitioner's assertions, she was afforded an opportunity to be heard
24 and *voluntarily waived her right to a hearing.* (Published Decision 08-2, filed August 12, 2008,
25 attached as Exhibit 2, at 2:13.) Because it is irrefutable that the Rules that govern a proceeding
26 in forum also apply to those parties who utilize the forum, and that Petitioner specifically
27 acknowledged the confidentiality provision of the Rules, Petitioner was on notice that her
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1 violation of such Rules could lead to a reprimand. Therefore, Petitioner was given ample notice
2 and an opportunity to be heard – an opportunity which she waived.

3 **C. Petitioner Has Not Demonstrated That This Court Erred When It Found That**
4 **Rule 4.5 Was Not Vague**

5 Petitioner argues – for the second time – that Rule 4.5 failed to provide adequate notice
6 of the prohibited acts and is therefore vague. (Mot. at 11:16-28.) However, Petitioner fails to
7 cite to any additional evidence or otherwise demonstrate that this Court’s ruling was clearly
8 erroneous. Indeed, Petitioner again fails to address how her interpretation of Rule 4.5 comports
9 with the basic rule of statutory construction that a court should avoid an interpretation that
10 would result in an absurd or ridiculous conclusion and the cannon of mere surplusage. *See*
11 *Cromer v. Wilson*, 126 Nev. Adv. Op. 11, 225 P.3d 788, 790 (2010) (“If, however, a statute is
12 susceptible of another reasonable interpretation, we must not give the statute a meaning that will
13 nullify its operation, and we look to policy and reason for guidance.”); *see also Nevada Attorney*
14 *for Injured Workers v. Nevada Self-Insurers Ass’n*, 126 Nev. Adv. Op. 7, 225 P.3d 1265, 1271
15 (2010) (finding that “[w]hen examining whether an administrative regulation is valid, [the
16 Court] will generally defer to the ‘agency’s interpretation of a statute that the agency is charged
17 with enforcing’” and “[w]henver possible, [the Court] interpret[s] ‘statutes within a statutory
18 scheme harmoniously with one another to avoid an unreasonable or absurd result.’”); *Great*
19 *Basin Water Network v. Taylor*, 126 Nev. Adv. Op. 2, 222 P.3d 665, 671 (2010) (courts “avoid[]
20 statutory interpretation that renders language meaningless or superfluous.”). Specifically,
21 Petitioner’s interpretation of Rule 4.5 – that nothing provided to the Committee or the material
22 relied upon by the Committee is confidential – renders Rule 4.5 meaningless.

23 Rule 4.5 cannot have any other interpretation than to mean that all information provided
24 to and relied upon by the Committee’s panel must remain confidential. Petitioner’s argument is
25 akin to the following: the testimony of a witness at a meeting of the panel is confidential, but a
26 sworn declaration submitted to the panel containing the same testimony is not. Such an
27 interpretation of the rule would be absurd. Petitioner was provided adequate notice that she
28 must keep Ms. Duffy’s response – which she submitted to the panel – confidential.

1 **D. Petitioner Has Not Demonstrated That This Court Erred When It Found That**
2 **Rule 4.5 Did Not Violate the First Amendment**

3 1. Rule 4.5 is Content-Neutral

4 As this Court has already ruled, Rule 4.5 is content-neutral. “[L]aws that confer benefits
5 or impose burdens on speech without reference to the ideas or views expressed” are content-
6 neutral. *In re Discipline of Schaefer*, 117 Nev. 496, 510, 25 P.3d 191, 200 (2001). Moreover,
7 “[a] statute is neutral if it serves objectives that are not related to the expression’s content, even
8 though it might unintentionally affect certain speakers or messages.” *Seres v. Lerner*, 120 Nev.
9 925, 936, 102 P.3d 91, 96 (2004). “A regulation is not an invalid content-based restriction
10 merely because one must review the speech’s content in order to determine whether the
11 regulation has been violated.” *In re Discipline of Schaefer*, 117 Nev. at 510, 25 P.3d at 201.

12 Here, the Rules do not prohibit Petitioner from publicly disclosing factual information
13 known by her. However, there is a clear distinction between factual information known to an
14 individual and the disclosure of a judge or judicial candidate’s response to a complaint which
15 was filed with the Committee. While the public disclosure of the former cannot be restricted,
16 the public disclosure of the latter can be. Rule 4.5 does not prohibit speech based on the ideas or
17 views expressed. Such a narrowly tailored restriction is content neutral and furthers an
18 important government interest unrelated to the suppression of free expression and is therefore
19 permitted under the First Amendment.

20 2. Although Rule 4.5 Is Content Neutral, It Meets The Standards Imposed Under
21 the Strict Scrutiny Test

22 “First Amendment jurisprudence dictates that legislatively created content-based
23 restrictions on speech satisfy strict scrutiny review under which any such measure must address
24 a compelling state interest and be narrowly tailored to achieve that interest.” *Seres*, 120 Nev. at
25 931, 102 P.3d at 93. This Court has already found that a compelling state interest has been
26 shown to allow the limited restriction on speech. (Order, at 2:5.)
27
28

1 Specifically, as acknowledged by the Court, the restriction on speech contemplated by
2 Rule 4.5 is justified under the strict scrutiny test for the reasons set forth in *Kamasinski v.*
3 *Judicial Review Council*, 44 F.3d 106, 111 (2d Cir. 1994):

- 4 (i) the protection of the reputations of individual judges and the judiciary as a whole;
- 5 (ii) the prevention of a loss of public confidence in the judiciary;
- 6 (iii) the fear that, "armed with the ability to make the fact of a complaint public,
7 complainants will engage in a campaign of harassment," which might result in the "loss of
8 judicial independence as well as an overburdening of the JRC with frivolous complaints";
- 9 (iv) facilitation of effective investigations;
- 10 (v) protection of the judges' right of privacy; and
- 11 (vi) the protection of "the state's significant interest in encouraging infirm or
12 incompetent judges to step down voluntarily, a likelihood that is greatly reduced after
13 publication that complaints have been filed against them." *Id.*

14 Additionally, the Rule's incidental restriction on free expression is no greater than
15 necessary to accomplish the goals of protecting the integrity of the Committee, preventing abuse
16 of its procedures in judicial campaigns, preventing a loss of public confidence in the judiciary,
17 and protecting the reputations and privacy of judicial candidates. Complainants are not
18 prohibited from publicly disclosing factual information underlying the complaint, just the
19 complaint and the related materials themselves. Therefore, the confidentiality provision is
20 narrowly tailored and does not violate the First Amendment.

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III. CONCLUSION

For the foregoing reasons, Petitioner's Motion for New Trial and/or Rehearing, and/or to Alter and Amend; or, Alternatively, Motion for Reconsideration should be denied.

DATED this 19th day of May, 2010

BAILEY ♦ KENNEDY

By: *Dennis L. Kennedy*
DENNIS L. KENNEDY
KIMBERLY R. MCGHEE
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
(702) 562-8820 Telephone
(702) 562-8821 Facsimile

Attorneys for Respondent
The Standing Committee on
Judicial Ethics and Election Practices

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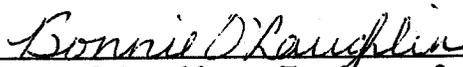
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2010, a copy of the foregoing
**OPPOSITION OF THE STANDING COMMITTEE ON JUDICIAL ETHICS AND
ELECTION PRACTICES TO PETITIONER'S MOTION FOR NEW TRIAL AND/OR
REHEARING, AND/OR TO ALTER AND AMEND; OR, ALTERNATIVELY, MOTION
FOR RECONSIDERATION** was served by depositing a true and correct copy in the U.S.
Mail, first class postage prepaid, and addressed to the following at their last known address:

David S. Lee, Esq.
Lee Hernandez Kelsey Brooks Garofalo & Blake
7575 Vegas Drive, Suite 150
Las Vegas, NV 89128

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, Nevada 89134

*Attorneys for Petitioner
Maria Maskall*



Bonnie O'Laughlin, an Employee of
BAILEY♦KENNEDY

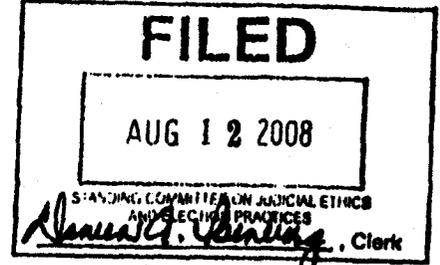
Exhibit 1

Exhibit 1

Exhibit 2

Exhibit 2

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3 STATE OF NEVADA
4 STANDING COMMITTEE ON JUDICIAL ETHICS
5 AND ELECTION PRACTICES
6



7 IN RE UNFAIR ELECTION PRACTICE)
8 FILED BY JUDICIAL CANDIDATE BRIGID)
9 DUFFY AGAINST JUDICIAL CANDIDATE)
10 MARIA MASKALL; COMPLAINT UNDER)
11 NEVADA CODE OF JUDICIAL CONDUCT)
12 CANON 5A(3)(a)

PUBLISHED DECISION: 08-2

13 Clark County Family Court Division, Department "R", candidate Brigid Duffy brought a
14 complaint against opponent Maria Maskall claiming violation of the Nevada Code of Judicial
15 Conduct, Canon 5A(3)(a), for failing to maintain the dignity and integrity expected of one who may
16 hold a judicial office. Candidate Duffy specifically alleged that that Ms. Maskall released a
17 confidential Standing Committee ("Committee") document to the public.

18 CHRONOLOGY

19 On February 25, 2008, Candidate Maskall submitted a Judicial Election Complaint
20 ("Complaint") against Ms. Duffy to the Committee in which she challenged Ms. Duffy's
21 qualifications to run for public office under Judicial Canon 5A(3)(d)(ii). Citing the ten (10) year
22 licensure rule in NRS 3.060(1)(c), Candidate Maskall alleged her opponent Duffy will not be
23 licensed for the requisite number of years prior to the date of the general election and, thus, is not
24 qualified to run for family court.

25 As provided for under Rule 4.1 of the Rules Governing the Standing Committee
26 ("Committee Rules"), a panel considered Candidate Maskall's Complaint and issued Published
27 Decision 08-1 on April 28, 2008. Stating there may still be a question under NRS 3.060(1)(c) if
28 Brigid Duffy were to win the general election, the Committee did not find, however, that she
29 knowingly misrepresented her qualifications in violation of Judicial Canon 5A(3)(d)(ii).

2
3
4 On April 29, 2008, Maria Maskall sued Brigid Duffy in the Eighth Judicial District Court for
5 Clark County. Ms. Maskall filed a Motion for Declaratory Relief and Preliminary and Permanent
6 Injunction on May 8, 2008. This Motion was ultimately denied by the Court. On May 30, 2008,
7 Attorney Robert P. Dickerson, on behalf of Candidate Maskall, filed a Motion for Reconsideration.
8 He attached as an exhibit a copy of the unpublished response Brigid Duffy filed with the Committee
in reply to Candidate Maskall's February 25, 2008 Judicial Election Complaint.

9 On June 10, 2008, Candidate Duffy filed a Judicial Election Complaint with the Standing
10 Committee. She alleged Maria Maskall violated Judicial Canon 5A(3)(a) by not maintaining the
11 dignity and integrity expected of one running for a judicial office, based on Maskall's release of the
12 unpublished response Duffy had filed with the Committee.

13 Candidates Duffy and Maskall waived the need for a hearing. In keeping with Committee
14 Rule 4.1, a panel considered Brigid Duffy's June 10 Complaint.

15 **DECISION**

16 While the Standing Committee does not question Candidate Maskall's right to take her case
17 to District Court after the Committee ruled on her February 25, 2008 Complaint, it does question the
18 information she supplied to the Court. The disclosure of Duffy's unpublished response to the
19 Committee is the crux of the issue. Thus, the question becomes one of potential violation of the
20 integrity of the Committee process, not one of breach of the Judicial Canon requiring a candidate to
21 act in a manner consistent with the "impartiality, integrity and independence" of the judiciary.

22 Rule 4.5 for the Standing Committee on Judicial Ethics and Election Practices provides:

23 All meetings of panels concerning unfair election practices are confidential.
24 Any decision shall be signed by the chair or vice-chair, and all decisions must
25 be made public.

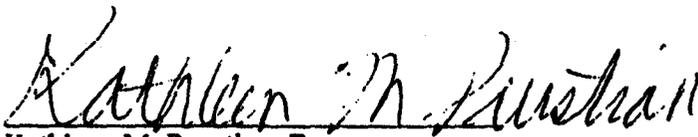
26 The Committee concludes Candidate Maskall did not violate Judicial Canon 5A(3)(a) by
27 releasing the Duffy response to the Maskall Judicial Election Complaint. However, the Committee
concludes Ms. Maskall did violate the confidentiality provision of Committee Rule 4.5 by publically
disclosing the Duffy response.

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This Decision shall be published in accordance with Committee Rules 4.4 and 4.5.

August 11, 2008

NEVADA STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES.


Kathleen M. Paustian, Esq.

Vice-Chair

ATTACHMENT 13

1 THE DICKERSON LAW GROUP
2 ROBERT P. DICKERSON, ESQ.
3 Nevada Bar No. 000945
4 1745 Village Center Circle
5 Las Vegas, Nevada 89134
6 (702) 388-8600

7 LEE HERNANDEZ KELSEY
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9 DAVID S. LEE, ESQ.
10 7575 Vegas Drive, Ste. 150
11 Las Vegas, Nevada 89128
12 (702) 880-9750

13 Attorneys for Petitioner

14 DISTRICT COURT
15 FAMILY DIVISION
16 CLARK COUNTY, NEVADA

17 MARIA MASKALL,
18
19 Petitioner,
20 v.
21 STANDING COMMITTEE ON
22 JUDICIAL ETHICS AND ELECTION
23 PRACTICES,
24 Respondent.

CASE NO. A570442
DEPT NO. VI

25 NOTICE OF ENTRY OF STIPULATION AND ORDER

26 TO: STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION
27 PRACTICES, Respondent; and
28 TO: DENNIS L. KENNEDY, ESQ., and KIMBERLY MCGHEE, ESQ. of BAILEY
KENNEDY, LLP, Attorneys for Respondent:

29 ...
30 ...
31 ...
32 ...
33 ...

1 PLEASE TAKE NOTICE that a STIPULATION AND ORDER was entered in
2 the above-entitled matter on June 23, 2010, a copy of which is attached hereto.

3 DATED this 24th day of June 2010.

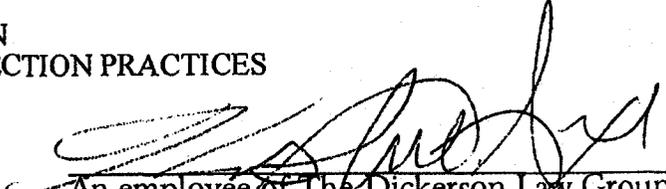
4 THE DICKERSON LAW GROUP

5
6 By 
7 ROBERT P. DICKERSON, ESQ.
8 Nevada Bar No. 000945
9 1745 Village Center Circle
10 Las Vegas, Nevada 89134
11 Attorneys for MARIA MASKALL

12 CERTIFICATE OF MAILING

13 I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of
14 the foregoing NOTICE OF ENTRY OF STIPULATION AND ORDER to the following
15 at his last known address on this 24th day of June, 2010.

16 DENNIS L. KENNEDY, ESQ.
17 KIMBERLY R. MCGHEE, ESQ.
18 8984 Spanish Ridge Avenue
19 Las Vegas, NV 89148-1302
20 Attorneys for Respondents
21 STANDING COMMITTEE ON
22 JUDICIAL ETHICS AND ELECTION PRACTICES

23
24
25
26
27
28

An employee of The Dickerson Law Group

ATTACHMENT 14

Allen D. Shuman

CLERK OF THE COURT

1 THE DICKERSON LAW GROUP
2 ROBERT P. DICKERSON, ESQ.
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6 (702) 388-8600

7 LEE HERNANDEZ KELSEY
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11 Las Vegas, Nevada 89128
12 (702) 880-9750

13 Attorneys for Petitioner

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MARIA MASKALL,

17 Petitioner,

18 v.

19 STANDING COMMITTEE ON
20 JUDICIAL ETHICS AND ELECTION
21 PRACTICES,

22 Respondent.

CASE NO.: A570442
DEPT NO.: VI

Published Decision: 08-2

DATE OF HEARING: May 27, 2010
TIME OF HEARING: 8:30 a.m.

23 **STIPULATION AND ORDER**

24 IT IS HEREBY STIPULATED AND AGREED to by Petitioner, MARIA MASKALL, by and
25 through her counsel, ROBERT P. DICKERSON, ESQ., of the DICKERSON LAW GROUP, and
26 Respondent, STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES, by
27 and through its counsel, DENNIS L. KENNEDY, ESQ., and KIMBERLY R. McGHEE, ESQ., of the
28 law firm of BAILEY KENNEDY, that Petitioner's Motion for New Trial and/or Rehearing, and/or to
Alter and Amend; or, Alternatively, Motion for Reconsideration, and all oppositions and replies thereto,
as well as Petitioner's Motion to Deny or Retax Costs and Disbursements Stated in Respondent's
Memorandum of Costs and Disbursements, and all oppositions and replies thereto, all of which were
to be heard on ~~May 27, 2010~~ should be taken off calendar.

<input checked="" type="checkbox"/> Slip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS	
<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial		<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial		<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Transferred			<input type="checkbox"/> Judgment Satisfied/Paid in full

1 IT IS FURTHER STIPULATED AND AGREED that Respondent dismisses its Memorandum
2 of Costs and Disbursements filed with the Court on April 15, 2010.

3 IT IS FURTHER STIPULATED AND AGREED that all issues in this case have been resolved;
4 that neither party will be filing any additional papers with the Court; that this case is considered closed
5 and should be placed in closed status; and that neither party will be appealing to the Nevada Supreme
6 Court on any issue in this case.

7 IT IS FURTHER STIPULATED AND AGREED that each party shall bear their own fees and
8 costs incurred herein.

9 DATED this 18th day of June, 2010.

DATED this 14th day of June, 2010.

10 DICKERSON LAW GROUP

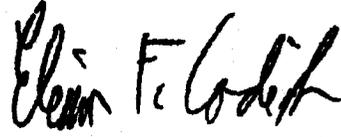
BAILEY KENNEDY

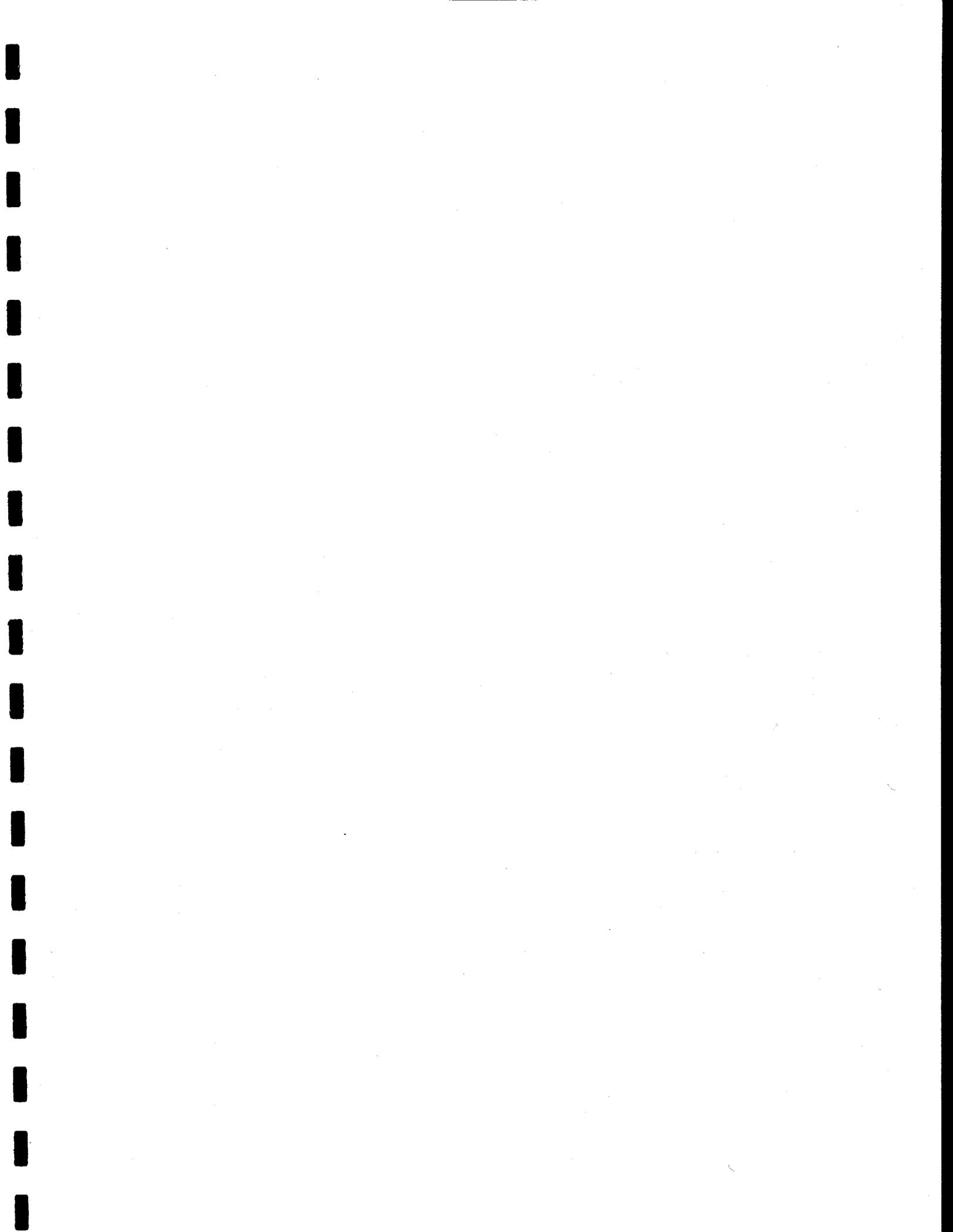
11 
12 ROBERT P. DICKERSON, ESQ.
13 Nevada Bar No. 000945
14 1745 Village Center Circle
15 Las Vegas, Nevada 89134
16 Attorneys for Petitioner
17 MARIA MASKALL


DENNIS L. KENNEDY, ESQ.
Nevada Bar No. 1462
KIMBERLY R. MCGHEE
Nevada Bar No. 9728
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
Attorneys for Respondents
STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES

18
19
20 IT IS SO ORDERED.

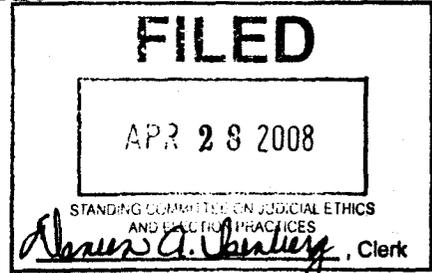
21 DATED this 22 day of June, 2010.


DISTRICT COURT JUDGE *kg*



STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES



IN RE: UNFAIR ELECTION PRACTICE)
)
FILED BY JUDICIAL CANDIDATE MARIA)
MASKALL AGAINST JUDICIAL CANDIDATE)
BRIGID DUFFY)
COMPLAINT UNDER NEVADA CODE OF)
JUDICIAL CONDUCT CANON 5A(3)(d)(ii))

PUBLISHED DECISION: 08-1

A complaint has been submitted to the Standing Committee on Judicial Ethics and Election Practices by Candidate Maria Maskall against Candidate Brigid Duffy. Both are running for the position of District Judge in the Eighth Judicial District Court, Department "R". The District Court serves Clark County, Nevada.

Background.

The complaint was submitted on February 25, 2008. On or about March 14, 2008, Candidate Brigid Duffy responded to the complaint with pertinent facts and legal argument. On March 17, 2008, Candidate Maria Maskall replied to Candidate Duffy's response with additional legal argument. Pursuant to Rule 4.1 of the Rules Governing the Standing Committee on Judicial Ethics and Election Practices (the "Committee Rules"), a panel was appointed to hear and decide this matter.

The facts material to the issues raised by the complaint are not in dispute. However, the principal issue is a difficult question of law which is mostly unrelated to Canon 5 of the Code of Judicial Conduct. For those reasons, the panel conferred by telephone conference to determine if and how to proceed. Rule 5.4(d) of the Committee Rules requires the Committee to decline to act on a request for an ethics advisory opinion when the "request involves activities, the propriety of which depends principally on a question of law unrelated to judicial

1 ethics," and Rule 5.4(f) allows it to decline to act on such a request when the Committee
2 determines it is not advisable to respond. There are no similar provisions in the Committee
3 Rules with respect to deciding an election complaint. Therefore, the panel agreed that it was
4 obligated to decide this matter, and directed the Chairman to contact the parties to determine if
5 either, or both, required a hearing, and to advise them that the Committee was also prepared to
6 decide the complaint based upon the written record.
7

8 On Monday, April 14, 2008, the Chairman spoke by telephone conference with both
9 candidates. Both candidates waived a hearing, and agreed that the matter could be decided
10 based upon the written record.

11 **The Declaration of Candidacy Filed by Candidate Duffy.**

12 A person filing for district court judge must complete and sign under penalty of perjury
13 a "Declaration of Candidacy" form. Among other things, that form requires the candidate to
14 state that he or she "will qualify for the office if elected thereto." Here, Candidate Duffy
15 completed such a form. A blank copy of the form is appended to this decision.
16

17 Central to the complaint in this matter is the qualification for district judge set forth in
18 N.R.S. 3.060(1)(c), as follows:

19 1. A person may not be a candidate for or be eligible to the office of district
20 judge:

21 (c) Unless he has been an attorney licensed and admitted to practice
22 law in the courts of this State, another state or the District of Columbia, for a
23 total of not less than 10 years at any time preceding his election or appointment,
at least two years of which has been in this State.

24 [Emphasis added].
25
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1 That provision was added to N.R.S. 3.060 in 2005. As will become apparent below, the date of
2 "his election" from which the 10-year period is to be measured makes all the difference here.

3 Candidate Duffy was admitted to the bar of, and licensed to practice law in the State of
4 Pennsylvania on December 17, 1998, and was licensed and admitted to the practice of law in
5 New Jersey on January 15, 1999. She has been licensed and admitted to the practice of law in
6 Nevada for longer than two years.
7

8 Candidate Maskall argues that because on the date of the general election, November 4,
9 2008, Candidate Duffy will not have been an attorney licensed and admitted to practice law in
10 the courts of any state "for a total of not less than 10 years," she is not qualified to be a
11 candidate for, or eligible to, the office of district judge. As a result, Candidate Maskall
12 contends that Candidate Duffy has knowingly misrepresented her qualifications. Canon
13 5A(3)(d)(ii) of the Code of Judicial Conduct prohibits a candidate from knowingly
14 misrepresenting the candidate's qualifications. The Code defines "knowingly" as "actual
15 knowledge of the fact in question," and states that "knowledge may be inferred from the
16 circumstances." The misrepresentation, if there is one, occurred when Candidate Duffy filed
17 for office and certified that she "will qualify for the office if elected thereto."
18

19 At the outset, it is important to be clear about the functions of the Committee here. The
20 Committee is to provide "a forum to resolve charges of knowing misrepresentation of the . . .
21 qualifications . . . concerning the candidate" and to "decide whether a candidate has engaged in
22 unfair election practices." Committee Rules, Rules 2.1 and 2.2. A violation of Canon
23 5A3(d)(ii) would be an unfair election practice. Committee Rules, Rule 4. The Committee has
24 no authority to make a determination on the ultimate question of whether Candidate Duffy is
25 qualified as a candidate, or is eligible to the office of district judge within the meaning of
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1 N.R.S. 3.060.¹ However, the fact that N.R.S. 3.060(1)(c) may be susceptible to more than one
2 interpretation is a circumstance which the Committee may consider in deciding if there has
3 been a misrepresentation here and, if so, whether it was made knowingly.

4 There is a certain incongruity in the notion that an "unfair election practice" can arise
5 from the filing of the very declaration of candidacy which is needed for one to even participate
6 in the election contest in which the unfair election practice has been alleged to occur.
7 Assuming for the sake of argument that it can, it is important to recognize that there is nothing
8 in the record before the Committee which in any way indicates that Candidate Duffy
9 misrepresented the dates when she was licensed and admitted to the practice of law in any state.
10 In addition, prior to filing her candidacy, Candidate Duffy researched the legislative history
11 regarding the 2005 amendments to N.R.S. 3.060. She consulted with at least one private
12 attorney, and contacted the Nevada Attorney General's Office and the Nevada Secretary of
13 State's Office concerning how N.R.S. 3.060 might be interpreted. Her review of the legislative
14 history of the amendment, like the independent review of that history by the Committee,
15 yielded no helpful information. There is no discussion in that history concerning how "his
16 election" is to be interpreted and applied. Candidate Duffy's consultations with a private
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22 ¹ That might have been decided by a court had there been a timely challenge under N.R.S.
23 293.182 to Candidate Duffy's qualifications. However, the last date for such a challenge here
24 was February 1, 2008. The fact that the Declaration of Candidacy form does not call for
25 specific information related to the precise qualifications required by N.R.S. 3.060 may have
26 contributed to the fact that the short time allowed for a challenge under N.R.S. 293.182 expired
27 without a challenge being filed. It may still be possible for a court to decide this issue before
28 the primary election, perhaps under N.R.S. Chapter 30 concerning declaratory relief, or
pursuant to an extraordinary writ proceeding under N.R.S. Chapter 34. In any event, a court
may still decide the question under the provisions of N.R.S. 293.407 in a contest filed within 14
days after November 4, 2008, if Candidate Duffy receives the most votes in the general
election. The grounds would be that the "person who has been declared elected to an office
was not at the time of election eligible to that office." N.R.S. 293.410(2)(b).

1 attorney and communications with the Attorney General's Office and the Secretary of State's
2 Office also did not result in a definitive interpretation.

3 Therefore, Candidate Duffy filed for election, and in her declaration of candidacy she
4 stated that she would "qualify for the office if elected thereto." Whether that is a
5 "misrepresentation" of Candidate Duffy's qualifications turns on the date which will constitute
6 "[her] election," and from which the 10-year period of being licensed and admitted to practice
7 law required by N.R.S. 3.060(1)(c) is to be measured.

8
9 Candidate Maskall contends that N.R.S. 3.060(1)(c) is clear on its face, and that the 10-
10 year period must be calculated from the date of the general election, which in this case is
11 November 4, 2008. If that interpretation is correct, Candidate Duffy would be ineligible to be a
12 candidate for, or eligible to, the office of district judge. On the other hand, Candidate Duffy
13 contends that the phrase "his election" is subject to numerous interpretations. She argues that it
14 could be the date of the primary election, the date of the general election, or the date the person
15 with the most votes assumes office.² She also asserts that the period between her passing of the
16 Pennsylvania bar exam, October 1, 1998, and her admission and licensing in that State on
17 December 17, 1998, during which time she worked in the Philadelphia District Attorney's
18 Office, should be considered part of the 10-year period.³

19
20 The question for the Committee is whether, at the time of filing, Candidate Duffy had
21 actual knowledge that she would not "qualify for the office [of district judge] if elected
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24 ² In the judgment of the Committee, "his election" could never be the date of a primary election
25 because primary elections are for the purpose of "nomination" and not election. See, N.R.S.
26 293.175.

27 ³ The Committee concludes that N.R.S. 3.060(1)(c) is clear in its requirement that the 10-year
28 period must be 10 years of being licensed and admitted, and that performing legal work for a
time without being licensed and admitted simply does not satisfy the requirement.

1 thereto," or whether, under the circumstances, such knowledge could be inferred within the
2 meaning of the Code and Canon 5A3(d)(ii). It is clear that Candidate Duffy knew there was an
3 issue associated with her ability to meet the statutory requirement of N.R.S. 3.060(1)(c).
4 However, the Committee concludes she did not actually know then, and she does not actually
5 know now, that she will not qualify for the office of district judge, if elected.
6

7 The Committee agrees that the relevant provisions of N.R.S. 3.060 are susceptible to
8 more than one interpretation, some of which may reach or go beyond the tenth anniversary of
9 Candidate Duffy's licensing and admission to practice law in Pennsylvania. As a result of those
10 possible interpretations, which are discussed below, the Committee concludes that actual
11 knowledge cannot be inferred here.
12

13 The interpretation of N.R.S. 3.060 will be guided by numerous legal principles
14 established by Nevada case law concerning statutory construction. There are some which relate
15 directly to this situation. Those include the principle that "ambiguities are to be resolved in
16 favor of eligibility to office," and that statutes imposing qualifications are to be liberally
17 construed "in favor of the right of people to exercise freedom of choice in the selection of their
18 officers." *Gilbert v. Breithaupt*, 60 Nev. 162, 104 P.2d 183, 184 (1940). Our Supreme Court
19 has said that no election is complete, or a candidate qualified to serve, until there has been a
20 proper canvass and certification of the result. *State v. Meder*, 22 Nev. 264 (1895).
21

22 It is useful to consider all of the qualifications set forth in N.R.S. 3.060(1). Although
23 nearly meaningless in light of the licensed and admitted to practice for a 10-year period
24 requirement, N.R.S. 3.060(1)(a) requires that the person "has attained the age of 25 years"
25 without any reference as to when, i.e., on filing, at the general election, upon being declared
26 elected after a canvass of the vote, upon receiving a certificate of election, or upon assuming
27 office. N.R.S. 3.060(1)(b), like N.R.S. 3.060(1)(c), refers to the time of "his election."
28

1 [Emphasis added]. On the other hand, N.R.S. 3.060(1)(d) relating to residency refers to "2
2 years next preceding the election." [Emphasis added].

3 Under Nevada law, it is clear that an election is not complete when the polls close on
4 the date of the election. When the polls close, the counting board must count the ballots, and
5 complete a tally list which records the number of votes cast for each candidate. See e.g.,
6 N.R.S. 293.3625 through N.R.S. 293.385. The duties are slightly different for mechanical
7 voting. See, N.R.S. 293B.330, et seq. The process may or may not be finished on a date which
8 is the same day as when the general election was held.

9
10 Thereafter, N.R.S. 293.387 requires that the returns from all the precincts and districts
11 in any county be canvassed by the board of county commissioners. The canvass is to take place
12 on or before the sixth working day following the election. See, N.R.S. 293.387. N.R.S.
13 293.032 defines "canvass" as "a review of the election results by the board of county
14 commissioners or the mayor and city council or the justices of the Supreme Court, by which
15 any errors within the election results are officially noted, and the official election results are
16 declared. The board of county commissioners, in making their canvass, are to note "any
17 clerical errors discovered" and are to "take account of changes resulting from the discovery, so
18 that the result declared represents the true vote cast." Once that declaration is made, the county
19 clerk enters upon the records of the board an abstract of the result which contains the number of
20 votes cast for each candidate. The board then causes the county clerk to certify the abstract and
21 to transmit the abstract and a report of the abstract to the Secretary of State within 7 working
22 days after the election. See, N.R.S. 293.387(1), (2) and (3).

23
24
25 On the fourth Tuesday of November, after the general election, the justices of the
26 Supreme Court meet with the Secretary of State and open and canvass the vote for, among
27 others, district judges. N.R.S. 293.395(2). Pursuant to Article 5, § 4 of the Nevada
28

1 Constitution, they are to declare the result and publish the names of the persons elected.
2 Thereafter, N.R.S. 293.395(3) requires the Governor to issue "certificates of election" to the
3 persons having the highest number of votes and to issue proclamations declaring the election of
4 those persons. That statute does not set a specific date for the Governor to do so, but
5 convention and the constitutional provisions governing when candidates take office normally
6 dictate a date prior to the date on which officers are sworn into office by taking the oath
7 administered by an officer empowered to do so. Pursuant to Article 6, § 5, of the Nevada
8 Constitution, an elected district judge takes office on the first Monday of January next
9 succeeding their election and qualification.
10

11 In addition, to the foregoing provisions, Nevada law provides for ties, recounts and
12 contests.⁴ If there is a tie in a general election for district judge, the "legislature shall by joint
13 vote of both houses, elect one of those persons to fill the office." N.R.S. 293.400(1)(a).
14 [Emphasis added]. If there is an election contest, the court deciding the contest may declare the
15 person bringing the contest elected. N.R.S. 293.317(1). There is no specific time frame by
16 which an election contest must be decided, although such contests "take precedence over all
17 regular business of the court in order that the results of elections shall be determined as soon as
18 practicable." N.R.S. 293.413(2).
19

20 Here, the general election will take place on Tuesday, November 4, 2008. The Clark
21 County Board of County Commissioners must complete its canvass on or before the sixth
22 working day following the election, or by Wednesday, November 12, 2008. The Nevada
23 Supreme Court and Secretary of State will meet on Tuesday, November 25, 2008, to canvass
24

25
26 ⁴ Although the Committee does not suggest that the legislature would intend that the 10-year
27 period be calculated based upon time frames involving ties, recounts and contests, the
28 Committee refers to these provisions to show that "his election" may well occur on a date
different from "the election."

1 the vote for district judges and declare the result. The Governor of Nevada will issue a
2 certificate of election sometime before January 5, 2009, but perhaps on or after December 17,
3 2008, and the elected district judge will assume office on January 5, 2009.⁵

4 It is not clear which of these possible dates the legislature intended be used to measure
5 whether a person "has been an attorney licensed and admitted to practice law . . . for a total of
6 not less than 10 years at any time preceding his election." [Emphasis added]. The use of the
7 phrase "his election" arguably indicates that the qualification need not be fully satisfied at the
8 time of "his filing." Finally, it is possible in the normal election process, without a tie, recount
9 or contest, that a certificate of election for this office could be issued on or after the tenth
10 anniversary of Candidate Duffy's licensing and admission to practice law in Pennsylvania. The
11 date for assuming office is also after that tenth anniversary.
12

13 Thus, under all the circumstances here, the Committee cannot conclude that by the mere
14 filing for the position of district judge, Candidate Duffy has knowingly misrepresented her
15 qualifications. She has made no affirmative representation that she was admitted and licensed
16 to practice law at any time, except upon the dates on which she was so admitted and licensed.
17 The mere fact that she filed for the office of district judge does not amount to an affirmative
18 representation on her part that she was admitted and licensed to practice law on dates other than
19 the actual dates on which she was so admitted and licensed. The only way in which one might
20 draw such an inference would be through an interpretation of precisely what the legislature
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25 ⁵ Some courts have determined that the date for measuring compliance with qualifications like
26 these should be the date of assumption of office, rather than the date of the general election,
27 because a required qualification could be lost between the two dates. In a very early case, *State*
28 *v. Clarke*, 3 Nev. 566 (1868), the Nevada Supreme Court interpreted the word "eligible," which
is also used in N.R.S. 3.060(1), to mean both capable of being legally chosen for, and capable
of legally holding, an office.

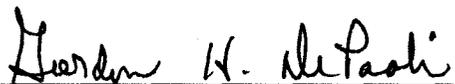
1 intended in N.R.S. 3.060(1)(c), an interpretation which this Committee believes presents a
2 difficult legal issue under all circumstances.

3 By its disposition of this complaint, the Committee does not intend to suggest that a
4 serious issue is not presented here as to whether Candidate Duffy, if she receives the most votes
5 in the general election, will in fact satisfy the qualification requirements of N.R.S. 3.060(1)(c).
6 However, Candidate Duffy, by merely filing for the position of district judge, has not
7 knowingly misrepresented her qualifications. Therefore, the Committee concludes that Canon
8 5A(3)(d)(ii) has not been violated, and that no unfair election practice has occurred.
9

10 This decision shall be published in accordance with Rules 4.4 and 4.5 of the Committee
11 Rules.

12 April 28, 2008

13
14 NEVADA STANDING COMMITTEE ON
15 JUDICIAL ETHICS AND ELECTION PRACTICES

16 
17 GORDON H. DePAOLI
18 Committee Chairman

State of Nevada Declaration of Candidacy of

For the Office of

Nonpartisan Office

Secretary of State Ross Miller

STATE OF NEVADA

COUNTY OF

For the purpose of having my name placed on the official ballot as a candidate for the office of I, the undersigned do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at in the City or Town of County of State of Nevada; that my actual, as opposed to constructive, residence in the state, district, county, township, city or other area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing declarations of candidacy for this office, in addition to any other requirements required by law; that my telephone number is and the address at which I receive mail, if different than my residence, is; that if nominated as a nonpartisan candidate at the ensuing election I will accept the nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this state; that I will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the Constitution and laws of this State concerning the number of years or terms for which a person may hold the office; and my name will appear on all ballots as designated in this declaration.

Signature of candidate for office

Designation of name to appear on ballot

Designation of name to appear on certificate of election

E-mail address (optional)

Subscribed and sworn or affirmed to before me this day of the month of of the year 2008.

Name of Candidate

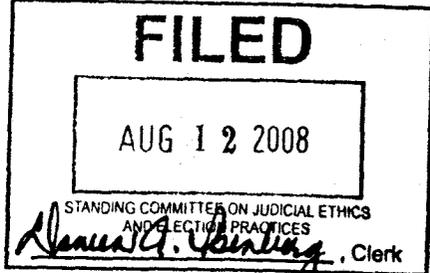
Notary Public or other person authorized to administer an oath

Reset Form



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STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES



IN RE UNFAIR ELECTION PRACTICE)
)
FILED BY JUDICIAL CANDIDATE BRIGID)
DUFFY AGAINST JUDICIAL CANDIDATE)
MARIA MASKALL; COMPLAINT UNDER)
NEVADA CODE OF JUDICIAL CONDUCT)
CANON 5A(3)(a))

PUBLISHED DECISION: 08-2

Clark County Family Court Division, Department "R", candidate Brigid Duffy brought a complaint against opponent Maria Maskall claiming violation of the Nevada Code of Judicial Conduct, Canon 5A(3)(a), for failing to maintain the dignity and integrity expected of one who may hold a judicial office. Candidate Duffy specifically alleged that that Ms. Maskall released a confidential Standing Committee ("Committee") document to the public.

CHRONOLOGY

On February 25, 2008, Candidate Maskall submitted a Judicial Election Complaint ("Complaint") against Ms. Duffy to the Committee in which she challenged Ms. Duffy's qualifications to run for public office under Judicial Canon 5A(3)(d)(ii). Citing the ten (10) year licensure rule in NRS 3.060(1)(c), Candidate Maskall alleged her opponent Duffy will not be licensed for the requisite number of years prior to the date of the general election and, thus, is not qualified to run for family court.

As provided for under Rule 4.1 of the Rules Governing the Standing Committee ("Committee Rules"), a panel considered Candidate Maskall's Complaint and issued Published Decision 08-1 on April 28, 2008. Stating there may still be a question under NRS 3.060(1)(c) if Brigid Duffy were to win the general election, the Committee did not find, however, that she knowingly misrepresented her qualifications in violation of Judicial Canon 5A(3)(d)(ii).

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3 On April 29, 2008, Maria Maskall sued Brigid Duffy in the Eighth Judicial District Court for
4 Clark County. Ms. Maskall filed a Motion for Declaratory Relief and Preliminary and Permanent
5 Injunction on May 8, 2008. This Motion was ultimately denied by the Court. On May 30, 2008,
6 Attorney Robert P. Dickerson, on behalf of Candidate Maskall, filed a Motion for Reconsideration.
7 He attached as an exhibit a copy of the unpublished response Brigid Duffy filed with the Committee
8 in reply to Candidate Maskall's February 25, 2008 Judicial Election Complaint.

9 On June 10, 2008, Candidate Duffy filed a Judicial Election Complaint with the Standing
10 Committee. She alleged Maria Maskall violated Judicial Canon 5A(3)(a) by not maintaining the
11 dignity and integrity expected of one running for a judicial office, based on Maskall's release of the
12 unpublished response Duffy had filed with the Committee.

13 Candidates Duffy and Maskall waived the need for a hearing. In keeping with Committee
14 Rule 4.1, a panel considered Brigid Duffy's June 10 Complaint.

15 DECISION

16 While the Standing Committee does not question Candidate Maskall's right to take her case
17 to District Court after the Committee ruled on her February 25, 2008 Complaint, it does question the
18 information she supplied to the Court. The disclosure of Duffy's unpublished response to the
19 Committee is the crux of the issue. Thus, the question becomes one of potential violation of the
20 integrity of the Committee process, not one of breach of the Judicial Canon requiring a candidate to
21 act in a manner consistent with the "impartiality, integrity and independence" of the judiciary.

22 Rule 4.5 for the Standing Committee on Judicial Ethics and Election Practices provides:

23 All meetings of panels concerning unfair election practices are confidential.
24 Any decision shall be signed by the chair or vice-chair, and all decisions must
25 be made public.

26 The Committee concludes Candidate Maskall did not violate Judicial Canon 5A(3)(a) by
27 releasing the Duffy response to the Maskall Judicial Election Complaint. However, the Committee
28 concludes Ms. Maskall did violate the confidentiality provision of Committee Rule 4.5 by publically
disclosing the Duffy response.

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This Decision shall be published in accordance with Committee Rules 4.4 and 4.5.

August 11, 2008

NEVADA STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES.



Kathleen M. Paustian, Esq.
Vice-Chair