

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

2 **STATE OF NEVADA**



3
4 In the Matter of)
5)
6 **THE HONORABLE DAWN HAVILAND,**)
7 **Goodsprings Township Justice Court,**)
8 **County of Clark County, State of Nevada,**)
9 **Respondent.**)
10)

CASE NO. 2016-078-P

11 **ORDER DENYING MOTION TO STRIKE ALLEGATIONS IN**
12 **PARAGRAPHS A, B, G AND K**

13 Currently before the Commission on Judicial Discipline (“Commission”) is a Motion to Strike
14 Allegations in Paragraphs A, B, G and K (“Motion to Strike”) of the Formal Statement of Charges
15 against the Honorable Dawn Haviland, Justice of the Peace, Goodsprings Township for Clark County,
16 Nevada (“Respondent”). The Motion to Strike was filed by Respondent on April 17, 2017, and
17 Prosecuting Officer to the Commission (“Prosecuting Officer”) filed an Opposition to Respondent’s
18 Motion to Strike (“Opposition”) on April 25, 2017. Respondent’s Reply was filed on April 26, 2017.

19 **FACTS AND PROCEDURAL BACKGROUND**

20 The Motion to Strike seeks to strike certain alleged irrelevant and prejudicial factual statements
21 in Paragraphs A, B, G and K of the Formal Statement of Charges. Respondent states that the factual
22 allegations do not form a basis of any of the eleven counts, and violate Commission Procedural Rule 15
23 as the factual allegations are vague and unspecific.

24 The factual allegations in Paragraph A state that Respondent sealed criminal records of her then
25 son-in-law pertaining to domestic battery arrests involving the Respondent’s daughter in Goodsprings,
26 and that the Court Clerk Becki Driskel reported the sealed cases were subsequently twice removed from
27 the court’s sealed records storage.

28 Respondent seeks to strike any reference to the removal of the sealed cases stating that there is

1 no evidence to support the allegation, and it fails to specify dates, times or places in violation of
2 Commission Procedural Rule 15. Respondent further argues that the statement is prejudicial, and was
3 repeated in an article in the Las Vegas Review Journal. Respondent emphasizes that the removal of the
4 files was not repeated in Count One of the Formal Statement of Charges, and thus is unclear if it is a
5 charge or not. Respondent opines that the sentence referring to the removal of files is prejudicial,
6 irrelevant, and violates her due process rights regarding notice.

7 The Prosecuting Officer highlights that the Motion to Strike is based upon Nevada Rule of Civil
8 Procedure ("NRCPP") 12(f) because the NRCPP apply once the Formal Statement of Charges is filed.
9 NRS 1.462(2). NRCPP 12(f) states that a motion to strike must be filed prior to any responsive pleading
10 is filed, and therefore the Motion to Strike is untimely as it should have been filed prior to
11 Respondent's Answer to the Formal Statement of Charges.

12 The Prosecuting Officer argues that the comment regarding the missing files was made by one
13 of the Complainants, and is not frivolous or "redundant, immaterial, impertinent, or scandalous" as
14 required pursuant to NRCPP 12(f). She further argues that the fact that the statement was printed in a
15 local newspaper does not make the comment scandalous and thus subject to NRCPP 12(f).

16 In her Reply, Respondent notes that a motion based upon NRCPP 12(f) may be filed at any time,
17 noting that the court may, on its own initiative, strike a pleading at any time. Furthermore, Respondent
18 argues that she is not charged with removing the sealed records as it is not stated in the corresponding
19 Count, and thus the statement regarding removal of records is immaterial, impertinent and scandalous.
20 Moreover, Respondent points to the fact that the newspaper article stated the same as an example of the
21 dangerous effect of the statement.

22 The factual allegations in Paragraph B focus upon a particular criminal history search through
23 the National Crime Information Center ("NCIC") and states that, "The Respondent also ordered other
24 improper NCIC criminal history inquiries."

25 Respondent seeks to have the sentence that she "ordered other improper NCIC criminal history
26 inquires" struck based upon Commission Procedural Rule 15 as there are no dates, times, places or
27 names specified in Paragraph B.

28 The Prosecuting Officer argues that Respondent mischaracterizes Commission Procedural Rule

1 15, as the Rule only requires specific dates, times and places to the extent possible. Additionally, the
2 Prosecuting Officer explains that the allegation that Respondent ordered other NCIC criminal histories
3 ties into the factual allegations of the specific inquiry.

4 In her Reply, Respondent notes that the general allegation that she ordered other improper
5 NCIC searches is highly prejudicial, and violates her due process rights as there are no specifics as
6 required by Commission Procedural Rule 15.

7 The factual allegations in Paragraph G pertain to the alleged administrative problems that arose
8 after Respondent removed the Goodsprings Justice Court from the Clark County Rural Courts. The
9 factual allegations also state that during the transition, Respondent became upset if Goodsprings'
10 employees turned to their former Administrator Cale-Powell for assistance. Count Seven which
11 incorporates the factual allegation in Paragraph G emphasizes that the removal of Goodsprings Justice
12 Court from the Rural Courts impeded the administrative functions of the Court in violation of Rule
13 2.5(A) and (B) which require the Respondent to competently and diligently handle administrative
14 matters and cooperate with court officials, and Rule 2.8 which mandates that Respondent exercise
15 patience, dignity and courtesy to court staff.

16 Respondent is seeking to have the statement that she became upset if court staff turned to their
17 former administrator Cale-Powell to be stricken as Count Seven fails to state an ethical charge for this
18 action.

19 The Prosecuting Officer notes that the Formal Statement of Charges format has been used for
20 years, with support from Nevada Supreme Court decisions, and there is no need for all of the factual
21 allegations to be repeated in the relevant count. Furthermore, it is premature to argue that one factual
22 count be struck at this juncture.

23 In her Reply, Respondent stated that there is no charge in Count Seven that her becoming upset
24 is an ethical violation. Furthermore, Respondent notes that there are no dates, times or places listed as
25 required by Commission Procedural Rule 15.

26 The factual allegations in Paragraph K are that Bailiff Smith and Clerk Driskel overheard
27 Respondent provide legal advice to various individuals.

28 The Respondent argues that Commission Procedural Rule 15 requires dates, times and places to

1 be specified in order to prepare a defense to the legal advice charge.

2 The Prosecuting Officer notes that the factual allegations meet the requirements of Commission
3 Procedural Rule 15 and NRCP 8 as the allegations provide fair notice to the adverse party.
4 Furthermore, the Prosecuting Officer noted that Respondent provided legal advice to a David Angel
5 regarding a will and to Tracy Coy regarding a protective order.

6 In her Reply, Respondent states she is not objecting if the Prosecuting Officer limits this charge
7 to David Angel and Tracy Coy only, but does object to the legal advice allegations exceeding these two
8 instances based upon the lack of required specificity as to dates, times, places and individuals as
9 required pursuant to Commission Procedural Rule 15.

10 ISSUES

11 Whether the Motion to Strike was timely filed pursuant to Nevada Rule of Civil Procedure
12 12(f).

13 Whether certain factual allegations should be stricken from the Formal Statement of Charges
14 based upon Nevada Rule of Civil Procedure 12(f) based upon redundant, immaterial, impertinent, or
15 scandalous matter.

16 Whether certain factual allegations should be stricken from the Formal Statement of Charges
17 based upon the failure to meet the requirements of Commission Procedural Rule 15 regarding
18 specificity as to identifying the dates, times and places to the extent possible.

19 STANDARD OF LAW

20 Commission Procedural Rule 15

21 **Rule 15. Content of Formal Statement of Charges.** The Formal Statement of Charges
22 must contain a clear reference to the specific provisions of statutes, the Nevada Code of
23 Judicial Conduct and the Nevada Constitution which are deemed to justify procedures
24 before the Commission, together with a clear statement of all acts and omissions which
25 are alleged to warrant action by the Commission under those provisions, identifying the
26 dates, times and places to the extent possible that the acts or omissions are alleged to
27 have occurred.

26 Nevada Rules of Civil Procedure

27 **NRCP 12(f) Motion to Strike.** Upon motion made by a party before responding to a
28 pleading or, if no responsive pleading is permitted by these rules, upon motion made by
a party within 20 days after the service of the pleading upon the party or upon the court's

1 own initiative at any time, the court may order stricken from any pleading any
2 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

3 NRCP 12(f)

4 DISCUSSION

5 a. Timeliness

6 Respondent answered the Formal Statement of Charges on March 22, 2017, filed a Motion to
7 Dismiss on March 28, 2017 (which was denied on May 2, 2017), and filed the herein Motion to Strike
8 on April 17, 2017. As the Nevada Rules of Civil Procedure apply to Commission matters after the
9 Formal Statement of Charges is filed, NRCP 12(f) applies in this matter pertaining to the legal standard
10 for a Motion to Strike. The Prosecuting Officer has raised the objection of timeliness to the Motion to
11 Strike. Pursuant to NRCP 12(f) a court has authority under Rule 12(f) to strike a pleading, in whole or
12 in part, only if a motion is made before the moving party has filed a responsive pleading, in this case an
13 answer, unless the court strikes the pleading on its own initiative or no responsive pleading is
14 permitted. NRCP 12(f); *See also* *Culinary & Serv. Employees Union, AFL-CIO Local 555 v. Hawaii*
15 *Employee Ben. Admin., Inc.*, 688 F.2d 1228, 1232 (9th Cir. 1982). While the Motion to Strike is
16 untimely, the Commission will address the merits of the Motion to Strike as it has the power to strike
17 pleadings on its own initiative.

18 b. Motion to Strike Sections of Paragraphs A and G based upon NRCP 12(f)

19 A motion to strike is used to strike from any pleading “any redundant, immaterial, impertinent,
20 or scandalous matter.” NRCP 12(f). NRCP 12(f) mirrors the Federal Rule of Civil Procedure 15(f) and
21 therefore federal case law is helpful in analyzing NRCP 12(f). The Nevada Federal District Court in
22 *Germaine Music v. Universal Songs of Polygram*, 275 F.Supp.2d 1288, 1299–1300 (D.Nev.2003)
23 defined redundant, immaterial, impertinent and scandalous matter as:

24 “Redundant matter” is that which “consists of allegations that constitute a needless
25 repetition of other averments.” 5A Charles Alan Wright & Arthur R. Miller, *Federal*
26 *Practice and Procedure* § 1382, at 704 (2d ed.1990). Matter which is “immaterial” is
27 “that which has no essential or important relationship to the claim for relief or the
28 defenses being pleaded.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993),
rev'd on other grounds, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994) (citing
5A Charles Alan Wright & Arthur R. Miller § 1382, at 706–07) (internal citations
omitted). “‘Impertinent’ matter consists of statements that do not pertain, and are not
necessary to the issues in question.” *Id.* (citing 5A Charles Alan Wright & Arthur R.
Miller § 1382, at 711). “Scandalous” matter “improperly casts a derogatory light on

1 someone, most typically on a party to the action.” 5A Charles Alan Wright & Arthur R.
2 Miller § 1382, at 712.

3 *Germaine Music v. Universal Songs of Polygram*, 275 F. Supp. 2d 1288, 1299–300 (D. Nev. 2003),
4 *aff’d in part, rev’d in part*, 130 Fed. Appx. 153 (9th Cir. 2005).

5 Furthermore, the Federal Court noted that motions to strike are generally disfavored and “should not be
6 granted unless it is clear that the matter to be stricken could have no possible bearing on the subject
7 matter of the litigation.” *See id, citations omitted*.

8 In Paragraph A, Respondent seeks to strike any reference to the removal of the sealed records
9 pertaining to her former son-in-law’s domestic violence matters on the basis that the allegation is
10 scandalous and prejudicial as it was mentioned in a press article.¹ Respondent is charged with signing
11 the order sealing the documents, and with removing the same from the sealed records storage. This
12 charge arose based upon Clerk Driskel’s statement in her interview with the Commission’s investigator
13 that the sealed files in question disappeared twice from the sealed records storage.

14 The signing of the sealing orders and the subsequent removal of the files are intertwined. The
15 first alleged misstep in this charge was Respondent’s failure to recuse herself from signing the orders
16 on the basis that she was not ruling on the matters, but rather was performing a ministerial task in the
17 case. Even in ministerial matters, a judge must recuse herself from a case involving family members.
18 Rule 2.11 and see e.g. *Reprimand of Bethel* (Arizona Commission on Judicial Conduct April 8, 2004).
19 This relates to the allegations of the subsequent missing files as it supports the inference that the
20 Respondent and/or her family possibly benefited from the records removal. The connectivity and
21 interrelation of the sealing of the records, and subsequent disappearance of the files highlights the
22 importance of disqualification in cases involving immediate family members pursuant to Rule 2.11, and
23 therefore survives Respondent’s Motion to Strike based upon NRCPC 12(f).

24 In Paragraph G, Respondent seeks to strike the “gratuitous” statement that she became upset if
25 Goodsprings employees turned to their former administrator for assistance after the Court left the Rural
26 Courts. The statement is not gratuitous as it pertains to Rules 2.5(A) and (B), and 2.8. As a judge, the
27 Respondent is held to a higher standard than a non-judicial manager pursuant to the Revised Nevada
28 Code of Judicial Conduct (“Code”). Rule 2.5 requires that a judge shall perform her administrative
duties competently and diligently and cooperate with court officials in the administration of court

¹ Respondent also seeks to have the reference to the missing records and becoming upset when employees contacted their former administrator stricken on the basis of failing to comply with Commission Procedural Rule 15 pertaining to notice, and will be addressed in the subsequent section.

1 business. Furthermore, Comment 2 notes that a judge should seek the necessary court staff, expertise
2 and resources to discharge all of the Court's administrative responsibilities. Moreover, Rule 2.8(B)
3 requires that the judge be patient, dignified and courteous with court staff and court officials.

4 The investigation in this matter supports allegations that upon Goodsprings' removal from the
5 Rural Courts, there were numerous lapses in court administration, and those failings were the
6 responsibility of the Respondent as she was the only judge in Goodsprings. Furthermore when staff
7 attempted to seek expertise in court administration from their former administrator, those attempts were
8 allegedly thwarted by Respondent. Those alleged actions violate Rule 2.5. In conjunction with the
9 administrative failures, Respondent's alleged lack of decorum when staff did contact their former
10 administrator violates Rule 2.8. Therefore, the allegation that Respondent became upset if court staff
11 contacted the Rural Courts Administrator is sufficient to withstand Respondent's Motion to Strike.

12 **c. Motion to Strike based upon Commission Procedural Rule 15 for Lack of Notice**

13 Respondent seeks to "strike" factual statements in the Formal Statement of Charges based upon
14 Commission Procedural Rule 15 for lack of specificity in Paragraphs A, B, G, and K. The notice
15 required in a Formal Statement of Charges is set forth in Commission Procedural Rule 15, and this
16 standard is similar to notice pleading for any civil complaint. All that is required to proceed to
17 discovery is "(1) a short and plain statement of the claim showing that the pleader is entitled to relief,
18 and (2) a demand for judgment for the relief the pleader seeks." NRCP 8(a). Dismissing the complaint
19 was not warranted unless there was no doubt that the Prosecuting Officer would be unable to prove any
20 set of facts at all that could entitle it to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,
21 228, 181 P.3d 670, 672 (2008).

22 This is not a criminal proceeding and the notice standard reflects the same. The judicial
23 discipline system "is neither civil nor criminal in nature, but sui generis, designed to protect the
24 citizenry by insuring the integrity of the judicial system." *In re Conduct of Pendleton*, A14-1871, 2015
25 WL 5949736 (Minn. 2015) quoting *In re Gillard*, 271 N.W.2d 785, 812 (Minn.1978). The unique
26 nature of judicial discipline is reflected in the Nevada Supreme Court's defining the Commission as a
27 court of judicial performance. *Whitehead v. Comm'n on Jud. Discipline*, 110 Nev. 128, 160 n. 24, 869
28 P.2d 795, 815 n. 24 (1994) and *Whitehead v. Nevada Comm'n on Judicial Discipline*, 110 Nev. 874,
882, 878 P.2d 913, 918, fn.7 (1994). In that same vein, this Commission and appellate courts around
the country have repeatedly held that the purpose of discipline in judicial cases is not to punish the

1 judge, but rather to preserve the integrity of the judicial system and public confidence in the system.
2 *See, Cynthia Gray, A Study of State Judicial Discipline Sanctions 1, 3* (National Center for State Courts
3 2002). It is within this framework that judicial discipline exists and Commission Procedural Rule 15
4 must be analyzed.

5 The Respondent seeks to strike: in Paragraph A that “Goodsprings Justice Court Clerk Becki
6 Driskel reported the sealed cases were subsequently twice removed from the court’s sealed records
7 storage”; in Paragraph B that “Respondent also ordered other improper NCIC criminal history
8 inquiries,” in Paragraph G that “Respondent became upset if Goodspring’s employees turned to their
9 former Administrator Cale-Powell for assistance,” and in Paragraph K that “Respondent gave legal
10 advice to various individuals” on the basis that the factual allegations fail to comport with Commission
11 Procedural Rule 15, which requires “dates, times and places to the extent possible” to be listed in the
12 Formal Statement of Charges.

13 Commission Procedural Rule 15 delineates that the Formal Statement of Charges must contain a
14 clear reference to the specific provisions of statutes, the Code and Nevada Constitution which are
15 deemed to justify procedures before the Commission, and a clear statement of the acts or omissions that
16 the Commission alleged that warrant action, with identifying dates, times, and places to the extent
17 possible. The clarifying phrase is “to the extent possible.” The pleading standard in Commission
18 Procedural Rule 15 does not require detailed factual allegations.

19 This Motion to Strike argument mirrors Respondent’s Motion to Dismiss argument for Count
20 Eleven which is factual Paragraph K, based upon Commission Procedural Rule 15. Respondent is
21 seeking to strike allegations instead of filing a motion for a more definite statement pursuant to NRCP
22 12(e). (*See* Order filed on May 2, 2017). The same analysis as in the Order applies to Paragraphs A, B,
23 G and K, and will not be repeated herein as the result would be the same. The allegations that
24 Respondent removed sealed files, had improper NCIC inquiries run, became upset with court
25 employees when they sought assistance in managing the court, and provided legal advice on various
26 occasions are clear violations of the Code, if proven. The factual allegations and related charges are
27 based upon testimonial evidence that was gathered by the independent investigator in this matter, and
28 the same was provided to Respondent, and therefore survive the threshold for a motion to strike as the
factual allegations are related to the subject matter being charged. NRCP 12(f).

1 Additionally, the Respondent cannot elevate her due process protections through multiple
2 motions. The Commission exists to protect the judicial system, and based upon the Code, it is the
3 Respondent who is held to a higher standard. Judges are held to a higher code of conduct than ordinary
4 members of the public and a hearing on the merits of any alleged misconduct will protect the rights of
5 the Respondent and preserve the public confidence in the integrity and independence of the judiciary.
6 *See In re Inquiry Concerning a Judge*, 3572, 1990 WL 25917 (Alaska 1990) (holding that “Alaska
7 statutory law and the Code of Judicial Conduct hold judges to the highest standard of personal and
8 official conduct. This standard is greater than that expected of lawyers and other persons in society.
9 *E.g., In re Inquiry Relating to Rome*, 218 Kan. 198, 542 P.2d 676, 682 (1975); *Complaint Concerning*
10 *Winton*, 350 N.W.2d 337, 340 (Minn.1984)”). The Formal Statement of Charges is sufficient to
11 protect Respondent’s due process rights, and the hearing in this matter will protect both the
12 Respondent’s due process rights and the public’s confidence in the judiciary.

12 Based on the foregoing, the Formal Statement of Charges does not contain redundant,
13 immaterial, impertinent, or scandalous matter pursuant to NRCP 12(f) and/or violate Respondent’s due
14 process rights as to notice pursuant to Commission Procedural Rule 15. Therefore, Respondent’s
15 Motion to Strike is hereby denied.

16 IT IS SO ORDERED.

17 DATED this 16 day of May, 2017.

19 STATE OF NEVADA
20 COMMISSION ON JUDICIAL DISCIPLINE

21 
22 _____
23 Thomas Armstrong, Presiding Judge

1 **CERTIFICATE OF SERVICE**

2 I hereby certify on this 19th day of May, 2017, I transmitted a copy of the foregoing ORDER
3 DENYING MOTION TO STRIKE via email and by placing said document in the U.S. Mail, postage
4 prepaid, addressed to:

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Janet Jacobsen, Commission Clerk