BEFORE THE COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of the

Justice of the Peace,

County of Washoe, State of Nevada,

HONORABLE PHILIP THOMAS

Gerlach Township Justice Court.

NEVADA COMMISSION ON JUDICIAL DISCIPLINE

WALLY SCHOOL CLERK

CASE NO. 0403-264

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, IMPOSITION OF DISCIPLINE AND CONSENT ORDER

Pursuant to prior written notice, the above-entitled matter came on for public (formal) hearing in Carson City pursuant to NRS §1.467(3)(c) and Interim Commission Rule 18 (hereinafter referred to as the "hearing") on September 23, 2004, before the Nevada Commission on Judicial Discipline (hereinafter referred to as the "Commission"). Mary E. Boetsch, Esq. appeared as Special Counsel for the Commission. The respondent, the Honorable Philip Thomas (hereinafter referred to as the "Respondent"), did not appear but was represented by Scott Freeman, Esq.

At the hearing, the Special Counsel and the Respondent's Counsel presented a Stipulation regarding disposition of the charges contained in the Formal Statement of Charges, thereby eliminating the need for a contested hearing. It should be noted that counsel for the Respondent represented to the Commission that he will provide the Respondent's signature on the Stipulation or a copy thereof, in order to properly document the fact that the Respondent personally approved the agreement. Among other things, the Respondent agreed to waive his appearance and to waive any right to appeal, following imposition of punishment by the Commission. Additionally, the Respondent stipulated to the following substantive provisions:

 The Respondent understood that pursuant to the agreement, he waived the filing of an Answer to the charges, thereby admitting the truth of the allegations contained therein. The Respondent understood and agreed that the Commission could

immediately proceed to enter findings that the violations recounted in the Formal Statement of Charges have been established by clear and convincing evidence, without the necessity for the presentation of evidence at a public hearing pursuant to Interim Commission Rules 24-26.

- The Respondent and the Special Counsel agreed to jointly recommend to the Commission that the following discipline be imposed against Respondent in order to resolve this case.
 - A. The Respondent stipulated that he has already resigned/retired from judicial office. He agreed never to seek appointive or elective judicial office in Nevada and to the entry of an Order by the Commission permanently banning him from judicial office due to said agreement.
 - B. The Respondent also agreed to imposition of public censure, a form of discipline authorized by Section 5(a), Article 6, Section 21, of the Nevada Constitution and NRS 1.4677.
- 3. The Respondent understood and agreed that the discipline imposed will be included in a "consent order" filed pursuant to Interim Commission Rule 29 and that said Order must be and will be filed with the clerk of the Nevada Supreme Court.

The Commission has considered the stipulation and respective statements proffered by the Special Counsel and counsel for the Respondent at the public hearing. After being fully advised of its obligations and duties, the Commission specifically finds that the hearing was conducted according to the statutes, rules and procedures required by law and hereby issues the following Findings of Fact, Conclusions of Law and Imposition of Discipline pursuant to Commission Interim Rules 27 and 28; and, NRS §1.4673 and §1.4677. Following deliberations in private, the Commission announced its decision as to the appropriate sanctions to be imposed, which are consistent with the terms of the agreement.

A. Findings Of Fact

The Commission finds that the Stipulation presented by the Special Counsel at the hearing clearly and convincingly established each of the following facts.

- That Respondent was, at all times applicable to the allegations contained in the Formal Statement of Charges, a Justice of the Peace for the Gerlach Township, located in the County of Washoe, State of Nevada. Therefore, the Respondent was a judicial officer whose conduct was subject to the provisions of the Nevada Code of Judicial Conduct (hereinafter the "Code").
- 2. The factual allegations contained in Counts 1 through 3, regarding the Respondent's multiple convictions for misdemeanor DUI of either alcohol, drugs or both, have been established by the required standard of proof, to wit, clear and convincing evidence. The Commission expressly finds that the Respondent was convicted in the Sparks (Nevada) Justice Court on January 29, 2004; in the Alpine County (California) Superior Court on February 2, 2004; and the Alameda County (California) Superior Court on February 13, 2004, for DUI incidents that occurred on August 24, 2003, October 8, 2003, and November 26, 2003, respectively. The Commission expressly finds that the Respondent's conduct leading to the convictions was willful.
- Prior to the instant hearing, the Commission issued an Interim Order of Suspension removing the respondent from office on a temporary basis. Thereafter, the Respondent resigned from his elected judicial post.

B. Conclusions of Law

The Commission unanimously concludes that the Stipulation suffices to prove each count of the Formal Statement of Charges, as follows: A violation of Canons 1, 1A, 2, 2A, and 4A(2) of the Code occurred regarding Counts 1 through 3. Each criminal conviction, which also constituted a violation of the canons, tends to implicate the integrity of the judiciary. *Matter of Davis*, 113 Nev. 1204, 946 P.2d 1033 (1997).

C. Imposition of Discipline

The Commission concludes that the appropriate discipline imposed under Commission Interim Rule 28 as to said charges shall be as follows:

By unanimous vote of the Commission, pursuant to Subsections 5(a) and (b) of Article 6, Section 21 of the Constitution of the State of Nevada, NRS 1.4653 (2), and Commission Interim Rule 28, the Respondent shall: (1) Be permanently barred from serving as an elected or appointed judicial officer in Nevada; and (2) Be publicly censured.

1 D. Order 2 IT IS HEREBY ORDERED, pursuant to the consent of the Respondent, that he is publicly 3 censured and permanently barred from seeking or holding judicial office in Nevada. IT IS HEREBY ORDERED, pursuant to the consent of the Respondent, that the Executive 4 Director of the Judicial Discipline Commission take the necessary steps to file this document in the 5 appropriate records of the Commission and with the Nevada Supreme Court. 6 IT IS HEREBY ORDERED that the Clerk's Certificate of Mailing, found below, shall 7 constitute notice of entry of this document pursuant to Commission Interim Rule 34, and the clerk 8 shall promptly serve it on the Respondent and the Special Counsel. 9 10 E. Notice NOTICE is hereby tendered to the Special Counsel and the Respondent that pursuant to 11 NRAP 3D, an appeal may be taken by filing a notice of appeal with the clerk of the Commission 12 and serving such notice on the Special Counsel within fifteen (15) days of service of this document 13 14 by the clerk of the Commission. DATED this 7th day of October , 2004. 15 NEVADA COMMISSION ON JUDICIAL DISCIPLINE 16 17 ssioner and Chairman 18 19 HAPPELL Commissioner and 20 21 NAVE, Commissioner 22 MARK DENTON Commissioner and 23 Presiding Officer 24 25 26 bmmissioner 27

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WAYNE CHIMARUSTI, Commissioner

CERTIFICATE OF MAILING I hereby certify that on the 7th day of 2004, I placed the above-referenced FINDINGS OF FACT, CONCLUSIONS OF LAW, IMPOSITION OF DISCIPLINE AND CONSENT ORDER in the United States Mail, postage pre-paid, addressed to the undersigned: Mary Boetsch, Esq. 448 Hill Street Reno, NV 89501 Scott Freeman, Esq. 556 California Ave. Reno, NV 89509 Kathy Schultz, Commission Clark