

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the Matter of the)
HONORABLE JAMES ENEARL,)
Justice of the Peace, East Fork Justice Court,)
County of Douglas, State of Nevada,)
Respondent.)

Case No. 42057

FILED

SEP 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY _____
DEPUTY CLERK

**CERTIFIED COPY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE**

Pursuant to Interim Commission Rule 28(2), I hereby certify that the document attached hereto is a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE adopted and filed by the Nevada Commission on Judicial Discipline on September 18, 2003.

DATED this 18th day of September, 2003.

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702

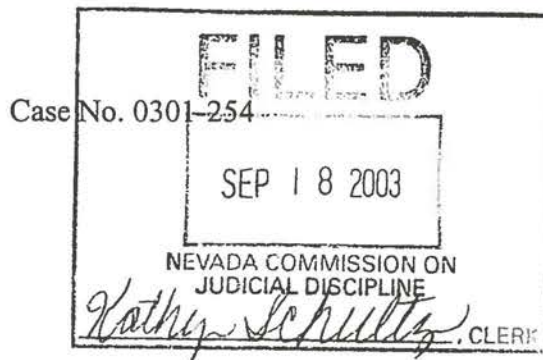
David F. Sarnowski

DAVID F. SARNOWSKI
General Counsel & Executive Director
Nevada Bar No. 0075



1 BEFORE THE COMMISSION ON JUDICIAL DISCIPLINE
2 STATE OF NEVADA

3
4 In the Matter of the)
5 HONORABLE JAMES ENEARL,)
6 Justice of the Peace, East Fork Justice Court,)
7 County of Douglas, State of Nevada,)
8 Respondent.)



9 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE**

10 Pursuant to prior notice, the above-entitled matter came on for public (formal) hearing
11 pursuant to NRS §1.467(3)(c) and Interim Commission Rule 18 (hereinafter referred to as the
12 “hearing”) on September 3, 2003 before the Nevada Commission on Judicial Discipline (hereinafter
13 referred to as the “Commission”). Mary E. Boetsch, Esq. appeared as Special Prosecutor for the
14 Commission. John Springgate, Esq., appeared as attorney for the Honorable James EnEarl
15 (hereinafter referred to as the “Respondent”).

16 After hearing the allegations, positions and proof of the parties, the arguments of counsel and
17 having carefully considered the evidence introduced by both parties, including substantial witness
18 testimony, and after being fully advised of its obligations and duties, the Commission specifically
19 finds that the hearing was conducted according to the statutes, rules and procedures required by law
20 and hereby issues the following Findings of Fact, Conclusions of Law and Imposition of Discipline
21 pursuant to Commission Interim Rules 27 and 28; and, NRS §1.4673 and §1.4677.

22 A. **Findings Of Fact**

23 The Commission finds that the legal evidence presented by the Special Prosecutor at the
24 hearing clearly and convincingly established each of the following facts:

25 1. That Respondent was, at all times applicable to the allegations contained in the Formal
26 Statement of Charges, a Justice of the Peace for the East Fork Township, located in the County of
27 Douglas, State of Nevada and Respondent was a judicial officer whose conduct was subject to the
28 provisions of the Nevada Code of Judicial Conduct (hereinafter the “Code”).

1 2. That the factual allegations contained in Charge 1 (which are specifically referenced in
2 Paragraph 1 of the Formal Statement of Charges), with one minor exception noted below, regarding
3 the Respondent's conduct during a May 21, 2001 hearing regarding a criminal defendant, have been
4 established by the required standard of proof of clear and convincing evidence. The facts regarding
5 alleged ex parte contacts by the Respondent were not proven to the requisite level of proof. All other
6 allegations were proven to the requisite level of proof.

7 3. That the factual allegations contained in Charge 2 (which are specifically referenced in
8 Paragraph 2 of the Formal Statement of Charges) regarding the Respondent's conduct during a
9 May 21, 2001 hearing regarding a criminal defendant, have been established by the required
10 standard of proof.

11 **B. Conclusions of Law**

12 The Commission unanimously concludes that the proof suffices to prove the Formal Statement of
13 Charges, as follows:

14 As To Charge 1: A violation of Canons 2A, 3B(4) and 3B(7) of the Code occurred regarding
15 Charge 1 contained in Paragraph 1 of the Formal Statement of Charges. The
16 Commission also concludes that the proof adduced did not prove a violation
17 of Canon 3E(1) and that it was not necessary for the Respondent to recuse
18 himself.

19 As To Charge 2: A violation of Canons 2A, 3B(4) and 3B(7) of the Code occurred regarding
20 charge 2 contained in Paragraph 2 of the Formal Statement of Charges. The
21 Commission also concludes that the proof adduced did not prove a violation
22 of Canon 3E(1) and that it was not necessary for the Respondent to recuse
23 himself.

24 **C. Imposition of Discipline**

25 With regard to Charges 1 and 2, for which the Commission found a violation of the Code,
26 the Commission concludes that the appropriate discipline imposed under Commission Interim Rule
27 28 as to said charges shall be as follows:

28 . . .

1 By unanimous vote of the Commission, pursuant to Subsections 5(a) and (b) of Article 6,
2 Section 21 of the Constitution of the State of Nevada, NRS 1.4653 (2), and Commission Interim
3 Rule 28, the Respondent shall herewith receive a public reprimand.

4 Critically, as admitted by the Respondent, he did not allow defendant Joseph Manoukian to
5 be heard through his duly appointed representative, attorney Michael Roeser, with regard to
6 allegations that defendant Manoukian had violated the terms of his probation. While there may well
7 have been evidence available and good factual and legal reasons to revoke the defendant's probation,
8 the Respondent's failure to ensure that attorney Roeser was present either to contest the allegations
9 or to enter his client's waiver of a hearing, denied the defendant critical due process protections
10 afforded by the law, and required by the Code of Judicial Conduct. The Respondent's own conduct
11 demonstrates impatience and intemperance that are unwarranted.

12 While the Respondent generally may be successful in handling with so-called "tough love"
13 minor offenders experiencing drug problems, the law expects that imposition of punishment will be
14 afforded after the provision of minimal due process protections, including the right to counsel where
15 loss of liberty is a possibility. As a defendant given the privilege of probation, Mr. Manoukian faced
16 the prospect of several months incarceration if the Respondent concluded that revocation of the
17 privilege was warranted. It was the Respondent's responsibility, not that of the defendant himself
18 or the deputy district attorney, to ensure that probation was revoked only after a fair hearing with
19 counsel, not a one-sided colloquy with an unrepresented litigant. Notwithstanding the defendant's
20 previous failures to appear or tardiness for court, or both, it was the Respondent's duty to ensure that
21 the defendant was incarcerated permanently only after due process protections were afforded. It is
22 clear Mr. Manoukian had counsel appointed by the Respondent when he entered his plea. It should
23 have been equally clear to the Respondent that the defendant's advocate should have been notified
24 of the allegations and allowed to appear at the hearing on the revocation issue before revocation was
25 *a fait accompli*.

26 The Commission concludes that its finding that either charge is true would warrant the same
27 sanction as imposed for both charges in this instance, i.e., a public reprimand, not a public censure.

28 . . .

1 Finally, the Commission concludes that no other sanction is warranted at this time, and it expects
2 that the Respondent will not allow similar instances to occur in the future.

3 D. IT IS HEREBY ORDERED that the Clerk's Certificate of Mailing, found below, shall
4 constitute notice of entry of this document pursuant to Commission Interim Rule 34, and the clerk
5 shall promptly serve it on the counsel for the Respondent and the Special Prosecutor.

6 NOTICE is hereby tendered to the Special Prosecutor and the Respondent that pursuant to
7 NRAP 3D, an appeal may be taken by filing a notice of appeal with the clerk of the Commission
8 and serving such notice on the prosecuting counsel within fifteen (15) days of service of this
9 document by the clerk of the Commission.


10 DATED this 18th day of September, 2003.

11 **NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

12 
13 _____
14 FRANK BRUSA, Commissioner and Chairman

15 
16 _____
17 STEVE CHAPPELL, Commissioner and
18 Vice-Chairman

19 
20 _____
21 DAVEEN NAVE, Commissioner

22 
23 _____
24 MARK DENTON, Commissioner and
25 Presiding Officer

26 
27 _____
28 JEROME POLAHA, Commissioner



KARL ARMSTRONG, Commissioner



JAMES BEASLEY, Commissioner

1 CERTIFICATE OF MAILING

2 I hereby certify that on the 18th day of September, 2003, I placed the above-referenced
3 FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE in the
4 United States Mail, postage pre-paid, addressed to the undersigned:

5
6 Mary E. Boetsch, Esq.
7 Sinai, Schroeder, et al.
8 448 Hill Street
9 Reno, NV 89501

10
11 John P. Springgate
12 Law Offices of John Springgate
13 One East First Street, Ste. 1100
14 Reno, NV 89501

15
16
17
18
19
20
21
22
23
24
25
26
27
28

Kathy Schultz, Commission Clerk