

1 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**
2 **STATE OF NEVADA**



3
4 In the Matter of)
5 THE HONORABLE DAWN HAVILAND)
6 Justice of the Peace, Goodsprings Township)
7 County of Clark, State of Nevada,)
) Respondent.)

Case No. 2016-078-P

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

10 Currently before the Commission on Judicial Discipline (“Commission”) is a Motion to Dismiss
11 Counts One, Three, Seven, Eight, Nine, Ten and Eleven for Lack of Jurisdiction (“Motion to Dismiss”)
12 filed by the Honorable Dawn Haviland, Justice of the Peace, Goodsprings Township for Clark County,
13 Nevada (“Respondent”). The Motion to Dismiss was filed by Respondent on March 28, 2016, and
14 Prosecuting Officer to the Commission (“Prosecuting Officer”) filed an Opposition to Respondent’s
15 Motion to Dismiss (“Opposition”) on April 11, 2016.¹

16 **FACTS AND PROCEDURAL BACKGROUND**

17 The Motion to Dismiss seeks to dismiss the following six counts: Counts One, Three, Seven,
18 Eight, Nine, Ten, and Eleven on the basis that the Commission, pursuant to Commission Procedural
19 Rule 8, lacks jurisdiction to take any action against a judge for reaching a legal conclusion, applying
20 the law in the course of official duties or administrative discretion. Additionally, Respondent seeks to
21 dismiss Count Eleven for lack of specificity in violation of Commission Procedural Rule 15 which
22 requires the identification of dates, times, and places where an act or omission occurred. The
23 Prosecuting Officer argues that Respondent’s arguments do not meet the legal criteria of NRCP
24 12(b)(5), and that the facts alleged support violations of the cited Rules of the Revised Nevada Code of
25 Judicial Conduct (“Code”). Each party addressed the Counts as delineated below with respective
26 arguments which are summarized herein.

27 Count One charged that Respondent sealed two criminal records of her former son-in-law
28 regarding domestic abuse against Respondent’s daughter, and later removed the same in violation of

¹ Respondent requested an extension of time to file a reply, however the request was denied based upon failure to provide good cause.

1 Rule 1.1, requiring the Respondent to comply with the law, including the Code; Rule 1.2, for failure to
2 promote confidence in the independence, integrity, and impartiality of the judiciary, avoiding
3 impropriety and the appearance of impropriety; Canon 2, Rule 2.2, requiring judges to uphold the law
4 and perform all duties of the judicial office fairly and impartially; Rule 2.3, requiring a judge to
5 perform her duties without bias; Rule 2.5(A), requiring judges to perform judicial and administrative
6 duties competently and diligently; Rules 2.11(A), requiring a judge to disqualify herself in any
7 proceeding in which her impartiality might reasonably be questioned; and 2.11(A)(2)(a), requiring
8 disqualification when her child is a party and/or (d) is likely to be a material witness in a case.

9 Respondent alleges that this was a judicial decision and that both parties agreed to the sealing of
10 the records, and the order was uncontested, as thus, any issue should be left to the appellate process
11 pursuant to Commission Procedural Rule 8. The Prosecuting Officer argued that the Code mandates
12 Respondent's disqualification, and any agreement by the parties as to sealing of the records is
13 irrelevant.

14 Count Three charged that Respondent improperly held a hearing and imposed an illegal
15 sentence in a protective order matter in violation of Rule 1.1, for failure to comply with the law,
16 including the Code; Rule 1.2, requiring her to promote confidence in the independence of the judiciary;
17 Canon 2, Rule 2.2, requiring her to act impartially and with fairness; and Rule 2.5(A), requiring her to
18 conduct her official duties competently and diligently.

19 Respondent argues that Count Three should be dismissed because the sentence was a mistake
20 that was later corrected by the Respondent, and thus a decisional matter under Commission Procedural
21 Rule 8 upon which the Commission lacks jurisdiction. The Prosecuting Officer argues that Respondent
22 failed to follow the law and was influenced by the Deputy District Attorney in hearing the matter.

23 Count Seven charged that Respondent precipitously removed Goodsprings Justice Court from
24 the Rural Court Administration and then failed to properly manage the court in violation of Rules
25 2.5(A), requiring her to perform her duties competently and diligently, and (B), requiring her to
26 cooperate with other court officials in administering court business, and Rule 2.8(B), mandating that
27 she exercise patience, dignity, and courtesy to court staff and officials and others she dealt with in her
28 official capacity.

Respondent argues that her precipitous removal of the Goodsprings Justice Court from the Rural
Courts was an administrative function, and that a quick removal is not a violation of the Code. The

1 Prosecuting Officer argues that the Respondent has a duty to handle court administrative matters
2 competently and diligently and cooperate with court staff, and that upon removal from the Rural
3 Courts, Respondent failed to properly manage the court, and act with patience and courtesy to court
4 staff.

5 Count Eight charged that Respondent improperly re-issued warrants and collected fines in
6 commercial traffic matters in violation of Rule 1.1, mandating that she comply with the law, including
7 the Code; Rule 1.2, which requires that she promote confidence in the judiciary; Canon 2, Rule 2.2,
8 requiring a jurist to act with impartiality and fairness; Rule 2.5(A), requiring her to carry out her
9 duties competently and diligently; and Rule 2.6(A), giving every person who has a legal interest in a
proceeding the right to be heard.

10 Respondent argues that she is being punished for how she legally handled the citations given to
11 truck drivers when the law is unclear, and that she should not have agreed to a reprimand in the
12 *Strickland* case (Case No. 1502-137). Furthermore, Respondent argues that how she handles the
13 citations is a decisional and administrative matter, and therefore under Commission Procedural Rule 8,
14 the Commission lacks jurisdiction. The Prosecuting Officer argues that Respondent's attempt to
15 correct the citation errors of the *Strickland* matter by reissuing warrants from the companies to the
16 drivers made the matters worse.

17 Count Nine charged that Respondent held hearings regarding titles to vehicles and ran title
18 searches in the DMV title database, even after she was told by the Attorney General's Office to cease
19 holding the hearings in violation of Rule 1.1, for failure to comply with the law, including the Code;
20 Rule 1.2, requiring her to promote confidence in the independence of the judiciary; Canon 2, Rule 2.2,
21 requiring her to act with impartiality and fairness; Rule 2.3, mandating that she act without bias; Rule
22 2.5(A), requiring her to carry out her duties competently and diligently; Rule 2.6(A), requiring her to
23 give everyone with an interest in a proceeding the right to be heard; Rules 2.9(C), precluding her from
24 conducting her own independent investigations into matters before her, and (D), requiring her to
25 ensure that her staff complies with Rule 2.9; and Canon 3, Rules 3.1(E), prohibiting improper use of
26 court resources, and 3.5, prohibiting her from using nonpublic information for any purpose unrelated
to her official duties.

27 Respondent alleges that she is being prosecuted for her attempt to come up with a solution for
28 resolving contested titles to motor vehicles and that this is an administrative and judicial function. She

1 states that once she was informed by the Attorney General's Office to cease resolving car title matters,
2 she ended that practice. The Prosecuting Officer argues that Respondent did not have the authority to
3 adjudicate car title matters, and therefore Respondent failed to comply with the law.

4 Count Ten charged that Respondent ran a juvenile program out of Justice Court in violation of
5 Rule 1.1, for failure to comply with the law, including the Code; Rule 1.2, for failure to promote
6 confidence in the independence of the judiciary; Canon 2, Rule 2.2, requiring her to exercise
7 impartiality and fairness in her official capacity; Rule 2.5(A), requiring her to competently and
8 diligently discharge her official duties; and Canon 3, Rule 3.10, prohibiting her from practicing law.

9 Respondent alleges that she is running a juvenile diversion program in conjunction with Family
10 Court Judge Voy, and that it is a judicial/administrative function that the Commission has no
11 jurisdiction over pursuant to Commission Procedural Rule 8. The Prosecuting Officer argues that
12 justice courts are of limited jurisdiction, and that family courts have exclusive jurisdiction over
13 domestic matters, including juvenile actions.

14 Count Eleven charged that Respondent gave legal advice to various constituents in violation of
15 Rule 1.1, failure to comply with the law, including the Code; Rule 1.2, failure to promote confidence in
16 the independence of the judiciary; Canon 2, Rule 2.2, failure to exercise impartiality and fairness in her
17 official capacity; Rule 2.5(A), failure to competently and diligently discharge her official duties, and
18 Canon 3, Rule 3.10, prohibiting her from practicing law.

19 Respondent alleges that Count Eleven is too vague and fails to comply with Commission
20 Procedural Rule 15 which requires identification of dates, times and places where acts are alleged to
21 have occurred. The Prosecuting Officer notes that dates, times and other specifics are required "to the
22 extent possible" under Commission Procedural Rule 15, and that this comports with NRCP 8 which
23 requires notice pleading.

24 ISSUES

25 In support of the Motion to Dismiss, Respondent alleges that the Commission may not take an
26 action against a judge for making a mistake pertaining to a judicial decision or administrative
27 discretion.

28 Respondent argues that the Formal Statement of Charges fails to meet the specific notice
pleading standards of Commission Procedural Rule 8.

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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 for relief. *Id.* A complaint need accomplish no more than to “set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

DISCUSSION

Judicial and Administrative Decisions

Respondent cites to Commission Procedural Rule 8 which notes that the Commission will not take action against a judge based upon legal conclusions, applying the law in the course of official duties or administrative discretion. However, Commission Procedural Rule 8 addresses decisions that are within the legal bounds of discretion. Furthermore, the Code mandates that a judge shall comply with the law, including the Code, thus the Commission may review acts that fail to comply with the law and the Code. Moreover, NRS 1.4653 sets forth the circumstances in which a judge may be disciplined for wilful misconduct. Specifically the statute states:

The term does not include claims of error or abuse of discretion in findings of fact, legal decisions or procedural rulings unless supported by evidence of abuse of authority, a disregard for fundamental rights, an intentional disregard of the law, a pattern of legal error or an action taken for a purpose other than the faithful discharge of judicial duty.

NRS § 1.4653

The Respondent argues that she cannot be disciplined for legal error. Typically, legal error is not grounds for discipline, however legal error that is egregious, made in bad faith, or part of a pattern or practice of legal error that has the capacity to detrimentally affect public confidence in the judiciary is grounds for discipline. NRS 1.4653. Moreover, a pattern of incompetent or willful legal error or a

1 sufficiently egregious instance of such error undermines the public's confidence in the judiciary.
2 Protecting the public's confidence in the integrity, impartiality, and independence of the judicial system
3 is the central tenet of the Judicial Canons. This central tenet drives the finding of whether legal error
4 rises to the level of misconduct under the Code and requires the imposition of discipline.

5 The Formal Statement of Charges in its specific Counts, and taken as a whole, support the
6 allegations with respect "to abuse of authority, a disregard for fundamental rights, an intentional
7 disregard of the law, a pattern of legal error or an action taken for a purpose other than the faithful
8 discharge of judicial duty."

9 Respondent argues that Counts One, Three, Eight, Nine, and Ten should be dismissed because
10 the actions were legal mistakes. However, even one egregious action can constitute grounds for
11 judicial misconduct. *In re DiLeo*, 216 N.J. 449, 456 (2014). In *DiLeo*, the underlying matter was
12 similar in that the municipal judge committed various procedural errors in handling a criminal trial.
13 The New Jersey Commission noted:

14 that the case presented an "issue of first impression in New Jersey, namely under what
15 circumstances may a judge's legal error constitute grounds for a finding of judicial
16 misconduct." The Committee added that, generally, legal error is not grounds for judicial
17 misconduct, and that neither case law nor our Canons have "delineated a standard by
18 which to determine when reversible legal error constitutes misconduct under Canon
19 3A(1) specifically or Canons 1 and 2A generally." The Committee looked to case law
20 outside of New Jersey and, quoting *In re Benoit*, 487 A.2d 1158, 1163 (Me.1985),
21 adopted an objective standard: whether a " 'reasonably prudent and competent judge'
22 considers the conduct 'obviously and seriously wrong in all circumstances.' " Citing *In*
23 *re Quirk*, 705 So.2d 172, 178 (La.1997), the Committee added that an egregious legal
24 error is an "exception to the general rule that legal error is not subject to judicial
25 discipline," and that "[error] involving the denial of basic fundamental rights[] may
26 constitute judicial misconduct."

27 *In re DiLeo*, 216 N.J. 449, 464-65 (2014)

28 The New Jersey Commission found that the judge abandoned his judicial function and assumed
the role of a prosecutor in the matter, and that conduct was a "perversion of justice for which judicial
discipline is required." *See id.* Judge DiLeo in that matter made a similar argument to that of the
Respondent in this Motion, stating that judges should be able to make independent decisions without
fear that a legal error will be subject to judicial discipline. *See id.* The Supreme Court of New Jersey
reviewed the cases in New Jersey and throughout the country regarding a judge's failure to follow the
law and judicial misconduct. The Court noted that the public's positive perception of the judiciary's
integrity and competence lies at the core of the Judicial Code. *See id.* The Court noted that there were

1 various standards in which legal error may constitute grounds for judicial misconduct such as applying
2 an objective reasonable judge standard or legal error "plus" with the plus encompassing NRS 1.4653, or
3 a legal ruling that was made contrary to clear and determined law upon which there is no confusion, or
4 denying individuals their fundamental procedural rights. *See id.*

5 While Nevada has not adopted a clear standard, it does have NRS 1.4653 which envelopes the
6 legal error plus standard. Additionally, the Code requires compliance with the law and the Code. Rule
7 1.1. Furthermore, Nevada does not require bad faith for a willful violation. *In re Fine*, 116 Nev. 1001,
8 13 P.3d 400 (2000) (bad faith not required for willful misconduct). Based upon NRS 1.4653, the
9 Commission has jurisdiction to consider actions pertaining to legal decisions.

10 The Counts support a reasonable inference that there was a pattern of legal error regarding the
11 vehicle title cases (Count Nine) and commercial traffic citations (Count Eight); a disregard for the
12 fundamental rights of the defendant in the TRO action (Count Three), and an intentional disregard of
13 the law regarding mandatory disqualification for matters involving immediate family relatives
14 pertaining to the signing of the order sealing domestic violence records (Count One). Furthermore, the
15 Formal Statement of Charges notes that Respondent's court is one of limited jurisdiction, and thus there
16 is a reasonable inference that Respondent disregarded the limited jurisdiction of the court when she ran
17 a juvenile program through the court, and heard vehicular title matters (Counts Ten and Nine
18 respectively). These actions also encompass the overarching abuse of authority and failure to follow
19 the law, and thus withstand Respondent's Motion to Dismiss for lack of jurisdiction for Counts One,
20 Three, Eight, Nine and Ten.

21 In regards to Count Seven, the Code specifically requires judges to perform administrative
22 duties competently and diligently pursuant to Rule 2.5, and thus administrative failures are chargeable
23 actions. Count Seven addresses Respondent's alleged failure to properly ensure that the administrative
24 functions of the court ran properly after the "precipitous" removal of the Goodsprings Justice Court
25 from the Rural Courts by Respondent. The charge of failure to properly maintain the administrative
26 aspect of the court is within the jurisdiction of the Commission, therefore, Respondent has not met
27 NRCP (12)(b)(5) requirements pertaining to Count Seven.

28 **Notice Pleading**

Respondent objects to Count Eleven based upon Commission Procedural Rule 15. Commission
Procedural Rule 15 delineates that the Formal Statement of Charges must contain a clear reference to

1 the specific provisions of statutes, the Code and Nevada Constitution which are deemed to justify
2 procedures before the Commission, and a clear statement of the acts or omissions that the Commission
3 alleged that warrant action, with identifying dates, times, and places to the extent possible. Respondent
4 argues that Count Eleven fails to identify specific instances wherein the Respondent provided legal
5 advice.

6 The notice required in a Formal Statement of Charges is set forth in Commission Procedural
7 Rule 15, and this standard is similar to notice pleading for any civil complaint. All that is required to
8 proceed to discovery is "(1) a short and plain statement of the claim showing that the pleader is entitled
9 to relief, and (2) a demand for judgment for the relief the pleader seeks." NRCP 8(a). Dismissing the
10 complaint was not warranted unless there was no doubt that the Prosecuting Officer would be unable to
11 prove any set of facts at all that could entitle it to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124
12 Nev. 224, 228, 181 P.3d 670, 672 (2008). Count Eleven alleges that Respondent provided legal advice
13 on various occasions, however it does not specify dates, times, and specific advice given. The pleading
14 standard does not require detailed factual allegations. The pleadings are that legal advice was given,
15 and the more detailed supporting testimonial evidence was presented to Respondent through initial
16 discovery. The factual allegation of providing legal advice is a clear violation of the Code, based upon
17 testimonial evidence, and survives the threshold for a motion to dismiss. Furthermore, if Respondent is
18 seeking more clarification, the appropriate motion is a motion for a more definite statement pursuant to
19 NRCP 12(e).

20 However, even pursuant to NRCP 12(e), the Motion to Dismiss fails. The United States District
21 Court in Nevada has discussed the equivalent of NRCP 12(e) through FRCP 12(e). A motion for a
22 more definite statement is made pursuant to Rule 12(e), which requires the filing of an amended
23 pleading where the initial pleading is "so vague or ambiguous that the party cannot reasonably prepare
24 a response." Fed. R. Civ. P. 12(e). "Rule 12(e) is designed to strike at unintelligibility, rather than want
25 of detail." *Woods v. Reno Commodities, Inc.*, 600 F. Supp. 574, 580 (D. Nev. 1984). Count Eleven is
26 not unintelligible, but rather explicitly states that Respondent provided legal advice to various
27 individuals.

28 Moreover, if the facts sought by a motion for a more definite statement are obtainable by
discovery, the motion should be denied. See *McHenry v. Renne*, 84 F.3d 1172, 1176 (9th Cir.1996).
"This liberal standard of pleading is consistent with [Rule] 8(a)(2) which allows pleadings that contain

1 a 'short and plain statement of the claim.' Both rules assume that the parties will familiarize themselves
2 with the claims and ultimate facts through the discovery process." *Neveau v. City of Fresno*, 392
3 F.Supp.2d 1159, 1169 (E.D.Cal.2005)(citing *Sagan*, 874 F.Supp. at 1077 ("Motions for a more definite
4 statement are viewed with disfavor and are rarely granted because of the minimal pleading
5 requirements of the Federal Rules.")). In this instance, discovery facilitated pursuant to the Prehearing
6 Order will allow the parties to flesh out the details of Count Eleven.

7 Based on the foregoing, and assuming all factual allegations set forth in the Formal Statement of
8 Charges are true, and having made all reasonable inferences in favor of the Prosecuting Officer to the
9 Commission, the Formal Statement of Charges state a claim upon which relief can be granted.
10 Therefore, Respondent's Motion to Dismiss Counts One, Three, Seven, Eight, Nine, Ten and Eleven
11 for Lack of Jurisdiction is hereby denied.

12 DATED this 26 day of April, 2017.

13 STATE OF NEVADA
14 COMMISSION ON JUDICIAL DISCIPLINE

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16 Thomas Armstrong, Presiding Judge
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CERTIFICATE OF MAILING

I hereby certify on this 2nd day of May, 2017, I transmitted a copy of the foregoing ORDER DENYING RESPONDENT'S MOTION TO DISMISS COUNTS 1,3, 7, 8, 9, 10 AND 11 FOR LACK OF JURISDICTION, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Janet Jacobsen, Commission Clerk