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10 Commission on Judicial Discipline



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

10 IN THE MATTER OF THE HONORABLE
11 DOUGLAS E. SMITH, Eighth Judicial
12 District Court, Department 8,
13 County of Clark, State of Nevada,
14
15 Respondent.

CASE NO.: 2016-068-P

16 **FORMAL STATEMENT OF CHARGES**

17 COMES NOW Thomas C. Bradley, Prosecuting Officer for the Nevada Commission on
18 Judicial Discipline ("Commission" or "NCJD"), established under Article 6, Section 21 of the
19 Nevada Constitution, who, in the name of and by the authority of the Commission, as found in NRS
20 1.425 - 1.4695, files this Formal Statement of Charges and informs the Respondent, the Honorable
21 Douglas E. Smith, District Court Judge, Eighth Judicial District Court, Department 8, County of
22 Clark, State of Nevada ("Respondent"), that the following acts were committed by Respondent and
23 warrant disciplinary action by the Commission under the Revised Nevada Code of Judicial Conduct
24 ("the Code").

25 **FACTUAL ALLEGATIONS**

26 Respondent knowingly, and in his capacity as a District Court Judge in and for the Eighth
27 Judicial District Court, in Clark County, State of Nevada, engaged in the following acts or a
28 combination of these acts ("acts or actions"):

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A) May 11, 2016 Conduct

In *State of Nevada v. Daniels*, Case Nos. C304976 and C305032, the Respondent held a calendar call hearing in his courtroom on May 11, 2016. At the hearing, the Defendant, Mr. Daniels, the Defendant's court appointed attorney, Mr. Claus, and the prosecutor, Ms. Pandukht were present. There were many other persons also present in the courtroom.

Defense counsel had previously filed a motion to continue the trial date which was set for May 23, 2016. The motion was unopposed by the prosecutor. When the hearing began, the Defendant requested the appointment of a new attorney because his attorney had allegedly failed to file a motion contending that the State had failed to comply with its obligation to disclose all exculpatory evidence, commonly known as *Brady* discovery. The Defendant claimed that the State had failed to disclose this evidence to his defense attorney. The Respondent denied the Defendant's motion for the appointment of new counsel.

Throughout the hearing, Respondent failed to treat the Defendant and his lawyer in a patient, dignified, and courteous manner. Instead, Respondent repeatedly threatened that he would order the trial to commence in only twelve days and deny the unopposed motion to continue the trial. Respondent did so even though the defense attorney attempted to explain that he was not adequately prepared for trial.

Respondent subsequently threatened the Defendant with the forced application of duct tape to the Defendant's mouth if the Defendant continued to make any further verbal statements to the Court. The threat to forcibly apply duct tape to the Defendant's mouth was excessive under the circumstances. The Respondent's conduct throughout the hearing was marked by rudeness and sarcasm.

The Respondent's actions described above in paragraph A violated the Code, including Judicial Canon 1, Rule 1.1, failing to comply with the law, including the Code; Rule 1.2, failing to act all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and avoiding impropriety and the appearance of impropriety; Canon 2, Rule 2.2, failing to perform all duties of his judicial office fairly and impartially; Rule 2.3(B),

1 failing to refrain from manifesting bias, prejudice, and harassment; Rule 2.5(A), failing to perform
2 judicial duties competently and diligently; and Rule 2.8 (B), failing to be patient, dignified, and
3 courteous to litigants and lawyers.

4 **B) August 31, 2016 Conduct**

5 In *State of Nevada v. Turner*, Case No. C314750, the Respondent held a sentencing hearing
6 in his courtroom on August 31, 2016. The Defendant, Mr. Turner, was convicted of child abuse for
7 kicking a five-year-old boy in the face. The Respondent sentenced the Defendant to 28 to 72 months
8 in the Nevada Department of Corrections, which was the maximum sentence allowed under the
9 plea agreement.

10 After issuing the sentence, Respondent muttered under his breath, but still loud enough to
11 be heard, "I hope this follows you to the prison." This comment is clearly heard on the JAVS
12 recording and is contained in the official court transcript. In his interview with the Judicial
13 Commission investigator, Respondent falsely denied that he made the entire comment and stated,
14 "No, no, I did not say I hope it follows you. I said, 'This will follow you.' We were reading from a
15 doctor's report." The comment "I hope this follows you to the prison" had the appearance that
16 Respondent wished harm upon the Defendant in prison.

17 The Respondent's actions described above in paragraph B violated the Code, including
18 Judicial Canon 1, Rule 1.1, failing to comply with the law, including the Code; Rule 1.2, failing to
19 promote confidence in the judiciary; Canon 2, Rule 2.2, failing to perform all duties of his judicial
20 office fairly and impartially; Rule 2.3(B), failing to refrain from manifesting bias, prejudice, and
21 harassment; Rule 2.5(A), failing to perform judicial duties competently and diligently; Rule 2.8
22 (B), failing to be patient, dignified, and courteous to litigants; and Rule 2.16(A), failing to cooperate
23 and be candid and honest with judicial discipline authorities.

24 **COUNT ONE**

25 By engaging in the acts, or combination of the acts, listed above, by treating Defendant
26 Daniels and his lawyer in a rude, sarcastic, and dismissive manner and by threatening Daniels with
27 the forced application of duct tape, Respondent violated the Code, including Judicial Canon 1, Rule
28 1.1, failing to comply with the law, including the Code; Rule 1.2, failing to promote confidence in

1 the judiciary; Canon 2, Rule 2.2, failing to perform all duties of his judicial office fairly and
2 impartially; Rule 2.3(B), failing to refrain from manifesting bias, prejudice, and harassment; Rule
3 2.5(A), failing to perform judicial duties competently and diligently; and Rule 2.8 (B), failing to be
4 patient, dignified, and courteous to litigants and lawyers.


5 **COUNT TWO**

6 By engaging in the acts, or combination of the acts, listed above, by making the improper
7 comment "I hope this follows you to the prison" after sentencing criminal Defendant Turner for
8 child abuse and by falsely denying in his interview with the Commission investigator that he made
9 that comment, Respondent violated the Code, including Judicial Canon 1, Rule 1.1, failing to
10 comply with the law, including the Code; Rule 1.2, failing to promote confidence in the judiciary;
11 Canon 2, Rule 2.2, failing to perform all duties of his judicial office fairly and impartially; Rule
12 2.3(B), failing to refrain from manifesting bias, prejudice, and harassment; Rule 2.5(A), failing to
13 perform judicial duties competently and diligently; Rule 2.8 (B), failing to be patient, dignified,
14 and courteous to litigants; and Rule 2.16(A), failing to cooperate and be candid and honest with
15 judicial discipline authorities.

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

20
21 Dated this 19 day of April, 2018.

22 Submitted by: _____

23 
24 Thomas C. Bradley, Esq., SBN 1621
25 Prosecuting Officer for the NCJD
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1 STATE OF NEVADA)
2) ss
3 COUNTY OF WASHOE)
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5 THOMAS C. BRADLEY, ESQ. being first duly sworn under oath, according to Nevada
6 law, and under penalty of perjury, hereby states:

7 1. I am an attorney licensed to practice law in the State of Nevada. I have been retained by
8 the Nevada Commission on Judicial Discipline to serve in the capacity of Prosecuting Officer in
9 the matter of the Honorable Douglas E. Smith, Case No. 2016-068-P.

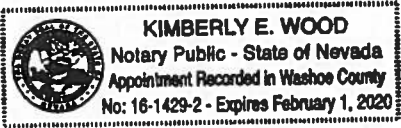
10 2. I have prepared and reviewed this Formal Statement of Charges against the Honorable
11 Douglas E. Smith and, pursuant to the investigation conducted in this matter, and based on the
12 contents of that investigation and following reasonable inquiry, I am informed and believe that the
13 contents of this Formal Statement of Charges are true and accurate.

14
15 Dated this 19 day of April, 2018.

16 
17 _____
18 THOMAS C. BRADLEY, ESQ.

19 Subscribed and sworn to before me, a Notary Public
20 this 19th day of April, 2018.

21 By: 
22 _____
23 NOTARY PUBLIC

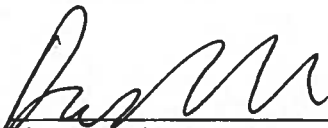


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CERTIFICATE OF SERVICE

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 19 day of April, 2018.

Thomas F. Pitaro
Pitaro & Fumo
601 Las Vegas Blvd. South
Las Vegas, NV 89101

By: 
David McIntosh, Legal Assistant to
Thomas C. Bradley, Esq., Prosecuting Officer for NCJD