

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

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In the Matter of)
THE HONORABLE MELANIE ANDRESS-)
TOBIASSON,)
Las Vegas Township Justice Court,)
County of Clark, State of Nevada,)
Respondent.)

CASE NO. 2014-094-P

ORDER GRANTING MOTION THAT THE COMMISSION TAKE JUDICIAL NOTICE

TO: THE HONORABLE MELANIE ANDRESS-TOBIASSON, Respondent
WILLIAM B. TERRY, ESQ., Counsel for Respondent
KATHLEEN M. PAUSTIAN, ESQ., Prosecuting Officer

Currently before the Commission on Judicial Discipline ("Commission") is a Motion Requesting That The Commission Take Judicial Notice ("Motion"), filed by the Prosecuting Officer to the Commission ("Prosecuting Officer") on January 11, 2017. Opposition to Motion Requesting That The Commission Take Judicial Notice and Request That Said Issue Be Held in Abeyance Until the Time of the Hearing ("Opposition") was filed by counsel to the Honorable Melanie Andress-Tobiasson, Justice of the Peace, Las Vegas Township Justice Court for Clark County, Nevada ("Respondent") on January 18, 2017. The Reply to Respondent's Opposition was filed by the Prosecuting Officer on January 23, 2017.

STATEMENT OF FACTS

The underlying complaint alleges that Respondent, a Justice of the Peace in Clark County, Nevada, signed an ex parte order containing findings of fact supporting the late Jennifer Bolton, Esq.'s application for a Canadian divorce. Ms. Bolton was conflict counsel in Respondent's court. The ex parte order was not in connection with any pending matter in Las Vegas Justice Court, and Respondent rescinded the Order shortly after signing the same.

1 On January 11, 2017, the Prosecuting Officer filed a Motion for Judicial Notice based upon
2 NRS 47.140(2) which permits judicial notice of the Constitution of the State and the Nevada Revised
3 Statutes, and NRS 47.130(2) which allows for judicial notice of facts that are capable of accurate and
4 ready determination and not subject to reasonable dispute. The Motion seeks judicial notice of the fact
5 that Respondent's actions did not comport with Nevada law on the jurisdiction of domestic matters
6 pursuant to NRS 3.223 which grants district court exclusive jurisdiction over domestic matters.

7 On January 18, 2017, Respondent filed her Opposition. The Opposition argued that the Motion
8 seeks to make a finding that Respondent did not have jurisdiction to participate in the issue presented to
9 her, and noted that this requires an element of intent or scienter which requires the Prosecuting Officer
10 to prove that Respondent knew she did not have the power to issue a finding. Respondent further
11 argued that the ex parte order was not an order because it ordered nothing but was a finding of fact, and
12 emphasized that the Commission must look to Respondent's state of mind when the document was
13 signed.

14 The Opposition focuses on NRS 1.4653 which encompasses both willful and non-deliberate
15 misconduct, with the difference in punishment being that removal is an option for willful misconduct
16 whereas for non-deliberate conduct it is not. Respondent noted that the Prosecuting Officer is
17 attempting to punish Respondent for the one act of Respondent signing a finding of fact for a Canadian
18 proceeding. Respondent further noted that for a non-deliberate violation the only possible avenue was
19 for abuse of authority based upon Respondent's state of mind at the time.

20 Respondent argues that NRS 4.370, which provides for jurisdiction of the justices of the peace
21 has been expanded and limited based upon judicial decisions and cited to three cases. In the first case,
22 the Nevada Supreme Court held that Justice Courts had neither express nor inherent authority to order
23 criminal discovery prior to a preliminary hearing and an alleged stipulation could not confer
24 jurisdiction. *State v. Justice Court of Las Vegas Twp., Clark County*, 112 Nev. 803, 919 P.2d 401
25 (1996). In *Grace v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 51, 375 P.3d 1017 (2016), the Supreme
26 Court held that Justice Courts have authority to suppress illegally obtained evidence during preliminary
27 hearings. In the third case, the Supreme Court held that: (1) justice courts have authority to resolve
28 constitutional issues arising in criminal misdemeanor cases, overruling *In Re Dixon*, 40 Nev. 228, 161

1 P. 737, and *McKay v. City of Las Vegas*, 106 Nev. 203, 789 P.2d 584; (2) justice court exceeded its
2 jurisdiction by issuing a collaborative, “en banc” decision. *Salaiscooper v. Eighth Judicial Dist. Court*
3 *ex rel. County of Clark*, 117 Nev. 892, 34 P.3d 509 (2001). Respondent cited to these cases as
4 permitting Justice Courts to make determinations that were not specified pursuant to NRS 4.370.

5 Respondent further relies upon the Nevada Federal Court’s ruling that Respondent is entitled to
6 judicial immunity for her actions noting, “[e]ven if Judge Andress-Tobiasson overstepped the bounds of
7 her court’s jurisdiction and acted in excess of her authority, this is not the same as acting in clear
8 absence of all jurisdiction.” Respondent seeks res judicata and collateral estoppel regarding this issue
9 based upon the Federal Court finding of judicial immunity for, at the very least, a colorable basis for
10 jurisdiction. Finally, Respondent maintains that NRS 47.170 is permissive in nature and as such the
11 question of judicial notice should be held until the hearing, if not denied in its entirety.

12 On January 23, 2017, Prosecuting Officer filed her Reply to the Opposition. The Prosecuting
13 Officer noted that nothing in the Opposition precludes the Commission from using its discretion to take
14 judicial notice of the laws and facts pertaining to this case. Specifically, NRS 3.223 grants to the
15 District Courts original and exclusive jurisdiction to handle any proceeding dealing with divorce or
16 other domestic matters. Furthermore, the Commission may take judicial notice that Respondent had an
17 ex parte discussion with Jennifer Bolton, an attorney she was familiar with and signed a document
18 entitled an “Order” regarding Ms. Bolton’s divorce in Canada. Respondent even signed an Order
19 rescinding the original Order, noting that Canadian law cannot expand the limited jurisdiction of Justice
20 Courts in Nevada. Therefore, the Prosecuting Officer argues that the Commission has ample discretion
21 to take judicial notice of the fact that Respondent signed an order which violated the laws granting
22 exclusive jurisdiction over domestic matters to the District Courts. Respondent failed to cite to any
23 authority which gives Justice Court jurisdiction over domestic matters. Finally, orders by the United
24 States District Court for Nevada have no precedence over the disciplining of Nevada judges. The Order
25 in that matter is not a final order, and moreover, it deals with judicial immunity not whether the
26 Respondent violated the Judicial Canons.

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ISSUES

Whether the Commission may take judicial notice, pursuant to NRS 47.130(2)(a) and (b) and NRS 47.140, of the fact that Nevada Justice Courts are courts of limited jurisdiction pursuant to NRS 4.370, and NRS 3.223 which specifically grants to the District Courts original and exclusive jurisdiction in any proceeding dealing with divorce or other domestic matters.

Whether the adjudicative document entitled "Order" that was signed by the Respondent is an order.

Whether the adjudicative document entitled "Order" was within the limited jurisdiction of the Nevada Justice Courts.

STANDARD FOR JUDICIAL NOTICE

NRS 47.130. Matters of fact

- 1. The facts subject to judicial notice are facts in issue or facts from which they may be inferred.
 - 2. A judicially noticed fact must be:
 - (a) Generally known within the territorial jurisdiction of the trial court; or
 - (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,
- so that the fact is not subject to reasonable dispute.

NRS § 47.130

NRS 47.140. Matters of law

- The laws subject to judicial notice are:
- ...
 - 2. The Constitution of this State and Nevada Revised Statutes.
 - ...

NRS § 47.140

DISCUSSION

I. JUDICIAL NOTICE OF LAW AND FACT

The Commission may take judicial notice of any fact not subject to reasonable dispute in that is capable of accurate and ready determination by resort to resources whose accuracy cannot be reasonably

1 questioned. NRS 47.130. This includes the Nevada Revised Statutes. NRS 47.140. In *Lemel v. Smith*,
2 the Nevada Supreme Court stated:

3 The theory of taking judicial notice of a fact (in case where taking of judicial notice is
4 warranted) is that it is a judicial short cut, a doing away, in the case of evidence, with the
5 formal necessity for evidence because there is no real necessity for it. *Varcoe v. Lee*, 180
6 Cal. 338, 181 P. 223. What is known need not be proved. *Peterson v. Standard Oil Co.*,
7 55 Or. 511, 106 P. 337, Ann.Cas. 1912A, 625. 'Judicial notice takes the place of proof,
8 and is of equal force. As a means of establishing facts, it is therefore superior to
9 evidence. In its appropriate field, it displaces evidence, since, as it stands for proof, it
10 fulfills the object which evidence is designed to fulfill, and makes evidence
11 unnecessary.' *State v. Main*, 69 Conn. 123, 37 A. 80, 84, 36 L.R.A. 623, 61 Am.St.Rep.
12 30. Judicial notice has been applied to a wide range of subjects from the facts of ordinary
13 life to the arts, sciences and professions, confined only to those things which any well
14 informed person would be presumed to know.

15 *Lemel v. Smith*, 64 Nev. 545, 565-66, 187 P.2d 169, 179 (1947)

16 In this instance, the Nevada Revised Statutes in question are NRS 4.370 which sets the limited
17 jurisdiction of Nevada Justice Courts, and NRS 3.223 which specifically grants to the District Courts
18 original and exclusive jurisdiction in any proceeding dealing with divorce or other domestic matters.
19 These are clearly matters of law upon which judicial notice can be taken by the Commission.

20 Based upon judicial notice of the jurisdictional limits of Justice Courts, and District Courts'
21 exclusive jurisdiction over divorce and other domestic matters, the next issue pertains to whether the
22 adjudicative document signed by Respondent was an order, and if it exceeded her jurisdictional
23 authority.

24 **II. JUDICIAL NOTICE REGARDING THE ADJUDICATIVE DOCUMENT AS AN** 25 **ORDER**

26 The adjudicative document was entitled an Order, was referred to as an Order in the Order
27 Rescinding the same, and even the Canadian Marriage Act required an order; therefore, the adjudicative
28 document is an order. Furthermore, Respondent references the Federal Court Order regarding judicial
immunity, and in the Federal Court matter it refers to the Order as an order. (Opposition Exhibit D –
Federal Order Granting Summary Judgment). Therefore, judicial notice can be taken of the adjudicative
document's status as, at the very least, a purported order.

1 **III. JUDICIAL NOTICE THAT THE SIGNED ORDER EXCEEDED THE LIMITED**
2 **JURISDICITON OF NEVADA JUSTICE COURTS**

3 The Nevada State Constitution vests the Legislature with exclusive authority to determine the
4 jurisdiction of the justices of the peace. *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d
5 305 (2012). “The justice courts are courts of limited jurisdiction and only have the authority granted by
6 statute.” *State of Nevada v. Justice Court of Las Vegas Tp., Clark County*, 112 Nev. 803, 805
7 (1996)(citations omitted). In *Bennett-Haron*, the Nevada Supreme Court held that a county passed
8 ordinance providing for participation by justices of the peace in coroner inquests unconstitutionally
9 impinged upon the Legislature’s constitutionally delegated authority to determine the jurisdictional
10 limits of justices of the peace. *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 316
11 (2012). Only the Legislature has the ability to expand the jurisdiction of justice court pursuant to the
12 Nev. Const. art. 6, § 8. *See id.* Furthermore, in *State v. Frederick*, 129 Nev. Adv. Op. 27, 299 P.3d
13 372, 376 (2013), the Court held “there is no evidence that the Legislature intended to expand, nor
14 delegate the power to expand, the jurisdiction of the justice courts.” Therefore, Respondent’s argument
15 that the Order was within her jurisdiction pursuant to the Canadian Marriage Act fails as a matter of
16 law. A Canadian Court cannot expand Justice Courts’ jurisdiction, and the same was noted in the Order
17 Rescinding. (Opposition Exhibit C, Order Rescinding).

18 The subject matter of the Order was related to terminating the marriage of the Boltons. The
19 Order specifically dealt with Jennifer Bolton’s petition for divorce in Canada. The Order that
20 Respondent signed found that (1) Bolton was a resident of Clark County, Nevada; (2) Clark County did
21 not grant legal status to marriages between same sex couples; (3) the Boltons had been separated for at
22 least one year, and neither spouse resided in Canada; and (4) Vivian Wright-Bolton was unreasonably
23 withholding her consent for divorce. (Opposition Exhibit A, Order signed by Respondent). These are
24 all matters that deal with divorce and other domestic matters.

25 NRS 4.370(1) states that “justice courts have jurisdiction of the following civil actions and
26 proceedings and no others except as otherwise provided by specific statute”. NRS 4.370, which sets the
27 limited jurisdiction of Nevada Justice Courts, does not mention divorce or any domestic proceedings in
28 the statute. NRS 3.223 specifically grants to the District Courts original and exclusive jurisdiction in

1 any proceeding dealing with divorce or other domestic matters. The Order dealt with divorce, a matter
2 that is unequivocally under the jurisdiction of the District Courts of Nevada. Therefore, the Order
3 signed by Respondent exceeded the jurisdictional limits of Justice Court.

4 Therefore, Prosecuting Officer's Motion for Judicial Notice is hereby granted in that the
5 Commission may take judicial notice of the limited jurisdiction of the Nevada Justice Courts, and the
6 original and exclusive jurisdiction which the District Courts have over all domestic matters, including
7 divorce. Judicial notice extends to the fact that the adjudicative document was an "Order" regarding a
8 Canadian divorce, and exceeded the limited jurisdiction of Respondent's court.

9 Prosecuting Officer's Motion Requesting That the Commission Take Judicial Notice is hereby
10 granted. The Honorable Thomas Armstrong is authorized to sign this order on behalf of the full
11 Commission.

12 IT IS SO ORDERED.

13 DATED this 7 day of February, 2017.

14 STATE OF NEVADA
15 COMMISSION ON JUDICIAL DISCIPLINE

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17 _____
18 Thomas Armstrong, Presiding Judge

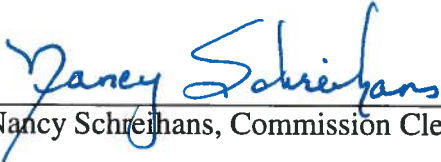
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CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of February, 2017, I transmitted a copy of the foregoing ORDER GRANTING MOTION THAT THE COMMISSION TAKE JUDICIAL NOTICE, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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