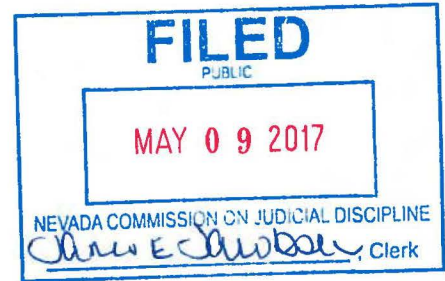


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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE) CASE NO. 2016-041-P
WILLIAM KEPHART, Eighth Judicial District)
Court, County of Clark, State of Nevada)
Respondent.)

FORMAL STATEMENT OF CHARGES

Brian Hutchins appears now as Prosecuting Officer for the Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), which is established under Article 6, section 21 of the Nevada Constitution, and files this Formal Statement of Charges in the name of and by the authority of the Commission as found in sections 1.425 through 1.4695 of the Nevada Revised Statutes. Respondent, the Honorable William Kephart, District Court Judge of the Eighth Judicial District Court, County of Clark, State of Nevada ("Respondent"), is informed that the following acts were committed by Respondent and warrant disciplinary action by the Commission under the Revised Nevada Code of Judicial Conduct ("the Code").

FACTUAL ALLEGATIONS

Respondent knowingly and in his capacity as a district court judge in and for the Eighth Judicial District Court, in Clark County, State of Nevada, engaged in the following acts:

A. In or about February of 2016, Respondent engaged in an on-camera interview in his judicial chambers with an investigative reporter concerning the criminal case of State of Nevada v. Kirstin

1 Lobato. Ms. Lobato is serving time for the July 2001 death and mutilation of Duran Bailey, a homeless
2 man living in Las Vegas at the time of his death. Respondent had been a chief deputy district attorney
3 and had appeared as one of two prosecutors in that case in Clark County in or around 2002 which
4 resulted in Ms. Lobato's conviction for murder and sexual penetration of a dead human body. She
5 received a sentence of 40 to 100 years in prison which was reversed by the supreme court in or about
6 September of 2004. Respondent again appeared as one of two prosecutors on Ms. Lobato's retrial in or
7 around 2006 which resulted in Ms. Lobato's conviction for manslaughter and sexual penetration of a
8 dead human body. She received a sentence of 13 to 45 years which was upheld on appeal in or about
9 2009.
10

11 B. The interview of Respondent appeared in a story presented through television video and in
12 electronic print by KSNV News 3, a Las Vegas NBC media affiliate, on or about February 29, 2016.
13 Respondent was described toward the beginning of the story as a district court judge. The video
14 presentation lasted approximately three minutes and forty seconds, although Respondent's comments
15 and appearance on the video lasted less than thirty seconds. Respondent's comments as they appeared
16 in the news story were substantially as follows:
17

- 18 1. After a brief introduction of the story by the reporter stating that a homeless man was
19 brutally killed, the report shows Respondent stating, "That was the first thought, is oh
20 my god, what happened here?"
- 21 2. After the reporter introduced Respondent as a district court judge and said this was his
22 only post-conviction interview since he prosecuted Lobato's case, Respondent is shown
23 saying, "I'm given a task to present evidence that we have, there's certainly no evidence
24 that was, you know, manufactured or anything like that. We just present what we have
25 to the jury and give the jury an opportunity to decide."
- 26 3. At the end of the story, after the reporter and the context indicated that there appeared to
27 be questions about Ms. Lobato's guilt, Respondent is shown saying, "I stand behind what
28 we did. I have no qualms about what happened and how we prosecuted this matter. I
believe it was completely justice done."

29 C. At the time that Respondent was interviewed and the story appeared in the media, the case of
30 Lobato (Kirstin) v. State was pending in the Nevada Supreme Court as case number 58913. This case

1 involved the appeal of Ms. Lobato from a denial of her post-conviction petition for a writ of habeas
2 corpus in the Eighth Judicial District Court in or about June, 2011. The appeal was filed in or about
3 August of 2011 and, as of February of 2016, all briefing had been completed. The Nevada Supreme
4 Court entered its order in November of 2016 affirming in part and reversing in part and remanding the
5 matter to the district court for further proceedings on the post-conviction habeas corpus petition.

6 D. At the time that Respondent was interviewed and the story appeared in the media, the case
7 involving the prosecution of Kirstin Lobato had gained significant notoriety through the media and due
8 to the work of various advocacy groups. Respondent's television interview statements attested to his
9 belief that Ms. Lobato is guilty as he indicated that justice was done, although these comments directly
10 contrast with Ms. Lobato's claim of actual innocence, which is a subject in the case. Therefore, there
11 was or is a reasonable expectation that Respondent's interview statements could affect the outcome or
12 impair the fairness of Ms. Lobato's case.
13

14 **CHARGE OF MISCONDUCT**

15 By engaging in the acts, or a combination of the acts, above, Respondent commented on a
16 pending legal proceeding and violated the Revised Code of Judicial Conduct, including paragraph [1] of
17 the Preamble (maintain the dignity of office and avoid impropriety); Judicial Canon 1, Rule 1.1 (failing
18 to comply with the law, including the Code of Judicial Conduct), Rule 1.2 (failing to act at all times in a
19 manner that promotes confidence in the independence, integrity, and impartiality of the judiciary and
20 avoiding impropriety and the appearance of impropriety); Judicial Canon 2, Rule 2.5(A)(performing
21 judicial and administrative duties competently and diligently), and Rule 2.10 (public statement on a
22 pending or impending case), or any single rule or any combination of these rules.

23 Based on the information above, the Commission shall hold a public hearing on the merits of
24 these allegations pursuant to NRS 1.4673 and, if violations as alleged are found to be true, the
25

26

27

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.....
Commission shall impose whatever sanctions or discipline or both it deems appropriate pursuant to
NRS 1.4677 and other Nevada Revised Statutes governing the Commission.

Dated this 9th day of May, 2017.

Brian Hutchins

Brian Hutchins, Esq.
Prosecuting Officer for the Commission

STATE OF NEVADA)
) ss
CARSON CITY)

BRIAN HUTCHINS, ESQ. being first duly sworn under oath, according to Nevada law, and
under penalty of perjury, hereby states:

1. I am an attorney licensed to practice law in the State of Nevada. I have been retained by the
Nevada Commission on Judicial Discipline to serve in the capacity of Prosecuting Officer in the matter
of the Honorable William Kephart, Case No. 2016-041-P.

2. I have prepared and reviewed this Formal Statement of Charges against the Honorable
William Kephart and, pursuant to the investigation conducted in this matter and based on the contents
of that investigation and following reasonable inquiry, I am informed and believe that the contents of
this Formal Statement of Charges are true and accurate.

Dated this 9th day of May, 2017.

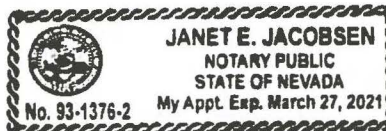
Brian Hutchins

Brian Hutchins, Esq.

Subscribed and sworn to before me, a Notary Public

this 9th day of May, 2017.

By: Janet E. Jacobsen
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this FORMAL STATEMENT OF CHARGES
was placed in the U.S. mail, postage pre-paid, on this 9th day of May, 2017, addressed to:

William B. Terry, Esq.
Law Offices of William B. Terry, Chartered
530 South Seventh Street
Las Vegas, NV 89101

By: Brian Hutchins
Brian Hutchins, Esq.
Prosecuting Officer for the Commission