

FILED
PUBLIC
MAY 17 2018
NEVADA COMMISSION ON JUDICIAL DISCIPLINE
[Signature], Clerk

1 HEIDI ALMASE
Nevada State Bar No. 7839
2 521 Park Way E.
Las Vegas, NV 89106
3 Telephone: 702/580-9622
Email: Battlborn@hotmail.com

4 *In Proper Person*

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

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9 IN THE MATTER OF HEIDI ALMASE,
10 Former Municipal Court Judge,
11 City of Las Vegas,
12 County of Clark,
13 State of Nevada,

Case No.: 2017-099-P

14
15 Respondent.

16
17 **REPLY TO OPPOSITION TO RESPONDENT'S MOTION TO RECUSE**
PROSECUTING OFFICER KATHLEEN M. PAUSTIAN

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19 COMES NOW, the Respondent HEIDI ALMASE, former Municipal Court Judge
20 for the City of Las Vegas, in Proper Person, and files the reply, and supporting points

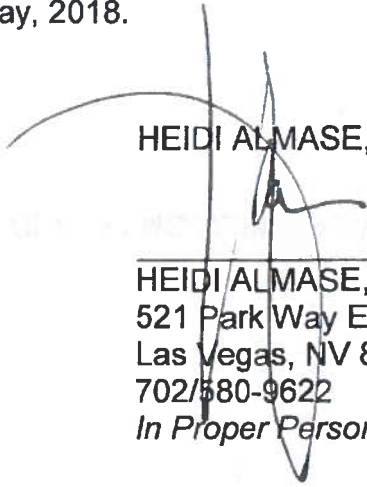
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1 and authorities in support of her request.

2 Dated this 16th day of May, 2018.

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2 **FACTUAL ALLEGATIONS**

3 Respondent incorporates by reference the factual allegations, exhibits and
4 affidavit filed in support of her motion to recuse Special Prosecutor Kathleen M.
5 Paustian.

6 Ms. Paustian does not challenge Respondent's position she has or had a
7 personal and/or professional relationship with Mr. Thomas and his wife, Judge Nancy
8 Alf ("the Thomases"). Rather, Ms. Paustian challenges the supporting exhibits on the
9 grounds they are dated. Opposition, p.2, ll.2; p.3, ll.9-11; and p. 4, ll.9-10. The purpose
10 of the limited selection of documentary exhibits was to demonstrate the length of the
11 personal and/or professional relationship between Ms. Paustian and the Thomases
12 which, based on a general search, goes back to 2002 or, nearly sixteen (16) years.

13 Ms. Paustian also states Respondent failed to demonstrate, in any event, the
14 manner in which such a relationship demonstrates bias. Opposition, p.2, ll.4-9, ll.21-27;
15 p.3, ll.9-12; and p.4, ll.27 – p.5, ll.1-3. In the first instance, Ms. Paustian did not cite to
16 any rule or case in support of her contention. See e.g., RDC Rule 13(2)(requiring a
17 memorandum of points and authorities be cited in support of each ground); see
18 generally, Procedural Rules of the Nevada Commission on Judicial Discipline, Rule
19 24(stating the rules of evidence applicable to civil proceedings apply). Rather, she
20 challenged Respondent for citing cases she contends are not applicable to judicial
21 discipline proceedings. Notably, Ms. Paustian stated, in her Conclusion, "There is no
22 statute or rule dealing with alleged bias on the part of an NCJD prosecuting officer and
23 there has never been a case brought on the basis of alleged prosecutorial bias."
24 Opposition, p.7, ll.11-13. Ms. Paustian has, by her own admission, been practicing law
25 for nearly thirty years. As she is well aware, it is not uncommon to find there is no case
26 or rule on point and has conceded as much in her conclusion.
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28

1 As Respondent stated in her motion, at the investigatory phase of the
2 proceedings, the investigator requested information related to the circumstances
3 leading to Ms. Barrier's employment. The investigation therefore delved into Ms.
4 Barrier's former employment with Mr. Thomas and Respondent's interactions with Mr.
5 Thomas leading to the termination of his campaign representation. Respondent's
6 investigatory interview also dealt with the resultant acrimony and publicity. Respondent
7 provided contractual information to the Commission by way of self-report and
8 cooperation with the investigation. All of the listed information touches on Ms.
9 Paustian's long-term personal and professional relationship with the Thomases.

10 Respondent reiterates, in the course of discussing the case with Respondent,
11 Ms. Paustian did not, in writing or verbally, notify Respondent of her personal and/or
12 professional relationship with Mr. Thomas and/or his wife. Therefore, to avoid the
13 appearance of bias, whether implicit or explicit, and to ensure the neutrality of the
14 proceedings, Respondent requests the Commission appoint a different and neutral
15 prosecuting officer to this matter.

16 POINTS AND AUTHORITIES

17
18 "[The] argument fails to recognize that "actual bias need not be shown" by a
19 particular officer for a system to be unconstitutional. See *Haas v. City of San*
20 *Bernadino*, 27 Cal.4th 1017, 1033, 45 P.3d 280 (2002). "[T]he Constitution is
21 concerned not only with actual bias but also with 'the appearance of
22 justice.'" *Exxon Corp. v. Heinze*, 32 F.3d 1399, 1403 (9th Cir. 1994)".

23
24 *Lucky Dogs LLC v. City of Santa Rosa*, 913 F. Supp. 2d 853, 862 (N.D. Cal.
25 2012).

26 The Procedural Rules of the Nevada Commission on Judicial Discipline, Exhibit A,
27 Public Case Filing Procedures, Procedure 3, Challenges for Cause ("Procedural
28 Rules"), provide the only mechanism for a respondent to disqualify a commissioner for
actual or implied bias or prejudice or other cause.

1 There exist significant rules mandating both attorneys and judicial officers disclose
2 potential conflicts for the express purpose of avoiding conflicts or actual or implied bias.
3 See generally, NRPC 1.7; 1.8, 1.10 and 1.11 (conflict rules related to attorneys); Nev.
4 Code of Judicial Conduct Rules 2.3 and 2.11. However, Ms. Paustian is correct: there
5 are no rules specific to appointed special prosecutors requiring them to disclose
6 potential conflicts which may result in actual or implied bias. That should not suggest
7 the appearance of bias go unaddressed. The Procedural Rules require due process of
8 law. See Procedural Rules of the Nevada Commission on Judicial Discipline, Rule
9 24(Respondent shall be accorded due process of law). See also, Mosely v. Nevada
10 Com'n on Judicial Discipline, 117 Nev. 371, 377-78, 22 P.3d 655, 659 (2001)(an
11 adjudicator's actual bias against a party is constitutionally unacceptable and, in some
12 situations, an implied probability of bias constitutes a deprivation of due process).

13
14 Here, Respondent has demonstrated the existence of a long-term business and
15 professional relationship between Ms. Paustian and Respondent's former campaign
16 manager, David V. Thomas, and his wife, Judge Nancy Alf. Given the level of acrimony
17 and publicity directed at Mr. Thomas owing to his decision to terminate his
18 representation of Respondent during the 2017 election, Respondent believes Ms.
19 Paustian may have implicit or explicit bias. Further, Respondent argues Procedural
20 Rules Rule 3 has analogous implications for Special Prosecutors insofar as the
21 Commission has failed to address the possibility in its self-promulgating rules.

22 **PRAYER FOR RELIEF**

23 Respondent respectfully requests the following:

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1. The Commission grant Respondent's motion and appoint a different and neutral Prosecuting Officer to the instant matter.

DATED this 16th Day of May 2018.

A handwritten signature in black ink, appearing to be 'HEIDI ALMASE', is written over a horizontal line. The signature is somewhat stylized and partially overlaps the line.

HEIDI ALMASE, ESQ.
Nevada Bar No. 7839
521 Park Way E.
Las Vegas, NV 89106
Telephone 702/580-9622

In Proper Person

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**DECLARATION OF HEIDI ALMASE IN SUPPORT OF REPLY TO THE OPPOSITION
TO RESPONDENT'S MOTION TO RECUSE PROSECUTING OFFICER KATHLEEN
M. PAUSTIAN**

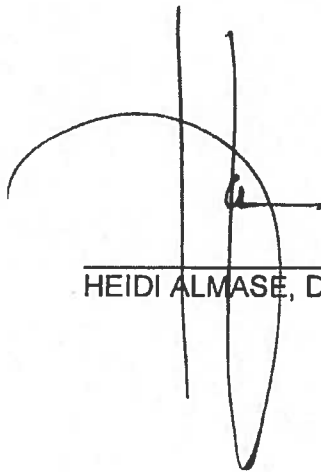
STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

HEIDI ALMASE being declares under penalty of perjury, deposes and says:

1. That, I am the Respondent in the above-captioned matter;
2. That, I have personal knowledge of and am competent to testify concerning the facts therein;
3. That, I request the Commission grant the Motion to Recuse Special Prosecutor Kathleen M. Paustian and appoint an independent and neutral special prosecutor;
4. That the motion and reply are made in good faith and not for the purpose of delay.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 16th Day of May 2018.



HEIDI ALMASE, Declarant

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May 2018, I, HEID ALMASE, caused to be served via email and by first class mail, a copy of the foregoing **REPLY TO SPECIAL PROSECUTOR'S OPPOSITION TO RESPONDENT'S MOTION TO RECUSE PROSECUTING OFFICER KATHLEEN M. PAUSTIAN** with postage fully pre-paid thereon, by depositing the same with the U.S. Postal Service, addressed as follows:

Kathleen M. Paustian, Esq.
1912 Madagascar Lane
Las Vegas, NV 89117
kathleenpaustian@cox.net
Prosecuting Officer



HEIDI ALMASE, ESQ.