

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA



In the Matter of the
HONORABLE DAWN HAVILAND
Justice of the Peace, Goodsprings Township
County of Clark, State of Nevada,

Respondent.

Case Nos: 2016-078, 079 & 080

**RESPONDENT'S MOTION TO DISMISS
COUNTS 1, 3, 7, 8, 9, 10 AND 11 FOR
LACK OF JURISDICTION**

Respondent, the Honorable Dawn Haviland, through her attorney, Albert G. Marquis, Esq., of Marquis Aurbach Coffing hereby moves the Commission to dismiss certain charges that have been made against her due to the fact that the Commission lacks jurisdiction to discipline a judge for their judicial or administrative decisions.

Rule 8 of the Procedural Rules of the Nevada Commission on Judicial Discipline provides in part:

The Commission shall take no action against a Judge for making findings of fact, **reaching a legal conclusion**, expressing views of laws or policy in a judicial opinion or otherwise declaring or **applying the law in the course of official duties**. The Commission shall not review or base charges upon differences of opinion between judges as to matters of law or as to other issues committed to **judicial or administrative discretion**. Claims of error shall be left to the appellate process. (Emphasis added.)

In other words, even if members of the Commission were to conclude that a judge made a "mistake" in making a judicial decision, the Commission does not have the jurisdiction to discipline that judge. If a party to legal proceedings believes that a mistake has been made, that party's remedy is to appeal. Similarly, the Commission cannot discipline a judge simply because they disagree with the manner in which the judge has administered her court.

I. COUNT ONE SHOULD BE DISMISSED.

Count One and the corresponding factual allegations in Paragraph A should be dismissed because these charges are based entirely upon a judicial decision by the Respondent. The only

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1 charge against the Respondent is that she signed an Order sealing records involving a charge of
 2 alleged domestic violence against the Respondent's daughter.¹ It is uncontested that the
 3 Respondent recused herself from the subject proceedings. After those proceedings were
 4 concluded, the District Attorney's office submitted a number of orders to the Respondent for
 5 signature, and one of those Orders included language that the records of her son-in-law would be
 6 sealed. Obviously both parties agreed to this. In other words, the parties stipulated that the
 7 records should be sealed. The signing of the Order was a routine judicial and administrative
 8 function. There is nothing inappropriate with a judge signing an order regarding an uncontested
 9 issue. Indeed, neither the parties nor their attorneys ever complained about the judge executing
 10 this Order. Neither party appealed. Any claim of error should be left to the appellate process as
 11 specified in Rule 8. If the Respondent is to be disciplined for executing this Order, then every
 12 judge who makes any uncontested decision in any case involving an acquaintance or
 13 relative—even routine matters such as scheduling hearings—would be subject to discipline. Count
 14 One and its attendant factual allegations in Paragraph A should be dismissed.

15 **II. COUNT THREE SHOULD BE DISMISSED.**

16 Respondent also moves to dismiss the allegations contained in Count Three and the
 17 supporting factual allegations in paragraph C. What the Respondent supposedly did wrong is
 18 unclear, but it appears that the allegations are based on the accusation that she made a mistake
 19 when she imposed a sentence upon the defendant, which she corrected a few days later. Clearly,
 20 imposing a sentence is a judicial function. Under Rule 8, the Respondent cannot be disciplined
 21 simply because members of this Commission might conclude that they would have imposed a
 22 different sentence. If a sentence is incorrect, it should either be corrected by the judge or left to
 23 the appellate process as specified in Rule 8—which is exactly what happened here. Indeed, if a
 24 judge were subject to discipline every time he/she made a mistake, then every judge who was
 25 ever reversed by an appellate court would be subject to discipline. This Commission has no

26
 27 ¹ There is a statement in paragraph A that records were removed after they had been sealed, but there is
 28 no evidence to support this statement, there is no evidence to link the Respondent to this alleged
 removal, and the alleged removal is not a basis for the charges in Count One.

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1 jurisdiction to discipline the Respondent because she made a mistake while imposing a sentence.
 2 Therefore, Count Three and the supporting factual allegations in Paragraph C should be
 3 dismissed.

4 **III. COUNT SEVEN SHOULD BE DISMISSED.**

5 Respondent also moves to dismiss Count Seven and the supporting factual allegations in
 6 Paragraph G. The charges in Count Seven are based on the allegation that Respondent
 7 "precipitously" removed the Goodsprings Justice Court from the rural Justice Court system. It is
 8 undisputed that the Respondent took this action because she was of the opinion that it would
 9 benefit the Goodsprings Court and the community it serves. Furthermore, this is clearly an
 10 administrative function. It is difficult to think of a situation that is more administrative than this.
 11 Whether the Respondent took this action "precipitously" or not is simply a matter of opinion.
 12 Sometimes it was better to take action quickly rather than slowly. Who is to say? In any event,
 13 this Commission does not have the jurisdiction to discipline the Respondent for "precipitously"
 14 removing the Goodsprings Justice Court from the rural Justice Court system.

15 **IV. COUNT EIGHT SHOULD BE DISMISSED.**

16 Respondent also moves to dismiss the charges in Count Eight as well as the supporting
 17 factual allegations in Paragraph H. In essence, the Respondent is being criticized because of the
 18 complexity in dealing with citations given to truck drivers for safety violations, which are
 19 generally the responsibility of the owner.

20 States and local jurisdictions across the country struggle with the issue of safety
 21 violations of commercial vehicles. If a driver is speeding or fails to maintain his log book, that
 22 should rightly be his violation. However, if the truck is cited for a safety violation, that is
 23 generally regarded as the owner's responsibility. Many states have statutes which address this
 24 issue. Some companies address the issues by giving letters to the drivers stating that the
 25 companies in fact accept responsibility for safety violations.

26 The Nevada Legislature has never given the courts clear guidance as to how these matters
 27 should be handled. Therefore, Respondent attempted to handle things as fairly and justly as
 28 possible. Often when a driver would appear before her, she would ask him whether the company

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1 was going to pay the fine for the safety violations. Often the driver would say yes or that he
2 didn't know, and Respondent would have her staff contact the company to inquire whether they
3 would pay. Although Respondent didn't realize it at the time, this resulted in staff entering the
4 owner's name into the collection system which resulted, unbeknownst to her, in warrants being
5 issued for the owner if they did not pay within 60 days. Although the warrants bore her
6 signature, that was computer generated. She never saw those warrants, nor did she realize they
7 existed, until the Strickly complaint was filed.

8 Although the Respondent agreed to a reprimand in the Strickly proceeding (Case No.
9 1502-137), clearly she was performing her judicial duties—even if it turned out that she made a
10 mistake. At the very least, this matter has already been decided and should not be the subject of
11 a second judicial discipline proceeding. The Respondent discontinued this practice following the
12 Strickland case.

13 In any event, dealing with the cumbersome situation of citations given to drivers for
14 safety violations which are the responsibility of owners is clearly a judicial and administrative
15 function. This Commission does not have jurisdiction to discipline the Respondent simply
16 because they disagree with how she handled these matters. Therefore, Count Eight should be
17 dismissed.

18 **V. COUNT NINE SHOULD BE DISMISSED.**

19 Respondent also moves the Commission to dismiss the charges set forth in Count Nine
20 and the supporting factual allegations in Paragraph I. The Respondent is being criticized because
21 she attempted to come up with an administrative and judicial process for resolving contested
22 titles to motor vehicles. It is an unfortunate fact that there are many abandoned vehicles in the
23 Goodsprings/Sandy Valley area. Often individuals purchase real property and must decide how
24 to dispose of abandoned vehicles situated thereon.

25 Respondent never awarded a DMV title to motor vehicles. Only the DMV can do that.
26 There was a huge need in the community to assist residents who had acquired or been left with a
27 vehicle with no title. Those that came to the court were sent to the DMV first with all paperwork
28 they had. Sometimes the DMV sent the people back saying they (DMV) could do nothing

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1 without a court order. When this happened, staff would start by running the VIN to see who
2 might have an interest in the vehicle. Then, using NRS 4.180, a date for hearing was set. If any
3 persons or corporations were showing on the vehicle in the past, a certified notification of the
4 hearing date was sent. Any past named entity was given the opportunity to attend or reply.

5 In any event, after the Attorney General expressed the opinion that Justices of the Peace
6 should not resolve title issues to motor vehicles, the Respondent discontinued this practice.
7 There is no evidence that she continued these hearings after notice from the Attorney General.
8 In any event, all of this was a judicial/administrative function which is outside the jurisdiction of
9 this Commission and the charges in Count Nine should therefore be dismissed.

10 **VI. COUNT TEN SHOULD BE DISMISSED.**

11 Respondent also moves to dismiss the charges set forth in Count Ten and the attendant
12 factual allegations in Paragraph J. The Respondent is accused of improperly operating a juvenile
13 court. In fact, she participated in the diversion program. This is a judicial function, and there is
14 nothing wrong with this action on the part of the Respondent. It is charged that the Respondent
15 must be a licensed attorney in order to participate in the Juvenile Diversion Program, but this is
16 incorrect. Only licensed attorneys can participate in juvenile court. The Juvenile Diversion
17 Program is operated by the Respondent in conjunction with Family Court Judge William Voy.
18 In any event, this is a judicial/administrative function and this Commission has no jurisdiction.
19 Therefore, Count Ten and the factual allegations in Paragraph J should be dismissed.

20 **VII. COUNT ELEVEN SHOULD BE DISMISSED.**

21 Finally, Respondent moves to dismiss the allegations in Count Eleven and the supporting
22 factual allegations in Paragraph K. The Respondent is charged with giving legal advice, but
23 absolutely no evidence is offered to support his allegation. Rule 15 requires formal charges to
24 include an identification of the dates, times and places that the acts or omissions are alleged to
25 have occurred. Absent such specifics, there is no way for the Respondent to prepare a defense.
26 It is like someone being issued a speeding citation, based on the allegation that sometime over
27 the past three years they have exceeded the speed limit at some unspecified location. Such an
28 accusation does not provide sufficient notice to satisfy the elements of due process. It is worthy


1 to note that not a single individual has come forward to claim that the Respondent improperly
 2 rendered legal advice. Obviously the Respondent must explain certain aspects of procedural
 3 rules of the law to parties who appear before her. Furthermore, friends from time-to-time may
 4 ask for her input. There is nothing inappropriate about anyone talking about the law, including
 5 the Respondent. There is simply no evidence that she has improperly given legal advice.
 6 Therefore, Count Eleven and the factual allegations in Paragraph K should be dismissed.

7 **VIII. CONCLUSION.**

8 Clearly the above referenced charges should never have been filed against the
 9 Respondent. Where the Commission clearly lacks jurisdiction with respect to a charge, the
 10 Respondent should not be required to defend herself (which requires the payment for legal
 11 services related to interviewing witnesses, calling witnesses, reviewing documents, introducing
 12 exhibits, and all of the other work associated with defending such claims). Where it is clear is
 13 that the Commission lacks jurisdiction because the actions complained of were clearly judicial
 14 and/or administrative functions, those charges should be dismissed. Accordingly, Respondent
 15 asks this Commission to dismiss Counts One, Three, Seven, Eight, Nine, Ten and Eleven for lack
 16 of jurisdiction.

17 Dated this 28 day of March, 2017.

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19
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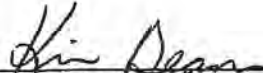
CERTIFICATE OF MAILING

I hereby certify that on the 28th day of March, 2017, I served a copy of the foregoing **RESPONDENT'S MOTION TO DISMISS COUNTS 1, 3, 7, 8, 9, 10 AND 11 FOR LACK OF JURISDICTION** upon each of the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

Paul C. Deyhle, General Counsel & Executive Director
Commission on Judicial Discipline
P.O. Box 48
Carson City, NV 89702

Kathleen M. Paustian, Esq. SBN 3785
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and that there is a regular communication by mail between the place of mailing and the place(s) so addressed.


KIM DEAN, an employee of
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