



1 JOHN L. ARRASCADA, ESQ.
2 State Bar No. 4517
3 ARRASCADA & ARAMINI, LTD.
4 145 Ryland Street
5 Reno, Nevada 89501
6 (775) 329-1118
7 Attorney for Respondent

8
9
10 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

11 **STATE OF NEVADA**

12 IN THE MATTER OF THE)
13)
14 HONORABLE KIMBERLY WANKER,)
15 Fifth Judicial District Court, Dept. One,)
16 County of Nye, State of Nevada)
17)
18 Respondent.)
19)
20)

Case No. 1501-1147

21 **ANSWER**

22 COMES NOW, THE HONORABLE KIMBERLY WANKER, of the Fifth Judicial
23 District Court, Dept. One, County of Nye, State of Nevada, by and through counsel,
24 JOHN L. ARRASCADA, ESQ. of the Law Firm of ARRASCADA & ARAMINI, LTD., and
25 answers the Formal Statement of Charges filed on August 10, 2015 by Special Counsel
for the Nevada Commission of Judicial Discipline, Thomas C. Bradley, Esq.

From the inception of this matter, and prior to retaining counsel, Judge Wanker
has admitted to and accepted full responsibility for violations of the Judicial Cannons of
Ethics regarding her actions as a district court judge in the Fifth Judicial District Case
No. CV32871, *In the Matter of the Paternity of Kolena Carson the issue of Robert
Carson and Kolena Brown.*

1 On January 12, 2015, prior to retaining counsel, Judge Wanker personally
2 responded to interrogatories propounded by this commission. In her answer to
3 interrogatories, Judge Wanker admitted to and accepted full responsibility for her
4 actions in this matter. See Ex. 1.

5 On January 12, 2015, Judge Wanker provided to this Commission, *Kimberly*
6 *Wanker's Response to the Nevada Commission on Judicial Discipline's Determination.*
7 See Ex. 2. In her Response, Judge Wanker accepted full responsibility for her
8 mistakes in the handling of the Carson v. Brown file. See Ex. 2 at p.9.

9
10 Prior to providing her written responses, Judge Wanker expressed to General
11 Counsel Paul Deyhle that she accepted full responsibility for her mistakes. This
12 statement was consistent with her statements to Investigator Freeman. Thus, from the
13 inception of this case Judge Wanker has consistently and candidly admitted to her
14 mistakes.

15 Consistent with her answer to interrogatories and her written Response to this
16 Commission on January 11th, 2015 and her prior statements to investigator Freeman
17 and General Counsel Deyhle, Judge Wanker does not dispute and admits to the
18 Formal Statement of Charges and admits to counts one through three contained within
19 the Formal Statement of Charges.
20

21 MITIGATION

22 Based on Judge Wanker's admission to the Formal Statement of Charges, the
23 following mitigation is being provided to this Commission. Judge Wanker also
24 respectfully requests the opportunity to present additional mitigation at the hearing of
25 this matter.

1 The highest form of mitigation in any matter is when upon personal and
2 professional reflection a person admits their actions were wrong and does not try to
3 excuse them away. That is exactly what Judge Wanker did when she learned of this
4 complaint and the nature of the complaint. Judge Wanker has admitted to this
5 Commission's investigator, its General Counsel and in her written responses that after
6 she learned of the complaint, further researched the law, reviewed the Canons of
7 Ethics and reflected upon the legal proceedings in this matter that she made mistakes.
8

9 Her admissions demonstrate that she has learned from her mistakes and will do
10 whatever is necessary in the eyes of this Commission to give this Commission the
11 confidence that this will not happen again.

12
13 DATED this 25 day of September, 2015.

14
15 
16 _____
17 JOHN L. ARRASCADA, ESQ.
18 State Bar No. 4517
19 145 Ryland Street
20 Reno, Nevada 89501
21 (775) 329-1118
22 Attorney for Respondent
23
24
25

EXHIBIT "1"

EXHIBIT "1"

1 **ANSWER TO INTERROGATORY NO. 2A:**

2 No. Until reviewing the interrogatory questions, I was unaware of the Nevada Supreme Court
3 decision in *Houston v. Eighth Judicial District Court*, 122 Nev. 544, 135 P.3d 1269 (2006), which
4 requires in a situation involving direct contempt, that a written contempt order be entered setting
5 forth specific facts concerning the contemptuous conduct. I have been under the erroneous belief that
6 stating the reasons orally, on the record, was sufficient in cases where the contempt was in the
7 immediate presence of the court or judge.

8 **INTERROGATORY NO. 2B:**

9 b.) Was the finding of contempt based on any information, such as blood-alcohol results or
10 reports from law enforcement, that respondent received outside of court proceedings? If so, what
11 was the information and when and how was it received?

12 **ANSWER TO INTERROGATORY NO. 2B:**

13 I was aware of a PBT Test result performed on Mr. Carson on October 3, 2012 by the Nye
14 County Sheriff's office at Mr. Carson's home, which indicated a .071 or .073 test result. I was
15 informed of this result I believe through a phone call from a Nye County Deputy Sheriff, who had
16 been dispatched to Mr. Carson's house, said call having been made to either me or my judicial clerk,
17 Christel Raimondo. A blood draw was also performed that same day at Quest Diagnostics. The
18 blood test results, which indicated a .081 alcohol level, were faxed to Judge's chambers by Quest
19 Diagnostics within a few days of the blood draw.

20 I want to make clear, however, the PBT Test results and the Blood Draw results were not the
21 basis for my finding of contempt. I asked Mr. Carson about the test results at the November 13,
22 2012 hearing. At the November 13, 2012 hearing, Mr. Carson admitted to me that he had lied to me
23 on October 3, 2012, and that he had in fact consumed alcohol on October 3, 2012 prior to the
24 hearing. Mr. Carson also admitted at the November 13, 2012 hearing that he told me at the October
25 3, 2012 hearing his PBT test would be negative.

26 The reason that I held Mr. Carson in what I believed was immediate contempt on November
27 13, 2012 was for his admitted conduct in lying to me in Court on October 3, 2012.

28 ///

1 **INTERROGATORY NO. 2C:**

2 c.) If respondent received and relied on any information, outside of court proceedings for
3 the finding of contempt, was the information provided to complainant or his counsel before a finding
4 of contempt?

5 **ANSWER TO INTERROGATORY NO. 2C:**

6 As indicated in 2 b.) above, I had received information of the PBT test results and the Quest
7 blood draw results outside of the court proceedings, but this is not what I relied upon in making the
8 determination to find Mr. Carson in contempt. I spoke about the test results at the November 13,
9 2012 hearing, but I did not provide this information to any party or counsel before a finding of
10 contempt.

11 **INTERROGATORY NO. 2D:**

12 d.) Prior to the hearing on or finding of contempt, did respondent provide complainant
13 with notice of the charge of contempt and an opportunity to be heard on the charge? If so, how was
14 that accomplished?

15 **ANSWER TO INTERROGATORY NO. 2D:**

16 No, I did not.

17 **INTERROGATORY NO. 2E:**

18 e.) Did respondent believe that the alleged contempt was based upon respondent's
19 disruption of the proceedings so as to require immediate action by the respondent? If so, please
20 explain.

21 **ANSWER TO INTERROGATORY NO. 2E:**

22 No. The reason that I held Mr. Carson in what I believed was immediate contempt on
23 November 13, 2012, was for his admission of lying to me in Court on October 3, 2012.

24 **INTERROGATORY NO. 3A:**

25 During the period from October 3, 2012 to March 31, 2014, was respondent aware of the
26 following requirements?

27 a.) regarding the requirement in NRS 22.030 that an order be entered following a finding
28

1 of contempt?

2 **ANSWER TO INTERROGATORY NO. 3A:**

3 Until reviewing the interrogatory questions, I was unaware of the Nevada Supreme Court
4 decision in *Houston v. Eighth Judicial District Court*, 122 Nev. 544, 135 P.3d 1269 (2006), which
5 requires in a situation involving direct contempt, that a written contempt order be entered setting
6 forth specific facts concerning the contemptuous conduct. I have been under the erroneous belief that
7 stating the reasons orally, on the record, was sufficient in cases where the contempt was in the
8 immediate presence of the court or judge.

9 **INTERROGATORY NO. 3B:**

10 b.) regarding the notice provisions of NRS 22.030(2)?

11 **ANSWER TO INTERROGATORY NO. 3B:**

12 I was under the erroneous belief that in a case of indirect contempt, the court should enter an
13 Order to Show Cause and that the party to which the Order was issued could request that another
14 judge hear the contempt issue. In reviewing NRS 22.030(2), it is clear that my understanding of the
15 statutory provision was erroneous.

16 **INTERROGATORY NO. 3C:**

17 c.) regarding the requirements for contempt as explained in *Houston v. Eighth Judicial*
18 *District Court*, 122 Nev. 544, 135 P.3d 1269 (2006)?

19 **ANSWER TO INTERROGATORY NO. 3C:**

20 No, I was not aware of the *Houston* case or the requirements of issuing a written order when
21 contempt occurs in the immediate presence of the court or judge.

22 **INTERROGATORY NO. 4:**

23 Has respondent, during her tenure as a district court judge and outside of the current case,
24 had occasion to hold someone in direct contempt and not filed an order pursuant to NRS 22.030? If
25 so, please state when and under what circumstances that was done.

26 **ANSWER TO INTERROGATORY NO. 4:**

27 I have had occasions during my criminal law and motion calendar to believe that the
28 defendant being arraigned or sentenced was under the influence of drugs. The defendant was asked

1 if they were drug tested whether they would be positive for an illegal substance. If the defendant
2 admits they would test positive, I advise the defendant that I am continuing their case for thirty days,
3 that the conditions of their Own Recognizance Release are being modified to no illegal drugs or
4 alcohol, and that they will be tested upon their return to court in thirty days. If the defendant is a
5 resident of the community, depending on the circumstances, I may also refer them for evaluation to
6 the Pahrump, Tonopah or Western Regional drug court program, so that I have a better
7 understanding of the nature of the problem, and can find an effective sentencing solution. I am a firm
8 believer in drug treatment and the drug court program for substance abusers, and I have a practice of
9 entering a deferred sentence under NRS 453.3363 if a defendant is eligible for the program. This
10 allows a defendant to have the charge dismissed and off their record, if they successfully complete a
11 drug or alcohol treatment program. I strongly support the use of drug treatment programs, both
12 inpatient and outpatient, as part of negotiated plea agreements on criminal charges when drug abuse
13 is problematic, and when the party is ineligible for diversion, I support as part of a guilty plea, a
14 withdrawal of a guilty plea to a more serious charge and allowance of a plea to a reduced charge if
15 drug treatment and probation is successfully completed by a defendant.

16 If the defendant denies being under the influence of any drugs, I trail the case, and send the
17 defendant to the drug court for testing. Once I have the drug court results (almost instantaneous from
18 a urine cup panel) I recall the case. The drug court test result is available for review by counsel in the
19 drug court office, which is two doors down from the courtroom. If the defendant's drug test results
20 are tests positive, I again ask about drug use. I advise the defendant that I am continuing their case
21 for thirty days, that the conditions of their Own Recognizance Release are being modified to no
22 illegal drugs or alcohol, and that they will be tested upon their return to court in thirty days. If they
23 continue to deny any drug usage, I advise that the test result will be sent to the laboratory for
24 confirmation, and that if the confirmation result is positive, the defendant will be responsible for the
25 cost of the testing. I also inform the defendant that if the confirmation result comes back positive,
26 they will be sanctioned to jail time for lying to the court about their usage, and I again give them the
27 opportunity to admit their drug use.

28 When a defendant returns to court in thirty days, I have them drug tested at the drug court. If

1 the defendant tests positive, I hold them in contempt for violation of the court order regarding the
2 conditions of their Own Recognizance Release, and place them in jail for twenty five days. If the
3 defendant returns to court having denied drug usage, and a positive drug court confirmation is
4 received by the drug court, the Court informs the defendant's counsel of the drug test result. I do not
5 recall any situations where a defendant who denied drug use, and whose drug test was confirmed
6 positive, when retested upon returning to court thirty days later, has ever had a subsequent clean
7 drug test result.

8 If a defendant is taken into custody, I make every possible effort to arraign or sentence them
9 within that twenty-five day time period, on my law and motion calendar twenty-one days later.

10 I believe that a written Order of Contempt has been issued in every case in Nye County.
11 While I admit I was unaware that the written order of contempt was required, a contempt order has
12 been prepared and sent over to the jail to provide direction to detention staff as to how long the
13 defendant is to remain in custody. I can say for certainty that a written order is now prepared in
14 every case in Nye County, by my staff, within a day or two of hearing the case. In both Esmeralda
15 County and in Mineral County, the respective District Attorney offices prepare the Judgments of
16 Conviction and other criminal orders. In the spirit of full disclosure, I cannot say with 100%
17 certainty that under the circumstances described above that a written order has issued in every case,
18 in all three counties.

19 **INTERROGATORY NO. 5:**

20 Has respondent, during her tenure as a district court judge, had occasion to hold someone in
21 indirect contempt prior to which an affidavit was presented to the court pursuant to NRS 22.030(2)?
22 If so, please state when and under what circumstances that was done.

23 **ANSWER TO INTERROGATORY NO. 5:**

24 Yes. As indicated in Answer to Interrogatory No. 4 above, I have not followed the
25 procedures of NRS 22.030(2) upon receiving a confirmed positive drug test, but to date, the
26 Defendant when drug tested upon return to court, has always tested positive for drugs.

27 To be sure that I do not mislead the Commission, I am also making the following disclosure.
28 I presided over a divorce case which was filed in November 2011 where spousal support was

1 ordered as part of the 2012 divorce decree. The ex-husband failed to pay spousal support, and the ex-
2 wife filed a Motion For Order to Show Cause which was set for hearing in May 2013. I
3 subsequently issued an Order to Show Cause when the ex-husband failed to show up for the
4 scheduled hearing, advising of a new June 11, 2013 court date. When the ex-husband failed to show
5 up in court or otherwise communicate with the court, I issued a bench warrant for the husband's
6 arrest, as the court could not proceed forward without the Defendant's presence. I felt that in this
7 case since the ex-husband's conduct – his failure to appear in court after I issued the Order to Show
8 Cause – fell within immediate contempt, since I had direct knowledge of my order and the failure to
9 appear.

10 **INTERROGATORY NO. 6:**

11 Has respondent as a district judge had contempt rulings reversed or modified by an appellate
12 or reviewing court? If so, please describe these.

13 **ANSWER TO INTERROGATORY NO. 6:**

14 No.

15 **INTERROGATORY NO. 7:**

16 Did respondent, in this case on or about August 17, 2012, indicate in court proceedings that
17 counsel for complainant was to prepare an order regarding visitation? If the answer is yes:

18 **ANSWER TO INTERROGATORY NO. 7:**

19 Yes.

20 **INTERROGATORY NO. 7A:**

21 a.) Did counsel for respondent subsequently submit a proposed order to the court?

22 **ANSWER TO INTERROGATORY NO. 7A:**

23 Yes.

24 **INTERROGATORY NO. 7B:**

25 b.) Did respondent issue any order from the August 17, 2012 as of March 31, 2014? If not,
26 please explain why not?

27 **ANSWER TO INTERROGATORY NO. 7B:**

28 No. As I explained to Investigator Vic Freeman, this case got overlooked. I do not have an

1 excuse, nor do I intend to make an excuse. At the start of the October 3, 2012 hearing, the court
2 inquired about a written order she had asked be prepared from the August 17, 2012 hearing.
3 Attorney Mullins provided the court with a copy of the proposed order he had prepared, and
4 indicated he had sent it for review to Attorney Gibson's office, but had not yet received a response.
5 This Order, along with a proposed order that the parties had been in the process of negotiating on
6 October 3, 2012 when Mr. Carson departed the courthouse, was submitted to the clerk's office on
7 November 8, 2012. I did not sign either proposed order prior to the November 13, 2012 status check.
8 At the status check on November 13, 2012, in light of the fact that Mr. Carson admitted he had been
9 drinking on October 3, 2012, Ms. Brown stated that she could no longer agree to the terms the
10 parties had negotiated on October 3, 2012. I then stated I would take the matter under advisement,
11 and issue my own order, which I did not do.

12 When chambers were contacted by counsel for Mr. Carson, I should have had the case file
13 sent down from Tonopah for review. When the judicial discipline complaint came to my attention, I
14 had the file pulled and I reviewed the file and the JAV recordings of all of the court hearings. As I
15 explained to Investigator Freeman, after becoming aware of the complaint, and before our March 31,
16 2014 meeting, I did not sign any of the proposed outstanding orders or prepare my own order
17 because I did not want it to appear to the Commission that I was trying to cover my mistake. I did
18 tell Investigator Freeman that I intended to set the case for a status check after our meeting. I sent a
19 Notice of Status Check to the parties on April 2, 2014, and had a status check hearing on May 2,
20 2014. At that hearing, Mr. Carson advised me that the parties had worked out a custody and
21 visitation plan and asked that I dismiss the case.

22 **INTERROGATORY NO. 7C:**

23 c.) Has any such order been issued as of the current time? If so, please provide a file stamped
24 copy of said order and explain why there was a delay from August 17, 2012.

25 **ANSWER TO INTERROGATORY NO. 7C:**

26 No. An Order Setting Status Check was filed on April 2, 2014. At the hearing on May 2,
27 2014, Mr. Carson advised the Court that the parties wished to dismiss the case, as the parties had
28 reached an agreement on custody and visitation.

1 **INTERROGATORY NO. 7D:**

2 d.) Did counsel for complainant contact respondent or her chambers on one or more
3 occasions following the hearing in an attempt to have the order issued.

4 **ANSWER TO INTERROGATORY NO. 7D:**

5 Yes.

6 **INTERROGATORY NO. 8:**

7 Did respondent, in this case, on or about October 3, 2012, indicate in the court proceedings
8 that she would take the matter under advisement and issue an order?

9 **ANSWER TO INTERROGATORY NO. 8:**

10 Yes.

11 If the answer is yes:

12 **INTERROGATORY NO. 8A:**

13 a.) Did counsel for respondent subsequently submit a proposed order to the court?

14 **ANSWER TO INTERROGATORY NO. 8A:**

15 Yes.

16 **INTERROGATORY NO. 8B:**

17 b.) Did respondent issue any order from the October 3, 2012 hearing as of March 31, 2014?
18 If not, please explain why not?

19 **ANSWER TO INTERROGATORY NO. 8B:**

20 No. A proposed order that the parties had been in the process of negotiating on October 3,
21 2012 when Mr. Carson departed the courthouse, was submitted to the clerk's office on November 8,
22 2012. I did not sign the proposed order prior to the November 13, 2012 status check. At the status
23 check on November 13, 2012, in light of the fact that Mr. Carson admitted he had been drinking on
24 October 3, 2012, Ms. Brown stated that she could no longer agree to the terms the parties had
25 negotiated on October 3, 2012. I then stated I would take the matter under advisement, and issue my
26 own order, which I did not do.

27 When chambers were contacted by counsel for Mr. Carson, I should have had the case file
28 sent down from Tonopah for review. When the judicial discipline complaint came to my attention, I

1 had the file pulled and I reviewed the file and the JAV recordings of all of the court hearings. As I
2 explained to Investigator Freeman, after becoming aware of the complaint, and before our March 31,
3 2014 meeting, I did not sign any of the proposed outstanding orders or prepare my own order
4 because I did not want it to appear to the Commission that I was trying to cover my mistake. I did
5 tell Investigator Freeman that I intended to set the case for a status check after our meeting. I sent a
6 Notice of Status Check to the parties on April 2, 2014, and had a status check hearing on May 2,
7 2014. At that hearing, Mr. Carson advised me that the parties had worked out a custody and
8 visitation plan and asked that I dismiss the case.

9 **INTERROGATORY NO. 8C:**

10 c.) Has any such order issued as of the current time? If so, please provide a file stamped copy
11 of said order and explain why there was any delay from August 17, 2012.

12 **ANSWER TO INTERROGATORY NO. 8C:**

13 No. An Order Setting Status Check was filed on April 2, 2014. At the hearing on May 2,
14 2014, Mr. Carson advised the Court that the parties wished to dismiss the case, as the parties had
15 reached an agreement on custody and visitation.

16 **INTERROGATORY NO. 8D:**

17 d.) Did counsel for complainant contact respondent or her chambers on one or more
18 occasions following the hearing in an attempt to have the order issued?

19 **ANSWER TO INTERROGATORY NO. 8D:**

20 Yes.

21 **INTERROGATORY NO. 9:**

22 Did respondent, in this case on or about November 13, 2012, indicate in the court
23 proceedings that she would take the matter under advisement and issue an order regarding the
24 matter, hopefully within a matter of days?

25 **ANSWER TO INTERROGATORY NO. 9:**

26 Yes.

27 ///

28 ///

1 If the answer is yes:

2 **INTERROGATORY NO. 9A:**

3 a.) Was any such order issued as of March 31, 2014? If not, please explain why not?

4 **ANSWER TO INTERROGATORY NO. 9A:**

5 No. As I explained to Investigator Vic Freeman, this case got overlooked. I do not have an
6 excuse, nor do I intend to make an excuse. When my chambers were contacted by counsel for Mr.
7 Carson, I should have had the case file sent down from Tonopah for review. I did not do that. As I
8 explained to Investigator Freeman, after becoming aware of the complaint, and before our March 31,
9 2014 meeting, I did not sign the proposed outstanding orders or issue my own order because I did
10 not want it to appear to the Commission that I was trying to cover my mistake. I did tell Investigator
11 Freeman that I intended to set the case for a status check after our meeting. I sent a Notice of Status
12 Check to the parties on April 2, 2014, and had a status check hearing on May 2, 2014. At that
13 hearing, Mr. Carson advised me that the parties had worked out a custody and visitation plan and
14 asked that I dismiss the case.

15 **INTERROGATORY NO. 9B:**

16 b.) Has any such order been issued as of the current time? If yes, please provide a file-
17 stamped copy of said order and explain why there was any delay from November 13, 2012.

18 **ANSWER TO INTERROGATORY NO. 9B:**

19 No. An Order setting a status check was filed on April 2, 2014. At the hearing on May 2,
20 2014, Mr. Carson advised the Court that the parties wished to dismiss the case, as the parties had
21 reached an agreement on custody and visitation.

22 **INTERROGATORY NO. 9C:**

23 c.) Did counsel for complainant contact respondent or her chambers on one or more
24 occasions following the hearing in an attempt to have the order issued?

25 **ANSWER TO INTERROGATORY NO. 9C:**

26 Yes.

27 **INTERROGATORY NO. 10:**

28 Has respondent on other occasions in this case or in other cases assigned to respondent not

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

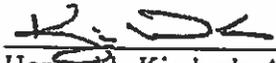
decided issues within what respondent would consider a timely manner or within about 16 months as is alleged in this case? If so, please describe these.

ANSWER TO INTERROGATORY NO. 10:

Yes. Working with my staff we have gone through and identified cases that have not been resolved in a timely manner. We are working as quickly as possible to have any outstanding decisions and orders issued within the next 60 days.

Upon oath and affirmation of belief that the responses to interrogatories set forth herein are true and correct to the best of my own knowledge.

DATED this 11th day of January 2015.



Honorable Kimberly A. Wanker

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the date shown below, I placed a true and correct copy of the above
3 and foregoing *Kimberly Wanker's Answer To The Commission On Judicial Discipline's*
4 *Interrogatories* in the U.S. Mail, Express Mail Service, postage fully affixed, addressed to:

5 Commission on Judicial Discipline
6 Attn.: Paul Deyhle, General Counsel
7 3476 Executive Point Way, # 15
8 Carson City, Nevada 89706

9 DATED this 12th day of January, 2015.

10 
11 _____
12 Kimberly A. Wanker

EXHIBIT "2"

EXHIBIT "2"

1 C. Respondent, on or about October 3, 2012, ordered that complainant was to submit to a blood-
2 alcohol test and, by about November 13, 2012, respondent subsequently received information
outside of court proceedings.

3 **RESPONSE:**

4 I presided over the child custody and visitation case of *Carson v. Brown*, CV 32871, filed in
5 the Fifth Judicial District Court, Nye County, Nevada. As background, the parties dated, lived
6 together for a period of time, and had a female child born June 8, 2010. A few months after the
7 child's birth, the parties ended their relationship. Mr. Carson had a long history of alcoholism. Mr.
8 Carson acknowledged that his drinking problem had cost him his first marriage, visitation with a son
9 born from his first marriage, his career in the military, and his relationship with Ms. Brown. Mr.
10 Carson also admitted that he had two prior DUI's. Mr. Carson further admitted that he had attended
11 alcohol treatment programs, but he had resumed drinking shortly after completing each program.
12 Ms. Brown made allegations concerning violence and violent behavior by Mr. Carson during the
13 course of their relationship attributed to Mr. Carson's use of alcohol, and indicated that Mr. Carson's
14 excessive drinking was the reason their relationship had ended.

15 The parties initially both lived in Pahrump. After an evidentiary hearing, and working with
16 both parties, the court entered a supervised visitation schedule. Because of the young age of the child
17 (less than 2 years of age), a lack of contact with the child for several months, and Mr. Carson's
18 alcohol issues, the court was working toward a graduated schedule of increased visitation for Mr.
19 Carson with the child where hopefully the parties could eventually share joint physical custody. The
20 court held a periodic status check on May of 2012, found that the parties were working together and
21 set another status check for August 21, 2012. On July 3, 2012, Ms. Brown filed a *Motion to*
22 *Relocate And Change Visitation*. Ms. Brown had recently married, and she and her new husband
23 desired to move to Alaska where his family was located, and where they had both obtained
24 employment. A hearing was held on July 31, 2012. At the hearing, the Court asked the parties to try
25 to negotiate an agreement to allow the relocation. A status check was set for August 14, 2012. At the
26 August 14, 2012 hearing, Ms. Brown appeared for the first time, with an attorney, Tom Gibson, who
27 appeared in an unbundled capacity. Mr. Carson had originally been represented by Attorney Carl
28

1 Joerger, and was subsequently represented by Attorney Neil Mullins. At the time of the August 14,
2 2012 hearing, the parties had not reached an agreement. After direction from the court on some of
3 the outstanding issues, the court continued the matter to August 17, 2012 to allow counsel for the
4 parties to negotiate a visitation schedule. Ms. Brown's proposed employment in Alaska was
5 scheduled to begin on August 23, 2012. At the August 17, 2012 hearing, Attorney Gibson failed to
6 appear, and his law partner, Harry Kuehn, who was at the court house handling a matter in justice
7 court, stepped in, admitting he had no knowledge of the case. Prior to the hearing, Attorney Mullins
8 had sent Attorney Gibson a visitation proposal but had received no response. The court allowed Ms.
9 Brown to travel to Alaska and set visitation for Mr. Carson before she left.

10 On October 3, 2012, a hearing was held concerning visitation. Mr. Carson was present with
11 his attorney, Neil Mullins. At the start of the hearing, the court inquired about a written order she
12 had asked be prepared from the August 17, 2012 hearing. Attorney Mullins provided the court with a
13 copy of the proposed order he had prepared, and indicated he had sent it for review to Attorney
14 Gibson's office, but had not yet received a response. At the October 3, 2012 hearing, Ms. Brown was
15 not represented by counsel, indicating that she had retained Attorney Tom Gibson in an unbundled
16 capacity, and that she no longer desired his representation. (I had judicial staff phone Attorney
17 Gibson's office to verify that he would not be attending the hearing.)The initial hearing lasted
18 approximately one hour. The parties discussed various issues and concerns regarding child visitation
19 and child support. The hearing could be characterized and very pleasant and cordial by both parties.
20 During the course of the hearing, it came to my attention that Mr. Carson might have been drinking
21 prior to court. I do not recall whether it was Deputy Sheriff Jennifer Jonas, who was acting as my
22 Bailiff, the court clerk, or court staff that handed me a note that they believed they smelled alcohol
23 on Mr. Carson. I then asked both parties if anyone would be opposed to taking a PBT test and
24 whether anyone would test positive. There was no opposition from either party, and both parties
25 indicated the result would be negative. Deputy Jonas left the courtroom and obtained her PBT test
26 kit. The hearing continued, and the court heard the concerns and proposals by both parties. Mr.
27 Carson himself addressed the court for approximately 10-15 minutes just prior to taking a break. It
28 was apparent that both parties were so close to agreeing on a visitation schedule that I wanted to give

1 the parties an opportunity to discuss and finalize the details.

2 I asked the question concerning the use of alcohol at two different times during the hour long
3 hearing. In fact, the second time I made inquiry of the parties, Mr. Carson indicated that he did not
4 think it was necessary to PBT Ms. Brown. As we were within seconds of taking the break, Mr.
5 Carson abruptly got up and walked out of the courtroom saying he needed to use the restroom. We
6 then proceeded to break. I left the courtroom and went into my office to work on other matters. I
7 intended for Deputy Jonas to PBT Mr. Carson during the break. I was notified either by Deputy
8 Jonas or court staff approximately 30 minutes later, that when Mr. Carson left the courtroom to use
9 the restroom he had in fact left the courthouse. He had sent a text message to his Attorney Mullins,
10 advising that he had a bout of colitis, had "messed his pants" and had gone home. I then returned to
11 the bench. Mr. Mullins showed me the text message from his client. I did not believe Mr. Carson's
12 reason for leaving the courthouse, as his conduct is very typical of the behavior I have previously
13 witnessed on numerous occasions by various participants in the drug court program. (I have served
14 as the presiding judge over the drug court program in Pahrump since August 2011) I advised the
15 parties that I intended to send either Deputy Sheriff Jonas or another Sheriff's Deputy to Mr.
16 Carson's house to transport Mr. Carson to Quest Laboratories for a blood draw. Attorney Mullins
17 had no objection. Mr. Mullins then explained that the parties had reached a tentative agreement,
18 pending the outcome of the alcohol test, and proceeded to outline the terms of the agreement. Mr.
19 Mullins indicated he would prepare and submit to chambers a proposed order of what the parties had
20 agreed upon, understanding that the proposed order to be submitted would be affected by the
21 outcome of Mr. Carson's alcohol test. I set this matter back on calendar for November 13, 2012.

22 I subsequently was contacted by a Nye County Sheriff's Deputy who had gone to Mr.
23 Carson's house. The deputy reported that he had conducted a PBT test on Mr. Carson, and to the
24 best of my recollection, the results were .071 or .073. The deputy was inquiring as to whether to
25 transport Mr. Carson to Quest for the blood draw. I do not recall whether I spoke directly to the
26 deputy or whether the deputy spoke to my Judicial Clerk Christel Raimondo, and she relayed the
27 information from and to the deputy. The deputy did take Mr. Carson to Quest Laboratories, and the
28 results were faxed to judicial chambers a few days later indicating a .081 alcohol test result. If I

1 recall correctly, I believe that Mr. Carson informed the deputy that he came home from court and
2 began drinking to calm his nerves.

3 I did not provide the Quest Laboratories results, or the other information concerning Mr.
4 Carson's alcohol use to the parties prior to the November 13, 2012 hearing. This information,
5 however, was not the basis for the finding of contempt.

6 At the November 13, 2012 hearing, I confronted Mr. Carson about his positive alcohol tests.
7 Mr. Carson admitted he had lied to me in Court on October 3, 2012, and that he had used alcohol
8 prior to coming to court on the morning of October 3, 2012. I then held Mr. Carson in Contempt of
9 Court for lying to the Court on October 3, 2012 and imposed a 7 day jail sentence and \$500.00 fine.
10 I believed that I could impose the contempt sentence because the lying had occurred in my direct
11 presence, during court on October 3, 2012. I did not issue a written contempt order, which I now
12 realize I was required to do pursuant to *Houston v. Eighth Judicial District Court*, 122 Nev. 544, 135
13 P.3d 1269 (2006).

14 I want to make clear, the PBT Test results and the Blood Draw results were not the basis for
15 my finding of contempt. I would have held Mr. Carson in contempt with or without the results of
16 the PBT and Blood Draw results. At the November 13, 2012 hearing, Mr. Carson admitted to me
17 that he had lied to me on October 3, 2012, and that he had in fact consumed alcohol on October 3,
18 2012 prior to the hearing. Mr. Carson also admitted at the November 13, 2012 hearing that he told
19 me at the October 3, 2012 hearing his PBT test would be negative.

20 The reason that I held Mr. Carson in what I believed was immediate contempt on November
21 13, 2012 was for his admitted conduct in lying to me in Court on October 3, 2012. My understanding
22 is that a judge may hold an individual in immediate contempt if the contempt occurs within the
23 ocular view of the court or where the court has direct knowledge of the contempt. I felt I had direct
24 knowledge of the contempt, since I was present, in court, on October 3, 2012 when Mr. Carson
25 indicated he would have a negative PBT result. I was also present in court on November 13, 2012
26 when he admitted had not been truthful to the court on October 3, 2012. Because I believed that Mr.
27 Carson had committed immediate contempt I did not issue an Order to Show Cause or a warrant of
28 attachment for Mr. Carson to answer the charges.

1 **ALLEGATIONS:**

2 D. Respondent, during the hearing on or about August 17, 2012, requested counsel for
3 complainant to prepare an order regarding visitation. A proposed order was submitted to the court by
4 complainant's counsel in a letter dated November 6, 2012 and received by the clerk of the court on
5 November 8, 2012. No order regarding the matter was entered as of March 31, 2014 and the matter
was not resolved in a timely manner. Complainant's counsel may have contacted respondent or her
chambers on more than one occasion following the hearing in an attempt to have the order issued.

6 E. Respondent, during the hearing on or about October 3, 2012, indicated that she would take
7 the matter under advisement and issue an order. A proposed order was submitted to the court by
8 complainant's counsel in a letter dated November 6, 2012 and received by the clerk of the court on
9 November 8, 2012. No order regarding the matter was entered as of March 31, 2014 and the matter
was not resolved in a timely manner. Complainant's counsel may have contacted respondent or her
chambers on more than one occasion following the hearing in an attempt to have the order issued.

10 F. Respondent, during the hearing on or about November 13, 2012, indicated that she would
11 take the matter under advisement and issue an order regarding the matter shortly. No order regarding
12 the matter was entered as of March 31, 2014 and that matter was not resolved in a timely manner.
Complainant's counsel may have contacted respondent or her chambers on more than one occasion
following the hearing in an attempt to have the order issued.

13 **RESPONSE:**

14 As I explained to Judicial Investigator Vic Freeman, this case got overlooked. I do not have
15 an excuse, nor do I intend to make an excuse. At the start of the October 3, 2012 hearing, the court
16 inquired about a written order she had asked be prepared from the August 17, 2012 hearing.
17 Attorney Mullins provided the court with a copy of the proposed order he had prepared, and
18 indicated he had sent it for review to Attorney Gibson's office, but had not yet received a response.
19 This Order, along with a proposed order that the parties had been in the process of negotiating on
20 October 3, 2012 when Mr. Carson departed the courthouse, was submitted to the clerk's office on
21 November 8, 2012. I did not sign either proposed order prior to the November 13, 2012 status check.
22 At the status check on November 13, 2012, in light of the fact that Mr. Carson admitted he had been
23 drinking on October 3, 2012, Ms. Brown stated that she could no longer agree to the terms the
24 parties had negotiated on October 3, 2012. I then stated I would take the matter under advisement,
25 and issue my own Order, which I did not do.

26 I do not dispute that Attorney Mullins contacted chambers inquiring about a visitation order.
27 When chambers were contacted by Attorney Mullin, I should have had the case file sent from
28

1 Tonopah for review. When the judicial discipline complaint came to my attention, I had the file sent
2 and I reviewed the file and the JAV recordings of all of the court hearings. As I explained to
3 Investigator Freeman, after becoming aware of the complaint, and before our March 31, 2014
4 meeting, I did not sign any of the proposed outstanding orders or prepare my own order because I
5 did not want it to appear to the Commission that I was trying to cover my mistake. I did tell
6 Investigator Freeman that I intended to set the case for a status check after our meeting. I sent a
7 Notice of Status Check to the parties on April 2, 2014, and had a status check hearing on May 2,
8 2014. At that hearing, Mr. Carson advised me that the parties had worked out a custody and
9 visitation plan and asked that I dismiss the case.

10 I am not trying in any way to make excuses to the Commission. I do hope, however, the
11 Commission in determining what action to take, will consider the circumstances surrounding the
12 way files are kept, tracked and stored within the Fifth Judicial District.

13 The Fifth Judicial District comprises Nye, Mineral and Esmeralda counties. Because of the
14 massive size of Nye County, Nye County is the only county in Nevada where there is an additional
15 courthouse in Pahrump, approximately 180 miles from the county seat of Tonopah. Prior to 2000,
16 Nye County had a single courthouse in Tonopah, and a single District Court judge. With the rapid
17 growth in southern Nye County, and particularly Pahrump, a second courthouse was built in
18 Pahrump and a second judge added. Judge Robert Lane has presided as the District Judge in
19 Pahrump since the position was created in 2000. Judge John Davis resided in Tonopah, and was
20 responsible for all cases in Tonopah, and all cases in Esmeralda and Mineral County. In addition,
21 Judge Davis traveled to Pahrump every 2 to 4 weeks to handle part of the Pahrump criminal case
22 load. Judge Lane handled a Pahrump case load. All of Judge Davis' Nye County files were housed in
23 Tonopah, whereas all court files of District Judge Robert Lane, were housed in Pahrump. After
24 Judge Davis' death in January 2011, and before a new Judge was appointed, Judge Lane issued an
25 order changing the work load of the District Judges. All odd file numbered cases throughout the
26 District are to be handled by Department 1 and all even numbered cases throughout the district are to
27 be handled by Department 2, Judge Lane.

28 When I was appointed Judge and assumed the position on July 1, 2011, I chose to reside in

1 Pahrump, since I owned a weekend home in Pahrump, and since the workload for the Fifth Judicial
2 District is overwhelmingly in southern Nye County, with a case breakdown as follows: Pahrump:
3 78%; Tonopah 10%; Goldfield 2%; and Hawthorne, 10%.

4 There is no unified filing or calendaring system within the Fifth Judicial District. There is no
5 Clerk of the Fifth Judicial District Court. Rather, each county has a separate paper calendaring and
6 file system. Each county clerk is responsible for the district court case files filed in their county, and
7 each county clerk is responsible for providing a courtroom clerk when the District Judge is sitting.
8 In Nye County, no provisions had ever been made for two District Judges to have primary chambers
9 in Pahrump. The vault in the Nye County Clerk's office in Pahrump is not large enough to
10 accommodate the case files for Department 1. Therefore, all Department 1 case files are located in
11 Tonopah. (Recent changes have been made to maintain some of the new open and active criminal
12 files for Department 1 in the Pahrump vault). When a new case is filed in Pahrump and assigned to
13 Department 1, the file is created, and then sent to Tonopah. There are no electronic or scanned files,
14 so if a case file is needed for a hearing, the physical paper case file has to be transported from the
15 clerk's office in Tonopah to the clerk's office in Pahrump. After a hearing in Pahrump, a case file is
16 returned from the clerk's office in Pahrump to Tonopah. If documents are filed at the clerk's office
17 in Pahrump for a Department 1 case, and the case file is in Tonopah, the documents are file stamped
18 and sent to Tonopah for filing in the court file.

19 Moreover, the AS 400 DOS based computer and case file system used by Nye County for the
20 District Court is arcane and extremely outdated. The judicial department cannot make any entries
21 into the system, and there is no provision or tickler system to alert the court that matters may be
22 outstanding on a case file. In June 2011, after having been appointed judge, but prior to being sworn
23 in to the office, I previewed an electronic case filing system that was purchased by the Nye County
24 District Court and the Nye County Clerk's office. I believe that the system is Tyler Technologies or
25 JustWare. The system is a windows based system that would allow the judges to enter notes, track
26 outstanding items, issue orders, etc. I was informed that the system would be in use beginning in
27 July of 2011. To date the system has not been placed in use, due to numerous case conversion and
28 problems of incompatibility with AS 400. Currently there is no projected date for implementation.

1 Therefore, my staff has begun tracking cases where additional action needs to be taken, on Microsoft
2 Outlook.

3 In addition, and not as an excuse, the Commission needs to be aware that the Fifth Judicial
4 District has an extremely heavy case load – second only to the Eighth Judicial District. In addition to
5 my regular court duties, since August 2011, I have presided over the adult drug court program in
6 Pahrump. Nye County received a federal Bureau of Justice grant and began a drug court in Tonopah.
7 My monthly travel miles for court related business has increased to over 2,400 miles per month.

8 I have not intentionally neglected the duties of my position. I believe that the judge should be
9 the most prepared person in the courtroom, so I review the entire case file before hearing any case. I
10 do not have a law clerk or anyone else review the file for me. As a consequence, I put in some very
11 long hours, well in excess of a 40 hour work week. Counsel who appear in my courtroom can attest
12 that I am thoroughly prepared on matters that come before me. When I first became judge, I would
13 be hesitant and reluctant to rule from the bench. Now, I rule from the bench unless there is some
14 additional information that must, in my opinion, be reviewed before decision.

15 As I expressed to General Counsel Paul Deyhle, I accept full responsibility for my mistakes
16 in the handling of this case file, and I do not find it necessary to waste the Commission on Judicial
17 Discipline's time or resources in proceeding to any formal proceedings or to a formal public hearing.
18 It is my desire to work with the Commission to resolve this matter as expeditiously as possible.

19 DATED this 11th day of January 2015.

20
21 
22 _____
23 Honorable Kimberly A. Wanker
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the date shown below, I placed a true and correct copy of the above
3 and foregoing *Kimberly Wanker's Response To The Nevada Commission On Judicial Discipline's*
4 *Determination* in the U.S. Mail, Express Mail Service, postage fully affixed, addressed to:

5 Commission on Judicial Discipline
6 Attn.: Paul Deyhle, General Counsel
7 3476 Executive Point Way, # 15
8 Carson City, Nevada 89706

9 DATED this 12 day of January, 2015.

10 
11 _____
12 Kimberly A. Wanker