

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

June 05, 2015

A-15-719406-P In the Matter of the Petition of
Catherine Ramsey

June 05, 2015 9:30 AM Minute Order

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Marwanda Knight

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- None. Minute Order only - no hearing held.

BEING a member of Nevada s Commission on Judicial Discipline, and given that significant issues involved in this case relate to the role of such Commission, and not wanting to appear to be acting in a dual role or to be acting on behalf of the Commission, the Court hereby RECUSES and directs that this case be reassigned at random. Canon 2, Rule 2.11(A).

IT IS SO ORDERED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filings (Petition)

COURT MINUTES

June 18, 2015

A-15-719406-P In the Matter of the Petition of
Catherine Ramsey

June 18, 2015 8:30 AM All Pending Motions

HEARD BY: Johnson, Eric COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER:

REPORTER: Amber Riggio

PARTIES

PRESENT:	Gentile, Dominic P.	Attorney
	Gordon, Richard C.	Attorney
	McCarty, Colleen E.	Attorney
	Miller, Ross J.	Attorney

JOURNAL ENTRIES

- PETITIONER'S EMERGENCY PETITION FOR INJUNCTION...RESPONDENTS BETTY HAMILTON, MICHAEL WILLIAM MORENO AND BOB BORGERSEN'S OPPOSITION TO EMERGENCY PETITION FOR INJUNCTION/EMERGENCY MOTION UNDER NRS 295.104 (4); COUNTERMOTION FOR SANCTIONS PURSUANT TO EDCR 7.60 (B)

Arguments by Mr. Mueller and Mr. Miller in support of their respective positions. Mr. Mueller argued that he feels this is a complaint; that the City Clerk had 5 days to call for a hearing. Mr. Miller feels this Petition was not properly filed and after argument, indicated there are enough signatures to remove Judge Ramsey, however, she will remain on the bench during this process, so she is not prejudiced. Arguments by Mr. Gordon.

Arguments by Mr. Mueller and Mr. Miller as to consolidation between this case and a case in Dept. 1. COURT ORDERED, the matter of consolidation is UNDER ADVISEMENT. Further, if this Court decides to consolidate the cases, it will then determine constitutionality.

Continued arguments by Mr. Miller, Mr. Mueller and Mr. Gordon. Court advised it will issue

A-15-719406-P

something no later than Monday.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

June 29, 2015

A-15-719406-P In the Matter of the Petition of
Catherine Ramsey

June 29, 2015 9:00 AM Hearing

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER: Amber Riggio

PARTIES

PRESENT: Byrne, Patrick G. Attorney
 Gordon, Richard C. Attorney
 McCarty, Colleen E. Attorney
 Miller, Ross J. Attorney
 Mueller, Craig A Attorney

JOURNAL ENTRIES

- Testimony and exhibits presented. Following argument of counsel. COURT ORDERED, MATTER CONTINUED.

7-02-15 1:00 PM HEARING (DEPT. XX)

CLERK'S NOTE: The documents presented prior to the hearing reconvening, were never marked for evidence, offered or admitted. ls

A719406

EXHIBITS

CASE NO. PLT7's

	Date Offered	Objection	Date Admitted
1) EMAIL FROM B. ANDOLNA	6-29-15	N	6-29-15
2) RECALL PETITION - 000030			
3) RECALL PETITION - 000050			
4) RECALL PETITION - 000087			
5) RECALL PETITION - 000117			
6) RECALL PETITION - 00147			
7) RECALL PETITION - 000123			
✓ 8) RECALL PETITION - 000112	6-29-15	N	6-29-15
9. PETITION RECEIPT			
✓ 10) RECALL PETITION - 000075	6-29-15	N	6-29-15
✓ 11) RECALL PETITION - 000076			
✓ 12) RECALL PETITION - 000142			
✓ 13) RECALL PETITION - 000062	↓	↓	↓
14. E-MAIL FROM JOHN JACKSON ^{5/29/15} _{3:13pm}	7/2	N/O	7/2/15
15. E-MAIL FROM JOHN JACKSON ^{5/29/15} _{3:58pm}	7/2	N/O	7/2/15
16. RECALL PETITION - 4	7/2	N/O	7/2/15
17. RECALL PETITION - 75	7/2	N/O	7/2/15
18. RECALL PETITION - 85	7/2	N/O	7/2/15
19. RECALL PETITION - 74	7/2	N/O	7/2/15
20. RECALL PETITION - 124	7/2	N/O	7/2/15
21. RECALL PETITION - 21	7/2	N/O	7/2/15
22. RECALL PETITION - 104	7/2	N/O	7/2/15
23. RECALL PETITION - 159	7/2	N/O	7/2/15



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

CRAIG A. MUELLER, ESQ.
600 S. EIGHTH ST.
LAS VEGAS, NV 89101

DATE: July 20, 2015
CASE: A719406 C/W A719651

RE CASE: HONORABLE CATHERINE RAMSEY NORTH LAS VEGAS MUNICIPAL JUDGE
vs. THE CITY OF NORTH LAS VEGAS; BARBARA A. ANDOLINA, City Clerk of NORTH LAS
VEGAS; BETTY HAMILTON, MICHAEL WILLIAM MORENO, and BOB BORGERSEN,
individually and a Members of "REMOVE RAMSEY NOW"

NOTICE OF APPEAL FILED: July 16, 2015

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION & ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

HONORABLE CATHERINE RAMSEY
NORTH LAS VEGAS MUNICIPAL JUDGE,

Plaintiff(s),

vs.

THE CITY OF NORTH LAS VEGAS;
BARBARA A. ANDOLINA, City Clerk of
NORTH LAS VEGAS; BETTY HAMILTON,
MICHAEL WILLIAM MORENO, and BOB
BORGENSEN, individually and a Members of
"REMOVE RAMSEY NOW",

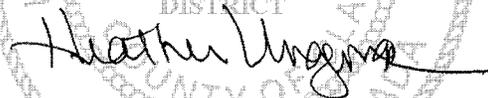
Defendant(s),

Case No: A719406
Consolidated with A719651
Dept No: XX

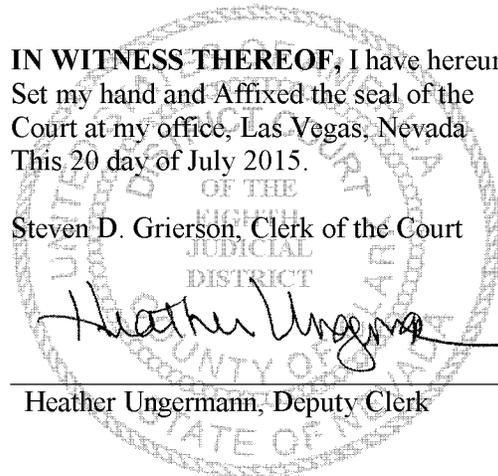
now on file and of record in this office.

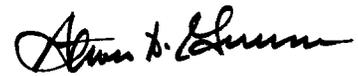
IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of July 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk





CLERK OF THE COURT

Electronically Filed
Jul 21 2015 03:14 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 NOTC
2 MUELLER, HINDS & ASSOCIATES
3 CRAIG A. MUELLER, ESQ.
4 Nevada Bar No. 4703
5 STEVEN M. GOLDSTEIN, ESQ.
6 Nevada Bar No. 6318
7 600 S. Eighth Street
8 Las Vegas, Nevada 89101
9 sgoldstein@muelhinds.com
10 (702)382-1200
11 Attorney for Petitioners

8 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CLARK

10 HONORABLE CATHERINE RAMSEY
11 NORTH LAS VEGAS MUNICIPAL JUDGE
12 Petitioner,

12 vs.

13 THE CITY OF NORTH LAS VEGAS AND
14 BARBARA A. ANDOLINA City Clerk of
15 NORTH LAS VEGAS, BETTY HAMILTON,
16 MICHAEL WILLIAM MORENO, and BOB
BORGERSEN, individually and as Members
of "REMOVE RAMSEY NOW,"

17 Respondents

Case No.: A-15-719406-P

Dept No.: XX

Consolidated with:

A-15-719651-C

18 NOTICE OF APPEAL

21 Notice is hereby given that Appellant, HONORABLE CATHERINE RAMSEY, by and
22 through his counsel of record, CRAIG A. MUELLER, ESQ. of MUELLER, HINDS & ASSOCIATES,
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24 ///

26 ///

1 hereby appeals to the Supreme Court of Nevada from the District Court's Order filed on July 6, 2014
2 denying her Emergency Petition for Injunction in *Case No. A-15-719406-P* and Denying her
3 Complaint in Case No. A-15-719651-C .
4

5 DATED this 16 day of July, 2015.

6 MUELLER, HINDS & ASSOCIATES.

7 

8 CRAIG A. MUELLER, ESQ.

9 Nevada Bar No. 004703

10 STEVEN M. GOLDSTEIN, ESQ.

11 Nevada Bar No. 006318

12 600 S. Eighth Street

13 Las Vegas, Nevada 89101

14 (702) 382-1200

15 Attorney for Appellant
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16th day of July, 2015, I faxed and hereby deposited a true and correct copy of the NOTICE OF APPEAL, U.S. Mail, postage fully pre-paid addressed to:

Dominic Gentile, Esq.
Ross Miller, Esq.
Colleen McCarty, Esq.
GENTILE, CRISTALLI, MILLER,
ARMENI & SAVARESE
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
dgentile@gentilecristalli.com
cmccarty@gentilecristalli.com
rmiller@gentilecristalli.com
Attorney for Respondents:
Bob Borgerson, Betty Hamilton and
Michael William Moreno

Richard C. Gordon, Esq.
SNELL & WILLMER
3883 Howard Hughes Pkwy. #600
Las Vegas, Nevada 89169
702-784-5252
Email: rgordon@swlaw.com
Attorney for Respondents:
City Clerk of North Las Vegas and
Barbara A. Andolina, City Clerk


An employee of
MUELLER, HINDS & ASSOCIATES

DEPARTMENT 20
CASE SUMMARY
CASE NO. A-15-719406-P

**In the Matter of the Petition of
 Catherine Ramsey**

§
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Location: **Department 20**
 Judicial Officer: **Johnson, Eric**
 Filed on: **06/04/2015**
 Case Number History:
 Cross-Reference Case Number: **A719406**

CASE INFORMATION

Related Cases

A-15-719651-C (Consolidated)

Case Type: **Other Civil Filings (Petition)**

Case Flags: **Consolidated - Lead Case
 Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-15-719406-P
Court	Department 20
Date Assigned	06/08/2015
Judicial Officer	Johnson, Eric

PARTY INFORMATION

		<i>Lead Attorneys</i>
Petitioner	Ramsey, Catherine	Mueller, Craig A <i>Retained</i> 702-382-1200(W)
Respondent	Andolina, Barbara A	Byrne, Patrick G. <i>Retained</i> 702-784-5200(W)
	Borgersen, Bob	Gentile, Dominic P. <i>Retained</i> 702-880-0000(W)
	Hamilton, Betty	Gentile, Dominic P. <i>Retained</i> 702-880-0000(W)
	Moreno, Michael Williams	Gentile, Dominic P. <i>Retained</i> 702-880-0000(W)
	North Las Vegas City of	Byrne, Patrick G. <i>Retained</i> 702-784-5200(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

06/04/2015	 Notice of Motion Filed By: Petitioner Ramsey, Catherine <i>Notice of Motion Emergency Petition for Injunction</i>
06/04/2015	Case Opened
06/04/2015	 Petition Filed by: Petitioner Ramsey, Catherine <i>Emergency Petition for Injunction</i>

DEPARTMENT 20
CASE SUMMARY
CASE NO. A-15-719406-P

- 06/05/2015  Initial Appearance Fee Disclosure
Filed By: Petitioner Ramsey, Catherine
Initial Appearance Fee Disclosure
- 06/05/2015  **Minute Order** (9:30 AM) (Judicial Officer: Denton, Mark R.)
- 06/05/2015  Notice of Department Reassignment
Notice of Department Reassignment
- 06/05/2015  Notice of Change of Hearing
Notice of Change of Hearing
- 06/08/2015  Opposition and Countermotion
Filed By: Respondent Hamilton, Betty
Opposition to Emergency Petition for Injunction/ Emergency Motion Under NRS 295.104(4) and Countermotion for Sanctions Pursuant to EDCR 7.60(B)
- 06/08/2015  Initial Appearance Fee Disclosure
Filed By: Respondent Hamilton, Betty
Initial Appearance Fee
- 06/08/2015  Peremptory Challenge
Party: Petitioner Ramsey, Catherine
Plaintiff's Peremptory Challenge of Judge
- 06/08/2015  Notice of Department Reassignment
Party: Petitioner Ramsey, Catherine
Notice of Department Reassignment
- 06/08/2015  Media Request and Order
Party: Petitioner Ramsey, Catherine
Media Request and Order Allowing Camera Access to Court Proceedings.
- 06/12/2015  Joinder
Filed By: Respondent North Las Vegas City of
The City of North Las Vegas and Barbara A. Andolina City Clerk's Partial Joinder to Respondents' Opposition to Emergency Petition for Injunction
- 06/15/2015  Media Request and Order
Media Request And Order Allowing Camera Access To Court Proceedings
- 06/16/2015  Ex Parte Motion
Filed By: Petitioner Ramsey, Catherine
Ex Parte Motion to Request an Expedited Hearing Pursuant to NRS 295.210(4) Upon an Order Shortening Time
- 06/16/2015  Ex Parte Motion
Filed By: Petitioner Ramsey, Catherine
Ex Parte Motion to Request an Expedited Hearing Pursuant to NRS 295.210(4) Upon an Order Shortening Time
- 06/17/2015  Opposition to Motion
Filed By: Respondent North Las Vegas City of
The City of North Las Vegas and Barbara A. Andolina City Clerk's Opposition to Ex Parte

DEPARTMENT 20
CASE SUMMARY
CASE NO. A-15-719406-P

Motion to Request an Expedited Hearing Pursuant to NRS 295.210(4) Upon an Order Shortening Time

- 06/18/2015 **Motion** (8:30 AM) (Judicial Officer: Johnson, Eric)
Events: 06/04/2015 Notice of Motion
Petitioner's Emergency Petition for Injunction
- 06/18/2015 **Opposition and Countermotion** (8:30 AM) (Judicial Officer: Johnson, Eric)
Events: 06/08/2015 Opposition and Countermotion
Respondents Betty Hamilton, Michael William Moreno and Bob Borgersen's Opposition to Emergency Petition for Injunction/ Emergency Motion Under NRS 295.104(4); Countermotion for Sanctions Pursuant to EDCR 7.60(B)
- 06/18/2015  **All Pending Motions** (8:30 AM) (Judicial Officer: Johnson, Eric)
- 06/19/2015  Reply to Opposition
Filed by: Petitioner Ramsey, Catherine
Petitioner Catherine Ramsey's Reply to Opposition to Hamilton, Moreno and Borgersen's Opposition to Emergency Petition for Injunction and Countermotion for Sanctions and the City of North Las Vegas and Barnara Andolina's Partial Joinder to Respondents Opposition to Emergency Petition
- 06/23/2015  Order Granting
Order Granting Consolidation of Actions Pursuant to Nevada Rule of Civil Procedure 42(a)
- 06/25/2015  Answer to Complaint
Filed by: Respondent North Las Vegas City of
The City of North Las Vegas and Barbara A. Andolina City Clerk's Answer to Plaintiff Catherine Ramsey, North Las Vegas Municipal Judge's Complaint
- 06/25/2015  List of Witnesses
Filed By: Respondent Hamilton, Betty
Defendant's List of Witnesses and Exhibits
- 06/26/2015  Motion to Continue
Filed By: Petitioner Ramsey, Catherine
Petitioner Catherine Ramsey's Motion to Continue The Evidentiary Hearing
- 06/26/2015  Supplement
Filed by: Petitioner Ramsey, Catherine
Petitioner Catherine Ramsey's Supplement to Arguments Made in Support of the Emergency Petition for Injunction
- 06/26/2015  Motion in Limine
The City of North Las Vegas and Barbara A. Andolina City Clerk's Motion In Limine to Exclude Any References to Irrelevant, Inflammatory, Prejudicial or Cumulative Evidence
- 06/27/2015  Joinder to Motion in Limine
Defendants' Joinder in The City of North Las Vegas and Barbara A. Andolina City Clerk's Motion In Limine to Exclude Any References to Irrelevant, Inflammatory, Prejudicial or Cumulative Evidence
- 06/29/2015  **Hearing** (9:00 AM) (Judicial Officer: Johnson, Eric)
06/29/2015, 07/02/2015
- 07/06/2015  Decision and Order

DEPARTMENT 20
CASE SUMMARY
CASE NO. A-15-719406-P

	<i>Decision and Order</i>	
07/07/2015	 Notice of Entry of Order Filed By: Respondent Hamilton, Betty <i>Notice of Entry of Order</i>	
07/16/2015	 Notice of Appeal	

DATE	FINANCIAL INFORMATION
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Petitioner Ramsey, Catherine		
Total Charges		720.00
Total Payments and Credits		720.00
Balance Due as of 7/20/2015		0.00
Respondent Borgersen, Bob		
Total Charges		30.00
Total Payments and Credits		30.00
Balance Due as of 7/20/2015		0.00
Respondent Hamilton, Betty		
Total Charges		223.00
Total Payments and Credits		223.00
Balance Due as of 7/20/2015		0.00
Respondent Moreno, Michael Williams		
Total Charges		30.00
Total Payments and Credits		30.00
Balance Due as of 7/20/2015		0.00

CIVIL COVER SHEET

A-15-719406-P

Dept XIII

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Catherine Ramsey
 c/o Craig A. Mueller
 Attorney (name/address/phone):
 Craig Mueller
 Mueller, Hinds & Associates
 600 S. 8th Street
 Las Vegas, NV 89101 702-382-1200

Defendant(s) (name/address/phone): City Clerk of North Las Vegas
 2250 Las Vegas Blvd North
 North Las Vegas, NV 89030
 702-633-1030

Bob Borgerson
 7617 Island Rail Dr.
 North Las Vegas 89084

Betty Hamilton
 1516 Logan Valley Lane
 North Las Vegas, NV 89081

Michael William Moreno
 3937 Fuselier Drive
 North Las Vegas, NV 89084
 (702)594-3515

Attorney (name/address/phone):
 unknown

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input checked="" type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court <i>(also check applicable civil case box)</i> <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters –

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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06/03/2015

Date

Signature of initiating party or representative

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ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

HONORABLE CATHERINE RAMSEY
NORTH LAS VEGAS MUNICIPAL JUDGE,

Petitioner/Plaintiff,

vs.

THE CITY OF NORTH LAS VEGAS AND
BARBARA A. ANDOLINA CITY CLERK OF
NORTH LAS VEGAS, BETTY HAMILTON,
MICHAEL WILLIAM MORENO, AND BOB
BORGENSEN, INDIVIDUALLY AND AS
MEMBERS OF "REMOVE RAMSEY NOW",

Respondents/Defendants.

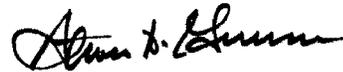
Case No. A-15-719406-P

Electronically Filed

07/06/2015 04:23:07 PM

Dept. No. XX

Consolidated with:
A-15-719651-C



CLERK OF THE COURT

DECISION & ORDER

DECISION & ORDER

THIS MATTER came before the Court for oral argument on Petitioner/Plaintiff's
Emergency Petition for Injunction, A-15-719406-P, on June 18, 2015. On June 23, 2015, the Court
consolidated this action with Petitioner/Plaintiff's Complaint, A-15-719651-C. The Court held a
hearing on both matters on June 29, 2015 and July 2, 2015. Appearing on behalf of
Petitioner/Plaintiff HONORABLE CATHERINE RAMSEY NORTH LAS VEGAS MUNICIPAL
JUDGE was CRAIG A. MUELLER, ESQ., of the law firm of MUELLER, HINDS &
ASSOCIATES; appearing on behalf of Respondents/Defendants BETTY HAMILTON, MICHAEL
WILLIAM MORENO and BOB BORGENSEN was DOMINIC P. GENTILE, ESQ., ROSS J.
MILLER, ESQ. and COLLEEN E. MCCARTY, ESQ., of the law firm of GENTILE, CRISTALLI,
MILLER, ARMENI & SAVARESE; and appearing on behalf of Respondents/Defendants the CITY
OF NORTH LAS VEGAS and BARBARA ANDOLINA was RICHARD C. GORDON, ESQ.,

1 PATRICK E. BYRNE, ESQ., and DANIEL IVIE, ESQ., of the law firm of SNELL & WILMER.

2 This Court having considered all related pleadings, documents, and the arguments of counsel, makes
3 the following findings of facts and conclusions of law.

4 I. EMERGENCY PETITION FOR INJUNCTION AND FIRST CAUSE OF ACTION

5 A. Resolution of Procedural Issues With Petition for Injunction

6 As the Court noted at the first hearing in this matter on June 18, 2015, Petitioner/Plaintiff
7 [hereinafter Plaintiff] filed her Emergency Petition for Injunction under NRS 295.105(4) and NRS
8 33.010. However, NRS 295.105 does not concern petitions for recall, but rather, those for ballot
9 questions or referendums for municipalities. Consequently, NRS 295.105 does not provide a basis
10 for Plaintiff to seek her requested injunctive relief. The proper statutory provision under which
11 Plaintiff should have sought relief was NRS 306.040 which specifically concerns recall petitions.
12 Additionally, under Nevada Rules of Civil Procedure [NRCPP] Rule 3 “[a] civil action is commenced
13 by filing a Complaint with the court.” NRS 33.010, which provides for the Court to grant injunctive
14 relief, states that an injunction may be granted in certain instances after the Plaintiff has filed a
15 Complaint or the parties have otherwise initiated litigation. Indeed, both NRS 306.040, addressing
16 recall petitions, and NRS 295.105, concerning city ballot initiatives, speak in terms of the
17 challenging party filing a complaint to bring the matter before the court. At the hearing, the Court
18 questioned whether Plaintiff had properly proceeded in this matter in that she had not filed a
19 Complaint to initiate litigation, or set out a proper basis for relief under NRS 295.105. She had only
20 filed an Emergency Petition for Injunction, which under NRS 33.010 requires the separate initiation
21 of litigation by Complaint.

22 At the hearing, Plaintiff’s counsel suggested that Judge Ramsey’s filing of the single petition
23 for injunction without filing a separate Complaint asserting a cause of action was intentional as
24 counsel did not see the reason or need to file two documents when one would be sufficient if it

1 provided all the necessary allegations and demands to satisfy the purposes of the NRCP. Plaintiff
2 asked the Court to construe the "Petition for Injunction" as both a Complaint initiating litigation and
3 a separate motion for injunctive relief although not labeled as such. Plaintiff further argued that
4 while the statutory basis for her action may be incorrect, her petition for injunction sets forth a
5 sufficient statement of facts and law to allege a violation of her Nevada Constitutional rights as a
6 judge and state her desired injunctive relief, meeting the requirements of NRCP 8(a). NRCP 8(a)
7 requires, "[a] pleading which sets forth a claim for relief, whether an original claim...shall contain
8 (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a
9 demand for judgment for the relief the pleader seeks."

10 Although at the hearing held on June 18, 2015, Respondents/Defendants [hereinafter
11 Defendants] in the instant matter also questioned Plaintiff's procedural approach, they expressed
12 they were willing to allow the Court to construe Judge Ramsey's filing in a manner which would
13 allow this Court to rule on the underlying constitutional issue of whether a judge could be recalled
14 under the Nevada Constitution. Defendants, however, expressed concern that Plaintiff had also filed
15 a separate Complaint under NRS Chapter 306. Plaintiff in her first cause of action of the Complaint
16 effectively realleged her contention that the Nevada Constitution does not permit her recall.
17 Defendants expressed concern if the Court did not consolidate the two actions under NRCP 42(a),
18 Plaintiff would possibly seek "two bites of the apple" on the constitutional question before different
19 courts. Plaintiff's counsel would not commit to this Court to treat a decision on the constitutional
20 issue as determinative of the issue in Plaintiff's separate action.

21 Consequently, to effectuate the interests of the parties and expedite the orderly progression of
22 this litigation, the Court will treat Plaintiff's Emergency Petition for Injunction as a Complaint
23 alleging a violation of the Nevada Constitution as its cause of action and demanding declarative
24 relief. The Court will also treat the petition as a motion for injunction under NRS 33.010. Because

1 of the similarity of issues, the Court previously ordered the consolidation of A-15-719406-P and A-
2 15-719651-C. This Court is acting appropriately in this instance in view of the parties' assertions of
3 either no procedural errors or waiver of any procedural errors, and in view of NRCP 8's underlying
4 purpose to ensure that the documents filed to initiate litigation give fair notice of the basis of the
5 claim and relief being sought. The parties all clearly indicated they understood the constitutional
6 basis of Plaintiff's claim and the declarative relief sought.

7 B. Article 2, Section 9 of the Nevada Constitution Allows the Recall of Judges

8 Plaintiff contends as a judge, she is not subject to the recall provisions of Article 2, Section 9
9 of the Nevada Constitution and she may only be removed from the bench pursuant to Article 6,
10 Section 21, providing for the Nevada Commission for Judicial Discipline. To answer this question,
11 the Court must first determine whether at the time the legislature and Nevada voters approved
12 Article 2, Section 9 in 1912, they understood the term "[e]very public officer" as used in the article
13 to include judges. If so, then the Court next must determine whether the legislature and Nevada
14 voters understood their passage of Article 6, Section 21 in 1976, creating the Judicial Disciplinary
15 Commission, as repealing Nevada citizens' right to recall as to judges.

16 The Nevada Constitution Article 2, Section 9, sets out Nevadans' right to recall public officials.
17 It provides in relevant part:

18 Recall of public officers: Procedure and limitations. Every public officer in the State of
19 Nevada is subject, as herein provided, to recall from office by the registered voters of the
20 state, or of the county, district, or municipality which he represents. For this purpose, not
21 less than twenty-five percent (25%) of the number who actually voted in the state or in the
22 county, district, or municipality which he represents, at the election in which he was
23 elected, shall file their petition, in the manner herein provided, demanding his recall by the
24 people. They shall set forth in said petition, in not exceeding two hundred (200) words, the
reasons why said recall is demanded.

23 This provision of the Nevada Constitution was added by amendment in 1912, as part of a section of
24 the Constitution entitled "Suffrage." This indicates that at the time of its adoption, the legislature

1 and voting citizens perceived the amendment to further define Nevada citizens' rights as voters
2 generally. The legislature in drafting the amendment did not set out an exclusive list of included
3 offices or descriptions of positions. Instead, the legislature passed and Nevada citizens approved an
4 amendment which broadly provides for "[e]very public officer" to be subject to recall. The term
5 "public officer" is not expressly defined in the Nevada Constitution. In determining whether a judge
6 is a "public officer" within Article 2, Section 9, this Court is mindful of the basic interpretive
7 principal that the Nevada Constitution should be construed in its ordinary sense unless some
8 apparent absurdity or unmistakable interest of its framers forbids such construction. *State ex rel.*
9 *Lewis v. Doron*, 5 Nev. 399, 411 (1870). Consequently, where the language in the Nevada
10 Constitution is plain and not ambiguous, it should be read in those plain and unambiguous terms.
11 *State ex rel. Summerfield v. Clarke*, 21 Nev. 333, 337, 31 P. 545 (1982). These principles were
12 recently reaffirmed by the Supreme Court in the context of interpreting Article 2, Section 9, in
13 *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010), explaining "we, like the
14 United States Supreme Court, 'are guided by the principle that "[t]he Constitution was written to be
15 understood by the voters; its words and phrases were used in their normal and ordinary as
16 distinguished from technical meaning.'" [quoting *District of Columbia v. Heller*, 554 U.S. 570
17 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)]. Consequently, the Court must
18 first consider whether "public officer," in the normal and ordinary sense of the term, includes a
19 judge.

20 In this regard, this Court believes an average voter would normally and ordinarily perceive
21 the term "[e]very public officer" to include all officials exercising some level public authority,
22 inclusive of all executive, legislative and judicial officials. The Court finds support for its
23 perception of the normal and ordinary meaning of "every public official" from a variety of sources.
24 For example, Merriam-Webster OnLine, whose hardcover dictionary the Nevada Supreme Court

1 referenced in *Strickland v. Waymire* to assist in determining the ordinary meaning of “number” and
2 “actually,” 126 Nev. Adv. Op. 25, 235 P.3d at 609 (quoting *Webster's New Universal Unabridged*
3 *Dictionary* (2d ed. 1996)), defines “public officer” as “a person who has been legally elected or
4 appointed to office and who exercises governmental functions.” *Merriam-Webster OnLine*, “Public
5 Officer,” (June 28, 2015) www.merriam-webster.com/dictionary/public%20officer. Judges are
6 officials who are elected or appoint to office and exercise certain governmental functions. Another
7 example, the Nevada Supreme Court in its opinion in *Nevada Judges Association v. Lau*, 112 Nev.
8 51, 60, 910 P.2d 898, 904 (1996), indicated that its members generally understood the term “all
9 public officials” to typically include judicial officers. In discussing the original language of the
10 proposed amendment setting term limits for state and local public officials, the high Court
11 referenced how the initiative’s language lumped together “all public officials—whether legislative,
12 executive or judicial.” *Id.* In its advisory opinion last month, the members of the State of Nevada
13 Standing Committee On Judicial Ethics, while not specifically dealing with the definition of “public
14 officer” under Article 2, Section 9, clearly indicated that they read the term’s general meaning to
15 include judges, commenting “under Article 2, Section 9, “sitting judges are subject to recall petition
16 and election just as they are subject to regular elections.” *Advisory Opinion JE15-011* (May 14,
17 2015). Even the legislative history Plaintiff quotes in reference to the Judicial Disciplinary
18 Commission supports the view that ordinary voters or legislators understand the term “every public
19 officer” to include judicial officers. In the Nevada State Legislature Background Paper 81-8
20 JUDICIAL DISCIPLINE, which Plaintiff states was intended to inform members of the legislature
21 as to issues relating to judicial discipline, the writer notes: “Because of the shortcomings of
22 impeachment, recall and legislative address, the judicial discipline commission was develop to
23 handle judicial misconduct.” The reference in the quote to shortcomings with recall demonstrates
24 that the writer for the background paper understood the Article 2, Section 9’s reference to “every

1 public officer” to include judicial officers. Defendants note other sources which also clearly
2 understand the term “every public officer” as used in the Nevada Constitutions recall provisions to
3 include judicial officers. James J. Alfini, Steven Lubet, Jeffrey M. Shaman, Charles G. Geyh,
4 *Judicial Conduct and Ethics* 14.06 (5th ed. 2013); National Center for State Courts, *Removal of*
5 *Judges*, (June 28, 2015)
6 www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state=. While the
7 Nevada Supreme Court, Ethics Committee, and other sources noted above were not being
8 specifically asked to define public officer or officials in their decisions or writings, their use of the
9 term in the manners they did, reinforces this Court’s general view that the normal and ordinary
10 understanding of the term “[e]very public official” in Article 9, Section 2, includes judicial officers.

11 The Nevada Supreme Court has not had the opportunity to consider the question whether a
12 judge is a public officer subject to recall. However, the high Court, just three years after the recall
13 amendment in 1915 had the opportunity to generally consider what government positions should be
14 considered “civil office of profit” as included in Article 4, Section 8 of the Nevada Constitution. In
15 *State ex rel. Kendall v. Cole*, 38 Nev. 215, 148 P. 551 (1915), the Nevada Supreme Court discussed
16 at length the concept of a “public office,” listing and approving a number of prior court cases from
17 different jurisdictions discussing the attributes of a public office as opposed to public employment or
18 private office. These approved factors included:

19 (1) whether the holder of the office is entrusted with some portion of the sovereign
20 authority of the state; (2) whether his duties involve the continuous exercise, as part of
21 the regular and permanent administration of the government, of a public power, trust or
22 duty; (3) whether his compensation, period of employment and the details of his duties
are set forth in statute or in the constitution; (4) whether he must take the oath of public
office pursuant to Nev. Const. art. 15, sec. 2; and (5) whether he must keep a record of
his official acts.

23 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987)(citing *Kendall*, 38 Nev. at 231-232).

24 All of these attributes can be found in the position of a judge. Judges take an oath of office, their

1 compensation, terms of office, jurisdiction and general duties are set by law, they exercise some
2 portion of the sovereign authority of the state, exercise a public power and trust, and keep records of
3 their official acts.

4 Plaintiff argues only executive and legislative officers are subject to recall. The fact the
5 constitutional provision for recall lies in Article 2 of the Nevada Constitution, concerning citizens'
6 suffrage rights, and not in Articles 4 and 5 concerning legislative and executive branches appears to
7 belie that suggestion. She also points to NRS 281A.160, a provision of NRS Chapter 281A, which
8 concerns Ethics in Government and contains certain provisions generally applicable to public
9 officers. NRS 281A.160 defines public officers to exclude judicial officers. She argues that through
10 this statute the legislature demonstrated the term "public officer" does not include judicial officers.
11 However, the legislature frequently uses general terms in its statutes and then provides specific
12 definitions of the term applicable to that statute only. Indeed, in NRS 281A.030, the statute
13 expressly states the definitions in NRS 281A.035 through NRS 281A.170 are for the words and
14 terms "[a]s used in this chapter," relating to *Ethics in Government* and not broadly to all statutes and
15 the Constitution. As Defendants point out, the *Ethics in Government* statute logically excludes
16 judges because the ethical requirements for judges are set out in the Nevada Code of Judicial
17 Conduct and discipline is administered through the Nevada Commission on Judicial Discipline and
18 Nevada Supreme Court. Consequently, the legislature simply excluded judicial officers from the
19 public officers whose ethical requirements are defined in NRS Chapter 281A. What is significant,
20 however, is the legislature in excluding judicial officers as "public officials" under NRS Chapter
21 281A, must have believed the general understanding of the term public officer would include
22 judicial officers; otherwise, there would have been no reason to specifically exclude them in the
23 statute.

24 Because it finds the constitutional language is clear on its face and not ambiguous and

1 susceptible to two or more reasonable interpretations, this Court has no need to look and consider
2 anything beyond the language of Article 2, Section 9. *Strickland v. Waymire*, 126 Nev. Adv. Op. 25,
3 235 P.3d at 608. However, this Court also finds persuasive the Attorney General's 1987 opinion's
4 detailed analysis of the historical and legislative background concerning the passage of the recall
5 amendment in 1912. This history strongly indicates the amendment was part of the Progressive
6 movement at that time which involved, in part, an anti-judicial sentiment. 1987 Nev. Op. Atty. Gen.
7 No. 7 (March 27, 1987) (citing *Fossey, Meiners v. Bering Strait School District and the Recall of*
8 *Public Officers: A Proposal for Legislative Reform*, 2 Alaska L. Rev. 41, 42 (1985); Moser,
9 *Populism A Wisconsin Heritage: Its Effect on Judicial Accountability in the State*, 66 Marquette L.
10 Rev. 1, 36 (1982); J. Hurst, *The Growth of American Law*, 360 (1950). Of particular interest to the
11 Court are three other western states at that same approximate time passed recall amendments with
12 very similar language to Nevada's, allowing for the recall of public officers without any limitation.
13 As the Nevada Attorney General pointed out, "[u]nlike Nevada, in Arizona, Colorado, and Oregon,
14 their recall provisions have been subjected to judicial scrutiny. In all three of the states, the courts
15 have held that judges are public officers subject to recall pursuant to their constitution. *Abbey v.*
16 *Green*, 235 P. 150 (Ariz. 1925); *Marians v. People ex rel. Hines*, 169 P. 155 (Colo. 1917); *State ex*
17 *rel. Clark v. Harris*, 144 P. 109 (Ore. 1914)." 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).
18 The Court also notes the authorities the Attorney General cites which discuss how the Nevada Bar
19 Association, following the lead of the American Bar Association, formally opposed the passage of
20 the recall amendment in 1912 because it permitted the recall of judicial officers. *Id.* (citing the
21 *Carson City Appeal*, July 26, 1912, at 4, col. 3). Despite the opposition of the Nevada Bar
22 Association and the American Bar Association, Nevada voters overwhelmingly approved amending
23 the constitution to allow the recall of "[e]very public officer." *Id.* (citing Secretary of State (William
24 D. Swackhamer), *Political History of Nevada*, (Carson City: State Printing Office, 1986) at 262).

1 Considering the plain and unambiguous language of Article 2, Section 9, as well as the relevant
2 history surrounding the passage of the recall amendment in 1912, the Court finds the term “[e]very
3 public officer” used in the article includes judges and the article permits voters to recall a judge.

4 The Court now turns to Plaintiff’s contention that the legislature and voters in approving
5 Article 6, Section 21, in 1976, creating the Nevada Commission on Judicial Discipline, either
6 intended to limit the removal of judges to proceeding brought under the auspices of the Commission,
7 or otherwise enacted a constitutional amendment inconsistent with Article 2, Section 9 and,
8 consequently, superseding it. *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585, 587 (1960) (if
9 provisions of the Constitution are inconsistent with each other, the provision adopted later is
10 controlling).

11 Plaintiff initially contends Article 6, Section 21 of the Nevada Constitution, providing for
12 judicial discipline, was intended by the legislature and voters through its drafting and passage to be
13 the sole mechanism for removal of judges. However, neither the language of the amendment nor the
14 ballot explanation provided at the time of its passage in 1976 express that Nevada’s voters are giving
15 up their right to recall their judges by approval of the amendment. The legislature could have easily
16 made such provisions in the amendment’s language to modify Article 2, Section 9, if that was its
17 intent. If the legislature and voters in 1976 intended by the passage of Article 6, Section 21 to
18 eliminate the right to recall judges under Article 2, Section 9, this Court “would expect a direct state
19 and express language to that effect.” *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d at 611
20 (2010) (citing 3 Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* 58:3,
21 at 114-15 (7th ed. 2008). Nowhere in the ballot explanation does it suggest, much less clearly state,
22 that voters in approving the amendment are modifying Article 2, Section 9, and surrendering their
23 right to recall judges. Nevada Secretary of State, *Constitutional Amendments to be Voted Upon in*
24 *State of Nevada at General Election*, November 2, 1976, at 16-17 (1976).

1 The amendment creating the judicial disciplinary commission is not inconsistent with the
2 constitutional provisions providing for recall of public officers. Article 6, Section 21, like
3 impeachment as provided in Article 7, Section 2, provides for discipline of judges for misdemeanor
4 or malfeasance while in office. Article 2, Section 9, in providing voters the right to recall a public
5 officer, does not require any allegation of misfeasance, nonfeasance or malfeasance. All that is
6 demanded is the voters seeking recall of an official state a reason. "The merit of that reason as
7 grounds for removal is for the electorate to determine...." *Batchelor v. Eighth Judicial Dist. Court*,
8 81 Nev. 629, 633, 408 P.2d 239, 632 (1965). Consequently, recall provides a separate basis
9 independent of the disciplinary function of the judicial disciplinary commission to remove a judge.
10 As the Nevada Attorney General in his 1987 advisory opinion pointed out:

11 we are of the opinion that Nev. Const. art. 6, sec. 21 is not applicable to our analysis of
12 whether a district judge is a public officer subject to recall, since the provisions of art.
13 2, sec. 9 and art. 6, sec. 21 are not inconsistent. *See Rea v. City of Reno*, 76 Nev. 483,
14 488, 357 P.2d 585 (1960). In contrast to a disciplinary action, there need not exist a
good reason for recall of a public officer, nor is there a requirement that cause be
shown. The merit of the recall petition is for the people to decide. *Batchelor v. Eighth
Judicial District Court*, 81 Nev. 629, 408 P.2d 239 (1965).

15 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).

16 Plaintiff argues that NRS 1.440(1) clearly demonstrates that the legislature has interpreted
17 the amendment creating the Nevada Commission on Judicial Discipline to eliminate the voters' right
18 to recall judges. This section reads: "The Commission has exclusive jurisdiction over the public
19 censure, removal, involuntary retirement and other discipline of judges which is coextensive with its
20 jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under
21 the same rules." In *Halverson v. Hardcastle*, 123 Nev. 245, 263, 163 P.3d 428, 441 (2007) the
22 Nevada Supreme Court stated "[u]nder the Nevada Constitution, the judicial discipline commission
23 exercises exclusive jurisdiction over the formal discipline of judges which may include censure,
24 removal, and retirement." NRS 1.440 only provides for the Commission to have exclusive

1 jurisdiction over the “discipline” of judges. Likewise, in *Halverson*, the Supreme Court stated only
2 the judicial discipline commission has exclusive jurisdiction over the “formal discipline” of judges,
3 which could amount to removal of the judge from his or her position. The voters’ right to recall
4 extends to virtually any reason a sufficient number of voters believes would justify removal of a
5 public official. Consequently, recall is not definitively a form of “discipline”. Consequently, as
6 noted above, Article 6, Section 21 and NRS 1.440 are not inconsistent with the right to recall in
7 Article 2, Section 9, and neither limits the voters’ right to recall judges. Moreover, the Nevada
8 Supreme Court in *Halverson* seemed to recognize that the Commission does not possess the sole
9 authority or means to remove a judge. In stating “[u]nder the Nevada Constitution, the Judicial
10 Discipline Commission exercises exclusive jurisdiction over the formal discipline of judges,” the
11 Supreme Court provided a lengthy citation to Article 6, Section 21, and court cases discussing the
12 concept of exclusive jurisdiction, but then at the end of the citation added: “*But see* Nev. Const. art.
13 2, § 9; *id.* art. 7, § 2; NRS 3.092 (providing for the voluntary retirement of district court judges for
14 permanent physical or mental incapacitation from performing the duties of office, regardless of
15 age).” *Id.* at n. 37.

16 Plaintiff argues public policy considerations support finding that judges should not be subject
17 to recall and put at risk of being influenced by public opinion and electoral pressures. Whether
18 judges should be subject to election and, consequently, subject to removal by voters is a debate
19 various states have answered in different ways. Nevada voters have, on more than one occasion,
20 considered and rejected constitutional amendments providing for the initial appointment of judges
21 with subsequent retention votes by the electorate. Nevada citizens plainly want the right to elect
22 their judges and their history also strongly suggests they want be able to recall them. The Court
23 finds no reason to doubt the wisdom of Nevada citizens having the right to recall their judges.
24 Nevada citizens have not abused this privilege and this State’s history demonstrates they appreciate

1 the significance of this responsibility. As Plaintiff notes, in Nevada's 150-year history, voters have
2 never recalled a judge. Rather than demonstrate that judges should not be subject to recall, this fact
3 demonstrates Nevada voters are prudent and considerate in exercising their right to recall and not
4 subject to political whims and frivolous causes. Indeed, the approval of the recall petition in this
5 matter does not mean that Plaintiff will ultimately be recalled. Voters will be asked to consider the
6 reasons for recalling Plaintiff and decide whether the reasons are sufficient to recall her. Voters can
7 reject or accept those reasons as they, in their insight, believe is right. This is their right under the
8 Nevada Constitution and this Court sees no basis to alter that because of fears of frivolous political
9 winds, fears for which there are no factual basis. As the Supreme Court stated in *Batchelor*:

10 'All political power is inherent in the people. Government is instituted for the
11 protection, security and benefit of the people; and they have the right to alter or reform
12 the same whenever the public good may require it.' Nevada Constitution, Art 1, § 2.. In
13 theory, a public officer need not fear recall if the reason given therefor is frivolous. In
14 such case the required number of signatures on the petition to force an election should
15 not be obtained and, if perchance, the required number of signatures is obtained, an
16 intelligent, informed electorate reading the reason printed on the ballot as required, will
17 not vote to recall him. Our governmental scheme dignifies the people; a treasured
18 heritage, indeed. The provision for recall is but one example. We shall not intrude upon
19 the people's prerogative.

20 The Court denies and dismisses Plaintiff's Petition/Complaint seeking a declaratory
21 judgment that judicial officers are not subject to recall pursuant to Article 2, Section 9 of the Nevada
22 Constitution, and it finds judges are public officers subject to recall under the provision of that
23 section. Consequently, the Court denies Plaintiff's Petition/Motion for injunction to stop the recall
24 petition of Judge Ramsey. Further, the Court dismisses Plaintiff's first cause of action of her
Complaint which contends she is not subject to recall under NRS 306.020 because the term "public
official" does not include judges. The Court finds NRS 306.020 was passed to aid in implementing
the voters' right to recall pursuant to Article 2, Section 9, and the term "[e]very public official" used
in NRS 306.020 does include judges as subject to recall.

1 II. SECOND AND THIRD CAUSES OF ACTION

2 Plaintiff in her Second Cause of Action makes the following assertions: 1) 2,549 signers of
3 the petitions failed to provide their addresses as required by NRS 306.020(3)(a); 2) 102 signers of
4 the petitions failed to include a date it was signed as required by NRS 306.020(3)(a)¹; 3) over 295
5 signatures on the petitions are duplicative and should not be counted under NRS 306.020(3)(a); and
6 4) the petitions include over 295 instances where one person signed for multiple persons in a
7 household and those signatures should not be counted under NRS 306.020(3)(a). In Plaintiff's Third
8 Cause of Action, she asserts the words "Recall Petition" are not in 10 pt bold type above at least 40
9 of the signatures on the petitions.

10 A. Substantial Compliance with the Recall Petition Statutes

11 At the hearing on this matter on June 29, 2015, Plaintiff did not provide any listing or
12 tabulation of specific signatures she challenged for any of the alleged inadequacies noted above.
13 The Court found its own review of the petitions it was the rare exception when a signature was not
14 accompanied by a signer's address. The Court inquired of Plaintiff's counsel how Judge Ramsey
15 determined 2,549 of the signers of the petition failed to include their address. Plaintiff's counsel in
16 response explained that generally the signers' addresses did not include their zip codes and Plaintiff
17 treated such addresses as incomplete. This Court finds a signer's failure to include a zip code did
18 not invalidate his or her address. The statute only requires the address of the signer and does not
19 specifically require the providing of a zip code. A zip code is a postal code used by the U.S. Postal
20 Service to enhance its ability to quickly route mail to the areas where they should be delivered.
21 Even if a letter does not include a zip code, the U.S. Postal Service will deliver the mail to the
22 address on the letter. The statute's purpose in requiring an address is to assist the Election

23 _____
24 ¹ Plaintiff incorrectly cites NRS 306.020(3)(d)]. However, that section concerns the inclusion on the petition of the date the notice of intent to recall is filed. NRS 306.020(3)(a) concerns the requirement that the signer include the date he or she signs the petition.

1 Department in identifying the person who signed the petition and determining if he or she was a
2 registered voter in the proper district. This purpose is accomplished by a signer providing his or her
3 street address and no need exists for the signer to include a zip code. Plaintiff at the hearing
4 introduced no other evidence or made any other argument concerning the failure of signers to
5 provide their addresses. The Court finds Plaintiff's challenge to the petitions is not substantiated.

6 Likewise, at the hearing, the Court asked Plaintiff's counsel to explain his challenge that 40
7 signatures did not have the words "Recall Petition" in 10 pt bold type immediately above them.
8 Counsel explained Plaintiff had found a number of signatures where the signers had signed in the
9 space designated for "Print Your Name" and then printed their names in the space designated for
10 signature. Counsel argued, because the words "Recall Petition" were printed on the petition form at
11 the top of each space on the form designated for signature and the space for "Print Your Name" was
12 located on the form above the space for signature, when a signer signed in the "Print Your Name"
13 space, the words "Recall Petition" were not immediately above his or her signature.

14 Plaintiff called Mark Preusch, a private investigator she hired to review the petitions in this
15 matter. Mr. Preusch testified he had reviewed the petitions and found 117 instances where the signer
16 had failed to include the date he or she signed the petition and 124 occasions where the signer had
17 dated the petition in the wrong location. Defendants in turn called Monica Eisenman who was a
18 supervisor of the verification of random sample signatures. She testified that in verifying a signature
19 where a date was not included, the Clark County Election Department employees would look at
20 surrounding signatures and the date or dates they were signed to determine the approximate missing
21 date.

22 In *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 552 P.2d 488, 489-90 (1976), a
23 public official subject to a recall petition challenged the petition, claiming it did not strictly adhere to
24 the requirements of NRS Chapter 306. The Nevada Supreme Court noted it had previously held that

1 “recall statutes should be liberally construed with a view toward promoting the purpose for which
2 they are enacted.” *Id.* The high Court concluded: “We find the rule of substantial compliance best
3 furthers this purpose and is apposite to the determination of sufficiency and validity of petitions here
4 involved.” *Id.* The Nevada Supreme Court has subsequently reaffirmed this standard in *Nevadans*
5 *for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006), where the Court stated a substantial
6 compliance standard is generally applied to statutory requirements, and in *Las Vegas Convention*
7 *and Visitor Authority v. Miller*, 124 Nev. 669, 191 P.3d 1138, 1146-47 (2008), where the Court
8 again held it looked for substantial compliance with a statutory requirement in the election context,
9 stating “a substantial compliance standard accords proper deference to the people’s initiative power.”

10 Plaintiff introduced no testimony or other evidence identifying the signatures on the petitions
11 which were above, rather than immediately below, the words “Recall Petition.” Regardless, this
12 Court finds those individuals who signed the petitions and who inadvertently placed their signatures
13 in the box for “Print Your Name,” and, consequently, immediately above the words “Recall
14 Petition” in 10 pt bold print were in substantial compliance with statutory requirements. The
15 purpose of the requirement is to ensure the individual signing the petition understands his or her
16 signature is being placed on a recall petition. The words “Recall Petition” are in large print at the
17 top of every page of the petition and are repeated in every signature box on the page. As noted
18 above, the words are just below the signature of a person who signs in the “Print Your Name” space.
19 Consequently, the Court has little doubt the signers did understand they were signing a recall
20 petition.

21 This Court also finds that Election Department employees acted properly when they used
22 surrounding signatures with dates on the petition to determine the date of signing for a person who
23 signed without including a date. NRS 306.011(3) provides after giving notice of intent to circulate a
24 petition for recall, those leading the recall effort have 90 days to collect the necessary number of

1 signatures. This window of time to obtain signatures “serves to notify elected officials of the
2 relevant time periods involved and discourages frivolous and harassing petitions.” *Citizens for*
3 *Honest & Responsible Government v. Heller*, 116 Nev. 939, 11 P.3d 121, 127 (2000). This statutory
4 provision and its underlying purpose are met when Election Department officials through reasonable
5 and reliable means can determine the approximate date a voter has signed a petition and if the voter
6 signed within the 90 day period for collecting signatures. The Court finds a petition signer who
7 inadvertently fails to date his or her signature substantially complies with the statute and its purpose
8 when it can be reasonably determine the approximate date of signing.

9 B. Sufficiency and Accuracy of Random Sample Verification

10 While Plaintiff did not specifically challenge in her complaint the adequacy of the random
11 sample process to statistically determine the number of valid signatures gathered in the petition, she
12 did make several assertions in her Complaint that the random sample process failed to statistically
13 identify large numbers of invalid signatures. At the hearing, Plaintiff’s counsel directly challenged
14 the adequacy of the random sample process to accurately determine the number of valid signatures
15 and requested a verification of all signatures on the petitions.

16 NRS 306.035(2) and NRS 293.1276-293.1279 allows the Election Department to use a
17 statistical sampling procedure to determine the number of valid signatures on a petition and the
18 Nevada Secretary of State may certify a recall election on the basis of such a sampling. The
19 Election Department is required to pull an entirely random selection of 500 signatures or 5 percent
20 of all signatures, whichever is larger, for verification. Both Ms. Eisenman and Registrar of Voters
21 Joseph Gloria testified this random selection is done through use of a computer program which
22 ensures the consideration of each signature on the petition for selection to the random sample. The
23 Nevada Supreme Court has found the use of the random sample procedure to be accurate and
24 constitutional as it “clearly creates a more efficient, less costly and less time-consuming process....”

1 that "'aids in the operation' of the recall right." *Citizens for Honest & Responsible Government v.*
2 *Heller*, 116 Nev. 939, 11 P.3d at 128 (quoting Nev. Const. Art. 2, Sec. 9). In *Citizens for Honest &*
3 *Responsible Government*, the high Court commented the process appears to be accurate. The Court
4 noted the case involved the verification of two petitions, the first of which the Secretary of State had
5 ordered be fully verified. In looking at the random sample statistical determination of invalid
6 signatures against the actual full verification of the petition, the Court found the statistical sampling
7 was accurate to within 0.25 percent of the actual number of verified signatures. The Court noted,
8 "[t]his small discrepancy is indicative of the sampling procedure's reliability and rebuts any
9 insinuation that an individual's vote might be overlooked by the procedure." *Id.* In the instant
10 matter, the Clark County Election Department drew 500 signatures for the sample because of the
11 low number of signatures on the petitions. This number represented approximately 18 percent of all
12 signatures, much higher than the 5 percent required for petitions with a larger number of signatures.
13 Consequently, as Mr. Gloria explained in his testimony, the size of the sample insured greater
14 accuracy than in a case with only a 5 percent sampling. This Court, in considering Plaintiff's
15 challenges to the accuracy of the random sampling in this case finds Judge Ramsey has failed to
16 present evidence showing the sample failed to accurately determine the statistical occurrence of
17 invalid signatures.

18 Plaintiff asserts that a large number of duplicate signatures are on the petitions beyond the
19 statistical number picked up in the random sampling. Plaintiff claims at least 174 people signed the
20 petitions two or more times, resulting in about 184 duplicate signatures being invalid. The only
21 evidence Plaintiff submitted as to the number of duplicate signatures was the testimony of Mr.
22 Preusch, who counsel represented had made no report concerning his review of the petitions and was
23 only going to reference his notes from the review. In response to Plaintiff's counsel's question on
24 re-direct "did you find or did you locate somebody—individuals who had signed multiple times, the

1 same signature on the—or different petitions?”, Mr. Preusch answered “Yeah, there were 356
2 names.” On further questioning by the Court concerning his answer about duplicate signature, the
3 witness stated “So 356 people that had signed the petition had also signed one of the other petitions
4 as well.” The Court then asked “Again, you didn’t keep any list or notations as to which ones you
5 found?” The witness responded “No.” Counsel for Defendant City of North Las Vegas asked a
6 follow-up question: “I’m still not clear with respect to the 356. Was it witness’ testimony that then
7 there’s approximately 180 examples where there’s duplicates and that comes up to the 356 number,
8 or are we suggesting that there are actually – how many would you say, of the 356, would actually
9 need to be removed is what I’m...” The witness responded, “Jeez, you know, I couldn’t answer
10 that. We’d really have to go through each one again and come up with that tabulation.”

11 Subsequently after the June 29, 2015 hearing, the Court determined it would like further
12 information from Mr. Preusch as to how he calculated the numbers he gave in his testimony. The
13 Court, on the morning of July 1, 2015, had his staff contact Plaintiff’s counsel to have Mr. Preusch
14 available to participate in the July 2, 2015, hearing, either in person or by telephone and to bring all
15 materials and notes he relied upon in his review of the petitions. On July 2, 2015, at 1:00 p.m.,
16 Plaintiff’s counsel represented his office had been unable to make any contact with Mr. Preusch in
17 the approximate 27 hours since the Court had requested his participation. However, Plaintiff’s
18 counsel produced four sets of tabulations he represented the witness had relied upon in making his
19 determinations of signature challenges for his testimony. Counsel stated that friends of the Plaintiff
20 had actually reviewed the petitions and made the lists and Mr. Preusch had been asked to review the
21 lists against the petitions to ensure they were accurate. Counsel did not disclose the detailed lists
22 Mr. Preusch purportedly used to conduct his investigation prior to witness’ testimony, despite being
23 asked on Monday if the witness had done any report as to how he compiled his tabulations or
24 identified the challenged signatures. Counsel simply stated the witness did not prepare a report, but

1 made no mention of the four tabulation lists. Mr. Preusch in his testimony made no mention of
2 being given the tabulation lists or using them in his review of the petitions, testifying he was
3 “requested to do a comprehensive review of all of the signatures, the petitions. . . .” Despite being
4 asked on at least three occasions if he did any tabulation or had anything which would identify the
5 signatures about which he was challenging, Mr. Preusch at no time mentioned the tabulation lists
6 that according to Plaintiff’s counsel had been provided to him to check against the petitions.
7 Plaintiff’s counsel provided the Court with copies of the four tabulation lists but never offered them
8 into evidence.

9 In response to Mr. Preusch’s testimony concerning duplicate signatures, Defendant
10 Committee Members offered the testimony of Ms. Lauren Paglina. Ms. Paglina testified she was a
11 Summer Law Clerk at Defendants’ counsel’s law firm and had started reviewing the petition
12 signatures to determine possible duplicates. She explained she did this by entering the names from
13 the petitions into a database alphabetically to identify possible duplicate signatures to compare. She
14 testified she had been able to go through approximately 1,100 signatures before the hearing and had
15 identified 16 duplicate signatures.

16 While neither party’s witnesses offered any tabulation identifying the duplicate signatures
17 that they had identified for the Court to consider as part of the evidence on this issue, this Court
18 finds the testimony of Ms. Paglina more credible in terms of evaluating the signatures for duplicates.
19 Ms. Paglina was able to explain the process she used to identify possible duplicate signatures which
20 reasonably included entering the signatures from the petitions in a database alphabetically to identify
21 signatures to compare and determine if they appeared duplicative. This contrasts to Mr. Preusch’s
22 testimony in which he had difficulty articulating how he went about making his tabulations. The
23 Court is also troubled by what it finds as Mr. Preusch’s questionable candor in failing to mention he
24 was provided with tabulation lists others had compiled for him to use to look and compare specific

1 signatures to challenge. Additionally, Ms. Paglina's statistical tabulation of 16 duplicates in
2 approximately 1,100 signatures, 1.4 percent, is consistent with the statistical occurrence of
3 duplicates in the random sample of 1.4 percent.

4 Finally, even accepting Plaintiff's contention that the random sample resulted in a significant
5 statistically deviation from the actual number of duplicates in all the petitions, the removal of the
6 signatures Plaintiff challenges would not bring the petition below the number needed for recall.
7 Plaintiff challenges 184 signatures as duplicate of other signatures in the petitions. Removing from
8 this number, 38 signatures that the random sample already identified and subtracted from the total
9 number of signatures (1.4% of 2717 is 38), and removing the remaining 146 challenged signature
10 from the 2,282 signatures the random sample validated results in 2,136 remaining. Consequently,
11 the Court finds that Plaintiff's challenge to the accuracy of the random sample based on her
12 contention of additional duplicate signatures does not undermine the use of the random sample in
13 this case.

14 Plaintiff in her Complaint contends the petitions contain 295 signatures signed by other
15 members of a household and should not be counted. However, Mr. Preusch testified that while he
16 observed occasions where he saw signatures which he believed were possibly signed by only one
17 member of a household, he did not "recall" how many time he saw such occurrences. He admitted
18 he did not document that number and just remembered seeing that "at least one or a couple times."
19 Plaintiff's counsel did provide as one of the four tabulations given to the Court on July 2, 2015, a
20 compilation represented to identify signatures signed by other members of a household. However,
21 Plaintiff did not seek to authenticate or admit the tabulation. Left with Mr. Preusch's testimony that
22 he noticed this occurring one or two times in the petitions, the Court finds no evidentiary basis for
23 Plaintiff's contention the random sample in this matter failed to accurately determine the statistical
24 occurrence of signatures signed by other members of a household.

1 Plaintiff did not raise in her Complaint the issue whether the random sample failed to
2 accurately determine the statistical occurrence of signatures by people who were not registered to
3 vote. At the hearing, Mr. Preusch testified 292 people who had signed the petition were not on the
4 list of registered voters for the 2011 General Election. On cross-examination, Mr. Preusch when
5 asked if he made any tabulation of the names of signers who were not registered to vote, stated, "No,
6 I did not." And when asked if he had anything with him right now to "show the Court where the
7 names came from," Mr. Preusch answered, "I do not." Plaintiff's counsel on July 2, 2015, gave the
8 Court a tabulation he identified as having been made by Plaintiff's friends which indicated 295
9 signatures were from "Persons Not on Voter List -From June 7, 2011 NLV General Election."
10 Neither Mr. Preusch, nor Plaintiff's counsel expressed or defined what they meant by "not registered
11 voters" or "Persons Not on Voter List - From June 7, 2011 NLV General Election." Significantly,
12 the Clark County Election Department in its review of the random sample excluded 57 signatures for
13 having not voted in the 2011 General Election, having an address change, being in the wrong district
14 or district invalid and not being registered. These categories would seem to be encompassed in the
15 general scope of "Persons Not on Voter List." The number of 295 names Plaintiff challenges
16 constitutes 10.9 percent of the total signatures. The 57 names the Election Department invalidated
17 from the random sample due to registration problems constitute 11.4 percent of the random sample
18 of 500. Plaintiff fails to establish any basis to believe the random sample failed to accurately
19 determine the statistical occurrence of signatures that should be excluded for registration and voting
20 problems.

21 During the hearing, Plaintiff's counsel questioned Mr. Gloria, Ms. Eisenman and Ms. Paglina
22 about specific instances of what counsel perceived as possible duplicate signatures as well as other
23 possible invalid signatures which were not part of the random sample and several instances where
24 counsel believed certain signatures should not have included in the sample. The Court finds these

1 limited number of instances as unpersuasive in that such incidents should statistically be picked up
2 and excluded through the statistical determination of valid signatures in the random sample.
3 Plaintiff's counsel also questioned Mr. Gloria about why certain information on the Election
4 Department's random sample detail list did not match certain information on the petitions. Mr.
5 Gloria explained the detail list was essentially an internal document used to assist Election
6 Department officials in the validation of the signatures in the sample. Mr. Gloria gave a number of
7 explanations for these variations which the Court finds reasonable and does not undermine the
8 integrity of the verification process.

9 C. Plaintiff's Representatives Allowed to Witness Verification

10 Although not raised as a cause of action in her Complaint, Plaintiff at the hearing on June 29,
11 2015, elicited testimony suggesting the Election Department may have provided incorrect
12 information as to when the verification of signatures was going to occur, and, consequently,
13 effectively precluded Plaintiff or her representative from watching the verification process. NRS
14 293.1277(8) provides the public official who is the subject of the recall must be allowed to witness
15 the verification process. On June 29, 2015, Johnny Jackson testified for the Plaintiff. He stated he
16 was a supporter of the Plaintiff and was present on Thursday, May 28, 2015, when the Committee
17 seeking the judge's recall presented their petitions at the City of North Las Vegas Clerk's Office.
18 He spoke to a woman in the City Clerk's Office that day and was told the petitions were going to be
19 transported to the Clark County Registrar of Voters that afternoon or the next day. On cross-
20 examination, Mr. Jackson stated he knew the petitions were being taken to the Registrar for
21 verification and that it was an expedited process. Mr. Jackson stated that on Friday, May 29, 2015,
22 after discussing the situation with the Plaintiff, he went to the Election Department at approximately
23 2:00 p.m. and eventually spoke to Mr. Gloria. Mr. Jackson alleged he asked about the verification
24 process and Mr. Gloria told him that the Election Department followed the NRS. According to Mr.

1 Jackson, he asked for a copy of the petition and to witness the verification. Mr. Gloria told him to
2 put his request in writing and stated the verification would start in one or two days. Mr. Jackson
3 said he subsequently sent an email to Mr. Gloria requesting a copy and to witness the verification.
4 He also testified he sent an email to the Plaintiff documenting what happened on May 29, 2015,
5 including that he had been told by Mr. Gloria the verification process would start in one or two days.
6 Mr. Jackson testified that on Monday, June 1, 2015, Plaintiff forwarded him an email she had
7 received from the City of North Las Vegas Clerk stating the verification process would begin at 9:30
8 a.m. Mr. Jackson said he arrived about 9:20 a.m. On arriving, he perceived the process had actually
9 started before he arrived. He said he was allowed to witness the process, but felt the Election
10 Department employees were not randomly selecting signatures but were looking for certain
11 signatures which he alleged as coming from areas of North Las Vegas which favored her opponent
12 in the last election. He explained he had expected the employees would be given instructions such
13 as verify signature 7 on every fourth petition and then go through the stack of petitions again and
14 look at the one above or below that. After the June 29, 2015 hearing, the Court requested Mr.
15 Jackson appear at the continuation of the hearing on July 2, 2015, and to bring the emails he had
16 referenced in his testimony. On July 2, 2015, Mr. Jackson produced the emails showing he had
17 forwarded an email to Mr. Gloria at approximately 3:13 p.m. on May 29, 2015, requesting the
18 petition copy and to witness the verification process. He also sent an email at approximately 3:58
19 p.m. to Plaintiff indicating he went to the County Offices at 1:15 p.m. and was told the verification
20 process had started. Mr. Jackson in his email indicated he complained why the Plaintiff was not told
21 the verification process would start that day and he was put in telephone contact with Mr. Gloria.
22 Mr. Gloria told him they had started the verification of signatures and Mr. Jackson asked Mr. Gloria
23 for a petition copy. He also asked if they were going to verify every signature on the petitions to
24 which Mr. Gloria said that the Department follows the NRS. According to Mr. Jackson in his email,

1 Mr. Gloria said he did not do anything over the phone and requested an email as to what Mr.
2 Jackson wanted. Mr. Gloria also told Mr. Jackson the verification process would be done by
3 Monday. Significantly, Mr. Jackson made no mention in his email that Mr. Gloria had told him the
4 verification process would begin in "one or two days."

5 Mr. Gloria testified he did speak with Mr. Jackson by telephone on May 29, 2015. Mr.
6 Gloria indicated that he remembered telling Mr. Jackson to put in writing his requests for a petition
7 copy and to view the verification process. Mr. Gloria expressed he would not have denied a
8 representative from viewing the verification. Mr. Gloria stated the first part of the verification
9 process started at 8:50 a.m. on May 29, 2015 and ended by approximately 1:50 p.m. that day.

10 Ms. Andolina testified by phone on July 2, 2015, explaining that on Thursday, May 28, 2015,
11 she sent a letter by express mail and by email to Plaintiff, stating the recall petition had been
12 presented and was being sent to the Election Department to start the raw count which needed to be
13 completed within four business days. She received no response back from the Plaintiff. Ms.
14 Andolina testified on June 29, 2015 that, on Monday, June 1, 2015, at 5:55 a.m., she sent the
15 Plaintiff another email, stating the verification process would start at 9:30 a.m. that morning.

16 Ms. Eisenman testified on June 29, 2015 that she believed the second half of the verification
17 process started Monday at 9:30 a.m., but possibly 9:00 a.m. She remembered Mr. Jackson showing
18 up five to ten minutes after the process started.

19 Plaintiff also called Dan Burdish as a witness on July 2, 2015. Mr. Burdish said he was
20 assisting Plaintiff and her counsel on Friday, May 29, 2015, and overheard Plaintiff state her
21 representatives had been denied the opportunity to view the verification. Mr. Burdish said he called
22 Mr. Gloria about 4:30 p.m. and said he understood Plaintiff's representatives had been denied the
23 opportunity to review the verification. He testified Mr. Gloria said he was unaware of anyone being
24 denied the chance to view the verification. Mr. Burdish offered to come down that day to view the

1 process, but Mr. Gloria said that it had concluded for the day. On Monday, Mr. Burdish received a
2 call that the verification process was going to begin about 9:00 or 9:30 a.m. He stated he went to the
3 Election Department, arriving five or ten minutes late. He said the Election Department employees
4 cooperated with him viewing the process and he testified to no irregularities.

5 Mr. Gloria and Ms. Andolina testified they never sent specific notice to Plaintiff as to when
6 the verification process was going to start on Friday, May 29, 2015. Ms. Andolina did send Plaintiff
7 notice by email of the starting time for the verification process on Monday, June 1, 2015.

8 NRS 293.1277(8), which provides that the public office subject to recall must be allowed to
9 witness the verification process, does not provide for any prior specific notice to the public official
10 giving a date and time when the process will occur. Nevada Administrative Code 306.023 does
11 require the "filing officer with whom a public officer to be recalled filed his or her declaration of
12 candidacy shall notify that public officer, in writing, within 2 days after a petition to recall a public
13 officer is filed" Ms. Barbara Andolina, City of North Las Vegas Clerk, testified she followed
14 the Code the day the petition was filed on Thursday, May 28, 2015, both by express mail and by
15 email. Going beyond what is required by the Code, Ms. Andolina also noted in her letter the petition
16 was being forwarded to the Registrar of Voters to begin the raw count process which needed to be
17 done in four working days. She testified that she did not hear further from Plaintiff.

18 Plaintiff was aware of the petition filing on Thursday, May 28, 2015, as Mr. Jackson, one of
19 her representatives, was present at the City of North Las Vegas Clerk's office when it was filed. Ms.
20 Andolina also sent an email to Plaintiff with the notice required by NAC 306.023 later that same
21 day. Plaintiff obviously was receiving Ms. Andolina's emails as she forwarded Ms. Andolina's June
22 1, 2015 email with the start of the Monday verification time to Mr. Jackson. Plaintiff presented no
23 evidence she in any way inquired directly or through a representative about the verification process
24 until approximately 1:15 p.m. the next day, Friday, May 29, 2015, when Mr. Jackson went to the

1 County offices. By then, the raw count and the verification had been ongoing since 8:50 a.m. Mr.
2 Jackson subsequently spoke by telephone with Mr. Gloria. This would have been approximately the
3 time according to Mr. Gloria when the Election Department was completing the first part of the
4 verification process at about 1:50 p.m.

5 The Court will not read into NRS 293.1277 a specific notice provision. The statute only
6 provides that the public official subject to recall be allowed to view the verification process and
7 makes no provision for notice or working with the public official to arrange a date and time for the
8 official or his or her representative to be present. In this instance, Plaintiff was aware on Thursday,
9 May 28, 2015, that the petition was filed and the process for verifying the Petition would commence
10 quickly. Plaintiff and her representatives took no step to reach out and determine how the Registrar
11 would specifically move forward on the process until 1:15 p.m. on Friday, May 29, 2015. Plaintiff's
12 representatives were allowed to view the process on Monday. There is some issue as to whether the
13 Election Department started on the verification before the 9:30 a.m. start time provided in Ms.
14 Andolina's email to Plaintiff as Mr. Jackson contends that he got there about 9:20 a.m. and the
15 process had started. However, the Court does not find any evidence to suggest the Election
16 Department sought to mislead Plaintiff as to the start time of verification. The Court also finds the
17 Election Department starting five to ten minutes before Mr. Jackson got there and possibly before
18 the scheduled start time, did not materially hamper Mr. Jackson's or Mr. Burdish's abilities to
19 meaningfully observe the verification process. Plaintiff does not suggest any specific prejudice
20 resulting from these missed few minutes. Both Mr. Gloria and Ms. Eisenman testified that the
21 verification process on Monday was essentially a repeat of the verification process on Friday as an
22 audit to insure the accuracy of the process. Mr. Burdish testified that the Department employees
23 were cooperative in allowing Plaintiff's representatives to view the verification. The Court finds
24 that to the extent Plaintiff was prejudiced by her lack of due diligence in learning the Election

1 Department's verification plans and by the speed the Election Department started the verification on
2 May 29, 2015, this prejudice was largely eliminated by the Election Department's essentially
3 repeating the process from May 29, 2015 on June 1, 2015 as an audit to ensure accuracy.

4 However, this Court notes, with the time and speed the City Clerk's office and Registrar of
5 Voters can now move through the verification process, presumably with new computer and other
6 technology, a procedure or policy at the Election Department to email or telephone a public official
7 or recall committee members prior to initiating the verification process and informing the official
8 and members when the process will start would potentially avoid this issue in the future. The Court
9 can foresee a situation where the process could be completed so quickly an official might not get any
10 notice of its specific occurrence until it was over. *See* NRS 293.1277(5) (discussing verification if a
11 county clerk sets up a process allowing citizens to vote by computer). If an official has the right to
12 observe, but the process begins and ends so quickly that the official, even while exercising some
13 level of diligence, has insufficient notice of the process to actually observe, the Court questions
14 whether the official truly is allowed to observe as required under the statute. In this instance,
15 however, the Court does not believe the facts present such a circumstance requiring the
16 consideration of the issue.

17 III. FOURTH CAUSE OF ACTION

18 Plaintiff in her fourth cause of action alleges the petitions are insufficient as they are not in
19 identical form and are not sequentially numbered as required by NRS 306.030(1). Plaintiff never
20 stated or presented evidence at the hearing as to what she meant by the petitions not being in
21 identical form. NRS 306.030(1) provides in pertinent part: "The petition may consist of any number
22 of copies which are identical in form with the original, except for the name of the county and the
23 signatures and addresses of the residences of the signers. The pages of the petition with the
24 signatures and of any copy must be consecutively numbered." The Court finds the petitions

1 submitted were in identical form except for the signatures and addresses of the residences of the
2 signers.

3 Plaintiff contends the petitions fail to meet the statute's numbering requirement as the
4 petitions as presented to the City Clerk were not sequentially numbered as a whole. Defendant
5 Committee Members argue the statute only requires that the pages of each petition circulated by an
6 individual for signatures need to be sequentially numbered. They point out that the pages of each
7 circulated petition which was submitted with the other petitions together as a group to the clerk were
8 numbered 1 to 4.

9 Mr. Gloria stated that the Election Department considered the numbering system of the
10 petitions submitted in this case to meet the terms of the statute. Mr. Gloria explained that it would
11 be impossible in many instances, such as recalls of state officials or state ballot initiatives, to
12 circulate a single petition with consecutively numbered pages and obtain the necessary number of
13 signatures. The statute allows for separate petitions to be circulated and to be then presented as a
14 group. If each separate petition is sequentially numbered, then it meets the requirement of the
15 statute.

16 The Court finds the Registrar of Voter's interpretation of NRS 306.030(1) to be a fair reading
17 of the statute. NRS 306.030(1) plainly allows a petition to consist of multiple copies of the petition
18 if they are all in identical form. The statute requires the "pages of the petition with the signatures
19 and of any copy must be consecutively numbered." The Court reads this as requiring the pages of
20 each copy of the petition to be consecutively numbered. The Court finds this reading to meet the
21 objectives of the statute to ensure someone does not add additional pages to a petition copy
22 disseminated and verified by a specific circulator.

23 IV. FIFTH CAUSE OF ACTION

24 Plaintiff challenges six petitions (30, 50, 87, 117, 123 and 147) which she contends have

1 irregularities in the verifications done by circulators before notaries. On one petition, the notary
2 printed her name and signed as notarizing, but failed to include her notary stamp, on one the notary
3 failed to print her name on the line where she was to print her name and just placed her notary stamp
4 and signed as notarizing, and on four petitions the circulator or notary had failed to write "Clark" in
5 the space for county name above the notarization. Mr. Gloria testified that the Election Department
6 would consider the petitions where the notary forgot to print his or her name and the name of
7 "Clark" county as being in substantial compliance with the statute requirement that the circulator
8 verify the petitions before a notary. He explained the Election Department had enough information
9 to conclude that the notarizations were authentic. As to the petition missing a notary stamp, Mr.
10 Gloria testified the Election Department would undertake research to determine if the person
11 identified as the notary was an actual notary at the time the petition was notarized. On examination
12 by Defendant Committee Members' counsel, Mr. Gloria identified another petition signed by the
13 same notary which included a notary stamp. The Court finds these six petitions were in substantial
14 compliance with the statute and should be counted.

15 The cases Plaintiff cites in support of her cause of action, *Fiannaca v. Gill*, 78 Nev. 337, 372
16 P.2d 683 (1962) and *Lundberg v. Koonts*, 82 Nev. 360, 365, 418 P.2d 808 (1966), are inapplicable to
17 the facts presented here. These cases applied an earlier version of NRS 306.030 which provided that
18 every copy of a petition "shall be verified by at least one of the signers thereof." The Court in those
19 cases was asked to determine the sufficiency of petitions if the circulators who verified the petition
20 were not also one of the signers. NRS 306.030 has been amended to eliminate the requirement a
21 circulator verifying a petition also be a signer on the petition verified.

22 V. SIXTH CAUSE OF ACTION

23 In her Sixth Cause of Action, Plaintiff asserts under NRS 293.1278, the recall petition should
24 have failed to qualify because the percentage of verified signatures from the random sample of 500

1 signatures was only 84 percent. Plaintiff contends NRS 293.1278 provides for a petition to be valid
2 the percentage of valid signatures from the random sample must be 90 percent or greater. Plaintiff
3 thoroughly misreads the statute as to what the 90 percent figure in the statute references and what
4 the statute requires.

5 NRS 293.1278(1) provides in pertinent part: "If the certificates received by the Secretary of
6 State from all the county clerks establish that the number of valid signatures is less than 90 percent
7 of the required number of registered voters, the petition shall be deemed to have failed to qualify,
8 and the Secretary of State shall immediately so notify the petitioners and the county clerks." This
9 statute is referring to the number of valid signatures after the random sample has been reviewed, the
10 statistical number of valid signatures determined and that percentage of valid signatures applied to
11 the total number of signatures obtained. In this case, the random sample determined that 84 percent
12 of the signatures were valid. This percentage was then applied to the total of 2,717 signatures
13 submitted to determine the petition contained 2,282, 115 percent of the number needed.

14 VI. SEVENTH CAUSE OF ACTION

15 Plaintiff in her seventh cause of action challenges the receipt the City of North Las Vegas
16 Clerk gave to the Committee members submitting the petition. NRS 293.12758(1) provides:

17 1. The county clerk shall issue a receipt to any person who submits a petition for
18 the verification of signatures or a petition, declaration of or acceptance of candidacy.

19 The receipt must state:

- 20 (a) The number of documents submitted;
21 (b) The number of pages of each document; and
22 (c) The number of signatures which the person declares are on the petition.

23 Plaintiff argues that the receipt provided to the committee members only said "Approximately
24 2,700" and did not give the exact number which Plaintiff contends the clerk "must" do. However,

1 the statute clearly states that the clerk is to include on the receipt the number of signatures that the
2 person submitting the petition declares are on the petition. Ms. Andolina testified the Committee
3 members presenting the petition told her there was approximately 2,700 signatures on the petition.
4 Consequently, the Court finds this complies with the statute and the use by committee members of
5 an approximate number did not undermine any purpose of the statute to ensure the integrity of the
6 recall process.

7 VII. EIGHTH CAUSE OF ACTION

8 Plaintiff in her last cause of action contends that the “Remove Ramsey Now” Committee has
9 accepted contributions above the amount it is allowed to accept pursuant to Article 2, Section 10 of
10 the Nevada Constitution and NRS 294A.100. Article 2, Section 10 limits contributions by any
11 “artificial or natural person” to “the campaign of any person for election to any office . . . to \$5,000
12 for the primary and \$5,000 for the general election. NRS 294A.100 provides that a person shall not
13 make or commit to make a contribution to a candidate for any office . . . in an amount which exceeds
14 \$5,000 for the primary election . . . and \$5,000 for the general election . . .” NRS 294A.005 defines
15 a candidate as a person who “files a declaration of candidacy,” “files an acceptance of candidacy,”
16 “whose name appears on an official ballot at any election” or “received contributions in excess of
17 \$100.”

18 Neither side raised or argued this issue at the hearing. The Court finds a committee for recall
19 is not a person for election to an office under Article 2, Section 10, or an candidate for office under
20 NRS 294A.100. The Court agrees with Defendant Committee Members’ contention that a
21 committee for recall, pursuant to NRS 294A.006, is “an organization that (1) receives any
22 contributions, makes any contributions to candidates or persons or makes any expenditures that are
23 designed to affect the recall of a public officer; or (2) files a notice of intent to circulate the petition
24 for recall. Consequently, the Remove Ramsey Now Committee is not limited in the contributions it

1 receives by either Article 2, Section 10 or NRS 294A.006.

2 **ORDER**

3 Accordingly, based upon the above findings and good cause appearing, IT IS HEREBY
4 ORDERED:

- 5 1. Petitioner/Plaintiff's Complaint seeking declaratory relief declaring that judges may not
6 be recalled under Article 2, Section 9 of the Nevada Constitution is DENIED;
- 7 2. Petitioner/Plaintiff's Emergency Motion for Injunction is DENIED;
- 8 3. Petitioner/Plaintiff separate Complaint challenging the Recall Petition is DENIED.

9 IT IS FURTHER ORDERED that not sooner than 10 days, nor more than 20 days after the
10 date of this order, the City of North Las Vegas Clerk shall issue a call for a special election in the
11 jurisdiction in which Petitioner/Plaintiff was elected to determine whether the people will recall
12 Petitioner/Plaintiff as a Municipal Court Judge.

13 DATED this 6 day of July, 2015.

14 
15 _____
16 ERIC JOHNSON
17 DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing via E-Service as follows:

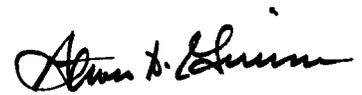
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CLERK OF THE COURT

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 9 *Betty Hamilton, Michael William Moreno,*
and Bob Borgersen

DISTRICT COURT

CLARK COUNTY, NEVADA

HONORABLE CATHERINE RAMSEY
NORTH LAS VEGAS MUNICIPAL JUDGE,

Case No.: A-15-719406-P
Dept. No.: XX

Petitioner,

**HAMILTON, MORENO, AND
BORGENSEN DEFENDANTS:**

vs.

17 THE CITY OF NORTH LAS VEGAS AND
 18 BARBARA A. ANDOLINA City Clerk of
 NORTH LAS VEGAS, BETTY HAMILTON,
 19 MICHAEL WILLIAM MORENO, and BOB
 20 BORGENSEN, individually and as Members of
 "REMOVE RAMSEY NOW,"

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a Decision & Order, a copy of which is attached hereto as

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Exhibit A, was entered in the above-entitled matter on the 6th day of July, 2015.

DATED this 7 day of July, 2015.

GENTILE, CRISTALLI, MILLER,
ARMENI & SAVARESE



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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of GENTILE CRISTALLI MILLER ARMENI &
3 SAVARESE, hereby certifies that on the 7th day of July, 2015, she caused a copy of the
4 NOTICE OF ENTRY OF DECISION & ORDER to all interested parties, by e-service
5 through the Court's Odyssey E-File & Service system and by placing said copy in an envelope,
6 postage fully prepaid, in the U.S. Mail addressed to the following counsel of record:

7 Craig A. Mueller, Esq.
8 Mueller, Hinds & Associates
9 600 S. Eighth Street
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18 _____
19 An employee of
20 GENTILE CRISTALLI MILLER
21 ARMENI & SAVARESE
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EXHIBIT A

EXHIBIT A

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 HONORABLE CATHERINE RAMSEY
5 NORTH LAS VEGAS MUNICIPAL JUDGE,

6 Petitioner/Plaintiff,

7 vs.

8 THE CITY OF NORTH LAS VEGAS AND
9 BARBARA A. ANDOLINA CITY CLERK OF
10 NORTH LAS VEGAS, BETTY HAMILTON,
11 MICHAEL WILLIAM MORENO, AND BOB
12 BORGENSEN, INDIVIDUALLY AND AS
13 MEMBERS OF "REMOVE RAMSEY NOW",

14 Respondents/Defendants.

Case No. A-15-719406-P

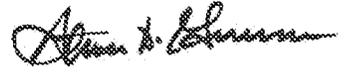
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Dept. No. XX

Consolidated with:

A-15-719651-C



CLERK OF THE COURT

DECISION & ORDER

15 **DECISION & ORDER**

16 THIS MATTER came before the Court for oral argument on Petitioner/Plaintiff's
17 Emergency Petition for Injunction, A-15-719406-P, on June 18, 2015. On June 23, 2015, the Court
18 consolidated this action with Petitioner/Plaintiff's Complaint, A-15-719651-C. The Court held a
19 hearing on both matters on June 29, 2015 and July 2, 2015. Appearing on behalf of
20 Petitioner/Plaintiff HONORABLE CATHERINE RAMSEY NORTH LAS VEGAS MUNICIPAL
21 JUDGE was CRAIG A. MUELLER, ESQ., of the law firm of MUELLER, HINDS &
22 ASSOCIATES; appearing on behalf of Respondents/Defendants BETTY HAMILTON, MICHAEL
23 WILLIAM MORENO and BOB BORGENSEN was DOMINIC P. GENTILE, ESQ., ROSS J.
24 MILLER, ESQ. and COLLEEN E. MCCARTY, ESQ., of the law firm of GENTILE, CRISTALLI,
MILLER, ARMENI & SAVARESE; and appearing on behalf of Respondents/Defendants the CITY
OF NORTH LAS VEGAS and BARBARA ANDOLINA was RICHARD C. GORDON, ESQ.,

1 PATRICK E. BYRNE, ESQ., and DANIEL IVIE, ESQ., of the law firm of SNELL & WILMER.
2 This Court having considered all related pleadings, documents, and the arguments of counsel, makes
3 the following findings of facts and conclusions of law.

4 I. EMERGENCY PETITION FOR INJUNCTION AND FIRST CAUSE OF ACTION

5 A. Resolution of Procedural Issues With Petition for Injunction

6 As the Court noted at the first hearing in this matter on June 18, 2015, Petitioner/Plaintiff
7 [hereinafter Plaintiff] filed her Emergency Petition for Injunction under NRS 295.105(4) and NRS
8 33.010. However, NRS 295.105 does not concern petitions for recall, but rather, those for ballot
9 questions or referendums for municipalities. Consequently, NRS 295.105 does not provide a basis
10 for Plaintiff to seek her requested injunctive relief. The proper statutory provision under which
11 Plaintiff should have sought relief was NRS 306.040 which specifically concerns recall petitions.
12 Additionally, under Nevada Rules of Civil Procedure [NRCP] Rule 3 “[a] civil action is commenced
13 by filing a Complaint with the court.” NRS 33.010, which provides for the Court to grant injunctive
14 relief, states that an injunction may be granted in certain instances after the Plaintiff has filed a
15 Complaint or the parties have otherwise initiated litigation. Indeed, both NRS 306.040, addressing
16 recall petitions, and NRS 295.105, concerning city ballot initiatives, speak in terms of the
17 challenging party filing a complaint to bring the matter before the court. At the hearing, the Court
18 questioned whether Plaintiff had properly proceeded in this matter in that she had not filed a
19 Complaint to initiate litigation, or set out a proper basis for relief under NRS 295.105. She had only
20 filed an Emergency Petition for Injunction, which under NRS 33.010 requires the separate initiation
21 of litigation by Complaint.

22 At the hearing, Plaintiff’s counsel suggested that Judge Ramsey’s filing of the single petition
23 for injunction without filing a separate Complaint asserting a cause of action was intentional as
24 counsel did not see the reason or need to file two documents when one would be sufficient if it

1 provided all the necessary allegations and demands to satisfy the purposes of the NRCP. Plaintiff
2 asked the Court to construe the "Petition for Injunction" as both a Complaint initiating litigation and
3 a separate motion for injunctive relief although not labeled as such. Plaintiff further argued that
4 while the statutory basis for her action may be incorrect, her petition for injunction sets forth a
5 sufficient statement of facts and law to allege a violation of her Nevada Constitutional rights as a
6 judge and state her desired injunctive relief, meeting the requirements of NRCP 8(a). NRCP 8(a)
7 requires, "[a] pleading which sets forth a claim for relief, whether an original claim...shall contain
8 (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a
9 demand for judgment for the relief the pleader seeks."

10 Although at the hearing held on June 18, 2015, Respondents/Defendants [hereinafter
11 Defendants] in the instant matter also questioned Plaintiff's procedural approach, they expressed
12 they were willing to allow the Court to construe Judge Ramsey's filing in a manner which would
13 allow this Court to rule on the underlying constitutional issue of whether a judge could be recalled
14 under the Nevada Constitution. Defendants, however, expressed concern that Plaintiff had also filed
15 a separate Complaint under NRS Chapter 306. Plaintiff in her first cause of action of the Complaint
16 effectively realleged her contention that the Nevada Constitution does not permit her recall.
17 Defendants expressed concern if the Court did not consolidate the two actions under NRCP 42(a),
18 Plaintiff would possibly seek "two bites of the apple" on the constitutional question before different
19 courts. Plaintiff's counsel would not commit to this Court to treat a decision on the constitutional
20 issue as determinative of the issue in Plaintiff's separate action.

21 Consequently, to effectuate the interests of the parties and expedite the orderly progression of
22 this litigation, the Court will treat Plaintiff's Emergency Petition for Injunction as a Complaint
23 alleging a violation of the Nevada Constitution as its cause of action and demanding declarative
24 relief. The Court will also treat the petition as a motion for injunction under NRS 33.010. Because

1 of the similarity of issues, the Court previously ordered the consolidation of A-15-719406-P and A-
2 15-719651-C. This Court is acting appropriately in this instance in view of the parties' assertions of
3 either no procedural errors or waiver of any procedural errors, and in view of NRCP 8's underlying
4 purpose to ensure that the documents filed to initiate litigation give fair notice of the basis of the
5 claim and relief being sought. The parties all clearly indicated they understood the constitutional
6 basis of Plaintiff's claim and the declarative relief sought.

7 B. Article 2, Section 9 of the Nevada Constitution Allows the Recall of Judges

8 Plaintiff contends as a judge, she is not subject to the recall provisions of Article 2, Section 9
9 of the Nevada Constitution and she may only be removed from the bench pursuant to Article 6,
10 Section 21, providing for the Nevada Commission for Judicial Discipline. To answer this question,
11 the Court must first determine whether at the time the legislature and Nevada voters approved
12 Article 2, Section 9 in 1912, they understood the term "[e]very public officer" as used in the article
13 to include judges. If so, then the Court next must determine whether the legislature and Nevada
14 voters understood their passage of Article 6, Section 21 in 1976, creating the Judicial Disciplinary
15 Commission, as repealing Nevada citizens' right to recall as to judges.

16 The Nevada Constitution Article 2, Section 9, sets out Nevadans' right to recall public officials.
17 It provides in relevant part:

18 Recall of public officers: Procedure and limitations. Every public officer in the State of
19 Nevada is subject, as herein provided, to recall from office by the registered voters of the
20 state, or of the county, district, or municipality which he represents. For this purpose, not
21 less than twenty-five percent (25%) of the number who actually voted in the state or in the
22 county, district, or municipality which he represents, at the election in which he was
23 elected, shall file their petition, in the manner herein provided, demanding his recall by the
24 people. They shall set forth in said petition, in not exceeding two hundred (200) words, the
25 reasons why said recall is demanded.

23 This provision of the Nevada Constitution was added by amendment in 1912, as part of a section of
24 the Constitution entitled "Suffrage." This indicates that at the time of its adoption, the legislature

1 and voting citizens perceived the amendment to further define Nevada citizens' rights as voters
2 generally. The legislature in drafting the amendment did not set out an exclusive list of included
3 offices or descriptions of positions. Instead, the legislature passed and Nevada citizens approved an
4 amendment which broadly provides for "[e]very public officer" to be subject to recall. The term
5 "public officer" is not expressly defined in the Nevada Constitution. In determining whether a judge
6 is a "public officer" within Article 2, Section 9, this Court is mindful of the basic interpretive
7 principal that the Nevada Constitution should be construed in its ordinary sense unless some
8 apparent absurdity or unmistakable intent of its framers forbids such construction. *State ex rel.*
9 *Lewis v. Doron*, 5 Nev. 399, 411 (1870). Consequently, where the language in the Nevada
10 Constitution is plain and not ambiguous, it should be read in those plain and unambiguous terms.
11 *State ex rel. Summerfield v. Clarke*, 21 Nev. 333, 337, 31 P. 545 (1982). These principles were
12 recently reaffirmed by the Supreme Court in the context of interpreting Article 2, Section 9, in
13 *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010), explaining "we, like the
14 United States Supreme Court, 'are guided by the principle that "[t]he Constitution was written to be
15 understood by the voters; its words and phrases were used in their normal and ordinary as
16 distinguished from technical meaning.'" [quoting *District of Columbia v. Heller*, 554 U.S. 570
17 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)]. Consequently, the Court must
18 first consider whether "public officer," in the normal and ordinary sense of the term, includes a
19 judge.

20 In this regard, this Court believes an average voter would normally and ordinarily perceive
21 the term "[e]very public officer" to include all officials exercising some level public authority,
22 inclusive of all executive, legislative and judicial officials. The Court finds support for its
23 perception of the normal and ordinary meaning of "every public official" from a variety of sources.
24 For example, Merriam-Webster OnLine, whose hardcover dictionary the Nevada Supreme Court

1 referenced in *Strickland v. Waymire* to assist in determining the ordinary meaning of “number” and
2 “actually,” 126 Nev. Adv. Op. 25, 235 P.3d at 609 (quoting *Webster’s New Universal Unabridged*
3 *Dictionary* (2d ed. 1996)), defines “public officer” as “a person who has been legally elected or
4 appointed to office and who exercises governmental functions.” *Merriam-Webster OnLine*, “Public
5 Officer,” (June 28, 2015) www.merriam-webster.com/dictionary/public%20officer. Judges are
6 officials who are elected or appoint to office and exercise certain governmental functions. Another
7 example, the Nevada Supreme Court in its opinion in *Nevada Judges Association v. Lau*, 112 Nev.
8 51, 60, 910 P.2d 898, 904 (1996), indicated that its members generally understood the term “all
9 public officials” to typically include judicial officers. In discussing the original language of the
10 proposed amendment setting term limits for state and local public officials, the high Court
11 referenced how the initiative’s language lumped together “all public officials—whether legislative,
12 executive or judicial.” *Id.* In its advisory opinion last month, the members of the State of Nevada
13 Standing Committee On Judicial Ethics, while not specifically dealing with the definition of “public
14 officer” under Article 2, Section 9, clearly indicated that they read the term’s general meaning to
15 include judges, commenting “under Article 2, Section 9, “sitting judges are subject to recall petition
16 and election just as they are subject to regular elections.” *Advisory Opinion JE15-011* (May 14,
17 2015). Even the legislative history Plaintiff quotes in reference to the Judicial Disciplinary
18 Commission supports the view that ordinary voters or legislators understand the term “every public
19 officer” to include judicial officers. In the Nevada State Legislature Background Paper 81-8
20 JUDICIAL DISCIPLINE, which Plaintiff states was intended to inform members of the legislature
21 as to issues relating to judicial discipline, the writer notes: “Because of the shortcomings of
22 impeachment, recall and legislative address, the judicial discipline commission was develop to
23 handle judicial misconduct.” The reference in the quote to shortcomings with recall demonstrates
24 that the writer for the background paper understood the Article 2, Section 9’s reference to “every

1 public officer” to include judicial officers. Defendants note other sources which also clearly
2 understand the term “every public officer” as used in the Nevada Constitutions recall provisions to
3 include judicial officers. James J. Alfani, Steven Lubet, Jeffrey M. Shaman, Charles G. Geyh,
4 *Judicial Conduct and Ethics* 14.06 (5th ed. 2013); National Center for State Courts, *Removal of*
5 *Judges*, (June 28, 2015)
6 www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state=. While the
7 Nevada Supreme Court, Ethics Committee, and other sources noted above were not being
8 specifically asked to define public officer or officials in their decisions or writings, their use of the
9 term in the manners they did, reinforces this Court’s general view that the normal and ordinary
10 understanding of the term “[e]very public official” in Article 9, Section 2, includes judicial officers.

11 The Nevada Supreme Court has not had the opportunity to consider the question whether a
12 judge is a public officer subject to recall. However, the high Court, just three years after the recall
13 amendment in 1915 had the opportunity to generally consider what government positions should be
14 considered “civil office of profit” as included in Article 4, Section 8 of the Nevada Constitution. In
15 *State ex rel. Kendall v. Cole*, 38 Nev. 215, 148 P. 551 (1915), the Nevada Supreme Court discussed
16 at length the concept of a “public office,” listing and approving a number of prior court cases from
17 different jurisdictions discussing the attributes of a public office as opposed to public employment or
18 private office. These approved factors included:

19 (1) whether the holder of the office is entrusted with some portion of the sovereign
20 authority of the state; (2) whether his duties involve the continuous exercise, as part of
21 the regular and permanent administration of the government, of a public power, trust or
22 duty; (3) whether his compensation, period of employment and the details of his duties
23 are set forth in statute or in the constitution; (4) whether he must take the oath of public
24 office pursuant to Nev. Const. art. 15, sec. 2; and (5) whether he must keep a record of
his official acts.

1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987)(citing *Kendall*, 38 Nev. at 231-232).

All of these attributes can be found in the position of a judge. Judges take an oath of office, their

1 compensation, terms of office, jurisdiction and general duties are set by law, they exercise some
2 portion of the sovereign authority of the state, exercise a public power and trust, and keep records of
3 their official acts.

4 Plaintiff argues only executive and legislative officers are subject to recall. The fact the
5 constitutional provision for recall lies in Article 2 of the Nevada Constitution, concerning citizens'
6 suffrage rights, and not in Articles 4 and 5 concerning legislative and executive branches appears to
7 belie that suggestion. She also points to NRS 281A.160, a provision of NRS Chapter 281A, which
8 concerns Ethics in Government and contains certain provisions generally applicable to public
9 officers. NRS 281A.160 defines public officers to exclude judicial officers. She argues that through
10 this statute the legislature demonstrated the term "public officer" does not include judicial officers.
11 However, the legislature frequently uses general terms in its statutes and then provides specific
12 definitions of the term applicable to that statute only. Indeed, in NRS 281A.030, the statute
13 expressly states the definitions in NRS 281A.035 through NRS 281A.170 are for the words and
14 terms "[a]s used in this chapter," relating to *Ethics in Government* and not broadly to all statutes and
15 the Constitution. As Defendants point out, the *Ethics in Government* statute logically excludes
16 judges because the ethical requirements for judges are set out in the Nevada Code of Judicial
17 Conduct and discipline is administered through the Nevada Commission on Judicial Discipline and
18 Nevada Supreme Court. Consequently, the legislature simply excluded judicial officers from the
19 public officers whose ethical requirements are defined in NRS Chapter 281A. What is significant,
20 however, is the legislature in excluding judicial officers as "public officials" under NRS Chapter
21 281A, must have believed the general understanding of the term public officer would include
22 judicial officers; otherwise, there would have been no reason to specifically exclude them in the
23 statute.

24 Because it finds the constitutional language is clear on its face and not ambiguous and

1 susceptible to two or more reasonable interpretations, this Court has no need to look and consider
2 anything beyond the language of Article 2, Section 9. *Strickland v. Waymire*, 126 Nev. Adv. Op. 25,
3 235 P.3d at 608. However, this Court also finds persuasive the Attorney General's 1987 opinion's
4 detailed analysis of the historical and legislative background concerning the passage of the recall
5 amendment in 1912. This history strongly indicates the amendment was part of the Progressive
6 movement at that time which involved, in part, an anti-judicial sentiment. 1987 Nev. Op. Atty. Gen.
7 No. 7 (March 27, 1987) (citing *Fossey, Meiners v. Bering Strait School District and the Recall of*
8 *Public Officers: A Proposal for Legislative Reform*, 2 Alaska L. Rev. 41, 42 (1985); Moser,
9 *Populism A Wisconsin Heritage: Its Effect on Judicial Accountability in the State*, 66 Marquette L.
10 Rev. 1, 36 (1982); J. Hurst, *The Growth of American Law*, 360 (1950). Of particular interest to the
11 Court are three other western states at that same approximate time passed recall amendments with
12 very similar language to Nevada's, allowing for the recall of public officers without any limitation.
13 As the Nevada Attorney General pointed out, "[u]nlike Nevada, in Arizona, Colorado, and Oregon,
14 their recall provisions have been subjected to judicial scrutiny. In all three of the states, the courts
15 have held that judges are public officers subject to recall pursuant to their constitution. *Abbey v.*
16 *Green*, 235 P. 150 (Ariz. 1925); *Marians v. People ex rel. Hines*, 169 P. 155 (Colo. 1917); *State ex*
17 *rel. Clark v. Harris*, 144 P. 109 (Ore. 1914)." 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).
18 The Court also notes the authorities the Attorney General cites which discuss how the Nevada Bar
19 Association, following the lead of the American Bar Association, formally opposed the passage of
20 the recall amendment in 1912 because it permitted the recall of judicial officers. *Id.* (citing the
21 *Carson City Appeal*, July 26, 1912, at 4, col. 3). Despite the opposition of the Nevada Bar
22 Association and the American Bar Association, Nevada voters overwhelmingly approved amending
23 the constitution to allow the recall of "[e]very public officer." *Id.* (citing Secretary of State (William
24 D. Swackhamer), *Political History of Nevada*, (Carson City: State Printing Office, 1986) at 262).

1 Considering the plain and unambiguous language of Article 2, Section 9, as well as the relevant
2 history surrounding the passage of the recall amendment in 1912, the Court finds the term “[e]very
3 public officer” used in the article includes judges and the article permits voters to recall a judge.

4 The Court now turns to Plaintiff’s contention that the legislature and voters in approving
5 Article 6, Section 21, in 1976, creating the Nevada Commission on Judicial Discipline, either
6 intended to limit the removal of judges to proceeding brought under the auspices of the Commission,
7 or otherwise enacted a constitutional amendment inconsistent with Article 2, Section 9 and,
8 consequently, superseding it. *Rea v. City of Reno*, 76 Nev. 483, 357 P.2d 585, 587 (1960) (if
9 provisions of the Constitution are inconsistent with each other, the provision adopted later is
10 controlling).

11 Plaintiff initially contends Article 6, Section 21 of the Nevada Constitution, providing for
12 judicial discipline, was intended by the legislature and voters through its drafting and passage to be
13 the sole mechanism for removal of judges. However, neither the language of the amendment nor the
14 ballot explanation provided at the time of its passage in 1976 express that Nevada’s voters are giving
15 up their right to recall their judges by approval of the amendment. The legislature could have easily
16 made such provisions in the amendment’s language to modify Article 2, Section 9, if that was its
17 intent. If the legislature and voters in 1976 intended by the passage of Article 6, Section 21 to
18 eliminate the right to recall judges under Article 2, Section 9, this Court “would expect a direct state
19 and express language to that effect.” *Strickland v. Waymire*, 126 Nev. Adv. Op. 25, 235 P.3d at 611
20 (2010) (citing 3 Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* 58:3,
21 at 114-15 (7th ed. 2008)). Nowhere in the ballot explanation does it suggest, much less clearly state,
22 that voters in approving the amendment are modifying Article 2, Section 9, and surrendering their
23 right to recall judges. Nevada Secretary of State, *Constitutional Amendments to be Voted Upon in*
24 *State of Nevada at General Election, November 2, 1976*, at 16-17 (1976).

1 The amendment creating the judicial disciplinary commission is not inconsistent with the
2 constitutional provisions providing for recall of public officers. Article 6, Section 21, like
3 impeachment as provided in Article 7, Section 2, provides for discipline of judges for misdemeanor
4 or malfeasance while in office. Article 2, Section 9, in providing voters the right to recall a public
5 officer, does not require any allegation of misfeasance, nonfeasance or malfeasance. All that is
6 demanded is the voters seeking recall of an official state a reason. "The merit of that reason as
7 grounds for removal is for the electorate to determine...." *Batchelor v. Eighth Judicial Dist. Court*,
8 81 Nev. 629, 633, 408 P.2d 239, 632 (1965). Consequently, recall provides a separate basis
9 independent of the disciplinary function of the judicial disciplinary commission to remove a judge.
10 As the Nevada Attorney General in his 1987 advisory opinion pointed out:

11 we are of the opinion that Nev. Const. art. 6, sec. 21 is not applicable to our analysis of
12 whether a district judge is a public officer subject to recall, since the provisions of art.
13 2, sec. 9 and art. 6, sec. 21 are not inconsistent. *See Rea v. City of Reno*, 76 Nev. 483,
14 488, 357 P.2d 585 (1960). In contrast to a disciplinary action, there need not exist a
15 good reason for recall of a public officer, nor is there a requirement that cause be
16 shown. The merit of the recall petition is for the people to decide. *Batchelor v. Eighth
17 Judicial District Court*, 81 Nev. 629, 408 P.2d 239 (1965).

18 1987 Nev. Op. Atty. Gen. No. 7 (March 27, 1987).

19 Plaintiff argues that NRS 1.440(1) clearly demonstrates that the legislature has interpreted
20 the amendment creating the Nevada Commission on Judicial Discipline to eliminate the voters' right
21 to recall judges. This section reads: "The Commission has exclusive jurisdiction over the public
22 censure, removal, involuntary retirement and other discipline of judges which is coextensive with its
23 jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under
24 the same rules." In *Halverson v. Hardcastle*, 123 Nev. 245, 263, 163 P.3d 428, 441 (2007) the
Nevada Supreme Court stated "[u]nder the Nevada Constitution, the judicial discipline commission
exercises exclusive jurisdiction over the formal discipline of judges which may include censure,
removal, and retirement." NRS 1.440 only provides for the Commission to have exclusive

1 jurisdiction over the "discipline" of judges. Likewise, in *Halverson*, the Supreme Court stated only
2 the judicial discipline commission has exclusive jurisdiction over the "formal discipline" of judges,
3 which could amount to removal of the judge from his or her position. The voters' right to recall
4 extends to virtually any reason a sufficient number of voters believes would justify removal of a
5 public official. Consequently, recall is not definitively a form of "discipline". Consequently, as
6 noted above, Article 6, Section 21 and NRS 1.440 are not inconsistent with the right to recall in
7 Article 2, Section 9, and neither limits the voters' right to recall judges. Moreover, the Nevada
8 Supreme Court in *Halverson* seemed to recognize that the Commission does not possess the sole
9 authority or means to remove a judge. In stating "[u]nder the Nevada Constitution, the Judicial
10 Discipline Commission exercises exclusive jurisdiction over the formal discipline of judges," the
11 Supreme Court provided a lengthy citation to Article 6, Section 21, and court cases discussing the
12 concept of exclusive jurisdiction, but then at the end of the citation added: "*But see* Nev. Const. art.
13 2, § 9; *id.* art. 7, § 2; NRS 3.092 (providing for the voluntary retirement of district court judges for
14 permanent physical or mental incapacitation from performing the duties of office, regardless of
15 age)." *Id.* at n. 37.

16 Plaintiff argues public policy considerations support finding that judges should not be subject
17 to recall and put at risk of being influenced by public opinion and electoral pressures. Whether
18 judges should be subject to election and, consequently, subject to removal by voters is a debate
19 various states have answered in different ways. Nevada voters have, on more than one occasion,
20 considered and rejected constitutional amendments providing for the initial appointment of judges
21 with subsequent retention votes by the electorate. Nevada citizens plainly want the right to elect
22 their judges and their history also strongly suggests they want be able to recall them. The Court
23 finds no reason to doubt the wisdom of Nevada citizens having the right to recall their judges.
24 Nevada citizens have not abused this privilege and this State's history demonstrates they appreciate

1 the significance of this responsibility. As Plaintiff notes, in Nevada's 150-year history, voters have
2 never recalled a judge. Rather than demonstrate that judges should not be subject to recall, this fact
3 demonstrates Nevada voters are prudent and considerate in exercising their right to recall and not
4 subject to political whims and frivolous causes. Indeed, the approval of the recall petition in this
5 matter does not mean that Plaintiff will ultimately be recalled. Voters will be asked to consider the
6 reasons for recalling Plaintiff and decide whether the reasons are sufficient to recall her. Voters can
7 reject or accept those reasons as they, in their insight, believe is right. This is their right under the
8 Nevada Constitution and this Court sees no basis to alter that because of fears of frivolous political
9 winds, fears for which there are no factual basis. As the Supreme Court stated in *Batchelor*:

10 'All political power is inherent in the people. Government is instituted for the
11 protection, security and benefit of the people; and they have the right to alter or reform
12 the same whenever the public good may require it.' Nevada Constitution, Art 1, § 2. In
13 theory, a public officer need not fear recall if the reason given therefor is frivolous. In
14 such case the required number of signatures on the petition to force an election should
15 not be obtained and, if perchance, the required number of signatures is obtained, an
16 intelligent, informed electorate reading the reason printed on the ballot as required, will
17 not vote to recall him. Our governmental scheme dignifies the people; a treasured
18 heritage, indeed. The provision for recall is but one example. We shall not intrude upon
19 the people's prerogative.

20 The Court denies and dismisses Plaintiff's Petition/Complaint seeking a declaratory
21 judgment that judicial officers are not subject to recall pursuant to Article 2, Section 9 of the Nevada
22 Constitution, and it finds judges are public officers subject to recall under the provision of that
23 section. Consequently, the Court denies Plaintiff's Petition/Motion for injunction to stop the recall
24 petition of Judge Ramsey. Further, the Court dismisses Plaintiff's first cause of action of her
Complaint which contends she is not subject to recall under NRS 306.020 because the term "public
official" does not include judges. The Court finds NRS 306.020 was passed to aid in implementing
the voters' right to recall pursuant to Article 2, Section 9, and the term "[e]very public official" used
in NRS 306.020 does include judges as subject to recall.

1 II. SECOND AND THIRD CAUSES OF ACTION

2 Plaintiff in her Second Cause of Action makes the following assertions: 1) 2,549 signers of
3 the petitions failed to provide their addresses as required by NRS 306.020(3)(a); 2) 102 signers of
4 the petitions failed to include a date it was signed as required by NRS 306.020(3)(a)¹; 3) over 295
5 signatures on the petitions are duplicative and should not be counted under NRS 306.020(3)(a); and
6 4) the petitions include over 295 instances where one person signed for multiple persons in a
7 household and those signatures should not be counted under NRS 306.020(3)(a). In Plaintiff's Third
8 Cause of Action, she asserts the words "Recall Petition" are not in 10 pt bold type above at least 40
9 of the signatures on the petitions.

10 A. Substantial Compliance with the Recall Petition Statutes

11 At the hearing on this matter on June 29, 2015, Plaintiff did not provide any listing or
12 tabulation of specific signatures she challenged for any of the alleged inadequacies noted above.
13 The Court found its own review of the petitions it was the rare exception when a signature was not
14 accompanied by a signer's address. The Court inquired of Plaintiff's counsel how Judge Ramsey
15 determined 2,549 of the signers of the petition failed to include their address. Plaintiff's counsel in
16 response explained that generally the signers' addresses did not include their zip codes and Plaintiff
17 treated such addresses as incomplete. This Court finds a signer's failure to include a zip code did
18 not invalidate his or her address. The statute only requires the address of the signer and does not
19 specifically require the providing of a zip code. A zip code is a postal code used by the U.S. Postal
20 Service to enhance its ability to quickly route mail to the areas where they should be delivered.
21 Even if a letter does not include a zip code, the U.S. Postal Service will deliver the mail to the
22 address on the letter. The statute's purpose in requiring an address is to assist the Election

23 _____
24 ¹ Plaintiff incorrectly cites NRS 306.020(3)(d)]. However, that section concerns the inclusion on the petition of the date
the notice of intent to recall is filed. NRS 306.020(3)(a) concerns the requirement that the signer include the date he or
she signs the petition.

1 Department in identifying the person who signed the petition and determining if he or she was a
2 registered voter in the proper district. This purpose is accomplished by a signer providing his or her
3 street address and no need exists for the signer to include a zip code. Plaintiff at the hearing
4 introduced no other evidence or made any other argument concerning the failure of signers to
5 provide their addresses. The Court finds Plaintiff's challenge to the petitions is not substantiated.

6 Likewise, at the hearing, the Court asked Plaintiff's counsel to explain his challenge that 40
7 signatures did not have the words "Recall Petition" in 10 pt bold type immediately above them.
8 Counsel explained Plaintiff had found a number of signatures where the signers had signed in the
9 space designated for "Print Your Name" and then printed their names in the space designated for
10 signature. Counsel argued, because the words "Recall Petition" were printed on the petition form at
11 the top of each space on the form designated for signature and the space for "Print Your Name" was
12 located on the form above the space for signature, when a signer signed in the "Print Your Name"
13 space, the words "Recall Petition" were not immediately above his or her signature.

14 Plaintiff called Mark Preusch, a private investigator she hired to review the petitions in this
15 matter. Mr. Preusch testified he had reviewed the petitions and found 117 instances where the signer
16 had failed to include the date he or she signed the petition and 124 occasions where the signer had
17 dated the petition in the wrong location. Defendants in turn called Monica Eisenman who was a
18 supervisor of the verification of random sample signatures. She testified that in verifying a signature
19 where a date was not included, the Clark County Election Department employees would look at
20 surrounding signatures and the date or dates they were signed to determine the approximate missing
21 date.

22 In *Cleland v. Eighth Judicial District Court*, 92 Nev. 454, 552 P.2d 488, 489-90 (1976), a
23 public official subject to a recall petition challenged the petition, claiming it did not strictly adhere to
24 the requirements of NRS Chapter 306. The Nevada Supreme Court noted it had previously held that

1 "recall statutes should be liberally construed with a view toward promoting the purpose for which
2 they are enacted." *Id.* The high Court concluded: "We find the rule of substantial compliance best
3 furthers this purpose and is apposite to the determination of sufficiency and validity of petitions here
4 involved." *Id.* The Nevada Supreme Court has subsequently reaffirmed this standard in *Nevadans*
5 *for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006), where the Court stated a substantial
6 compliance standard is generally applied to statutory requirements, and in *Las Vegas Convention*
7 *and Visitor Authority v. Miller*, 124 Nev. 669, 191 P.3d 1138, 1146-47 (2008), where the Court
8 again held it looked for substantial compliance with a statutory requirement in the election context,
9 stating "a substantial compliance standard accords proper deference to the people's initiative power."

10 Plaintiff introduced no testimony or other evidence identifying the signatures on the petitions
11 which were above, rather than immediately below, the words "Recall Petition." Regardless, this
12 Court finds those individuals who signed the petitions and who inadvertently placed their signatures
13 in the box for "Print Your Name," and, consequently, immediately above the words "Recall
14 Petition" in 10 pt bold print were in substantial compliance with statutory requirements. The
15 purpose of the requirement is to ensure the individual signing the petition understands his or her
16 signature is being placed on a recall petition. The words "Recall Petition" are in large print at the
17 top of every page of the petition and are repeated in every signature box on the page. As noted
18 above, the words are just below the signature of a person who signs in the "Print Your Name" space.
19 Consequently, the Court has little doubt the signers did understand they were signing a recall
20 petition.

21 This Court also finds that Election Department employees acted properly when they used
22 surrounding signatures with dates on the petition to determine the date of signing for a person who
23 signed without including a date. NRS 306.011(3) provides after giving notice of intent to circulate a
24 petition for recall, those leading the recall effort have 90 days to collect the necessary number of

1 signatures. This window of time to obtain signatures "serves to notify elected officials of the
2 relevant time periods involved and discourages frivolous and harassing petitions." *Citizens for*
3 *Honest & Responsible Government v. Heller*, 116 Nev. 939, 11 P.3d 121, 127 (2000). This statutory
4 provision and its underlying purpose are met when Election Department officials through reasonable
5 and reliable means can determine the approximate date a voter has signed a petition and if the voter
6 signed within the 90 day period for collecting signatures. The Court finds a petition signer who
7 inadvertently fails to date his or her signature substantially complies with the statute and its purpose
8 when it can be reasonably determine the approximate date of signing.

9 B. Sufficiency and Accuracy of Random Sample Verification

10 While Plaintiff did not specifically challenge in her complaint the adequacy of the random
11 sample process to statistically determine the number of valid signatures gathered in the petition, she
12 did make several assertions in her Complaint that the random sample process failed to statistically
13 identify large numbers of invalid signatures. At the hearing, Plaintiff's counsel directly challenged
14 the adequacy of the random sample process to accurately determine the number of valid signatures
15 and requested a verification of all signatures on the petitions.

16 NRS 306.035(2) and NRS 293.1276-293.1279 allows the Election Department to use a
17 statistical sampling procedure to determine the number of valid signatures on a petition and the
18 Nevada Secretary of State may certify a recall election on the basis of such a sampling. The
19 Election Department is required to pull an entirely random selection of 500 signatures or 5 percent
20 of all signatures, whichever is larger, for verification. Both Ms. Eisenman and Registrar of Voters
21 Joseph Gloria testified this random selection is done through use of a computer program which
22 ensures the consideration of each signature on the petition for selection to the random sample. The
23 Nevada Supreme Court has found the use of the random sample procedure to be accurate and
24 constitutional as it "clearly creates a more efficient, less costly and less time-consuming process...."

1 that "'aids in the operation' of the recall right." *Citizens for Honest & Responsible Government v.*
2 *Heller*, 116 Nev. 939, 11 P.3d at 128 (quoting Nev. Const. Art. 2, Sec. 9). In *Citizens for Honest &*
3 *Responsible Government*, the high Court commented the process appears to be accurate. The Court
4 noted the case involved the verification of two petitions, the first of which the Secretary of State had
5 ordered be fully verified. In looking at the random sample statistical determination of invalid
6 signatures against the actual full verification of the petition, the Court found the statistical sampling
7 was accurate to within 0.25 percent of the actual number of verified signatures. The Court noted,
8 "[t]his small discrepancy is indicative of the sampling procedure's reliability and rebuts any
9 insinuation that an individual's vote might be overlooked by the procedure." *Id.* In the instant
10 matter, the Clark County Election Department drew 500 signatures for the sample because of the
11 low number of signatures on the petitions. This number represented approximately 18 percent of all
12 signatures, much higher than the 5 percent required for petitions with a larger number of signatures.
13 Consequently, as Mr. Gloria explained in his testimony, the size of the sample insured greater
14 accuracy than in a case with only a 5 percent sampling. This Court, in considering Plaintiff's
15 challenges to the accuracy of the random sampling in this case finds Judge Ramsey has failed to
16 present evidence showing the sample failed to accurately determine the statistical occurrence of
17 invalid signatures.

18 Plaintiff asserts that a large number of duplicate signatures are on the petitions beyond the
19 statistical number picked up in the random sampling. Plaintiff claims at least 174 people signed the
20 petitions two or more times, resulting in about 184 duplicate signatures being invalid. The only
21 evidence Plaintiff submitted as to the number of duplicate signatures was the testimony of Mr.
22 Preusch, who counsel represented had made no report concerning his review of the petitions and was
23 only going to reference his notes from the review. In response to Plaintiff's counsel's question on
24 re-direct "did you find or did you locate somebody---individuals who had signed multiple times, the

1 same signature on the—or different petitions?”, Mr. Preusch answered “Yeah, there were 356
2 names.” On further questioning by the Court concerning his answer about duplicate signature, the
3 witness stated “So 356 people that had signed the petition had also signed one of the other petitions
4 as well.” The Court then asked “Again, you didn’t keep any list or notations as to which ones you
5 found?” The witness responded “No.” Counsel for Defendant City of North Las Vegas asked a
6 follow-up question: “I’m still not clear with respect to the 356. Was it witness’ testimony that then
7 there’s approximately 180 examples where there’s duplicates and that comes up to the 356 number,
8 or are we suggesting that there are actually — how many would you say, of the 356, would actually
9 need to be removed is what I’m...” The witness responded, “Jeez, you know, I couldn’t answer
10 that. We’d really have to go through each one again and come up with that tabulation.”

11 Subsequently after the June 29, 2015 hearing, the Court determined it would like further
12 information from Mr. Preusch as to how he calculated the numbers he gave in his testimony. The
13 Court, on the morning of July 1, 2015, had his staff contact Plaintiff’s counsel to have Mr. Preusch
14 available to participate in the July 2, 2015, hearing, either in person or by telephone and to bring all
15 materials and notes he relied upon in his review of the petitions. On July 2, 2015, at 1:00 p.m.,
16 Plaintiff’s counsel represented his office had been unable to make any contact with Mr. Preusch in
17 the approximate 27 hours since the Court had requested his participation. However, Plaintiff’s
18 counsel produced four sets of tabulations he represented the witness had relied upon in making his
19 determinations of signature challenges for his testimony. Counsel stated that friends of the Plaintiff
20 had actually reviewed the petitions and made the lists and Mr. Preusch had been asked to review the
21 lists against the petitions to ensure they were accurate. Counsel did not disclose the detailed lists
22 Mr. Preusch purportedly used to conduct his investigation prior to witness’ testimony, despite being
23 asked on Monday if the witness had done any report as to how he compiled his tabulations or
24 identified the challenged signatures. Counsel simply stated the witness did not prepare a report, but

1 made no mention of the four tabulation lists. Mr. Preusch in his testimony made no mention of
2 being given the tabulation lists or using them in his review of the petitions, testifying he was
3 "requested to do a comprehensive review of all of the signatures, the petitions. . . ." Despite being
4 asked on at least three occasions if he did any tabulation or had anything which would identify the
5 signatures about which he was challenging, Mr. Preusch at no time mentioned the tabulation lists
6 that according to Plaintiff's counsel had been provided to him to check against the petitions.
7 Plaintiff's counsel provided the Court with copies of the four tabulation lists but never offered them
8 into evidence.

9 In response to Mr. Preusch's testimony concerning duplicate signatures, Defendant
10 Committee Members offered the testimony of Ms. Lauren Paglina. Ms. Paglina testified she was a
11 Summer Law Clerk at Defendants' counsel's law firm and had started reviewing the petition
12 signatures to determine possible duplicates. She explained she did this by entering the names from
13 the petitions into a database alphabetically to identify possible duplicate signatures to compare. She
14 testified she had been able to go through approximately 1,100 signatures before the hearing and had
15 identified 16 duplicate signatures.

16 While neither party's witnesses offered any tabulation identifying the duplicate signatures
17 that they had identified for the Court to consider as part of the evidence on this issue, this Court
18 finds the testimony of Ms. Paglina more credible in terms of evaluating the signatures for duplicates.
19 Ms. Paglina was able to explain the process she used to identify possible duplicate signatures which
20 reasonably included entering the signatures from the petitions in a database alphabetically to identify
21 signatures to compare and determine if they appeared duplicative. This contrasts to Mr. Preusch's
22 testimony in which he had difficulty articulating how he went about making his tabulations. The
23 Court is also troubled by what it finds as Mr. Preusch's questionable candor in failing to mention he
24 was provided with tabulation lists others had compiled for him to use to look and compare specific

1 signatures to challenge. Additionally, Ms. Paglina's statistical tabulation of 16 duplicates in
2 approximately 1,100 signatures, 1.4 percent, is consistent with the statistical occurrence of
3 duplicates in the random sample of 1.4 percent.

4 Finally, even accepting Plaintiff's contention that the random sample resulted in a significant
5 statistically deviation from the actual number of duplicates in all the petitions, the removal of the
6 signatures Plaintiff challenges would not bring the petition below the number needed for recall.
7 Plaintiff challenges 184 signatures as duplicate of other signatures in the petitions. Removing from
8 this number, 38 signatures that the random sample already identified and subtracted from the total
9 number of signatures (1.4% of 2717 is 38), and removing the remaining 146 challenged signature
10 from the 2,282 signatures the random sample validated results in 2,136 remaining. Consequently,
11 the Court finds that Plaintiff's challenge to the accuracy of the random sample based on her
12 contention of additional duplicate signatures does not undermine the use of the random sample in
13 this case.

14 Plaintiff in her Complaint contends the petitions contain 295 signatures signed by other
15 members of a household and should not be counted. However, Mr. Preusch testified that while he
16 observed occasions where he saw signatures which he believed were possibly signed by only one
17 member of a household, he did not "recall" how many time he saw such occurrences. He admitted
18 he did not document that number and just remembered seeing that "at least one or a couple times."
19 Plaintiff's counsel did provide as one of the four tabulations given to the Court on July 2, 2015, a
20 compilation represented to identify signatures signed by other members of a household. However,
21 Plaintiff did not seek to authenticate or admit the tabulation. Left with Mr. Preusch's testimony that
22 he noticed this occurring one or two times in the petitions, the Court finds no evidentiary basis for
23 Plaintiff's contention the random sample in this matter failed to accurately determine the statistical
24 occurrence of signatures signed by other members of a household.

1 Plaintiff did not raise in her Complaint the issue whether the random sample failed to
2 accurately determine the statistical occurrence of signatures by people who were not registered to
3 vote. At the hearing, Mr. Preusch testified 292 people who had signed the petition were not on the
4 list of registered voters for the 2011 General Election. On cross-examination, Mr. Preusch when
5 asked if he made any tabulation of the names of signers who were not registered to vote, stated, "No,
6 I did not." And when asked if he had anything with him right now to "show the Court where the
7 names came from," Mr. Preusch answered, "I do not." Plaintiff's counsel on July 2, 2015, gave the
8 Court a tabulation he identified as having been made by Plaintiff's friends which indicated 295
9 signatures were from "Persons Not on Voter List --From June 7, 2011 NLV General Election."
10 Neither Mr. Preusch, nor Plaintiff's counsel expressed or defined what they meant by "not registered
11 voters" or "Persons Not on Voter List -- From June 7, 2011 NLV General Election." Significantly,
12 the Clark County Election Department in its review of the random sample excluded 57 signatures for
13 having not voted in the 2011 General Election, having an address change, being in the wrong district
14 or district invalid and not being registered. These categories would seem to be encompassed in the
15 general scope of "Persons Not on Voter List." The number of 295 names Plaintiff challenges
16 constitutes 10.9 percent of the total signatures. The 57 names the Election Department invalidated
17 from the random sample due to registration problems constitute 11.4 percent of the random sample
18 of 500. Plaintiff fails to establish any basis to believe the random sample failed to accurately
19 determine the statistical occurrence of signatures that should be excluded for registration and voting
20 problems.

21 During the hearing, Plaintiff's counsel questioned Mr. Gloria, Ms. Eisenman and Ms. Paglina
22 about specific instances of what counsel perceived as possible duplicate signatures as well as other
23 possible invalid signatures which were not part of the random sample and several instances where
24 counsel believed certain signatures should not have included in the sample. The Court finds these

1 limited number of instances as unpersuasive in that such incidents should statistically be picked up
2 and excluded through the statistical determination of valid signatures in the random sample.
3 Plaintiff's counsel also questioned Mr. Gloria about why certain information on the Election
4 Department's random sample detail list did not match certain information on the petitions. Mr.
5 Gloria explained the detail list was essentially an internal document used to assist Election
6 Department officials in the validation of the signatures in the sample. Mr. Gloria gave a number of
7 explanations for these variations which the Court finds reasonable and does not undermine the
8 integrity of the verification process.

9 C. Plaintiff's Representatives Allowed to Witness Verification

10 Although not raised as a cause of action in her Complaint, Plaintiff at the hearing on June 29,
11 2015, elicited testimony suggesting the Election Department may have provided incorrect
12 information as to when the verification of signatures was going to occur, and, consequently,
13 effectively precluded Plaintiff or her representative from watching the verification process. NRS
14 293.1277(8) provides the public official who is the subject of the recall must be allowed to witness
15 the verification process. On June 29, 2015, Johnny Jackson testified for the Plaintiff. He stated he
16 was a supporter of the Plaintiff and was present on Thursday, May 28, 2015, when the Committee
17 seeking the judge's recall presented their petitions at the City of North Las Vegas Clerk's Office.
18 He spoke to a woman in the City Clerk's Office that day and was told the petitions were going to be
19 transported to the Clark County Registrar of Voters that afternoon or the next day. On cross-
20 examination, Mr. Jackson stated he knew the petitions were being taken to the Registrar for
21 verification and that it was an expedited process. Mr. Jackson stated that on Friday, May 29, 2015,
22 after discussing the situation with the Plaintiff, he went to the Election Department at approximately
23 2:00 p.m. and eventually spoke to Mr. Gloria. Mr. Jackson alleged he asked about the verification
24 process and Mr. Gloria told him that the Election Department followed the NRS. According to Mr.

1 Jackson, he asked for a copy of the petition and to witness the verification. Mr. Gloria told him to
2 put his request in writing and stated the verification would start in one or two days. Mr. Jackson
3 said he subsequently sent an email to Mr. Gloria requesting a copy and to witness the verification.
4 He also testified he sent an email to the Plaintiff documenting what happened on May 29, 2015,
5 including that he had been told by Mr. Gloria the verification process would start in one or two days.
6 Mr. Jackson testified that on Monday, June 1, 2015, Plaintiff forwarded him an email she had
7 received from the City of North Las Vegas Clerk stating the verification process would begin at 9:30
8 a.m. Mr. Jackson said he arrived about 9:20 a.m. On arriving, he perceived the process had actually
9 started before he arrived. He said he was allowed to witness the process, but felt the Election
10 Department employees were not randomly selecting signatures but were looking for certain
11 signatures which he alleged as coming from areas of North Las Vegas which favored her opponent
12 in the last election. He explained he had expected the employees would be given instructions such
13 as verify signature 7 on every fourth petition and then go through the stack of petitions again and
14 look at the one above or below that. After the June 29, 2015 hearing, the Court requested Mr.
15 Jackson appear at the continuation of the hearing on July 2, 2015, and to bring the emails he had
16 referenced in his testimony. On July 2, 2015, Mr. Jackson produced the emails showing he had
17 forwarded an email to Mr. Gloria at approximately 3:13 p.m. on May 29, 2015, requesting the
18 petition copy and to witness the verification process. He also sent an email at approximately 3:58
19 p.m. to Plaintiff indicating he went to the County Offices at 1:15 p.m. and was told the verification
20 process had started. Mr. Jackson in his email indicated he complained why the Plaintiff was not told
21 the verification process would start that day and he was put in telephone contact with Mr. Gloria.
22 Mr. Gloria told him they had started the verification of signatures and Mr. Jackson asked Mr. Gloria
23 for a petition copy. He also asked if they were going to verify every signature on the petitions to
24 which Mr. Gloria said that the Department follows the NRS. According to Mr. Jackson in his email,

1 Mr. Gloria said he did not do anything over the phone and requested an email as to what Mr.
2 Jackson wanted. Mr. Gloria also told Mr. Jackson the verification process would be done by
3 Monday. Significantly, Mr. Jackson made no mention in his email that Mr. Gloria had told him the
4 verification process would begin in "one or two days."

5 Mr. Gloria testified he did speak with Mr. Jackson by telephone on May 29, 2015. Mr.
6 Gloria indicated that he remembered telling Mr. Jackson to put in writing his requests for a petition
7 copy and to view the verification process. Mr. Gloria expressed he would not have denied a
8 representative from viewing the verification. Mr. Gloria stated the first part of the verification
9 process started at 8:50 a.m. on May 29, 2015 and ended by approximately 1:50 p.m. that day.

10 Ms. Andolina testified by phone on July 2, 2015, explaining that on Thursday, May 28, 2015,
11 she sent a letter by express mail and by email to Plaintiff, stating the recall petition had been
12 presented and was being sent to the Election Department to start the raw count which needed to be
13 completed within four business days. She received no response back from the Plaintiff. Ms.
14 Andolina testified on June 29, 2015 that, on Monday, June 1, 2015, at 5:55 a.m., she sent the
15 Plaintiff another email, stating the verification process would start at 9:30 a.m. that morning.

16 Ms. Eisenman testified on June 29, 2015 that she believed the second half of the verification
17 process started Monday at 9:30 a.m., but possibly 9:00 a.m. She remembered Mr. Jackson showing
18 up five to ten minutes after the process started.

19 Plaintiff also called Dan Burdish as a witness on July 2, 2015. Mr. Burdish said he was
20 assisting Plaintiff and her counsel on Friday, May 29, 2015, and overheard Plaintiff state her
21 representatives had been denied the opportunity to view the verification. Mr. Burdish said he called
22 Mr. Gloria about 4:30 p.m. and said he understood Plaintiff's representatives had been denied the
23 opportunity to review the verification. He testified Mr. Gloria said he was unaware of anyone being
24 denied the chance to view the verification. Mr. Burdish offered to come down that day to view the

1 process, but Mr. Gloria said that it had concluded for the day. On Monday, Mr. Burdish received a
2 call that the verification process was going to begin about 9:00 or 9:30 a.m. He stated he went to the
3 Election Department, arriving five or ten minutes late. He said the Election Department employees
4 cooperated with him viewing the process and he testified to no irregularities.

5 Mr. Gloria and Ms. Andolina testified they never sent specific notice to Plaintiff as to when
6 the verification process was going to start on Friday, May 29, 2015. Ms. Andolina did send Plaintiff
7 notice by email of the starting time for the verification process on Monday, June 1, 2015.

8 NRS 293.1277(8), which provides that the public office subject to recall must be allowed to
9 witness the verification process, does not provide for any prior specific notice to the public official
10 giving a date and time when the process will occur. Nevada Administrative Code 306.023 does
11 require the "filing officer with whom a public officer to be recalled filed his or her declaration of
12 candidacy shall notify that public officer, in writing, within 2 days after a petition to recall a public
13 officer is filed" Ms. Barbara Andolina, City of North Las Vegas Clerk, testified she followed
14 the Code the day the petition was filed on Thursday, May 28, 2015, both by express mail and by
15 email. Going beyond what is required by the Code, Ms. Andolina also noted in her letter the petition
16 was being forwarded to the Registrar of Voters to begin the raw count process which needed to be
17 done in four working days. She testified that she did not hear further from Plaintiff.

18 Plaintiff was aware of the petition filing on Thursday, May 28, 2015, as Mr. Jackson, one of
19 her representatives, was present at the City of North Las Vegas Clerk's office when it was filed. Ms.
20 Andolina also sent an email to Plaintiff with the notice required by NAC 306.023 later that same
21 day. Plaintiff obviously was receiving Ms. Andolina's emails as she forwarded Ms. Andolina's June
22 1, 2015 email with the start of the Monday verification time to Mr. Jackson. Plaintiff presented no
23 evidence she in any way inquired directly or through a representative about the verification process
24 until approximately 1:15 p.m. the next day, Friday, May 29, 2015, when Mr. Jackson went to the

1 County offices. By then, the raw count and the verification had been ongoing since 8:50 a.m. Mr.
2 Jackson subsequently spoke by telephone with Mr. Gloria. This would have been approximately the
3 time according to Mr. Gloria when the Election Department was completing the first part of the
4 verification process at about 1:50 p.m.

5 The Court will not read into NRS 293.1277 a specific notice provision. The statute only
6 provides that the public official subject to recall be allowed to view the verification process and
7 makes no provision for notice or working with the public official to arrange a date and time for the
8 official or his or her representative to be present. In this instance, Plaintiff was aware on Thursday,
9 May 28, 2015, that the petition was filed and the process for verifying the Petition would commence
10 quickly. Plaintiff and her representatives took no step to reach out and determine how the Registrar
11 would specifically move forward on the process until 1:15 p.m. on Friday, May 29, 2015. Plaintiff's
12 representatives were allowed to view the process on Monday. There is some issue as to whether the
13 Election Department started on the verification before the 9:30 a.m. start time provided in Ms.
14 Andolina's email to Plaintiff as Mr. Jackson contends that he got there about 9:20 a.m. and the
15 process had started. However, the Court does not find any evidence to suggest the Election
16 Department sought to mislead Plaintiff as to the start time of verification. The Court also finds the
17 Election Department starting five to ten minutes before Mr. Jackson got there and possibly before
18 the scheduled start time, did not materially hamper Mr. Jackson's or Mr. Burdish's abilities to
19 meaningfully observe the verification process. Plaintiff does not suggest any specific prejudice
20 resulting from these missed few minutes. Both Mr. Gloria and Ms. Eisenman testified that the
21 verification process on Monday was essentially a repeat of the verification process on Friday as an
22 audit to insure the accuracy of the process. Mr. Burdish testified that the Department employees
23 were cooperative in allowing Plaintiff's representatives to view the verification. The Court finds
24 that to the extent Plaintiff was prejudiced by her lack of due diligence in learning the Election

1 Department's verification plans and by the speed the Election Department started the verification on
2 May 29, 2015, this prejudice was largely eliminated by the Election Department's essentially
3 repeating the process from May 29, 2015 on June 1, 2015 as an audit to ensure accuracy.

4 However, this Court notes, with the time and speed the City Clerk's office and Registrar of
5 Voters can now move through the verification process, presumably with new computer and other
6 technology, a procedure or policy at the Election Department to email or telephone a public official
7 or recall committee members prior to initiating the verification process and informing the official
8 and members when the process will start would potentially avoid this issue in the future. The Court
9 can foresee a situation where the process could be completed so quickly an official might not get any
10 notice of its specific occurrence until it was over. *See* NRS 293.1277(5) (discussing verification if a
11 county clerk sets up a process allowing citizens to vote by computer). If an official has the right to
12 observe, but the process begins and ends so quickly that the official, even while exercising some
13 level of diligence, has insufficient notice of the process to actually observe, the Court questions
14 whether the official truly is allowed to observe as required under the statute. In this instance,
15 however, the Court does not believe the facts present such a circumstance requiring the
16 consideration of the issue.

17 III. FOURTH CAUSE OF ACTION

18 Plaintiff in her fourth cause of action alleges the petitions are insufficient as they are not in
19 identical form and are not sequentially numbered as required by NRS 306.030(1). Plaintiff never
20 stated or presented evidence at the hearing as to what she meant by the petitions not being in
21 identical form. NRS 306.030(1) provides in pertinent part: "The petition may consist of any number
22 of copies which are identical in form with the original, except for the name of the county and the
23 signatures and addresses of the residences of the signers. The pages of the petition with the
24 signatures and of any copy must be consecutively numbered." The Court finds the petitions

1 submitted were in identical form except for the signatures and addresses of the residences of the
2 signers.

3 Plaintiff contends the petitions fail to meet the statute's numbering requirement as the
4 petitions as presented to the City Clerk were not sequentially numbered as a whole. Defendant
5 Committee Members argue the statute only requires that the pages of each petition circulated by an
6 individual for signatures need to be sequentially numbered. They point out that the pages of each
7 circulated petition which was submitted with the other petitions together as a group to the clerk were
8 numbered 1 to 4.

9 Mr. Gloria stated that the Election Department considered the numbering system of the
10 petitions submitted in this case to meet the terms of the statute. Mr. Gloria explained that it would
11 be impossible in many instances, such as recalls of state officials or state ballot initiatives, to
12 circulate a single petition with consecutively numbered pages and obtain the necessary number of
13 signatures. The statute allows for separate petitions to be circulated and to be then presented as a
14 group. If each separate petition is sequentially numbered, then it meets the requirement of the
15 statute.

16 The Court finds the Registrar of Voter's interpretation of NRS 306.030(1) to be a fair reading
17 of the statute. NRS 306.030(1) plainly allows a petition to consist of multiple copies of the petition
18 if they are all in identical form. The statute requires the "pages of the petition with the signatures
19 and of any copy must be consecutively numbered." The Court reads this as requiring the pages of
20 each copy of the petition to be consecutively numbered. The Court finds this reading to meet the
21 objectives of the statute to ensure someone does not add additional pages to a petition copy
22 disseminated and verified by a specific circulator.

23 IV. FIFTH CAUSE OF ACTION

24 Plaintiff challenges six petitions (30, 50, 87, 117, 123 and 147) which she contends have

1 irregularities in the verifications done by circulators before notaries. On one petition, the notary
2 printed her name and signed as notarizing, but failed to include her notary stamp, on one the notary
3 failed to print her name on the line where she was to print her name and just placed her notary stamp
4 and signed as notarizing, and on four petitions the circulator or notary had failed to write "Clark" in
5 the space for county name above the notarization. Mr. Gloria testified that the Election Department
6 would consider the petitions where the notary forgot to print his or her name and the name of
7 "Clark" county as being in substantial compliance with the statute requirement that the circulator
8 verify the petitions before a notary. He explained the Election Department had enough information
9 to conclude that the notarizations were authentic. As to the petition missing a notary stamp, Mr.
10 Gloria testified the Election Department would undertake research to determine if the person
11 identified as the notary was an actual notary at the time the petition was notarized. On examination
12 by Defendant Committee Members' counsel, Mr. Gloria identified another petition signed by the
13 same notary which included a notary stamp. The Court finds these six petitions were in substantial
14 compliance with the statute and should be counted.

15 The cases Plaintiff cites in support of her cause of action, *Fiannaca v. Gill*, 78 Nev. 337, 372
16 P.2d 683 (1962) and *Lundberg v. Koonts*, 82 Nev. 360, 365, 418 P.2d 808 (1966), are inapplicable to
17 the facts presented here. These cases applied an earlier version of NRS 306.030 which provided that
18 every copy of a petition "shall be verified by at least one of the signers thereof." The Court in those
19 cases was asked to determine the sufficiency of petitions if the circulators who verified the petition
20 were not also one of the signers. NRS 306.030 has been amended to eliminate the requirement a
21 circulator verifying a petition also be a signer on the petition verified.

22 V. SIXTH CAUSE OF ACTION

23 In her Sixth Cause of Action, Plaintiff asserts under NRS 293.1278, the recall petition should
24 have failed to qualify because the percentage of verified signatures from the random sample of 500

1 signatures was only 84 percent. Plaintiff contends NRS 293.1278 provides for a petition to be valid
2 the percentage of valid signatures from the random sample must be 90 percent or greater. Plaintiff
3 thoroughly misreads the statute as to what the 90 percent figure in the statute references and what
4 the statute requires.

5 NRS 293.1278(1) provides in pertinent part: "If the certificates received by the Secretary of
6 State from all the county clerks establish that the number of valid signatures is less than 90 percent
7 of the required number of registered voters, the petition shall be deemed to have failed to qualify,
8 and the Secretary of State shall immediately so notify the petitioners and the county clerks." This
9 statute is referring to the number of valid signatures after the random sample has been reviewed, the
10 statistical number of valid signatures determined and that percentage of valid signatures applied to
11 the total number of signatures obtained. In this case, the random sample determined that 84 percent
12 of the signatures were valid. This percentage was then applied to the total of 2,717 signatures
13 submitted to determine the petition contained 2,282, 115 percent of the number needed.

14 VI. SEVENTH CAUSE OF ACTION

15 Plaintiff in her seventh cause of action challenges the receipt the City of North Las Vegas
16 Clerk gave to the Committee members submitting the petition. NRS 293.12758(1) provides:

17 1. The county clerk shall issue a receipt to any person who submits a petition for
18 the verification of signatures or a petition, declaration of or acceptance of candidacy.

19 The receipt must state:

- 20 (a) The number of documents submitted;
- 21 (b) The number of pages of each document; and
- 22 (c) The number of signatures which the person declares are on the petition.

23 Plaintiff argues that the receipt provided to the committee members only said "Approximately
24 2,700" and did not give the exact number which Plaintiff contends the clerk "must" do. However,

1 the statute clearly states that the clerk is to include on the receipt the number of signatures that the
2 person submitting the petition declares are on the petition. Ms. Andolina testified the Committee
3 members presenting the petition told her there was approximately 2,700 signatures on the petition.
4 Consequently, the Court finds this complies with the statute and the use by committee members of
5 an approximate number did not undermine any purpose of the statute to ensure the integrity of the
6 recall process.

7 VII. EIGHTH CAUSE OF ACTION

8 Plaintiff in her last cause of action contends that the "Remove Ramsey Now" Committee has
9 accepted contributions above the amount it is allowed to accept pursuant to Article 2, Section 10 of
10 the Nevada Constitution and NRS 294A.100. Article 2, Section 10 limits contributions by any
11 "artificial or natural person" to "the campaign of any person for election to any office . . . to \$5,000
12 for the primary and \$5,000 for the general election. NRS 294A.100 provides that a person shall not
13 make or commit to make a contribution to a candidate for any office . . . in an amount which exceeds
14 \$5,000 for the primary election . . . and \$5,000 for the general election . . ." NRS 294A.005 defines
15 a candidate as a person who "files a declaration of candidacy," "files an acceptance of candidacy,"
16 "whose name appears on an official ballot at any election" or "received contributions in excess of
17 \$100."

18 Neither side raised or argued this issue at the hearing. The Court finds a committee for recall
19 is not a person for election to an office under Article 2, Section 10, or an candidate for office under
20 NRS 294A.100. The Court agrees with Defendant Committee Members' contention that a
21 committee for recall, pursuant to NRS 294A.006, is "an organization that (1) receives any
22 contributions, makes any contributions to candidates or persons or makes any expenditures that are
23 designed to affect the recall of a public officer; or (2) files a notice of intent to circulate the petition
24 for recall. Consequently, the Remove Ramsey Now Committee is not limited in the contributions it

1 receives by either Article 2, Section 10 or NRS 294A.006.

2 **ORDER**

3 Accordingly, based upon the above findings and good cause appearing, IT IS HEREBY
4 ORDERED:

- 5 1. Petitioner/Plaintiff's Complaint seeking declaratory relief declaring that judges may not
6 be recalled under Article 2, Section 9 of the Nevada Constitution is DENIED;
7 2. Petitioner/Plaintiff's Emergency Motion for Injunction is DENIED;
8 3. Petitioner/Plaintiff separate Complaint challenging the Recall Petition is DENIED.

9 IT IS FURTHER ORDERED that not sooner than 10 days, nor more than 20 days after the
10 date of this order, the City of North Las Vegas Clerk shall issue a call for a special election in the
11 jurisdiction in which Petitioner/Plaintiff was elected to determine whether the people will recall
12 Petitioner/Plaintiff as a Municipal Court Judge.

13 DATED this 6 day of July, 2015.

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16 ERIC JOHNSON
17 DISTRICT COURT JUDGE
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