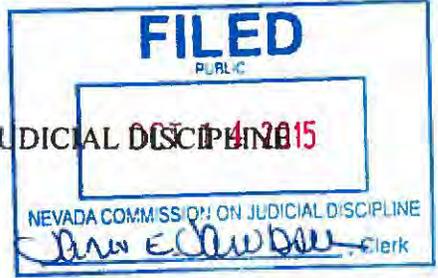


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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE  
STATE OF NEVADA



In the Matter of )  
STEVEN E. JONES )  
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 )

Case No. 2006-100

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS THE FORMAL STATEMENT OF CHARGES**

Currently before the Commission on Judicial Discipline ("Commission") is a Motion to Dismiss the Formal Statement of Charges ("Motion to Dismiss") against Steven E. Jones, a former Eighth Judicial District Court Judge in the Family Division ("Respondent"). The Formal Statement of Charges was filed with the Commission on June 11, 2015. The Motion to Dismiss was filed July 28, 2015, and Special Counsel to Commission ("Special Counsel") filed an Opposition to the Respondent's Motion to Dismiss Formal Statement of Charges ("Opposition") on August 5, 2015. No Reply in support of the Motion to Dismiss was filed by Respondent.

**STATEMENT OF FACTS**

Beginning in or about September 2002 and continuing until in or about October 2012, Respondent knowingly used his position as a Nevada Eighth Judicial District Court Judge in the Family Division to conspire with others to defraud victims of their money. While in office as a District Court Judge, Respondent became part of a conspiracy in which co-conspirators used the status of Respondent's office to vouch for their credibility to convince victims to invest money in non-existent projects. One such project, and the central issue in the instant case, involves the Respondent working in concert with his former brother-in-law, Mr. Thomas Cecrle, to sell non-existent water rights associated with unspecified parcels of land in the Southwestern United States. The conspirators misrepresented the project as being near completion and in need of a short-term cash contribution, promising a large return on investment to their victims. Respondent knew that co-conspirators were making these false statements and knew that he would receive money from Cercle in return for his part in the conspiracy.

1 In March 2006, Respondent used his power as a judge to assist Cecrle in obtaining release on  
2 his own recognizance after the latter was arrested for writing bad checks to a victim of the conspiracy.  
3 From March 2006 to June 2009, Respondent used the status of his office to personally vouch for the  
4 credibility of the project and Cecrle. From March 2006 to November 2008, Respondent met with at least  
5 one victim repeatedly in his chambers and various areas of the Family Division of the Eighth Judicial  
6 District Court to discuss the victim's payment to the fraudulent water rights project. Respondent knew  
7 the victim relied on his cloak of office to assess the legitimacy of the project. At some point between  
8 February and June 2007, Respondent accepted a cash payment from a victim for the water rights scheme  
9 in the parking lot of the courthouse. From approximately December 2006 to approximately March 2008,  
10 Respondent shared a joint checking account with the conspirators knowing that the account would be  
11 used to further the fraudulent investment scheme. At least \$260,000 of illegal proceeds from the scheme  
12 was deposited in the account and Respondent personally withdrew portions of the proceeds from the  
13 account for his own use. The conspirators also sent an interstate email to a victim in furtherance of the  
14 fraudulent investment scheme.

15 Conspirators, including Respondent, defrauded at least 22 victims of more than \$2.6 million.  
16 Respondent subsequently signed a U.S. District Court Plea Agreement based on the above facts and was  
17 sentenced to 26 months in the U.S. Prison in Taft, California beginning May, 2015. As a result of the  
18 facts outlined above, the Commission has charged Respondent with two counts of misconduct. Count  
19 One: violations of Canon 1, Rule 1.1 (requiring a judge to comply with the law, including the Code of  
20 Judicial Conduct), Rule 1.2 (requiring a judge to act at all times in a manner that promotes public  
21 confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and  
22 the appearance of impropriety), and Rule 1.3 (requiring a judge to avoid abusing the power of the office  
23 to advance the personal or economic interests of himself or others); Count Two: violation of Canon  
24 3.1(C) (prohibiting participation in activities that undermine, or appear to undermine, the judge's  
25 independence, integrity, or impartiality), Canon 3.1(D) (prohibiting participation in coercive conduct),  
26 and Canon 3.1(E) (prohibiting use of court premises and other resources for unlawful extrajudicial  
27 activities).

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## ISSUES

In support of the Motion to Dismiss, Respondent Jones alleges the following:

1. The Commission lacks jurisdiction over Respondent because he is no longer a judge.
2. The Commission lacks jurisdiction over Respondent because the relevant statute of limitations passed before charges were filed.
3. The Statement of Charges brought by the Commission violates the Respondent's right to due process of law because he is currently incarcerated and cannot properly respond.
4. The Statement of Charges is an abuse of authority and a waste of public resources.

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### STANDARD FOR MOTION TO DISMISS

Under NRCP 12(b)(5), a complaint should be dismissed when a plaintiff fails to state a claim upon which relief can be granted. In considering the dismissal of a claim under NRCP 12(b)(5), the Court must assume all factual allegations in the complaint as true, and make all reasonable inferences in favor of the non-moving party. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In fact, a complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle them to relief or where the allegations are insufficient to establish the elements of a claim to relief. *Id.*

Special Counsel notes that Respondent has pled guilty to the basic facts in the Statement of Charges as outlined above, so there should not be any doubt as to their truth. Special Counsel also notes that the Commission in this instance acts as both the Plaintiff and the trier-of-fact.

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### DISCUSSION

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#### **I. The Commission Lacks Jurisdiction Over Respondent Because He Is No Longer A Judge.**

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The Respondent argues that because he resigned his position 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, he is beyond the jurisdiction of the Commission as he is no longer a judge as defined by NRS 1.428. Respondent further argues that the Commission's failure to bring charges against him before his resignation means that the Commission is bringing suit against a private person, which it has no authority to do. There is no case law in support of the Respondent's contention.

1 Special Counsel argues that the Respondent's argument is illogical and implies that a judge  
2 should be able to avoid sanctions simply by resigning before the Commission brings charges against him.  
3 Special Counsel concedes that Nevada has no case law on jurisdiction over former judges, but points to  
4 case law of several assorted states upholding the jurisdiction of a judicial commission over a former  
5 judge for inappropriate actions taken while in judicial office. Cases cited include: *In re Perez*, No. A12-  
6 2118, 843 N.W.2d 562 (Minn. 2014) (finding that imposing discipline on a former judge for actions  
7 taken as a judge protects the integrity of the judicial system and restores public confidence in the judicial  
8 system); *In re Waters*, 5 JD 2015 (Penn. 2015) (charging former judge with nine violations of judicial  
9 sanctions six months after his resignation); *In re Conahan*, 51 A.3d 922 (Penn. 2012) (issuing sanctions  
10 based on constitutional provisions regulating judicial misconduct against a judge who had resigned from  
11 the bench four years earlier); *In Re Toole*, 5 JD 11 (Penn. 2011) (subjecting former judge to discipline  
12 based on judicial conduct, symbolically removing him from office, and prohibiting him from ever  
13 holding judicial office in the future based on two felonies for which he had been sentenced); *In re Joyce*,  
14 3 JD 11 (Penn. 2011) (removing and permanently barring from office a former judge found guilty of  
15 multiple felony charges); *In re DiLeo*, D-66 072095 (N.J. 2010) (denying motion to dismiss charges by  
16 former judge and holding that he was subject to discipline).

17 In sum, Special Counsel provides abundant case law from other jurisdictions interpreting the use  
18 of the word "judge" in the constitutional provisions enabling their judicial commissions to sanction and  
19 discipline former judges for actions taken while in office. This case law supports interpreting the use of  
20 the word "judge" in Article 6, Section 21(1) of the Nevada Constitution and in NRS 1.428 and 1.440 as  
21 referring to both current and former judicial officers when subjecting them to discipline or sanctions for  
22 actions taken while in judicial office. Based on the case law presented, this is especially true where  
23 sanctions are brought against the current or former judicial officer by a judicial commission based on  
24 felony charges after guilt is proven, in order to reinforce public trust in the judiciary.

25 Here, Respondent was an elected judicial official for the entirety of the time that he was  
26 committing the actions underlying the Counts in the Formal Statement of Charges. The underlying  
27 actions constituted at least one felony, to which the Respondent pleaded guilty. Although Respondent  
28 is no longer a judge, there is no reason to so severely limit the applicable law authorizing the

1 Commission's jurisdiction. Special Counsel rightfully indicates that to do so would allow judges to avoid  
2 any sanction for a violation of the Canons by simply resigning before formal charges could be filed.  
3 Furthermore, the interest in protecting the integrity of the judicial system and restoring public confidence  
4 in the system weigh against the Respondent's interpretation of the constitutional and statutory language.

5 In conclusion, the Commission has jurisdiction over Respondent as a former judge.

6 **II. The Applicable Statute of Limitations Period under NRS 1.4655 Has Passed.**

7 The Respondent argues that under NRS 1.4655(1) and (2) the Commission is barred from  
8 considering complaints, presumably including those brought on its own initiative, more than 1 year after  
9 the Commission knew or should have known of the alleged conduct. Respondent further argues that there  
10 is no reasonable argument that the complaint should be brought before the Commission under subsection  
11 (a) of NRS 1.4655(2) as a continuing course of conduct because Respondent alleges that the conduct  
12 ended at the time of the indictment in October 2012, more than 3 years before the Statement of Formal  
13 Charges was filed. Respondent appears to consider the Statement of Formal Charges tantamount to a  
14 complaint.

15 In opposition, Special Counsel argues that the instant case has evolved out of the original Verified  
16 Statement of Complaint ("2006 Complaint") filed by former Commission Executive Director David  
17 Sarnowski on August 6, 2006, and was part of a continuing course of conduct uncovered by the  
18 subsequent investigation into the allegations in the 2006 Complaint. Special Counsel also argues that the  
19 Respondent's course of misconduct culminated with his guilty plea, thus leaving the entire pattern of his  
20 misconduct open to sanctions and discipline.

21 NRS 1.4655(1) provides that "The Commission may *begin an inquiry* regarding the alleged  
22 misconduct ... of a judge upon the *receipt of a complaint*." (Emphasis added). NRS 1.4655(2) provides:

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

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

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

28 (Emphasis Added).

1            “[J]udges generally have no right to avoid charges based on new evidence discovered during the  
2 course of a lawful investigation.” *Jones v. Nevada Judicial Commission*, 130 Nev. Adv. Op. 11. (27 Feb.  
3 2014).

4            The 2006 Complaint focused on allegations of domestic abuse and the Respondent’s misuse of  
5 his office. Special Counsel cites to a procedural review of the allegations contained in the Nevada  
6 Supreme Court’s rejection of the Respondent’s Petition for Writ of Mandamus. *Jones v. Nevada Judicial*  
7 *Commission*, 130 Nev. Adv. Op. 11. The Court declined to issue a Writ of Mandamus to dismiss this  
8 case, and concisely summarized the events leading from the 2006 Complaint to the instant Statement of  
9 Formal Charges.

10            In sum, following the 2006 Complaint, the Commission assigned The Advantage Group to  
11 investigate the charges in the complaint. In November 2010, the Respondent was first notified of the  
12 charges against him through an interview with The Advantage Group. He received a copy of the 2006  
13 Complaint and an attached Proposed Charging Document in July 2012. The Proposed Charging  
14 Document reflected that the investigation by The Advantage Group led to a lack of clear and convincing  
15 evidence to pursue the domestic abuse and misuse of office charges, but the investigation had led to  
16 concerns that the Respondent “had, continually, since approximately 1996 or 1997, violated the Nevada  
17 Code of Judicial Conduct by persuading various individuals to invest large sums of money in unsound  
18 financial schemes, some involving ex-felons.” *Id.* at 3-4. This basic allegation forms the basis of the  
19 instant Statement of Formal Charges. As noted, *supra*, “judges generally have no right to avoid charges  
20 based on new evidence discovered during the course of a lawful investigation.” *Id.* at 11. In addition,  
21 NRS 1.4655 allows an entire course of conduct to be considered if at least one of the actions was taken  
22 within the applicable 1 or 3 year period. Although the reference to 1996 or 1997 as a starting point for  
23 the conspiracy would place it beyond the statute of limitations period, “[w]here there is a continuous  
24 course of conduct, the conduct will be deemed to have been committed at the termination of the course  
25 of conduct.” Here, the conduct continued until December 2012 according the Respondent’s guilty plea.

26            The foregoing establishes that the instant Statement of Formal Charges is the product of the  
27 original complaint filed against the Respondent in August 2006. The subsequent investigation uncovered  
28 evidence of the charges noted in the Proposed Charging Document attached to the 2006 Complaint and

1 received by the Respondent in July 2012. The Statement of Formal Charges was filed June 11, 2015.  
2 Therefore, under NRS 1.4655(1), the Commission did begin an inquiry when it filed the 2006 Complaint.  
3 Under NRS 1.4655(2), the Commission was entitled to consider its own filed complaint as it was filed  
4 less than one year after the Commission knew or should have known of the domestic abuse and misuse  
5 of office allegedly conducted by the Respondent. After the timely filing of the 2006 Complaint, the  
6 inquiry stage of the proceeding continued for several more years and culminated in the instant Statement  
7 of Formal charges. Although the final Statement of Formal Charges is based on conduct not listed in the  
8 2006 Complaint, the Respondent is unable to avoid the charges because they are based on new evidence  
9 uncovered during the course of the investigation.

10 In conclusion, the Respondent mischaracterizes the application of the statute. The Statement of  
11 Formal Charges is not the complaint in this matter. The complaint was timely filed in 2006 by the  
12 Commission and was properly considered and investigated. The Statement of Formal Charges is the  
13 product of the investigation that began with the timely filing of the 2006 Complaint. The fact that the  
14 investigation and adjudication of the charges against the Respondent took several years to culminate in  
15 the Statement of Formal Charges is not a ground to dismiss it.

16 **III. The Respondent's Right to Due Process of Law Has Been Violated by the Delay Filing**  
17 **Charges.**

18 The Respondent argues that the timing of the Commission's filing of the Statement of Formal  
19 Charges is suspect and could have been done at any point in the last three years. The Respondent further  
20 implies that the Commission intentionally waited until the Respondent was incarcerated out of state to  
21 bring the Statement of Formal Charges against him. The Respondent further argues that the Commission  
22 never suspended the Respondent as required by the procedural rules, and states that if the Commission  
23 had done so, they would have been required to file formal charges against him within 60 days of the  
24 Order of Suspension.

25 Special Counsel contends that although the Commission was aware of the indictment, the  
26 indictment is not a plea. Until the Respondent signed the Plea Agreement and was sentenced, the content  
27 of his plea and the final adjudication of the criminal case were uncertain. Special Counsel maintains that  
28 only once all criminal matters against the Respondent were settled could they charge the Respondent with

1 violation of the applicable sections of the Code of Judicial Conduct.

2 Special Counsel convincingly states that the Plea Agreement represents not only part of the basis  
3 for the Statement of Charges, but also for facts that prove up the Statement. The fact that the Respondent  
4 eventually pled guilty and was sentenced for violations of the law proves the violations of the Canons  
5 listed in Count One. Specifically, Canon 1, Rule 1.1 (requiring a judge to comply with the law), Rule 1.2  
6 (requiring a judge to act at all times in a manner that promotes public confidence in the independence,  
7 integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety),  
8 and the facts presented in the plea agreement prove a violation of Rule 1.3 (requiring a judge to avoid  
9 abusing the power of the office to advance the personal or economic interests of himself or others).  
10 Further, the more specific facts presented in the plea agreement form the basis for Count Two. The  
11 Respondent's participation, and manner of participation, in the conspiracy and use of judicial resources  
12 to further the conspiracy violated canon 3.1(C) (prohibiting participation in activities that undermine,  
13 or appear to undermine, the judge's independence, integrity, or impartiality), Canon 3.1(D) (prohibiting  
14 participation in coercive conduct), and Canon 3.1 (E) (prohibiting use of court premises and other  
15 resources for unlawful extrajudicial activities). Therefore, any delay argued by the Respondent is fully  
16 justified.

17 Special Counsel further argues that the Respondent and the Respondent's former counsel were  
18 on notice of the charges against him before his incarceration. Specifically, the Commission established  
19 communication with the Respondent's former counsel, Sigal Chattah, in late April or early May of 2015,  
20 well before the Respondent reported to prison on May 26, 2015. On at least May 4, 2015, counsel was  
21 aware that the Commission had voted to pursue this matter and wanted to know the Respondent's  
22 position before his incarceration. Counsel for the Respondent withdrew on May 26, 2015, the day he  
23 reported to prison and current counsel did not file a Notice of Appearance until June 24, 2015.

24 Finally, Special Counsel notes that the Respondent was in fact suspended per the procedural  
25 rules. The Commission suspended the Respondent with pay in an Order dated November 29, 2012, in  
26 Case No. 1206-218. The Formal Statement of Charges in Case No. 1206-218 was timely filed on  
27 December 20, 2012. On February 3, 2014, the Final Discipline Order was filed in Case No. 1206-218  
28 publically censoring the Respondent and suspending him without pay for three months. The Respondent

1 remained suspended with pay for another three months until he resigned as part of his Guilty Plea  
2 Agreement on September 3, 2014.

3 In conclusion, there is no cognizable argument presented that the Commission has denied the  
4 Respondent his right to due process of law.

5 **IV. The Statement of Charges is a Waste of Public Resources and an Abuse of Authority.**

6 The Respondent argues that the Commission should not waste public funds to ensure that the  
7 Respondent never be able to run for the few judicial offices in the State of Nevada where admission to  
8 the Nevada State Bar is not required. The Respondent argues that the Commission should pursue more  
9 current misconduct rather than continuing to pursue the Respondent.

10 Special Counsel argues that the Respondent is precluded from arguing a waste of resources based  
11 on his own unclean hands as evidenced by his own serious abuses of the judicial system in his previous  
12 suspension in Case No. 1206-218, and his attempts to do so once more in this matter by filing a Petition  
13 for Writ of Mandamus with the Nevada Supreme Court.

14 In addition to Special Counsel's argument presented in response, it seems insincere for the  
15 Respondent to claim that protecting rural counties where judges are not required to be members of the  
16 bar from the "infinitesimally small chance" that the Respondent will one day run again for judicial office  
17 is a waste of resources. In light of the Respondent's felony record, having been permanently disbarred,  
18 continual abuse of the judicial office, and general predatory attitude toward members of the public, the  
19 Commission is not wasting resources in this matter.

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2 **CONCLUSION**

3 The Respondent has failed to meet his burden. The Respondent's argument that the articles of the  
4 Nevada Constitution and the enabling statutes do not refer to former judges, even for unlawful conduct  
5 committed while in office, is baseless. The Respondent provides no case law for this position, and is  
6 unable to argue a salient point in support. Likewise, the Respondent's argument that the statute of  
7 limitations has expired is based on a misunderstanding or willful misapplication of the statute. In  
8 addition, any claim that the Respondent has been denied his right to due process of law has been outright  
9 disproved by Special Counsel, and the claim that the Commission is wasting resources pursuing the  
10 Respondent is unfounded in light of his criminal record and assorted unlawful activities.

11 The Respondent's Motion to Dismiss is hereby denied.

12 It is further ordered that Respondent's Answer to the Formal Statement of Charges shall be filed  
13 with the Commission no later than October 21, 2015, pursuant to Procedural Rule 17.

14 DATED this 13th day of October, 2015.

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16 STATE OF NEVADA  
17 COMMISSION ON JUDICIAL DISCIPLINE

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20 Jerome Polaha, Presiding Judge  
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1 CERTIFICATE OF MAILING

2 I hereby certify that on the 14<sup>th</sup> day of October, 2015, I served a copy of the ORDER  
3 DENYING RESPONDENT'S MOTION TO DISMISS FORMAL STATEMENT OF CHARGES, by  
4 e-mail and United States Mail, postage pre-paid, addressed to the following:

5  
6 J. Scott MacDonald, Esq.  
MacDonald & Associates, Ltd.  
7 6625 W. Sahara Ave., Suite 3  
Las Vegas, NV 89146

8  
9 Kathleen M. Paustian, Esq.  
10 Law Office of Kathleen M. Paustian  
3205 Skipworth Drive  
11 Las Vegas, NV 89107

12  
13 

14 JANET E. JACOBSEN  
Commission Clerk  
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