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

8 IN THE MATTER OF THE HONORABLE)
9 DAWN HAVILAND, Justice of the Peace,)
10 Goodsprings Township Justice Court,)
11 County of Clark, State of Nevada,)
12 Respondent.)

CASE NO.: 2016-078-P

13 **OPPOSITION TO RESPONDENT'S MOTION TO STRIKE ALLEGATIONS IN**
14 **PARAGRAPHS A, B, G AND K**

15 The Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), through its
16 Prosecuting Officer, Kathleen M. Paustian, opposes Respondent's Motion to Strike Allegations in
17 Paragraphs A, B, G and K ("Motion"). Respondent bases her Motion on Commission Procedural
18 Rule 15, which provides:

19 The Formal Statement of Charges must contain a clear reference to
20 the specific provisions of statutes, the Nevada Code of Judicial Conduct
21 and the Nevada Constitution which are deemed to justify procedures
22 before the Commission, together with a clear statement of acts and
23 omissions which are alleged to warrant action by the Commission under
24 those provisions, identifying the dates, times and places to the extent
possible that the acts or omissions are alleged to have occurred.
(Emphasis added.)

25 *See*, Formal Statement of Charges ("FSOC") filed with the Commission on March 1, 2017,
26 attached and incorporated as **EXHIBIT 1**.

27 The Respondent's entire Motion must be denied. Her arguments that certain portions of the
28

1 FSOC must be struck are without merit.

2 **I. THE RESPONDENT'S ARGUMENTS DO NOT MEET THE LEGAL CRITERIA FOR**
3 **A MOTION TO STRIKE.**

4 **A. Respondent's Motion Is Not Timely Filed and Must Be Denied.**

5 NRS 1.462 (2) provides that the Nevada Rules of Civil Procedure (NRCP) apply to
6 proceedings before the Commission after the filing of a formal statement of charges. Additionally,
7 *Nyberg v. Nevada Indus. Comm'n*, 100 Nev. 322, 324, 683 P.2d 3 (1984) holds the NRCP may be
8 applied to administrative agency proceedings, if the NRCP is not inconsistent with the agency's
9 statutes or rules.

10 While the Respondent cites to no statute or case law to support her demand that the
11 Commission strike allegations in four (4) paragraphs of the FSOC, she is apparently relying on
12 NRCP 12(f) as her statutory authority. It states:

13 Upon motion made by a party before responding to a pleading or,
14 if no responsive pleading is permitted by these rules, upon motion made
15 by a party within 20 days after the service of the pleading upon the party
16 or upon the court's own initiative at any time, the court may order stricken
17 from any pleading any insufficient defense or any redundant, immaterial,
18 impertinent, or scandalous matter. (Emphasis added.)

19 Respondent did not file this Motion before responding to the FSOC, the "pleading" in this
20 instance. She filed her Answer to Formal Statement of Charges on March 22, 2017. This pending
21 Motion was mailed to the Commission on April 17, 2017. The Motion is not timely and must be
22 denied.

23 As demonstrated in the paragraphs below, the Respondent also cannot provide the basis for
24 striking portions of the FSOC as "redundant, immaterial, impertinent, or scandalous matter" or on
25 the basis of Commission Procedural Rule 15.

26 **II. THE REFERENCES CHALLENGED BY THE RESPONDENT ARE PART OF THE**
27 **TOTAL ALLEGATIONS IN THE FSOC AND, AS SUCH, ARE NOT SUSCEPTIBLE TO**
28 **THE PROVISIONS OF THE NRCP 12(f).**

1
2 **A. The Allegation Which Respondent Challenges in Paragraph A Is Relevant to the**
3 **Paragraph as a Whole and Is Not “Redundant, Immaterial, Impertinent” or “Scandalous”.**
4

5 The challenged statement in this paragraph is attributed to one of the three (3) individuals
6 who lodged Complaints with the Commission against the Respondent. It is not frivolous or a
7 “redundant, immaterial, impertinent, or scandalous matter.” Arguing that it must be struck because
8 it was printed in a local newspaper does not meet the criteria of NRCP 12(f). The attorney for the
9 Respondent has made numerous and broad statements regarding the alleged invalidity of the
10 Commission’s process to the same newspaper and has not complained when his statements were
11 printed.

12 **B. The Challenge to the Allegation in Paragraph B Relies on a Mischaracterization of**
13 **Commission Procedural Rule 15.**

14 Commission Procedural Rule 15, as cited above, requires “dates, times and places to the
15 extent possible...” (Emphasis added.) The FSOC meets this requirement in paragraph B, pp. 2-3,
16 by providing details of the NCIC run on an individual named Bruce Nelson. It has provided the
17 specifics “to the extent possible”. The statement “Respondent also ordered other improper NCIC
18 criminal history inquiries” is not susceptible to being struck. This paragraph, taken as a whole, ties
19 its factual allegations to the Judicial Rules violated.

20 **C. The Challenge to the Statement in Paragraph G is Also Unfounded and Does Not Provide**
21 **a Basis for Its Removal.**

22 The manner of preparation of this FSOC is part of the process the Commission has relied
23 upon for years. There is a consistency of approach, which has been supported on more than one
24 occasion by the Nevada Supreme Court. There is no provision in the Constitution, the relevant
25 Statutes or the Commission’s Rules requiring that every allegation made in one of the opening
26 paragraphs to establish the pattern and/or practice of a jurist has to be repeated in the concurring
27 count of the FSOC. The Commission panel will weigh the relevancy of the testimonial and
28 documentary evidence at the hearing. It is pre-mature to ask that one (1) factual allegation

1 regarding a Count be struck at this juncture.

2 **D. Count Eleven and Paragraph K are Sufficient in their Pleading to Withstand a Motion**
3 **to Strike.**

4 Not only do the allegations in this Count and Paragraph meet the requirements of
5 Commission Procedural Rule 15, they also fulfill those under the NRCP 8, which instructs Nevada
6 courts to construe pleadings liberally, so long as there is fair notice to the adverse party. The
7 investigatory materials which provide the basis for the fair notice in the FSOC are available to
8 counsel for the Commission and for the Respondent. Her counsel can use them to prepare her case
9 as he sees appropriate. Also, Bailiff Ken Smith and Clerk Becki Driskel told the Commission
10 Investigator they overheard Respondent provide legal advice on various occasions. Ms. Driskel
11 recalled that on or about June 27, 2016, Respondent provided legal advice regarding a will to David
12 Angel and a female companion. Respondent also provided legal advice to her friend, Tracy Coy,
13 regarding a protective order. There is a reasonable basis for the allegations challenged by
14 Respondent and these portions of this Count and Paragraph are not susceptible to strike pursuant to
15 the NRCP 12(f).

16 **III. CONCLUSION.**

17 The Respondent's request is not timely filed pursuant to the controlling NRCP 12(f). For
18 that reason alone, her Motion to Strike must not be entertained. Additionally, Commission
19 Procedural Rule 15 and NRCP 12(f) do not provide support for any of the four (4) arguments put
20 forward by the Respondent. The FSOC meets the requirements of the Commission Procedural
21 Rules and the relevant NRCP and must be maintained in its entirety.

22
23 DATED this 25th day of April, 2017.

24
25 Submitted

26 by: 

27 Kathleen M. Paustian, Esq.


28 Prosecuting Officer for the NCJD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this OPPOSITION TO RESPONDENT'S MOTION TO STRIKE ALLEGATIONS IN PARAGRAPHS A, B, G AND K was e-mailed and placed in U.S. mail, postage pre-paid, on this 25th day of April, 2017, addressed to:

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By: 
Kathleen M. Paustian
Prosecuting Officer for the NCJD