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11 *Attorneys for Respondent*

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


13 IN THE MATTER OF THE HONORABLE
14 CHARLES WELLER, District Court Judge,
15 Second Judicial District Court, Family
16 Division, Washoe County, State of Nevada,


Case No.: 2017-025-P

Respondent.

17 **AMENDED VERIFIED RESPONSE AND ANSWER**

18 COMES NOW, Respondent, CHARLES WELLER, District Court Judge, Second Judicial
19 District Court, Family Division, by and through his attorneys, the Law Office of David R.
20 Houston, David R. Houston, Esq., and Arrascada & Aramini Ltd., John L. Arrascada, Esq., and
21 files the instant Amended Verified Response And Answer setting forth his answers, affirmative
22 defenses and mitigating factors in response to the Formal Statement of Charges filed against him
23 on or about January 22, 2018.

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1 **FACTUAL ALLEGATIONS**

2 In answering the factual allegations set forth in the Formal Statement of Charges
3 paragraphs A, B, C, D, the Respondent upon information and belief denies the characterization
4 and interpretation of all alleged statements.

5 As to paragraph "A", Respondent denies making the comments attributed to him in
6 Paragraph A. Respondent denies he admitted making such comments. Respondent denies Ms.
7 Chavis asked the question attributed to her in Paragraph A.

8 As to paragraph "B", Respondent admits that Chief Allen filed a Complaint with the
9 Commission. Respondent is without sufficient information and belief to admit or deny the other
10 factual allegation of Paragraph B.

11 As to paragraph "C", Respondent admits he spoke with Ms. Chavis about contacting Ms.
12 Olsen, Respondent denies asking Ms. Chavis to contact Ms. Olsen. Respondent is without
13 sufficient information and belief to admit or deny the interpretation and characterization of the
14 remaining allegations of Paragraph "C".

15 As to paragraph "D", Respondent is without sufficient information and belief to admit or
16 deny the allegation of Paragraph D, concerning the thoughts of Ms. Olsen, Ms. Chavis, and Ms.
17 Utzig.

18 Further, Respondent denies he violated Canons 1 and 2 of the Revised Code of Judicial
19 Conduct ("the Code") and further, the Respondent denies he violated Canon 1, Rule 1.1, Rule
20 1.2; Canon 2, Rule 2.2, Rule 2.3, Rule 2.4(A)(B)(C), Rule 2.8(B) as alleged in paragraphs A, B,
21 C and D.

22 The Respondent denies the allegations in paragraph E.

23 **COUNT ONE**

24 In answering those allegations set forth in Count One, the Respondent does deny that by
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1 his acts and comments during the Task Force Meeting on February 1, 2017 and his failure to
2 clarify his comments during the meeting, he violated any of the Cannons or Rules alleged to
3 have been violated in Count One. Specifically, Respondent denies that he violated Cannon 1,
4 Rule 1.1, failing to comply with the law, including the Code; and Rule 1.2, failing to promote
5 confidence in the independence, integrity and impartiality of the judiciary, avoiding impropriety
6 and the appearance of impropriety; the Respondent further denies that he violated Cannon 2,
7 Rule 2.2, failing him to act impartially and fairly; and Rule 2.3, failing to be free from bias; and
8 Rule 2.5(A), failing to perform judicial and administrative duties competently and diligently.
9 The Respondent denies that he abused his judicial authority by engaging in any or all, or any
10 combination of, these alleged acts and/or omissions. Further, the Respondent denies that any of
11 his acts and comments at the February 1, 2017 Task Force meeting and his failure to clarify his
12 comments during the meeting were done with knowledge of facts that would amount to a
13 violation of the Code.
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16 COUNT TWO

17 In answering those allegations set forth in Count Two, the Respondent does deny that he
18 violated: Cannon 1, Rule 1.1, failing to comply with the law, including the Code; and Rule 1.2,
19 failing to promote confidence in the independence, integrity and impartiality of the judiciary,
20 avoiding impropriety and the appearance of impropriety; the Respondent further denies that he
21 violated Cannon 2, Rule 2.2, failing to act impartially and fairly; and Rule 2.3, failing to be free
22 from bias; and Rule 2.4(A), (B) and (C), precluding a judge from being swayed by external
23 influences in the performance of judicial duties, or conveying the impression of external
24 influence; and Rule 2.8(B), failing to be patient, dignified and courteous to litigants, jurors,
25 witnesses, lawyers, court staff, court officials and others which whom the judge deals in an
26 official capacity, by (1) engaging in the acts, or a combination of the acts, listed above, (2)
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1 approaching Ms. Chavis and asking her to explain and clarify his comments at the Task Force
2 meeting to others on his behalf, and (3) attempting to prevent the public dissemination of
3 misconstrued statements and associated connotations. The Respondent denies that he abused his
4 judicial authority by engaging in any or all, or any combination of, these alleged acts and/or
5 omissions. Further, the Respondent denies that any of his aforementioned actions were done
6 with knowledge of facts that would amount to a violation of the Code.
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8 **COUNT THREE**

9 In answering those allegations set forth in Count Three, the Respondent does deny that he
10 violated: Cannon 1, Rule 1.1, failing to comply with the law, including the Code; and Rule 1.2,
11 failing to promote confidence in the independence, integrity and impartiality of the judiciary,
12 avoiding impropriety and the appearance of impropriety; the Respondent further denies that he
13 violated Cannon 2, Rule 2.2, failing him to act impartially and fairly; and Rule 2.3, failing to be
14 free from bias; and Rule 2.4(A), (B) and (C), precluding a judge from being swayed by external
15 influences in the performance of judicial duties, or conveying the impression of external
16 influence; and Rule 2.8(B), failing to be patient, dignified and courteous to litigants, jurors,
17 witnesses, lawyers, court staff, court officials and others which whom the judge deals in an
18 official capacity, by (1) engaging in the acts, or a combination of the acts, listed above, (2)
19 approaching Ms. Utzig and asking her to explain and clarify his comments at the Task Force
20 meeting to others on his behalf, and (3) attempting to prevent the public dissemination of
21 misconstrued statements and associated connotations. The Respondent denies that he abused his
22 judicial authority by engaging in any or all, or any combination of, these alleged acts and/or
23 omissions. Further, the Respondent denies that any of his aforementioned actions were done
24 with knowledge of facts that would amount to a violation of the Code.
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AFFIRMATIVE DEFENSES (COUNT ONE)

(1) The Respondent asserts that Count One of the Formal Statement of Charges fails to specifically identify how his conduct violated each of the cited Cannons as alleged.

(2) The Respondent asserts that his comments during the Task Force meeting on February 1, 2017 expressed his opinion concerning the motives of the some legislators who proposed cutting funding to VAWA, as well as the potential negative effects of said policy. The Respondent's comments constitute speech involving political issues and matters of public concern and are protected by the federal and state guarantees of free speech and expression.

(3) The Respondent asserts that the charges brought against him, even if proven to be factually correct, fail to allege violations of the Code, Nevada statutes, or Nevada constitutional provisions.

AFFIRMATIVE DEFENSES (COUNT TWO)

(1) The Respondent asserts that Count Two of the Formal Statement of Charges fails to specifically identify how his conduct violated each of the cited Cannons as alleged.

(2) The Respondent asserts that the charges brought against him, even if proven to be factually correct, fail to allege violations of the Code, Nevada statutes, or Nevada constitutional provisions.

(3) To the extent that the alleged violations of the Code alleged in Count Two are based on the comments made by Respondent during the February 1, 2017 Task Force meeting, the Respondent's comments constitute speech involving political issues and matters of public concern and are protected by the federal and state guarantees of free speech and expression.

(4) Respondent's communications with Ms. Chavez were necessary under Rule 1.2 of the Code of Judicial Conduct in order to promote confidence in the independence, integrity and impartiality of the judiciary.

1 **AFFIRMATIVE DEFENSES (COUNT THREE)**

2 (1) The Respondent asserts that Count Three of the Formal Statement of Charges fails
3 to specifically identify how his conduct violated each of the cited Cannons as alleged.

4 (2) The Respondent asserts that the charges brought against him, even if proven to be
5 factually correct, fail to allege violations of the Code, Nevada statutes, or Nevada constitutional
6 provisions. To the extent that the alleged violations of the Code in Count Three are based on the
7 comments made by Respondent during the February 1, 2017 Task Force meeting, the
8 Respondent's comments constitute speech involving political issues and matters of public
9 concern and are protected by the federal and state guarantees of free speech and expression.
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11 (3) Respondent's communications with Ms. Utzig were necessary under Rule 1.2 of
12 the Code of Judicial Conduct in order to promote confidence in the independence, integrity and
13 impartiality of the judiciary
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15 **MITIGATING CIRCUMSTANCES**

16 In answering the Formal Statement of Charges, the Respondent does assert that there are
17 mitigating circumstances that are applicable to him, including but not limited to, the following:

- 18 (1) The absence of a prior disciplinary record;
19 (2) The absence of a dishonest or selfish motive;
20 (3) Free and full disclosure to the Judicial Ethics Panel and Cooperation;
21 (4) The Respondent's good character and good reputation;
22 (5) That the Respondent has expressed remorse for this misunderstanding.
23 (6) Any and all other mitigating factors that Respondent may raise during these
24 proceedings.
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DATED this 26th day of February, 2018.



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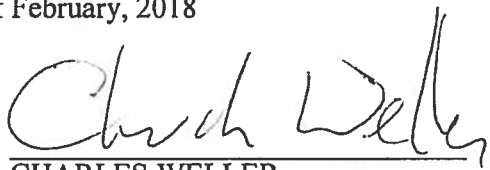
VERIFICATION

STATE OF NEVADA)
 ss
COUNTY OF WASHOE)

CHARLES WELLER, under penalty and perjury, being first duly sworn, deposes and says:

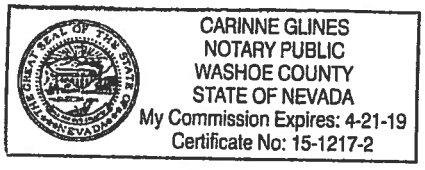
That he is a respondent in the above-entitled action, that he has read the foregoing Amended Verified Responses and Answer and knows the contents thereof, and that the same are true of his own knowledge except for those matters stated on information belief, and as for those matters, he believes them to be true.

READ AND SIGNED this 26 day of February, 2018


CHARLES WELLER

SUBSCRIBED AND SWORN to before me this 26 day of February, 2018.


NOTARY PUBLIC



1 CERTIFICATE OF SERVICE

2 I hereby certify that on this date I caused to be served via electronic mail and first class
3 mail, a copy of the foregoing AMENDED VERIFIED RESPONSE AND ANSWER with
4 postage fully prepared thereon, by depositing the same with the U.S. Postal Service to the
5 following:
6

7 Kathleen M. Paustian, Esq.
8 Law Office of Kathleen M. Paustian
9 1912 Madagascar Lane
10 Las Vegas, NV 89117
11 kathleenpaustian@cox.net

12 DATED this 26 day of February, 2018,

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