

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

FILED

NOV 22 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

In the Matter of)
)
THE HONORABLE William S. Potter,)
Eighth Judicial District Court, Dept. M,)
Clark County, State of Nevada,)
)
Respondent.)

CASE NO. 74527

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

Pursuant to Commission Procedural Rule 29, 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 filed with the Nevada Commission on Judicial Discipline on November 22, 2017.

DATED this 22nd day of November, 2017.

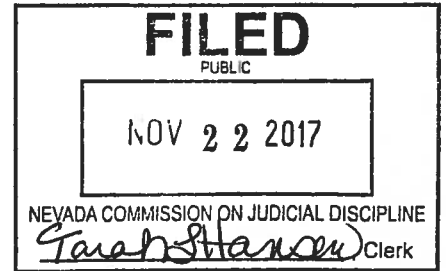
STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
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1 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

2 **STATE OF NEVADA**



3
 4 In the Matter of)
 5 THE HONORABLE WILLIAM S. POTTER,)
 Eighth Judicial District Court, Dept. M,)
 6 County of Clark, State of Nevada,)
 7 Respondent.)

CASE NO. 2015-013-P

8
9 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE**

10 Pursuant to prior written notice, the above-entitled matter came on for a formal, three (3) day
 11 public hearing in Las Vegas, Nevada, pursuant to NRS 1.467 and Commission Rule 18, commencing on
 12 November 1, 2017, before the Nevada Commission on Judicial Discipline (hereinafter, the
 13 "Commission"), regarding the allegations against the Honorable William S. Potter (hereinafter
 14 "Respondent") for violations of the Revised Nevada Code of Judicial Conduct (hereinafter, the
 15 "Code").

16 Thomas C. Bradley, Esq. served as the Prosecuting Officer to the Commission (hereinafter, the
 17 "Prosecuting Officer") and was present. Respondent was represented by William B. Terry, Esq. and
 18 both were present. During the hearing, the Commission considered all evidence and testimony
 19 presented.

20 This document contains the findings of fact and conclusions of law contemplated by
 21 Commission Procedural Rule 28. The findings set forth below establish that Respondent violated
 22 multiple sections of the Code.

23 **A. FINDINGS OF FACT**

24 The Commission finds that the legal evidence presented by the Prosecuting Officer at the
 25 hearing clearly and convincingly established each of the following facts set forth in Paragraphs 1
 26 through 5 below:

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1 1. Respondent was, at all times applicable to the allegations contained in the Formal
2 Statement of Charges, a Judge for the Eighth Judicial District Court located in Clark County, Nevada,
3 and whose conduct was subject to the Code.

4 2. The factual allegations in Count One of the Formal Statement of Charges regarding
5 Respondent contacting a reporter and commenting upon two pending or impending cases, in an attempt
6 to protect his re-election bid, have been proven by clear and convincing evidence.

7 The credible evidence established that on or about October 15, 2014, Respondent heard a
8 temporary custody hearing in *Angeles v. Cardona*, Case No. D-12-468167-F, Eighth Judicial District
9 Court, County of Clark, State of Nevada. Attorney David Mann represented Michelle Angeles, formerly
10 known as Michelle Bagalawis, who is the biological mother of a son born in 2007. Johnny W. Cardona
11 is the biological father of the son and former husband of Ms. Angeles. After Ms. Angeles divorced Mr.
12 Cardona in 2012, she married a woman named Suzanne Angeles-Bagalawis in 2013. Ms. Angeles was a
13 lieutenant in the United States Air Force. At the October 15, 2014 hearing, Respondent ruled that the
14 son should reside with his father during the period of time that Ms. Angeles was deployed in Cuba.

15 The Las Vegas Review Journal (“LVRJ”) published an article on October 22, 2014, that focused
16 on the October 15, 2014 ruling and alleged discrimination by Respondent against Ms. Angeles based
17 upon her sexual orientation. (Prosecuting Officer Exhibit No. 14, LVRJ Article dated October 22,
18 2014). Respondent then contacted the LVRJ reporter responsible for the article and gave comments to
19 the reporter because he was concerned that the article portrayed him as anti-homosexual during the final
20 two weeks before election day.

21 On October 23, 2014, Respondent’s follow-up article was published in the LVRJ. (Prosecuting
22 Officer Exhibit No. 15, LVRJ Article dated October 23, 2014). The article was entitled “Judge Defends
23 Custody Decision in Lesbian Mom Case”. *See id.* In the article, Respondent discussed Lt. Angeles’
24 case. Respondent stated that he granted Lt. Angeles physical custody “knowing full well she was gay”
25 and that “there’s no way” he could find it to be in the child’s best interests to stay with his stepmother
26 while Lt. Angeles was deployed to Cuba. *See id.* The article states that Respondent “provided the
27 Review-Journal with profane text messages the stepmother had sent the father” in the case. *See id.*

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1 Furthermore, Respondent told the reporter that Mr. Mann “might have an ax to grind,” as Respondent
2 had “handled Mann’s personal divorce this year, and Mann did not show up for the trial.” *See id.*

3 Respondent testified that he did make the comments cited in the LVRJ article. He admitted that
4 his comments regarding Mr. Mann’s divorce and Ms. Angeles’ case were made while Mr. Mann’s
5 divorce was on appeal, and Ms. Angeles’ case was pending; however, he denied violating Rule 2.10.
6 Respondent professed that his comments would not impact the fairness of a pending matter.
7 Respondent’s denial in this regard is inconsistent with his Answers to Interrogatories, wherein
8 Respondent admitted that he clearly violated Rule 2.10. (Prosecuting Officer Exhibit No. 17, Answers
9 to Interrogatories).

10 Respondent testified that he was embarrassed that he put the bench in a poor light. He professed
11 that the article upset him because it was a lie and opined that he was not anti-gay. Respondent further
12 disclosed he felt that he had to respond to the article, in part, because the election was twelve days
13 away, he had an opponent, newspaper articles never go away on the Internet, and he wanted to protect
14 his reputation and the integrity of the judiciary. Respondent avowed that he was not particularly
15 concerned that it was a pending matter or about the appearance of bias against Mr. Mann, and at the
16 time of the article, was unaware that contacting the reporter was an ex parte communication.

17 While Respondent was not concerned about the appearance of bias against Mr. Mann, Mr. Mann
18 was very disturbed by the article. Mr. Mann testified that he was very worried that his divorce case,
19 which was on appeal, could be remanded to Respondent. Mr. Mann further stated that he did not have
20 an “ax to grind” with Respondent. Moreover, Mr. Mann explained that his divorce case was sealed in
21 order to protect his livelihood since he is a divorce attorney, and the publicity of the newspaper article
22 thereby quashed that protection.

23 Respondent expressed remorse at the hearing for contacting the press. He explained that
24 because his daughter and wife read the article it impacted him more, thus he felt compelled to respond
25 to the lies in the article. However, no remorse towards Mr. Mann was evidenced during the hearing.
26 Respondent reiterated that he could still be fair after the article, and that he had a duty to sit on both
27 cases. Despite his conflicting hearing testimony with respect to violating Rule 2.10 (which differs from

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1 his Answers to Interrogatories), Respondent did admit during the hearing that he violated Rule 2.9
2 regarding ex parte communications.

3 The Respondent's actions in contacting a reporter and commenting upon two pending or
4 impending cases, in an attempt to protect his re-election bid, clearly and convincingly established
5 violations of Canon 1, Rule 1.1, requiring the Respondent to comply with the law, including the Code;
6 Rule 1.2, for failure to promote confidence in the judiciary; Canon 2, Rule 2.1, requiring Respondent to
7 give precedence to the duties of judicial office; Rule 2.2, requiring impartiality and fairness (comments
8 pertaining to Mr. Mann); Rule 2.9, requiring Respondent to not engage in ex-parte communications;
9 Rule 2.10, requiring Respondent not to make statements on pending or impending cases; Canon 3, Rule
10 3.5, for the use of non-public information (comments pertaining to Mr. Mann); and Canon 4, Rule
11 4.2(A)(1), requiring that an election/campaign must conform with the independence, integrity and
12 impartiality of the judiciary.

13 3. The factual allegations in Count Two of the Formal Statement of Charges regarding
14 Respondent refusing to vacate a scheduled hearing in Case No. D-14-493172-D, where a Motion for
15 Recusal was pending, and by advising the opposing party to file a complaint against Mr. Mann with the
16 State Bar of Nevada, have been proven by clear and convincing evidence.

17 The credible evidence established that following the October 23, 2014 article, Mr. Mann filed
18 three Motions for Recusal in separate cases involving Respondent. An evidentiary hearing was set for
19 November 24, 2014, in Case No. D-14-493172-D ("*Rios*"), while the Motion for Recusal was still
20 pending; however, Respondent refused to take the matter off calendar pursuant to NRS 1.235, despite
21 having adequate time to vacate the hearing. The Commission questioned Respondent as to why he left
22 the matter on calendar, noting that once a Motion to Recuse is filed, a judge cannot touch the case,
23 referring to it as a "hot potato." Respondent testified that he left the hearing on the calendar for two
24 reasons: (1) he wanted to explain to the pro se litigant why the hearing was vacated to avoid criticism by
25 the litigant; and (2) because he thought Mr. Mann was forum shopping.¹

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28 ¹ Respondent testified that he did not realize that Mr. Mann was counsel in the *Rios* matter, and was unaware that Mr. Mann had filed a witness list. Respondent eventually admitted that a judge must vacate a hearing if a motion to recuse is filed.

1 Although the evidentiary hearing did not proceed on November 24, 2014, the Respondent took
2 the opportunity to advise the opposing party, without Mr. Mann or his client being present, to file a
3 complaint against Mr. Mann with the State Bar of Nevada for causing an unnecessary and needless
4 delay in the prosecution of the divorce. Mr. Mann testified that he felt that he was being retaliated
5 against when Respondent put in a minute order that the opposing party should file a bar complaint
6 against him. On or about January 21, 2015, the Chief Judge of the Eighth Judicial District Court
7 granted the three Motions for Recusal in Case Nos. D-14-493172-D, D367335, and D-12-468167-F.²

8 The Respondent's actions in refusing to vacate a scheduled hearing in Case No. D-14-493172-D
9 where a Motion for Recusal was pending, and by advising the opposing party to file a complaint with
10 the State Bar of Nevada against Mr. Mann, clearly and convincingly established violations of Canon 1,
11 Rule 1.1, requiring the Respondent to comply with the law, including the Code; Rule 1.2, for failure to
12 promote confidence in the judiciary; Canon 2, Rule 2.2, requiring impartiality and fairness; and Rule
13 2.4, requiring Respondent to avoid external influences.

14 4. The factual allegations in Count Four of the Formal Statement of Charges regarding
15 Respondent failing to accord Ms. Cramer the right to be heard, by repeatedly using intemperate
16 language and virtually yelling at Ms. Cramer, and by directing that Ms. Cramer be handcuffed during
17 the *Scorelle v. Scorelle* hearing, have been proven by clear and convincing evidence.

18 The credible evidence established that on or about January 13, 2015, in Case No. D-14-490728-
19 D, Respondent asked Plaintiff's counsel, Ms. Cramer, a number of questions regarding outstanding
20 discovery issues, at which time the hearing became hostile. (Prosecuting Officer's Exhibit No. 5 –
21 JAVS video).

22 During Respondent's questioning, Ms. Cramer attempted to explain certain matters related to
23 the discovery issues. Respondent in frustration raised his voice and said that he was "gonna try and
24 wade through some of this crap and get you guys straightened out." Respondent then had a discussion
25 with opposing counsel about bank statements, and Ms. Cramer again interjected asking Respondent that
26 she be allowed to make her argument. Respondent tersely directed Ms. Cramer to have a seat, telling
27

28 ² In his Answers to Interrogatories, Respondent admitted to violating Rule 2.8(B) and stated that his behavior was not dignified.

1 her, "I will allow you to make arguments as to the relevant factors that I wish to hear about." After
2 questioning opposing counsel, Respondent demanded only a "yes" or "no" answer from Ms. Cramer,
3 without allowing her to make any other statement.

4 The Commission noted that Respondent was clearly frustrated during the hearing; in fact, he
5 even yelled at and threatened to handcuff opposing counsel, Mr. Buche. Mr. Buche nervously
6 commented, "[a]nd I certainly don't want to be arrested. I've never been arrested in my life."
7 Respondent's tone and demeanor remained threatening and condescending throughout the entire
8 hearing. By virtue of Respondent yelling and handcuffing Ms. Cramer, denying Ms. Cramer the right to
9 be heard, slamming his hand on the bench, and yelling at and threatening to handcuff opposing counsel,
10 Respondent violated Rules 2.6(A) and 2.8.

11 Moreover, Respondent, throughout his testimony, blamed Ms. Cramer and felt that she deserved
12 to be held in contempt, and that she should be taught a lesson for disrespecting him. This is despite the
13 fact that Respondent admitted that he was never concerned for his safety or the safety of court staff, and
14 acknowledged that Ms. Cramer never yelled or used obscene language at any time during the hearing.
15 NRS 22.010.³ Rather, Respondent blamed Ms. Cramer for putting her wrists into the handcuffs, even
16 though Respondent told his Marshal to get the handcuffs out. Respondent further admitted that he
17 threatened Ms. Cramer with incarceration, and Ms. Cramer testified that she thought she was going to
18 jail. Even upon reflection, Respondent admitted that he signed the order that contained the finding of
19 contempt almost four (4) months later, which demonstrated to the Commission that Respondent failed
20 to realize his error. At the hearing, Respondent denied violating the Judicial Canons pertaining to the
21 incident with Ms. Cramer, and never expressed any remorse. However, in his Answers to
22 Interrogatories, Respondent acknowledged that he demonstrated a lack of patience pertaining to Rule
23 2.8.

24 Ms. Cramer testified that during the hearing, she was trying to explain what had occurred
25 regarding the bank statements. She stated that she felt intimidated when the Marshal stood behind her
26 and that intimidation continued after she was forced to proceed with the case in handcuffs. While she

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28 ³ Judges have the right to handcuff litigants under the proper circumstances in order to maintain control of the courtroom. However, this was a civil matter wherein Respondent used physical restraints as a punitive measure for an attorney who would not answer Respondent's "yes" or "no" questions and, thus, the Commission found the handcuffing to be improper.

1 was handcuffed, Ms. Cramer noted that she was worried that she would go to jail and concerned about
2 her client, both of which impacted her ability to present her client's case. Throughout her testimony,
3 Ms. Cramer was visibly upset. In fact, Ms. Cramer disclosed that she still has a lot of anxiety regarding
4 this incident and that she no longer appears before Respondent. Ms. Cramer explained to the
5 Commission that she felt that she could not say anything during the hearing.⁴

6 The video of the Cramer matter was shown twice during the Commission hearing, and each time
7 Respondent closed his eyes as he listened to the video and acknowledged that the video is terrible and
8 described his behavior as short, rude and abrasive. Respondent also made the following statements in
9 reference to his behavior on the video: "When I watch that video, I cringe"; "My behavior is bad"; "is
10 unacceptable"; and "I allowed my emotions to become too involved". When asked by one of the
11 Commissioners to define a "bully", Respondent replied "I think if you watch the video that you get a
12 taste of it," and agreed that such behavior causes fear. Nevertheless, despite his admissions to the
13 contrary, Respondent still denied that his actions violated the Judicial Canons.

14 The Respondent's actions in failing to accord Ms. Cramer the right to be heard, by repeatedly
15 using intemperate language and virtually yelling at Ms. Cramer, and by directing that Ms. Cramer be
16 handcuffed during the *Scorelle v. Scorelle* hearing, clearly and convincingly established violations of
17 Canon 1, Rule 1.1, requiring the Respondent to comply with the law, including the Code; Rule 1.2, for
18 failure to promote confidence in the judiciary; Canon 2, Rule 2.2, requiring impartiality and fairness;
19 Rule 2.6(A), requiring the right to be heard; and Rule 2.8, requiring Respondent to maintain decorum
20 and demeanor.

21 5. The factual allegations in Count Five of the Formal Statement of Charges regarding
22 Respondent holding Ms. Cramer in contempt of court on January 13, 2015, and sentencing her to
23 seventy-two (72) hours in the Clark County Detention Center, suspended pending counsel's "improved
24 behavior, her drafting a letter of apology to Defendant for her refusal to comply with basic discovery
25 requests and a letter of apology to the Court", have been proven by clear and convincing evidence.

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28 ⁴ The Commission noted that once Ms. Cramer was forced to represent her client while handcuffed as a result of Respondent's defective oral contempt finding, Respondent's continuation of the hearing significantly impaired Ms. Cramer's ability to represent her client.

1 The credible evidence established that on or about January 13, 2015, in Case No. D-14-490728-
2 D, at the conclusion of the hearing, Respondent went off the record to admonish the still handcuffed
3 Ms. Cramer. Respondent then went back on the record to make a minute order finding Ms. Cramer in
4 contempt for refusing to answer a question, refusing to confer with her client and her continued arguing
5 with the Court. Respondent sentenced Ms. Cramer to seventy-two (72) hours in the Clark County
6 Detention Center, which was suspended pending counsel's "improved behavior, her drafting a letter of
7 apology to Defendant for her refusal to comply with basic discovery requests and a letter of apology to
8 the Court." Respondent's sentence also required Ms. Cramer "to conduct herself in a respectful and
9 courteous manner when she practices in front of this Court and all other courts in this
10 jurisdiction/County" and "[i]f this Court hears from its colleagues that she is not complying with
11 procedural rules and is discourteous, the Court will impose the sanctions." Respondent then released
12 Ms. Cramer.

13 The finding of contempt was not in accordance with Nevada law in the following respects:

14 (A) Respondent held Ms. Cramer in contempt for statements or actions that do not constitute
15 contempt under Nevada law;⁵

16 (B) Respondent's penalty for contempt violated Nevada law in that Respondent handcuffed Ms.
17 Cramer and threatened that if he heard from his colleagues "that she was not complying with procedural
18 rules and is discourteous, the Court will impose sanctions"; and

19 (C) Respondent failed to timely enter the requisite order following Respondent's finding of
20 contempt.

21 Respondent testified that he followed the law on contempt, but admitted that he only violated
22 Rule 2.8 regarding patience and decorum. Despite his belief that he complied with the contempt laws,
23 Respondent stated that after this incident he attempted to find judicial education classes that dealt with
24 the practicalities of contempt but found none. However, Respondent also admitted that he only
25 reviewed the annotated cases in the Nevada Revised Statutes regarding contempt, and at the
26 Commission hearing, appeared to not understand the parameters for finding a person in contempt.⁶

27 ⁵ Respondent admitted during the hearing that holding someone in contempt is a matter of last resort.

28 ⁶ A judge has a duty to know the law of contempt. *Goldman v. Nevada Comm'n on Judicial Discipline*, 108 Nev. 251, 830 P.2d 107 (1992), *overruled on other grounds by Matter of Fine*, 116 Nev. 1001, 1002 n. 17, 13 P.3d 400, 414, n. 17 (2000).

1 Although Respondent testified that he complied with the law on contempt, he also simultaneously
2 acknowledged that the order of contempt was “unenforceable” and filed months after the oral contempt
3 finding.

4 The Respondent’s actions of holding Ms. Cramer in contempt of court on January 13, 2015, and
5 his resulting sentence, clearly and convincingly established violations of Canon 1, Rule 1.1, requiring
6 the Respondent to comply with the law, including the Code; Rule 1.2, for failure to promote confidence
7 in the judiciary; Canon 2, Rule 2.2, requiring impartiality and fairness; Rule 2.6(A), requiring the right
8 to be heard; and Rule 2.8, requiring Respondent to maintain decorum and demeanor.

9 6. The Commission finds that the factual allegations contained in Count Three have not
10 been proven by clear and convincing evidence.

11 **B. CONCLUSIONS OF LAW**

12 1. As to Count One of the Formal Statement of Charges, the Commission finds that the
13 Prosecuting Officer has proven by clear and convincing evidence that Respondent’s actions constitute
14 violations of Canon 1 of the Code, Rules 1.1 and 1.2; and Canon 2, Rules 2.1, 2.2, 2.9, and 2.10; Canon
15 3, Rule 3.5; and Canon 4, Rule 4.2(A)(1).

16 The Commission rejects Respondent’s argument that his comments to the press were protected
17 by the First Amendment to the U.S. Constitution.⁷ The First Amendment does offer protection to
18 judges even while they are acting in their capacity as judges, but this protection is limited. In support of
19 his legal argument, Respondent cited to a case involving an attorney’s public comments made during a
20 pending criminal case. In *Gentile v. State Bar of Nevada*, 501 US 1030 (1991), the United States
21 Supreme Court considered attorney speech in active cases.

22 In *Gentile*, the U.S. Supreme Court upheld the “substantial likelihood of material prejudice” test
23 prohibiting lawyers from making public comments on pending cases as set forth in Nevada Supreme
24 Court Rule 177. The Court reasoned that the “substantial likelihood of material prejudice” standard

25 ⁷ Respondent argued for the first time in his Prehearing Brief, and subsequently at the conclusion of the hearing, that he has
26 a First Amendment right to go to the press. Respondent testified that he contacted the press in order to preserve his
27 reputation regarding gay rights prior to the election and to preserve the integrity of the judiciary. The Commission did not
28 find Respondent’s testimony credible as to contacting the press to preserve judicial integrity. The Commission gave
credence to Respondent’s interview statements and Answers to Interrogatories wherein he stated he went to the press because
the original newspaper article painted him as anti-gay so close to the election. Therefore, the Commission finds that
Respondent’s comments to the press were in relation to his re-election campaign.

1 constitutes a constitutionally permissible balance between the First Amendment rights of attorneys in
2 pending cases and the State's interest in fair trials. *Id.* at 1075. "The 'substantial likelihood' test. . . is
3 constitutional under this analysis, for it is designed to protect the integrity and the fairness of a State's
4 judicial system, and it imposes only narrow and necessary limitations on lawyers' speech." *Id.*⁸ Rule
5 2.10's language is similar in that it prohibits judges from making "any public statement that might
6 reasonably be expected to affect the outcome or impair the fairness of a matter pending"

7 Accordingly, under similar reasoning, Rule 2.10 is constitutionally permissible.

8 Moreover, statements to the press by a judge threaten the fairness of a pending proceeding, and
9 fairness is essential to justice.

10 Because judges and attorneys play different roles in the judicial process, their public
11 comments on pending judicial proceedings threaten the fairness of those proceedings in
12 different ways and to different degrees. The public understands that in judicial
13 proceedings lawyers, although also officers of the court, are advocates for the interests of
14 their clients (see, e.g., *Gentile v. State Bar of Nevada, supra*, 501 U.S. at p. 1051, 111
15 S.Ct. 2720 [professional mission of criminal defense bar is to challenge actions of the
16 state]); therefore, the public does not expect a high degree of neutrality or objectivity
17 when lawyers comment on pending cases, nor does the public expect all attorneys to
18 assess the merits of pending cases in the same way. Judges, by contrast, cannot be
19 advocates for the interests of any parties; they must be, and be perceived to be, neutral
20 arbiters of both fact and law (see Preamble, Cal.Code Jud. Ethics) who apply the law
21 uniformly and consistently. Because judges are both "highly visible member[s] of
22 government" (*ibid.*) and neutral decision makers in all court proceedings, their public
23 comments will be received by the public as more authoritative than those of lawyers. And
24 because judges have this greater influence over public opinion, inappropriate public
25 comment by judges poses a much greater threat to the fairness of judicial proceedings
26 than improper public comment by lawyers.

19 *Broadman v. Comm'n on Judicial Performance*, 18 Cal. 4th 1079, 1099–101 (1998), *as*
20 *modified* (Sept. 2, 1998)⁹

21 ⁸ Although the U.S. Supreme Court found Rule 177 void for vagueness, it only did so due to Rule 177's "safe harbor"
22 provision which appeared to permit the speech in question. *Gentile* at 1048. With respect to the Code, Rule 2.10 is not
23 vague. The law recognizes that the standard for vagueness is relaxed when applied to judicial conduct. See, e.g., *Matter of*
24 *Halverson*, 123 Nev. 493, 169 P.3d 1161, 1176 (2007) ("[W]hen evaluating a statute that applies only to judges, the issue is
25 whether an ordinary judge could understand and comply with it."). In fact, courts have consistently rejected vagueness
26 challenges in judicial discipline matters. *Id.*; See also, *Judicial Conduct Comm'n v. McGuire (In re McGuire)*, 685 N.W.2d
748, 761 (N.D. 2004); *In re Barr*, 13 S.W.3d 525, 565 (Tex. Rev. Trib. 1998); *In re Complaint Against Harper*, 77 Ohio
St.3d 211, 673 N.E.2d 1253, 1263 (1996); *In re Disciplinary Proceeding Against Ritchie*, 123 Wash.2d 725, 870 P.2d 967,
972 (1994); *Matter of Young*, 522 N.E.2d 386, 387-88 (Ind. 1988); *Matter of Seraphim*, 97 Wis.2d 485, 294 N.W.2d 485,
493 (1980).

26 ⁹ See also *In re Mathesius*, 188 N.J. 496, 521-22 (2006). The United States Supreme Court also recently addressed the
27 relationship between a judge's constitutional right to free speech and restrictions on a judge's speech imposed by codes of
28 judicial ethics. See *Williams-Yulee v. Fla. Bar* --- U.S. ---, 135 S. Ct. 1656, 1672-73, 191 L.Ed.2d 570 (2015) (holding that a
prohibition against a personal solicitation of campaign funds by a candidate seeking election to become a judge did not
violate the candidate's First Amendment rights). As the *Yulee* court observed, the state has a "compelling interest in
preserving public confidence in the integrity of the judiciary" and that the "perception of judicial integrity is a state interest

1 2. As to Count Two of the Formal Statement of Charges, the Commission finds that the
2 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
3 violations of Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.2 and 2.4.

4 3. As to Count Four of the Formal Statement of Charges, the Commission finds that the
5 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
6 violations of Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.2, 2.6(A) and 2.8.

7 4. As to Count Five of the Formal Statement of Charges, the Commission finds that the
8 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
9 violations of Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.2, 2.6(A) and 2.8.

10 5. As to Count Three of the Formal Statement of Charges, the Commission found that the
11 factual proof was insufficient to sustain the charges at the clear and convincing threshold.

12 6. The Commission has both personal jurisdiction over Respondent and subject matter
13 jurisdiction over the violations of the Code at issue in this case.

14 **C. IMPOSITION OF DISCIPLINE**

15 In consideration of the totality of Respondent's actions and violations of the Code, and all
16 evidence presented, the Commission concludes that the appropriate discipline under Commission Rule
17 28 shall be as follows:

18 By unanimous vote of the Commission, after due deliberation and consideration of the evidence
19 presented; Respondent's lack of prior discipline by the Commission; and Respondent's character
20 reference letters; but nevertheless, in light of the seriousness of Respondent's failure to follow the law
21 and the Code in several respects, along with consideration of the Commission's recent issuance of a
22 letter of caution to Respondent in 2016 which involved Respondent yelling, belittling and threatening
23 both parties before him;¹⁰ it is decided that pursuant to subsections 5(a) and (b) of Article 6, Section 21
24 of the Constitution of the State of Nevada, NRS 1.4653(1) and (2), NRS 1.4677(1)(b), (c), (d), and (f),

25
26 of the highest order." *Id.* at 1666 (internal quotations and citations omitted). Code Rule 2.10 protects judicial integrity, and
the Commission has a compelling interest in maintaining the integrity of the judiciary and enforcing the Code.

27 ¹⁰ The Commission may consider a letter of caution when deciding the appropriate action to be taken on a subsequent
28 complaint unless the letter of caution is not relevant to the misconduct alleged in the subsequent complaint. NRS 1.4667(2),
NRS 1.467(2).

1 and Commission Rule 28, Respondent shall be hereby suspended without pay for a period of sixty (60)
2 days, effective as of the filing date of this Order; required to attend and complete a judicial education
3 course, at his own expense, on dealing with difficult parties/attorneys or such other similar course as
4 may be available with the approval of the Commission's Executive Director, within one (1) year of the
5 date of this Order; send a written letter of apology to both Ms. Cramer and Mr. Buche within sixty (60)
6 days of the date of this Order; perform ten (10) hours of community service with the Southern Nevada
7 Antibullying Council (SNABC) which supports the Clark County School District's anti-bullying
8 programs, or such other organizations that support anti-bullying programs as may be available with the
9 approval of the Commission's Executive Director, within six (6) months of the date of this Order; pay a
10 \$5,000 fine to the Southern Nevada Antibullying Council (SNABC), or such other organizations that
11 support anti-bullying programs as may be available with the approval of the Commission's Executive
12 Director, within sixty (60) days of the date of this Order; and submit to a psychiatric exam, at his own
13 expense, at ComPsych, conducted by a physician licensed to practice medicine in the State of Nevada,
14 or such other psychiatric organization located in Clark County, Nevada, as may be available with the
15 approval of the Commission's Executive Director, within ninety (90) days of the date of this Order,
16 with the report of such evaluation submitted directly to the Commission's Executive Director, along
17 with the requirement that Respondent timely comply with any recommendations contained therein.
18 Respondent shall timely notify the Commission upon compliance with all requirements of this Order. If
19 Respondent fails to comply with the requirements of this Order, such actions will result in his
20 permanent removal from the bench. NRS 1.4677(1)(e).¹¹

21 The primary purpose of the Revised Nevada Code of Judicial Conduct is the protection of the
22 public, not the punishment of judges. The Commission protects the public by instilling confidence in
23 the integrity of the judicial system in Nevada, as public trust is essential to the administration of justice.
24 In carrying out this duty, the law provides the Commission a broad range of disciplinary measures to be
25 imposed which include, but are not limited to, removal from office, suspensions, fines, educational

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28 ¹¹ Due to the improper and unenforceable nature of the contempt order against Ms. Cramer, the Commission believes that it would be appropriate under the circumstances for Respondent to issue an order vacating *nunc pro tunc* the finding of contempt.

1 requirements, public reprimands, etc. The imposition of discipline further serves the function of
2 discouraging future misconduct by the disciplined judge as well as the judiciary as a whole.

3 The evidence clearly and convincingly supported that Respondent put his desire to be re-elected
4 ahead of the Judicial Canons when he commented to the press. Furthermore, the comments far
5 exceeded Rule 2.10(E) which permits a judge to respond regarding a judge's conduct. Specifically, the
6 comments regarding Mr. Mann's divorce were entirely unrelated to the initial LVRJ article.
7 Respondent's misconduct did not stop with his comments to the press. Respondent manifested his
8 expressed bias against Mr. Mann when Respondent refused to vacate a scheduled hearing after Mr.
9 Mann's Motion to Recuse was filed, and told the pro se party to file a State Bar complaint against Mr.
10 Mann. *See generally* NRS 1.235.

11 Respondent's inappropriate actions were also not limited to Mr. Mann. Respondent's actions in
12 finding Ms. Cramer in contempt, handcuffing her, quelling her argument, and issuing an unenforceable
13 contempt order, violated the law and the Judicial Canons. Respondent's attempt to lay the blame for the
14 contempt incident on Ms. Cramer's less than professional conduct does not excuse Respondent from
15 adhering to the Code. Respondent testified that he has a duty to control his courtroom; however, that
16 duty must be tempered, tailored and used in the least restrictive means. The Commission found that
17 Respondent's use of physical restraints far exceeded the least restrictive means. Moreover, the
18 Commission noted that once Ms. Cramer was handcuffed in court, that action stifled her client's right to
19 be heard, and the contempt order itself had the potential to hamper Ms. Cramer's ability to zealously
20 advocate in other matters before different judges.

21 The Commission found that Respondent did not take full responsibility or learn from the
22 incidents in question. The Commission found it disturbing that Respondent never apologized to Mr.
23 Mann or Ms. Cramer for his actions; failed to acknowledge that the contempt order was unlawful
24 despite agreeing that it was unenforceable; committed numerous legal errors regarding the contempt
25 incident; failed to vacate a hearing once a motion to recuse was filed; and failed to admit to most of the
26 Judicial Canon violations. However, the most troubling aspect of the hearing occurred when
27 Respondent's temper exploded during the Commission hearing itself, thus allowing the Commission to

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1 witness first-hand the very same behavior that the judge exhibited during the *Cramer* incident.¹² Such a
2 visceral and emotional display of rage on the part of Respondent towards the Prosecuting Officer in
3 response to whether the Prosecuting Officer was asking him a question or merely reading into the record
4 his prior statements caused the Commission to seriously question Respondent's mental stability and
5 capacity to control his anger, thereby necessitating a psychiatric evaluation.¹³

6 The Commission must hold the judges of this state to the highest standards of personal and
7 professional conduct. Respondent's intemperate behavior on and off the bench demeaned the office he
8 holds and the judiciary in general. Respondent's public disparagement of Mr. Mann and egregious
9 conduct towards Ms. Cramer created prejudice, partiality, bias, loss of integrity and ineffectiveness of
10 the administration of justice in Clark County's Family Court. Based on the foregoing, the Commission
11 finds that Respondent's misconduct justifies the discipline imposed.

12 **D. ORDER**

13 IT IS HEREBY ORDERED by unanimous vote of Commissioners Chairman Gary Vause, Karl
14 Armstrong, Esq., Honorable Jerome Polaha, Bruce C. Hahn, Esq., Mary-Sarah Kinner, Stefanie
15 Humphrey, and Honorable Leon Aberasturi that Respondent shall be hereby suspended without pay for
16 a period of sixty (60) days, effective as of the filing date of this Order; required to attend and complete a
17 judicial education course, at his own expense, on dealing with difficult parties/attorneys, or such other
18 similar course as may be available with the approval of the Commission's Executive Director, within
19 one (1) year of the date of this Order; send a written letter of apology to both Ms. Cramer and Mr.
20 Buche within sixty (60) days of the date of this Order; perform ten (10) hours of community service
21 with the Southern Nevada Antibullying Council (SNABC) which supports the Clark County School
22 District's anti-bullying programs, or such other organizations that support anti-bullying programs as
23 may be available with the approval of the Commission's Executive Director, within six (6) months of
24 the date of this Order; pay a \$5,000 fine to the Southern Nevada Antibullying Council (SNABC), or

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26 ¹² In fact, the Respondent actually appeared to be provoking and goading the Prosecuting Officer into a confrontation by
27 threateningly stating, "I mean, do you want to see the guy who was on the video?" Reporter's Transcript of Proceedings, Vol.
28 2, dated November 2, 2017, p. 361, lines 5-6.

¹³ The Nevada Supreme Court has approved the Judicial Discipline Commission making note of the demeanor of a judge
during a Commission hearing as a factor that may be considered in the process of deliberating on appropriate sanctions.
Matter of Davis, 113 Nev 1204, 946 P.2d 1033 (1997).

1 such other organizations that support anti-bullying programs as may be available with the approval of
2 the Commission's Executive Director, within sixty (60) days of the date of this Order; and submit to a
3 psychiatric exam, at his own expense, at ComPsych, conducted by a physician licensed to practice
4 medicine in the State of Nevada, or such other psychiatric organization located in Clark County,
5 Nevada, as may be available with the approval of the Commission's Executive Director, within ninety
6 (90) days of the date of this Order, with the report of such evaluation submitted directly to the
7 Commission's Executive Director, along with the requirement that Respondent timely comply with any
8 recommendations contained therein.

9 IT IS FURTHER ORDERED that Respondent shall timely notify the Commission upon
10 compliance with all requirements of this Order and provide copies to the Commission of all relevant
11 documentation evidencing compliance with this Order.

12 IT IS FURTHER ORDERED that failure to comply with this Order's requirements shall result
13 in Respondent being permanently removed from the bench and forever barred from serving as a judicial
14 officer in the future. NRS 1.4677(1)(e). Accordingly, the Commission retains jurisdiction over this
15 matter for the required period of time for Respondent to comply with this Order.

16 IT IS FURTHER ORDERED by unanimous vote that the Chairman is authorized to sign this
17 document on behalf of all voting Commissioners.

18 DATED this 22nd day of November, 2017.

19 STATE OF NEVADA
20 COMMISSION ON JUDICIAL DISCIPLINE
21 P.O. Box 48
22 Carson City, NV 89702

23 By: 
24 GARY VAUSE
25 COMMISSION CHAIRMAN
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and
3 that on the 22nd day of November, 2017. I served a copy of the **FINDINGS OF FACT,**
4 **CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE** by email and U.S Mail, postage
5 paid, addressed to the following:

6 William B. Terry, Chartered Attorney at Law
7 530 South Seventh Street
8 Las Vegas, NV 89101-6011
9 info@WilliamTerryLaw.com

10 Thomas C. Bradley, Esq.
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Tarah L. Hansen, Commission Clerk