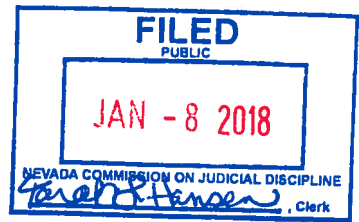


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Commission on Judicial Discipline



BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE)
DAVID HUMKE, District Court Judge,)
Second Judicial District Court, Family)
Division, Washoe County, State of Nevada,)
Respondent.)

CASE NO.: 2016-150-P

FORMAL STATEMENT OF CHARGES

COMES NOW Kathleen M. Paustian, Prosecuting Officer for the Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), established under Article 6 § 21 of the Nevada Constitution, who, in the name of and by the authority of the Commission, as found in NRS 1.425 - 1.4695, files this Formal Statement of Charges and informs the Honorable David Humke, District Court Judge, Second Judicial District Court, Family Division, County of Washoe, State of Nevada ("Respondent" or "Judge Humke"), 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

Beginning in or about the year 2015 and continuing to in or about the year 2017, Respondent knowingly and in the capacity of his office as a District Court Judge, Second Judicial District Court, Family Division, County of Washoe ("District Court" or "Family Court"), engaged in the following acts, or a combination of these acts ("acts" or "actions"):

1 A. In or about January, 2015, Respondent hired Mitchell Wright as his judicial assistant ("JA"),
2 over the objections of then Chief Judge David A. Hardy. Mr. Wright had been publically
3 reprimanded by the State Bar for bringing a concealed handgun into the Family Court in a
4 Temporary Protective Order proceeding in which he was a party and for failing to cooperate
5 with the State Bar's investigation of the incident. Mr. Wright also failed the District
6 Court's background check. The Respondent met Mr. Wright in 2007 when practicing in
7 tribal courts in which Mitchell Wright served as a prosecutor.

8 Over the course of the next two (2) years, the Respondent failed to carry out his
9 administrative duties regarding the lack of supervision over Mr. Wright in his JA position,
10 and interfered with the Human Resources investigations pertaining to his JA. Specifically,
11 despite repeated requests from the child support enforcement business unit and the fact that
12 he was repeatedly trained in the execution of the task, Mr. Wright failed to process 172 "no
13 show" orders for delinquent parents who failed to present themselves for incarceration
14 pursuant to a contempt order. Fellow Family Court Judge Bridget Robb processed this
15 paperwork for the first two (2) months of Judge Humke's tenure to allow time for his staff
16 to receive training. Over a year later, she learned the documents were still not being
17 processed in the Respondent's Department and she was required to obtain an Administrative
18 Order from the Chief Judge to return the no show orders to her, as the Presiding Family
19 Court Judge, for processing. Furthermore, the Respondent's Department processed only 62
20 cases as of the end of November 2016, while most of the departments processed over 700.
21 Also, the Respondent's Department did not timely file case disposition reports, which show
22 the number of cases closed by each department on a monthly basis. The necessity for these
23 filings was discussed in an August 2, 2016 judges' meeting, which Judge Humke did not
24 attend. Judge Robb had a subsequent private conversation with the Respondent to stress
25 the importance of this reporting. The Respondent attended two (2) later judges' meetings
26 and said he was taking care of the matter. However, Respondent's Department disposed of
27 only four (4) cases in September 2016 and no cases in October and November of that year.
28 The Judge's Department also neglected to process large volumes of child support hearing
master recommendations, as well as court orders for, among other issues, child support

1 enforcement, and failed to act on other matters within the deadlines. On one occasion,
2 litigants came to the Respondent's Department for an emergency hearing, but neither Mr.
3 Wright nor Judge Humke was there, so Judge Robb heard the matter. Litigants also found
4 it extremely difficult to obtain help from the Respondent's Department, because they would
5 get a recorded voicemail when they called and no one returned their calls. When these
6 litigants complained to other offices and staff checked the Respondent's chambers, no one
7 was there.

8 On December 4, 2015, Court Administrator Jackie Bryant issued Mr. Wright a
9 written warning for inappropriate comments, gestures and interpersonal relations and for
10 retaliation. On August 2, 2016, Administrator Bryant issued another written warning
11 finding Mr. Wright: (1) inappropriately blew a kiss to a female employee; (2) acted as, or
12 held himself out as, a tribal judge, a position he had been told to withdraw from upon being
13 hired at the District Court; and, (3) failed to correctly record work hours. Respondent
14 failed to take corrective action on any of the foregoing matters. On December 2, 2016,
15 Administrator Bryant put Mr. Wright on administrative leave. Chief Judge Patrick
16 Flanagan terminated Mitchell Wright on January 11, 2017, citing to his "...disruptive
17 behavior" and "failure to carry out your duties..., including following specific directives
18 given to you..." Judge Flanagan also stated in the termination letter that Mr. Wright's
19 poor performance had interfered with the operation of Judge Humke's Department, the
20 management of information in the Court in general and the Chief Judge's ability to carry out
21 "administrative and judicial functions." The Respondent had not disciplined his JA or
22 taken any corrective action during the two (2) year period covered by the Chief Judge's
23 termination letter.

24 Respondent's answers during the investigatory interview and his responses to the
25 Commission's Interrogatories initially deflected responsibility for the actions and inaction of
26 Mr. Wright, or claimed lack of knowledge or memory, or alleged the claims against the JA
27 were due to unfair treatment of him, because of other employees "pick[ing] upon" him.
28 See, September 27, 2017 Response to Interrogatory 27, p. 16, ll. 23-4. However, the
Respondent finally admitted his defense of the JA was due to "...misguided loyalty..."

1 Response to Interrogatory 27, p. 16, ll. 21-5. The Respondent added, despite the fact he
2 hired Mr. Wright, Judge Humke learned, that, like any other employee, Mr. Wright was
3 covered under personnel policies, including the Employee Handbook, as the result of a
4 December 30, 2015 meeting with Chief Judge Hardy and the Court Administrator. The
5 Respondent stated this meeting, along with the Court putting Mr. Wright on administrative
6 leave in early December, 2016, finally convinced him Mr. Wright's "...conduct and
7 behavior were a reflection upon me and I was responsible for him. I made a mistake in
8 trusting his representations not listening to others and accept full responsibility for my
9 errors." Response to Interrogatory 9, p. 8, l. 26-p. 9, l. 1. In other words, Respondent
10 admits that for two (2) years, he took the word of his JA that the work was being done over
11 the expressions of concern from other judges and the Court Administrator.

12 The Respondent's conduct in relationship to the performance of his JA and his own
13 conduct violated Canon 1 of the Code, Rule 1.1, requiring the Respondent to comply with
14 the law, including the Code; Rule 1.2, requiring him to promote confidence in the
15 independence, integrity and impartiality of the judiciary, avoiding impropriety and the
16 appearance of impropriety; Canon 2, Rule 2.5(A), requiring that he perform judicial and
17 administrative duties competently and diligently; Rule 2.5 (B), requiring him to cooperate
18 with other judges and court officials in the administration of court business; and Rule 2.12
19 (A), requiring him to ensure court staff act consistent with his obligations under the Code.

20 B. Respondent was elected in the fall of 2014 and has consistently failed to follow established
21 Court practice and procedure and cooperate with other judges and Court staff. It started
22 with his insistence upon hiring Mr. Wright as his JA, despite Wright's public reprimand by
23 the Nevada State Bar and failure to pass the Court's background check and over the
24 objections of then Chief Judge Hardy. Respondent then failed to provide adequate
25 oversight of the JA to ensure timely completion of the official and legal duties of his
26 Department, including the processing of requests, recommendations and orders as detailed
27 above in Paragraph A.

28 Judge Humke also failed to perform his own administrative duties. He did not
timely complete an evaluation of a hearing master, despite repeated notifications to do so.

1 When the evaluation still had not been completed nine (9) months after the deadline, the
2 Court Administrator sought input on the hearing master's performance from other family
3 judges so the employee, who was eligible for a pay increase, would not be penalized by the
4 Respondent's failure to perform his duty. Judge Humke also failed to answer his phone
5 when "on call", to the extent fellow Judge Robb had to answer these calls when Respondent
6 would not do so.

7 Respondent also failed to timely respond to phone calls from the Commission's
8 Investigator over the course of five (5) separate days in June, 2017. The Investigator
9 followed up with an e-mail to the Respondent after the fifth call. The Judge did not
10 respond until almost a week later and then only through his new JA who only provided the
11 information he was obtaining counsel. The Respondent later alleged in his interview that
12 he did not know who was calling, however, the Investigator noted the JA asked him when
13 the Complaint was filed with the Commission, so the Department was aware that the calls
14 came from a representative of the NCJD.

15 The Respondent's acts and conduct violated Canon 1 of the Code, Rule 1.1,
16 requiring the Respondent to comply with the law, including the Code; Rule 1.2, requiring
17 him to promote confidence in the independence, integrity and impartiality of the judiciary,
18 avoiding impropriety and the appearance of impropriety; Canon 2, Rule 2.5(A), requiring
19 that he perform judicial and administrative duties competently and diligently; Rule 2.5 (B),
20 requiring him to cooperate with other judges and court officials in the administration of
21 court business; Rule 2.12 (A), requiring him to ensure his staff acted consistent with his
22 obligations under the Code; and Rule 2.16, requiring jurists to cooperate with disciplinary
23 authorities.

- 24 C. The Respondent abused his judicial authority by engaging in any or all, or any combination
25 of, the acts listed above in paragraphs A through B.

26 **COUNT ONE**

27 By engaging in the acts, or a combination of the acts listed above, Respondent failed to
28 adequately supervise his JA over a period of two (2) years, accepting the JA's assurances that legal,

1 official and administrative duties of Respondent's Department were being satisfactorily and timely
2 completed, even while the Respondent's peers and Court staff repeatedly informed him this was not
3 the case. By his acts, the Respondent violated Canon 1 of the Code, Rule 1.1, requiring him to
4 comply with the law, including the Code; and Rule 1.2, requiring him to promote confidence in the
5 independence, integrity and impartiality of the judiciary, avoiding impropriety and the appearance
6 of impropriety; Canon 2, Rule 2.5(A), requiring him to perform judicial and administrative duties
7 competently and diligently; Rule 2.5 (B), requiring that he cooperate with other judges and court
8 officials in the administration of court business; and Rule 2.12 (A), requiring him to ensure court
9 staff act consistent with his obligations under the Code.

10 **COUNT TWO**

11 By engaging in the acts, or a combination of the acts listed above, the Respondent also
12 failed in carrying out his own administrative duties. By his acts, the Respondent violated Canon 1
13 of the Code, Rule 1.1, requiring him to comply with the law, including the Code; and Rule 1.2,
14 requiring him to promote confidence in the independence, integrity and impartiality of the judiciary,
15 avoiding impropriety and the appearance of impropriety; Canon 2, Rule 2.5(A), requiring him to
16 perform judicial and administrative duties competently and diligently; and Rule 2.5 (B), requiring
17 that he cooperate with other judges and court officials in the administration of court business.

18 **COUNT THREE**

19 By engaging in the acts, or a combinations of the acts listed above, the Respondent's
20 intransigence extended to the workings of the Commission when he initially refused to cooperate
21 with the Commission's Investigator. By his acts, the Respondent violated Canon 1 of the Code,
22 Rule 1.1, requiring him to comply with the law, including the Code; Rule 1.2, requiring him to
23 promote confidence in the independence, integrity and impartiality of the judiciary, avoiding
24 impropriety and the appearance of impropriety; and Canon 2, Rule 2.16, requiring him to cooperate
25 with disciplinary authorities.

26 **COUNT FOUR**

27 By engaging in the acts, or a combination of the acts listed above, the Respondent failed to
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cooperate with the other judges and Court administration with respect to administrative duties of the Court and the Human Resources investigations. By his acts, the Respondent violated Canon 1 of the Code, Rule 1.1, requiring him to comply with the law, including the Code; and Rule 1.2, requiring him to promote confidence in the independence, integrity and impartiality of the judiciary, avoiding impropriety and the appearance of impropriety; Canon 2, Rule 2.5(A), requiring him to perform judicial and administrative duties competently and diligently; and Rule 2.5 (B), requiring that he cooperate with other judges and court officials in the administration of court business.

Based on the information above, the Commission shall hold a public hearing on the merits of these facts and Counts pursuant to NRS 1.4673 and, if violations as alleged are found to be true, the Commission shall impose whatever sanctions and/or discipline it deems appropriate pursuant to NRS 1.4677 and other Nevada Revised Statutes governing the Commission.

DATED this 8th day of January, 2018.

Submitted
by: Kathleen M. Paustian
Kathleen M. Paustian, Esq.
Prosecuting Officer for the NCJD

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STATE OF NEVADA)
) ss
COUNTY OF CLARK)

KATHLEEN M. PAUSTIAN, 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 David Humke, Case No. 2016-150-P.

2. I have prepared and reviewed this Formal Statement of Charges against the Honorable David Humke, 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.

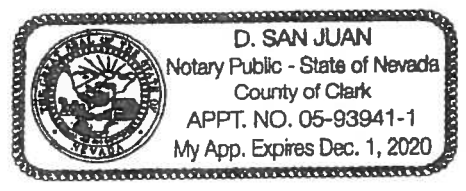
Dated this 8th day of January, 2018.

Kathleen M. Paustian
KATHLEEN M. PAUSTIAN, ESQ.

State of Nevada, County of Clark
Subscribed and sworn to before me, a Notary Public

this 8 day of January, 2018.
by Kathleen M. Paustian

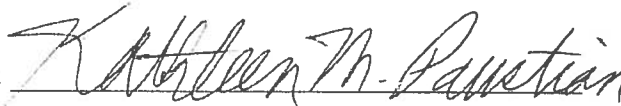
By: *D. San Juan*
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this FORMAL STATEMENT OF CHARGES was placed in U.S. mail, postage pre-paid, on this 8th day of January, 2018, addressed to:

John L. Arrascada, Esq.
Arrascada & Aramini, LTD.
145 Ryland Street
Reno, NV 89501

By: 
Kathleen M. Paustian
Prosecuting Officer for the NCJD

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