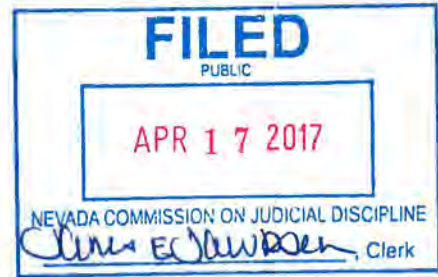


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11 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

12 In the Matter of

Case No.: 2016-078-P

13 THE HONORABLE DAWN HAVILAND
14 Justice of the Peace, Goodsprings Township
15 Justice Court, County of Clark, State of Nevada,

16 Respondent.

17 **MOTION TO STRIKE ALLEGATIONS IN PARAGRAPHS A, B, G AND K**

18 Respondent, the Honorable Dawn Haviland, through her attorney, Albert G. Marquis,
19 Esq., of Marquis Aurbach Coffing hereby moves the Commission to strike certain irrelevant but
20 prejudicial allegations in Paragraphs A, B, G and K of the Formal Statement of Charges
21 (“FSOC”) on file herein. These “factual” allegations do not form a basis of any of the eleven
22 Counts. Furthermore, they are vague, unspecific, and in violation of Rule 15, which requires
23 details concerning date, time, place, etc. At least one of these allegations has already been
24 reported in a local newspaper, which demonstrates how prejudicial such charges can be. For all
25 of these reasons, the allegations identified below should be stricken from the FSOC.

26 **I. THE STATEMENT IN PARAGRAPH A REGARDING MISSING RECORDS**
27 **SHOULD BE STRICKEN.**

28 Respondent moves to strike the second sentence in Paragraph A of the FSOC which
reads:

Goodsprings Justice Court Clerk Becki Driskel reported the sealed cases were
subsequently twice removed from the court’s sealed records storage.

1 There is no allegation that the Respondent removed such records. Including such a statement
2 within the formal charges, therefore, is inappropriate and highly prejudicial.

3 It is alleged in Count One that the Respondent committed an ethical violation by signing
4 an order sealing the records of her then son-in-law, which is a factual allegation in Paragraph A.
5 However, there is the additional statement in the second sentence of Paragraph A that the sealed
6 cases were removed from the Court's sealed record storage on two occasions. There is
7 absolutely no evidence to support this allegation. There is no date, time, place or other specific
8 fact as required by Rule 15. Most importantly, there is no contention that the Respondent
9 removed any such records.

10 If, in fact, records were missing on two occasions (for which there is no supporting
11 evidence), one must question how Becki Driskel, the Complainant, knows of this fact. Why was
12 Becki Driskel accessing sealed records? If this was part of an official audit, where is that audit?
13 What records were missing? And if everyone who works in the Goodsprings Courthouse has
14 access to such records, as Becki Driskel said in her interview, then, assuming there are missing
15 records, anyone could have removed them. Why is this statement in a complaint against Judge
16 Haviland?

17 When the FSOC was filed, an article appeared in the Las Vegas Review Journal. See
18 Exhibit A attached hereto. In that article, they repeated the statement that the sealed documents
19 "were twice removed from the court's record storage." Obviously, this left the impression in the
20 eyes of the public that the Respondent was being charged with improperly removing these
21 documents. But she is not being charged with this. This is an example of why it is so prejudicial
22 to have such gratuitous statements included in the FSOC—statements that have nothing to do with
23 the charges themselves.

24 Finally, including such a statement in the FSOC leaves the Respondent to wonder
25 whether she is required to defend herself against this statement. On the one hand, there is no
26 allegation in Count One that she improperly removed documents, so it could be assumed that
27 there is no need for her to prepare a defense relative to this charge. On the other hand, it might
28 be claimed at the hearing that the Respondent had something to do with this mysterious charge,

1 even though there are no facts in the FSOC. Leaving such a statement in the FSOC, therefore, is
2 a violation of the Respondent's right of due process in that it does not properly provide her with
3 notice and opportunity to defend. Because the statement is prejudicial and irrelevant to the
4 actual charges themselves, this statement should be stricken.

5 **II. THE STATEMENT ABOUT "OTHER IMPROPER NCIC CRIMINAL HISTORY**
6 **INQUIRIES" IN PARAGRAPH B SHOULD BE STRICKEN.**

7 In Count Two, the Respondent is charged with improperly running an NCIC criminal
8 history on a particular individual. The factual basis for this charge is set forth in Paragraph B.
9 However, an additional statement is included in Paragraph B that the "Respondent also ordered
10 other improper NCIC criminal history inquiries." See FSOC, p. 3, Lines 2-3. There is no date,
11 time, place or named individual specified in the charge as required by Rule 15. Once again, how
12 is the Respondent to defend herself in the face of such a charge when there are no specifics? Are
13 witnesses going to be called and asked about other specific inquiries? If so, due process requires
14 that the Respondent be notified of the incidents in question so that she has an opportunity to
15 defend herself. If no witness is going to be called upon to identify such other inquiries, then this
16 statement is highly prejudicial. It does not support the allegations in Count Two, yet the
17 statement makes it appear as if the Respondent was conducting improper NCIC criminal history
18 inquiries on a regular basis (which, of course, is not true). For these reasons, this statement
19 should be stricken from Paragraph B of the FSOC.

20 **III. THE STATEMENT IN PARAGRAPH G THAT THE RESPONDENT BECAME**
21 **UPSET IF GOODSPRINGS EMPLOYEES TURNED TO THEIR FORMER**
22 **ADMINISTRATOR CALE-POWELL, FOR ASSISTANCE, SHOULD BE**
23 **STRICKEN.**

24 In Count Seven, the Respondent is charged with "precipitously" removing the
25 Goodsprings Justice Court from the Rural Justice Court System. This charge is based upon the
26 allegation in Paragraph G that there were certain administrative problems associated with this
27 separation. While the Respondent denies this charge, she is also troubled by the gratuitous
28 statement in Paragraph G (page 6, line 7) that she became upset if Goodsprings employees turned
to their former administrator Cale-Powell for assistance. There is no charge in Count Seven that

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becoming upset in this manner is an ethical violation.¹ How then, is this statement relevant? Will witnesses be called to support this statement even though it does not form a basis for any of the charges against the Respondent? Where are the dates, times, and places as required by Rule 15? If this statement is a basis for the charges, then that should be so stated in Count Seven. If it is not a basis for these charges, then it should be stricken from the record.

IV. THE ALLEGATIONS IN PARAGRAPH K AND IN COUNT ELEVEN THAT THE RESPONDENT GAVE LEGAL ADVICE SHOULD BE STRICKEN.

It is alleged in Count Eleven and Paragraph K that the Respondent gave legal advice. However, no dates, times, places or individuals are identified as required by Rule 15. Therefore, there is no way for the Respondent to prepare a defense. This is like alleging that someone has exceeded the speed limit at some unspecified place and time in the past and should therefore be fined. Without specifics, there is no way the Respondent can prepare a defense, which is why vague charges such as this violate the Respondent's right of due process. For these reasons, the allegations in Paragraphs K and Count Eleven of the FSOC should be stricken.

Dated this 17 day of April, 2017.

MARQUIS AURBACH COFFING

By 
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Las Vegas, Nevada 89145
Attorney for Respondent
The Honorable Dawn Haviland

¹ As the Judge, isn't it appropriate for her to want her employees to do their job rather than speaking on the telephone?


1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 17th day of April, 2017, I served a copy of the foregoing
3 **MOTION TO STRIKE ALLEGATIONS IN PARAGRAPHS A, B, G AND K** upon each of
4 the parties by depositing a copy of the same in a sealed envelope in the United States Mail, Las
5 Vegas, Nevada, First-Class Postage fully prepaid, and addressed to:

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

10 Kathleen M. Paustian, Esq. SBN 3785
11 Law Office of Kathleen M. Paustian
12 3205 Skipworth Drive
13 Las Vegas, NV 89107

14 and that there is a regular communication by mail between the place of mailing and the place(s)
15 so addressed.

16 
17 _____
18 KIM DEAN, an employee of
19 Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

EXHIBIT A

[Shared Post]
 Goodsprings judge
 faces ethics
 charges&body-You
 may be interested in
 the following post:
<https://wp.me/p8qdWm-48JT>

Updated March 7, 2017 - 7:57 pm

State disciplinary investigators have slapped a Goodsprings judge with what amounts to a laundry list of ethics charges.

Justice of the Peace Dawn Haviland faces allegations that include sealing her then-son-in-law's criminal records, ordering staff to run background checks on her friend's boyfriend, and bullying employees while using commentary rife with vulgarity.

Haviland was suspended with pay in <http://www.reviewjournal.com/local/las-vegas/nevada-judicial-discipline-commission-suspends-goodsprings-justice-the-peace> December <http://www.reviewjournal.com/local/las-vegas/nevada-judicial-discipline-commission-suspends-goodsprings-justice-the-peace> and the charges against her were made public last week. The ethics accusations, when viewed collectively, paint a picture of a small-town, small-court judge who — through broad abuse of her public office — made repeated efforts to expand her limited power and to bend the justice system as she saw fit.

But Haviland maintains she did nothing wrong. On Tuesday her attorney accused the state Commission on Judicial Discipline of slamming his client with onerous charges built on baseless accusations by disgruntled employees.

"Frankly, it makes it appear that someone has an axe to grind with Judge Haviland when they make accusations like that," said Las Vegas defense lawyer Al Marquis. He said Haviland was well-respected by people in her community, "except for these two people that work for her that decided to go after her."

The disciplinary investigation relied heavily on testimony from two of Haviland's employees, Goodsprings Justice Court Clerk Becki Driskel and Balliff Kenneth Smith.

THE CHARGES

The 14-page statement of charges includes the following allegations:

—Haviland sealed court records of her son-in-law's arrest in two domestic battery cases. The cases involved Haviland's daughter. The documents were twice removed from the court's record storage after they were sealed.

"There's no evidence of that except Becki Driskel saying so," Marquis said. He said the parties in the case agreed to the sealing.

—Haviland instructed two of her staff members to run criminal background checks on a man who was the boyfriend of one of her friends. The disciplinary report states that Haviland also ordered other "improper" criminal searches in the FBI database.



—She sentenced a defendant to eight months in jail before the district attorney filed formal charges against him. Haviland later modified the penalty, and admitted it was a "bad sentence" that exceeded the statutory limit for civil contempt and protective order violations.

—Haviland ordered her staff to conduct unauthorized searches of the state Department of Motor Vehicles' license plate database in order to hold hearings over titles for abandoned vehicles. She told staff the vehicles "had been driven poorly or an acquaintance of hers had asked for the information."

When the state attorney general's office told her those hearings were outside her jurisdiction, she instructed people interested in the vehicles to file a small claims complaint so she could oversee the matter in small claims court.

UNION EMPLOYEES

"I don't think anything sticks," Marquis said. He said Driskel previously accused former Elko County District Judge Michael Memeo of sexual harassment. The state disciplinary commission later dismissed the charges.

Driskel and Smith, the two employees quoted in the report, both are union employees and told investigators that Haviland exhibited anti-union bias.

They also accused her of bullying. Smith said Haviland called him a "sperm donor" in front of other court employees. He accused her of describing the Nevada judiciary as an "old boys club" made up of "swinging d---s" and "Mos," referencing Mormons.

Driskel, meanwhile, told investigators that Haviland used to give court tours and point out a window by Driskel's desk that overlooked a holding cell. Haviland told visitors stories about a man who sexually gratified himself in the holding cell by peering through the window. Driskel said the story caused her embarrassment and was not true.

Disciplinary officials accused Haviland of making an improper administrative change by removing the Goodsprings Justice Court's financial ties with the Clark County Rural Court system. Marquis said she did so because "she thought Goodsprings was better off retaining the revenue that was generated for the Goodsprings community."

The lawyer also said Haviland had the authority to operate a juvenile diversion program in conjunction with Family Court. State disciplinary investigators charged that running the program was not within her limited authority.

LONGTIME JUDGE

Haviland has been a justice of the peace since 1999. The job involves presiding over preliminary criminal hearings, traffic cases, and low-budget civil matters.

She earns a taxpayer-funded salary of over \$70,000 a year. She does not have a law degree, which is not a requirement for justices of the peace in rural communities. Goodsprings is about 40 miles southwest of Las Vegas.

Haviland has a chance to respond to the allegations, and then a disciplinary hearing will be scheduled. She faces possible discipline ranging from a private reprimand to removal from office, or the charges could be dismissed.

Contact Jenny Wilson at jenwilson@reviewjournal.com or 702-384-8710. Follow @jennydwilson (<http://www.twitter.com/@jennydwilson>) on Twitter.