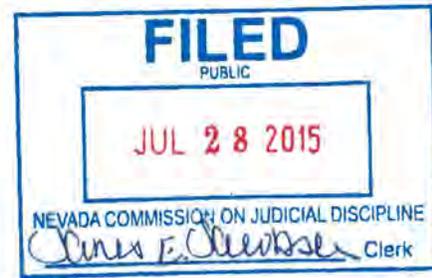


1 **MACDONALD & ASSOCIATES, LTD.**
2 **J. SCOTT MACDONALD, ESQ.**
3 Nevada Bar No. 511
4 6625 W. Sahara Ave., Suite 3
5 Las Vegas, NV 89146
6 T: (702) 870-1771
7 F: (702) 869-0683
8 scott@jsmaclaw.com
9 Attorney for Petitioner



7 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

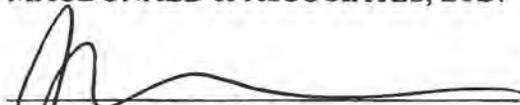
8 In the Matter of 9 STEVEN E. JONES, 10 11 Respondent.	Case No. 2006-100
--	-------------------

12
13 **MOTION TO DISMISS FORMAL STATEMENT OF CHARGES**

14
15 COMES NOW Respondent, Steven E. Jones, by and through his counsel, J. Scott
16 MacDonald, Esq., of MacDonald & Associates, Ltd., who hereby files the instant Motion to
17 Dismiss the Formal Statement of Charges filed on June 11, 2015 by Special Counsel, Kathleen
18 M. Paustian, on behalf of the Nevada Commission on Judicial Discipline. This Motion is based
19 upon all of the pleadings and papers on file with this Commission and the Points and Authorities
20 attached hereto.

21 DATED this 28 day of July, 2015.

22 **MACDONALD & ASSOCIATES, LTD.**

23
24 
25 J. Scott MacDonald, Esq.
26 Bar No. 511
27 6625 W. Sahara Ave., Suite 3
28 Las Vegas, NV 89146
Attorney for Respondent

1
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

POINTS AND AUTHORITIES

I.

**THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE LACKS JURISDICTION
OVER STEVEN E. JONES TO BRING A FORMAL STATEMENT OF CHARGES**

A. Steven E. Jones Is Not A Judge Subject To Discipline By The Commission.

NRS 1.428 states as follows:

NRS 1.428 "Judge" defined. "Judge" means:

1. A justice of the Supreme Court;
2. A judge of the Court of Appeals;
3. A judge of the district court;
4. A judge of the municipal court;
5. A justice of the peace; and
6. Any other officer of the Judicial Branch of this State, whether or not the officer is an attorney, who presides over judicial proceedings, including, but not limited to, a magistrate, court commissioner, special master or referee.

Respondent resigned his position as a Nevada State Judge on September 3, 2014 as part of a plea agreement with the U.S. Attorney's Office related to a felony indictment brought in October, 2012. At that time, Judge Jones was already under investigation by the Commission for other alleged wrongdoing committed while sitting as a Nevada State Judge. The Commission was well aware of the indictment and ongoing investigation of the Respondent related to those charges and could have brought disciplinary proceedings at any time prior to the filing of his resignation. For purposes of the instant case against Steven E. Jones, Steven E. Jones is not a judge in any sense of the definition of a Judge defined by the statute.

NRS 1.440, Jurisdiction over judges; appointment of justices of the peace and municipal judges to Commission, states in pertinent part as follows:

1
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

NRS 1.440 Jurisdiction over judges; appointment of justices of the peace and municipal judges to Commission.

I. The Commission has exclusive jurisdiction over the public censure, removal, involuntary retirement and other discipline of judges which is coextensive with its jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under the same rules.

The Commission's existence and authority is established by Article 6, Section 21 of the Nevada State Constitution. Article 6, Section 21 (1) of the Nevada State Constitution states:

I. A justice of the Supreme Court, a judge of the court of appeals, a district judge, a justice of the peace or a municipal judge may, in addition to the provisions of Article 7 for impeachment, be censured, retired, removed or otherwise disciplined by the Commission on Judicial Discipline. Pursuant to rules governing appeals adopted by the Supreme Court, a justice or judge may appeal from the action of the Commission to the Supreme Court, which may reverse such action or take any alternative action provided in this subsection.

The Nevada State Constitution and its enabling statute, NRS Chapter 1, make it abundantly clear that the Commission has exclusive jurisdiction over the discipline and removal of *Judges* in the State of Nevada. However, nowhere in the Constitution or Nevada Revised Statutes is the Commission granted jurisdiction over private citizens, even a private citizen who may harbor a desire to one day run for judicial office in the State of Nevada. From the moment Respondent resigned his position as a District Court Judge in the State of Nevada this Commission lost jurisdiction to discipline him. Even the caption to these very proceedings, i.e., "In the Matter of Steven E. Jones" makes the case that the Commission lacks jurisdiction over Respondent to file a Formal Statement of Charges under NRS Chapter 1.

Article 6, Section 21 (9) of the Nevada State Constitution states in pertinent part:

9. Any matter relating to the fitness of a justice or judge may be brought to the attention of the Commission by any person or on the motion of the Commission. The Commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter must be served upon the justice or judge against whom the proceeding is brought.

1 In the instant case, the Commission is over-reaching its own authority. In its zeal to
2 ensure that Steven E. Jones never occupy judicial office again in the State of Nevada, the
3 Commission is ignoring its own rules and enabling statutes. Were the jurisdiction of this
4 Commission to be interpreted more broadly, what would prevent the Commission from bringing
5 a Formal Statement of Charges against anyone ever convicted of a crime in the State of Nevada
6 to ensure that such individuals could never occupy a judicial position in Nevada? That alone
7 raises interesting questions regarding the constitutionality of prospectively barring someone,
8 even a former judge, convicted of a crime, from ever again holding judicial or political office.
9

10 **B. The Applicable Time Period Has Passed For The Bringing Of A Formal**
11 **Statement Of Charges In The Instant Case.**

12 NRS 1.4655 (1) and (2) state as follows:

13 NRS 1.4655 Commencement of inquiry regarding alleged misconduct or
14 incapacity of judge; time limitation for considering complaints; certain action
15 required.

16 1. The Commission may begin an inquiry regarding the alleged misconduct or
17 incapacity of a judge upon the receipt of a complaint.

18 2. The Commission shall not consider complaints arising from acts or omissions
19 that occurred more than 3 years before the date of the complaint or more than 1
20 year after the complainant knew or in the exercise of reasonable diligence should
21 have known of the conduct, whichever is earlier, except that:

22 (a) Where there is a continuing course of conduct, the conduct will be deemed to
23 have been committed at the termination of the course of conduct;

24 (b) Where there is a pattern of recurring judicial misconduct and at least one act
25 occurs within the 3-year or 1-year period, as applicable, the Commission may
26 consider all prior acts or omissions related to that pattern; and

27 (c) Any period in which the judge has concealed or conspired to conceal evidence
28 of misconduct is not included in the computation of the time limit for the filing of
a complaint pursuant to this section.

1 In the instant case, the complainant, for purposes of the statute, is the Commission.
2 The statute is clear that the Commission shall not consider complaints, which a reasonable
3 presumption would include complaints brought on its own initiative, more than 1 year
4 after the Complainant (Commission) knew or should have known of the conduct alleged.
5 Subsection (a) of Section 2 goes on to say that where there is a continuing course of
6 conduct, the conduct will be deemed to have been committed at the end of the course of
7 conduct.
8

9 Respondent was indicted in October 2012, almost 3 years ago, and well beyond the
10 1 year time period within which the Commission would be deemed to have had knowledge
11 of the alleged conduct. Based upon this fact alone, the Statement of Charges should be
12 dismissed. There is no reasonable argument that the course of conduct alleged against
13 Respondent continued on past the date of indictment to bring it within the time period
14 contemplated by the statute. Moreover, most, if not all of the acts alleged against the
15 Respondent occurred years earlier. This Statement of Charges must be dismissed.
16
17

18 II.

19 THE STATEMENT OF CHARGES BROUGHT BY THE COMMISSION 20 CONSTITUTES A VIOLATION OF RESPONDENT'S RIGHT 21 TO DUE PROCESS OF LAW

22 A. Respondent is Incarcerated and Cannot Properly Respond.

23 Respondent is currently serving an approximately 26 month sentence at the Federal
24 Correctional Camp in Taft, California. He reported on May 26, 2015. While incarcerated,
25 Respondent has no access to the internet, very limited access to email, no telephonic access to his
26 lawyer, and is completely and utterly unable to mount an appropriate defense to the instant
27 action. Rule 24 of the Commissions own procedural rules states:
28

1
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

RULE 24. Rules of evidence and due process.

The rules of evidence applicable to civil proceedings apply at the hearing, and the respondent shall be accorded due process of law.

The timing of filing of the instant Formal Statement of Charges is somewhat suspect in light of the fact that the Commission has been aware, literally for years, of the indictment against the Respondent. The Commission could have brought the Statement of Charges at anytime within the last 3 years. Instead, the Commission waited to bring the Statement of Charges until after the Respondent was incarcerated, out of State, with almost no ability to mount a proper defense.

NRS 1.4675 States:

NRS 1.4675 Circumstances under which a judge may be suspended with or without pay; hearing; appeal.

1. The Commission shall suspend a judge from the exercise of office with salary:

(a) While there is pending an indictment or information charging the judge with a crime punishable as a felony pursuant to the laws of the State of Nevada or the United States; or

(b) When the judge has been adjudged mentally incompetent or insane.

2. The Commission may suspend a judge from the exercise of office without salary if the judge:

(a) Pleads guilty, guilty but mentally ill or no contest to a charge of; or

(b) Is found guilty or guilty but mentally ill of,

Ê a crime punishable as a felony pursuant to the laws of the State of Nevada or the United States. If the conviction is later reversed, the judge must be paid his or her salary for the period of suspension.

3. In addition to the grounds set forth in subsection 2, the Commission may suspend a judge from the exercise of office without salary if the Commission determines that the judge:

(a) Has committed serious and repeated willful misconduct;

(b) Has willfully or persistently failed to perform the duties of office; or

1
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

(c) Is habitually intemperate,

and the Commission determines that the circumstances surrounding such conduct, including, without limitation, any mitigating factors, merit disciplinary action more severe than censure but less severe than removal.

4. During any stage of a disciplinary proceeding, the Commission may suspend the judge from the exercise of office with salary pending a final disposition of the complaint if the Commission determines, by a preponderance of the evidence, that the judge poses a substantial threat of serious harm to the public or to the administration of justice.

5. The Commission shall give the judge 7 days' notice of its intention to suspend the judge pursuant to this section and shall give the judge an opportunity to respond. The Commission shall hold a public hearing before ordering such a suspension, unless the judge waives the right to the hearing. The decision of the Commission must be made public.

6. A judge suspended pursuant to this section may appeal the suspension to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. If a judge appeals such a suspension:

(a) The standard of review for such an appeal is an abuse of discretion standard; and

(b) The proceedings held at the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court concerning the suspension must be open to the public.

7. Within 60 days after a decision by the Commission to suspend a judge pursuant to this section, the Commission shall:

(a) Have a formal statement of charges filed against the judge;

(b) Rescind the suspension; or

(c) Enter into a deferred discipline agreement with the judge pursuant to NRS 1.468.

8. The Commission may suspend a judge pursuant to this section only in accordance with its procedural rules.

First, As set forth above, Section 1 states that the Commission *shall* (emphasis added) suspend a judge while under indictment. The Commission failed to take this action as required by Statute. Second, under Section 7, the Commission, had they suspended Respondent as

1 required by this Statute, would have been required to bring a Formal Statement of Charges
2 within 60 days of the Order of Suspension. Finally, under Section 8, the commission may
3 suspend a judge pursuant to this section *only in accordance with its procedural rules* (emphasis
4 added).
5

6 In the instant case, the Commission is in violation of its own rules in bringing this
7 Statement of Charges at this time and, as a result, constitutes a violation of Respondent's right to
8 due process of law and the instant Statement of Charges should be dismissed.

9 **B. The Statement of Charges Constitutes an Abuse of Authority and a Waste of**
10 **Public Resources.**

11 Respondent has been convicted of a serious felony, sentenced to more than two years
12 incarceration in a federal correctional facility, forced to resign from office, irrevocably disbarred,
13 suffered the loss of his civil rights, and otherwise humbled and brought low. Now the
14 Commission, empowered by our State Constitution and enabled by the Legislature, seeks to use
15 additional public funds to ensure that Respondent never be able to run for those few judicial
16 positions available in the State of Nevada where admission to the State Bar is not required. The
17 fact that Respondent will never again practice law, and the infinitesimally small likelihood of
18 being elected to a judicial position in a small, rural county, where bar admission is not required,
19 calls into question the true motivation of this esteemed Commission. It seems the use of the
20 limited resources available to this Commission would be better spent pursuing current, relevant,
21 judicial misconduct, rather than going on a witch hunt for a witch that for all intents and
22 purposes, has already been burned at the stake. If the real purpose of the Commission as created
23 by our Constitution is the protection of the public, where is the substantial threat of serious harm
24 to the public that would warrant this action by the Commission?
25
26
27
28

1
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

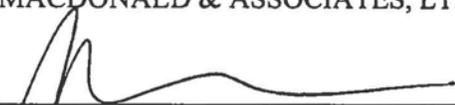
III.

CONCLUSION

Respondent is not a judge but a private citizen and as such is not subject to oversight and discipline by the Commission. The Commission failed to bring this Statement of Charges in a timely manner. The Statement of Charges was brought in violation of the Commissions own procedural rules and in violation of NRS 1.4675. Respondent's inability to mount a proper defense to these charges is a violation of his right to due process of law. For all of the above reasons, the Statement of Charges should be dismissed in its entirety.

DATED this 20th day of July, 2015.

MACDONALD & ASSOCIATES, LTD.



J. Scott MacDonald, Esq.
Bar No. 511
6625 W. Sahara Ave., Suite 3
Las Vegas, NV 89146
Attorney for Respondent