

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

2 **STATE OF NEVADA**



3  
4 In the Matter of )  
5 THE HONORABLE RENA G. HUGHES, )  
6 Eighth Judicial District Court, Family Division, )  
7 Department J, County of Clark County, State of )  
Nevada, )  
8 Respondent. )  
9 )  
10 )

CASE NO. 2016-113-P

11 **ORDER DENYING MOTION TO DISMISS COMPLAINT**

12 Currently before the Commission on Judicial Discipline (“Commission”) is a Motion to Dismiss  
13 Complaint (“Motion”), which was filed by counsel to the Honorable Rena G. Hughes, District Court  
14 Judge, Eighth Judicial District Court, Family Division, Department J, for Clark County, Nevada  
15 (“Respondent”) on May 11, 2018. Opposition to Respondent’s Motion to Dismiss Complaint was filed  
16 by the Prosecuting Officer to the Commission (“Prosecuting Officer”) on May 21, 2018. No reply to  
17 the Prosecuting Officer’s Opposition was filed by the counsel for Respondent.

18 **I. Statement of Facts**

19 The underlying complaint alleges that Respondent acted in violation of the Judicial Canons.  
20 Welthy Silva (“Mother”) and Rogerio Silva (“Father”) were divorced in 2013 in Clark County, Nevada.  
21 The parties had one minor child. In the original Decree of Divorce, the Court granted the Mother  
22 primary physical custody of the child and the Father weekend visitation.

23 Beginning in May 2015, the parties began litigating a number of issues concerning the well-  
24 being of their child and whether the Mother was interfering with the Father’s visitation rights. During  
25 the next twelve months, Respondent held a number of hearings on these issues.

26 On May 12, 2016, an in-person hearing was held. During the hearing, the parties argued whether  
27 the Mother was interfering with the Father’s rights of visitation. Respondent then advised the Mother  
28

1 that she was close to being held in contempt and being incarcerated. At the conclusion of the hearing,  
2 the Respondent ordered that the Father shall have visitation with the child on the upcoming weekend  
3 and that the parties shall exchange the child under the supervision of Donna's House Central.

4 Subsequently, the Father alleged that the Mother failed to comply with the recently ordered  
5 visitation. On May 17, 2016, the Father's counsel filed a motion to place the matter back on calendar  
6 regarding the visitation. On June 8, 2016, Respondent issued a Minute Order detailing the visitation  
7 issues. The Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the  
8 Court's order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE  
9 SHALL ISSUE."

10 The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room  
11 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom  
12 on June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to twenty-five (25)  
13 days incarceration. If the Mother fails to appear, a bench warrant shall issue." The Minute Order also  
14 addressed other Order to Show Cause issues that were not related to visitation, and stated in closing,  
15 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 2016 at 1:30 p.m."

16 The Mother arrived with her minor child at the scheduled hearing on June 15, 2016.  
17 Respondent ordered all parties and counsel, except the minor child, to leave the courtroom, and  
18 Respondent addressed the child for nine (9) minutes off the record. The Mother was not allowed to  
19 return to the courtroom and was escorted off the Courthouse property. In the Mother's absence,  
20 Respondent awarded the Father temporary sole legal and physical custody, terminated the Father's child  
21 support obligation, ordered the Mother to pay the statutory minimum child support to the Father, and  
22 ordered the Mother to have no contact with the minor child.

23 The minor child was clearly distressed and cried during the entire process while the Father  
24 remained impassive at his counsel table. Respondent addressed the crying minor child by stating that  
25 the change in custody occurred because the Mother and minor child were not cooperative with the Court  
26 ordered visitations. Respondent further stated that if the minor child refused to go with the Father she  
27 would end up in Child Haven, which Respondent referred to as a jail for kids.  
28

1 At the court proceeding on June 15, 2016, no evidence or testimony was entered into the record  
2 regarding the change of custody, change in child support or the finding of contempt. No Order to Show  
3 Cause issued regarding the failure to facilitate visitation or notice regarding the change of custody  
4 and/or child support, and no hearing was held.

5 **II. Motion**

6 Respondent filed her Motion to Dismiss the Complaint on May 11, 2018. In her Motion,  
7 Respondent cited to Judge Weller's motion to dismiss<sup>1</sup> arguing that the Commission's procedures  
8 regarding investigating complaints are in contravention of the Rules of the Commission, Nevada Rules  
9 of Civil Procedure, and Respondent's due process rights. Regarding due process violations, Respondent  
10 states that the Commission improperly wears multiple hats as it executes the investigation, prosecution,  
11 hearing, and decision in judicial discipline matters. Furthermore, Respondent questions who is making  
12 the determination as to whether a rule violation has occurred and whether those same judges or  
13 individuals are on the ultimate hearing panel. Respondent argues if they are the same individuals, then  
14 in effect they have already prejudged the case without hearing Respondent's witnesses, mitigating  
15 evidence and defenses. Pertaining to civil procedure violations, Respondent notes that pursuant to the  
16 Nevada Rules of Civil Procedure, interrogatories are sent out only after a formal complaint has been  
17 filed; however, the Commission sends out interrogatories before a case is assigned to a prosecuting  
18 officer.

19 Respondent cites to Judge Weller's points and authorities which argued that the Commission  
20 failed to follow applicable procedural rules, and thus acted in excess of its jurisdiction and denied Judge  
21 Weller his Fourteenth Amendment due process rights. Moreover, Respondent cites to the *Whitehead*  
22 decisions and the ABA Model Rules that Judge Weller used in his motion to highlight the need for  
23 separate investigative and adjudicative functions of the commission members. Respondent  
24 acknowledges that the Nevada Supreme Court has the ultimate authority to review the Commission's  
25 findings de novo. *Assad v. Nevada Commission on Judicial Discipline*, 124 Nev. 391 (2008).

26  
27 <sup>1</sup> Respondent attached and incorporated by reference Exhibit A, a copy of Judge Weller's unfiled points and authorities for  
28 Case No. 2017-025-P. Respondent noted that the cases are the same on a procedural level even though the cases are  
factually distinct.

1 Finally, Respondent agrees with Judge Weller's points and authorities that there is no basis set  
2 forth within the interrogatories to justify the use of interrogatories prior to the filing of a formal  
3 statement of charges.

4 **III. Opposition**

5 The Prosecuting Officer argues that Respondent inappropriately integrated an unfiled, twenty-  
6 nine page pleading from an entirely different case in her Motion. The Prosecuting Officer notes that  
7 Respondent incorporated the entire motion as her own by stating that her case and Judge Weller's are  
8 almost identical. However, the Prosecuting Officer attests that even if Judge Weller's arguments were  
9 applicable to Respondent, her Motion exceeds the Commission's Pre-Hearing Order page limits of  
10 fifteen (15) pages for the motion. While the limitation does not apply to exhibits, Respondents use of  
11 the "exhibit" as a pleading causes Respondent's Motion to be thirty-five pages. Furthermore, he notes  
12 that Respondent did not seek permission to file a motion in excess of the page limits.

13 Moreover, the Prosecuting Officer notes that Judge Weller's arguments are not applicable to  
14 Respondent. Judge Weller argues that the allegations against him lack merit and thus the Commission's  
15 decision was arbitrary and capricious in violation of Judge Weller's Fourteenth Amendment rights.  
16 However, the Prosecuting Officer further notes that no such argument has been made by Respondent, as  
17 Respondent's case centers upon a hearing that was recorded on the Court's JAVS system, with the  
18 exception of nine (9) minutes, and related court filings.

19 The Prosecuting Officer noted that in *Mosely v. Nevada Commission on Judicial Discipline*, the  
20 Nevada Supreme Court analyzed the combination of the Commission's investigative, prosecutorial and  
21 adjudicative functions in regards to a judge's due process rights. 177 Nev. 371, 22 P. 3d 655 (2001).  
22 The Prosecuting Officer states that the Court rejected that argument, and noted that the Commission is  
23 authorized to play multiple roles through the legislative intent manifested in the amendment process to  
24 the Constitution. *See Mosley at 379 (citing to Withrow v. Larkin, 421 U.S. 35 (1975) (holding that a*  
25 *medical disciplinary board's process of investigating and then holding a hearing on the same issues did*  
26 *not deny the doctor his procedural due process rights).* The Prosecuting Officer declares that judicial  
27 discipline proceedings wherein there is a combination of adjudicative and prosecutorial functions is not  
28 biased per se, and without more, does not violate a judge's due process rights. *Mosley*, 117 Nev. At

1 380.

2 The Prosecuting Officer further argues that pursuant to *Mosely*, Respondent has the burden of  
3 showing actual bias to prove a violation of her due process rights. The Prosecuting Officer notes that  
4 Respondent claims that the Commission is inherently biased because the Commission had made a  
5 probable cause determination; however, he opines that this argument was rejected by the Nevada  
6 Supreme Court in *Matter of Davis*, 113 Nev. 1204, 1218 (1997) (holding that probable cause  
7 determinations are not determinations of guilt, and that proof by clear and convincing evidence is  
8 required at the formal adjudicatory level, thus Commissioners who found probable cause were not  
9 disqualified from participating in the formal hearing).

10 The Prosecuting Officer emphasizes that the Commission is presumed to be comprised of people  
11 who are capable of judging a controversy fairly on the basis of its own circumstances. *Mosley*, 117  
12 Nev. At 381 (citing to *Withrow*, 421 U.S. at 54). Therefore, the Prosecuting Officer argues that the  
13 burden rests upon Respondent to overcome the presumption that the Commission is unbiased. *Id.*

14 The Prosecuting Officer further argues that Respondent's contention that Nevada should adhere  
15 to the 1994 ABA Model Rules for Judicial Discipline Enforcement ("Model Rules") of a two-panel  
16 system, separating investigative and adjudicative functions, is without merit as those rules were rejected  
17 in Nevada when the Nevada Constitution was amended in 1997 to create the modern Commission.  
18 Moreover, he notes, that decisions of the Commission are reviewed de novo; therefore, any risk of harm  
19 to Respondent is minimal.

## 20 ISSUES

21 Whether the combination of the Commission's investigative, prosecutorial and adjudicative  
22 functions violate the due process rights of Respondent.

## 23 STANDARD OF LAW

24 The Nevada Rules of Civil Procedure provide that the defense of lack of jurisdiction over the  
25 subject matter may, at the option of the defendant, be made by motion. NRCP 12(b)(1).

26 NRCP 12(b)(5) permits a party to file a motion to dismiss for failure to state a claim upon which  
27 relief can be granted. In considering a motion to dismiss, the court construes all factual allegations in  
28 the complaint as true and draws all inferences in favor of the non-moving party. *Buzz Stew, LLC v. City*

1 of *North Las Vegas*, 181 P.3d 670, 672 (Nev. 2008). A complaint will be dismissed if it appears beyond  
2 doubt that the plaintiff can prove no set of fact which, if true, would entitle it to relief. *Id.*

### 3 DISCUSSION

4 Respondent's Motion to Dismiss attacks the composition and procedures of the Commission as  
5 it relates to due process. However, the cited points and authorities are in the form of an exhibit to  
6 Respondent's Motion. Respondent attached an unfiled brief of the Honorable Charles Weller for Case  
7 No. 2017-025-P. Procedurally, the Commission issued a Prehearing Order in this matter, wherein  
8 motions were limited to fifteen pages in length. While the Prehearing Order does not set a page limit for  
9 exhibits, Respondent's incorporation of an exhibit as her own argument is a blatant attempt to  
10 circumvent the reasonable page limits set by the Commission. Therefore, Respondent's Motion is  
11 procedurally in violation of the Commission's Prehearing Order, and as such, only the actual Motion  
12 filed by Respondent and the Prosecuting Officer's Opposition will be addressed in this Order.

13 Respondent makes an overall due process argument that the Commission wears too many hats,  
14 stating that the Commission does the investigation, prosecution, and adjudicatory functions. Moreover,  
15 Respondent notes that it is unclear if the same Commissioners participate in the initial determination of  
16 probable cause and in the formal hearing. Respondent's concern is that if the same Commissioners  
17 participate in both proceedings, the clear and convincing evidence standard falls to the wayside.  
18 However, this due process argument has already been ruled upon in *Mosley v. Nevada Comm'n on*  
19 *Judicial Discipline*, 117 Nev. 371, 22 P.3d 655 (2001); *see also Matter of Davis* 113 Ne. 1204, 1218,  
20 946 P. 2d 1033, 1043 (1997) (holding that because some of the Commissioners previously had found  
21 there was probable cause to believe appellant had committed perjury does not require that they be  
22 disqualified from participating in the formal hearing). In *Mosely*, the Court held that the Commission's  
23 combination of prosecutorial, investigative, and adjudicative functions is not implicitly prejudicial to  
24 judges brought within the disciplinary process, and therefore, the Commission's procedures do not  
25 violate a judge's protected due process rights.

26 The combination of investigative and prosecutorial functions vested in disciplinary commissions  
27 has been consistently upheld by the Nevada Supreme Court and other courts. *See, e.g., Matter of Davis*,  
28 113 Nev. 1204, 1218, 946 P.2d 1033, 1043 (1997); *Mosley v. Nevada Comm'n on Judicial Discipline*,

1 22 P.3d 655, 660 (Nev. 2001) (“Although the Court’s ruling concerned an administrative agency and  
2 not, as here, a court of judicial performance [or discipline], ... *Withrow* is otherwise indistinguishable  
3 and therefore dispositive.”); *Mississippi Comm’n on Judicial Performance v. Russell*, 691 So.2d 929,  
4 946 (Miss. 1997) (bifurcated judicial disciplinary process presented “no more evidence of bias or the  
5 risk of bias ... than inheres in the very fact that the Board had investigated and would now adjudicate”)  
6 (quoting *Withrow*, 421 U.S. at 54); *In re Eriksson*, 36 So.3d 580, 591 (Fla. 2010) (finding that “the  
7 analysis of *Withrow* from other jurisdictions [in the context of judicial discipline] is persuasive”).<sup>2</sup>

8 The *Mosely* and *Davis* decisions ruled that the combination of functions did not per se violate  
9 the judges’ due process rights; however, the Court noted that in order to make such a finding, a judge  
10 must show actual bias. Respondent, as in the *Mosely* and *Davis* cases, has not demonstrated actual bias.  
11 Moreover, Commission Procedural Rule 3(6) permits challenges for cause for a judge to disqualify a  
12 commissioner for actual or implied bias or prejudice or other cause based upon an affidavit specifying  
13 why the disqualification is sought. Respondent did not file such a challenge for cause, but rather she  
14 filed a peremptory challenge to remove a Commissioner, the Honorable Jerome Polaha, under  
15 Commission Procedural Rule 3(8).

16 Respondent alleges that her due process rights were violated during the investigatory phase of  
17 the proceedings regarding the Commission’s use of interrogatories. Respondent’s objections to  
18 answering interrogatories after the investigation has occurred, but before a prosecuting officer is  
19 appointed, lacks merit. Although not mandated by procedural due process, Commission Procedural  
20 Rule 12 permits the judge an opportunity to present information during the investigatory process. The  
21 interrogatories provide Respondent with more due process as the interrogatories narrow the issues from  
22 the initial complaint filed with the Commission, to allegations based upon the factual findings

---

23 <sup>2</sup> See, e.g., *Withrow v. Larkin*, 421 U.S. 35, 52-58 (1975), wherein the Supreme Court rejected a physician’s challenge to the  
24 constitutionality of the Wisconsin Medical Examining Board on the basis that the Board’s combined investigative and  
25 adjudicative functions implicitly biased the adjudicators and, therefore, violated due process. *Withrow*, 421 U.S. at 57-58.  
26 Noting that constitutional due process does not bar a judge from making a preliminary determination of probable cause and  
27 then presiding over a criminal trial, the Court held that such a combination of investigative and adjudicative functions in an  
28 administrative agency likewise did not violate due process. *Id.*, at 56-57. Further the Court held that “The mere exposure to  
evidence presented in non-adversary investigative procedures is insufficient in itself to impugn the fairness of the board  
members at a later adversary hearing. Without a showing to the contrary, [Commission members including judges, attorneys  
and laypersons] ‘are assumed to be [people] of conscience and intellectual discipline, capable of judging a particular  
controversy fairly on the basis of its own circumstances.’” *Withrow*, 421 U.S. at 55 (quoting *United States v. Morgan*, 313  
U.S. 409, 421 (1941)).

1 supported by the independent investigator's investigation, and subsequent determination by the  
2 Commission based on the same. Commission Procedural Rule 12 effectuates important public policy  
3 concerns regarding the confidentiality required in judicial disciplinary proceedings prior to the filing of  
4 a formal statement of charges. NRS 1.4683. In this instance, Respondent provided the Commission  
5 with a detailed written response and exhibits.

6 Furthermore, confidentiality during the investigatory stage protects a judge's due process rights.  
7 Such confidentiality protects judges from "injury which might result from publication of unexamined  
8 and unwarranted complaints," and further enhances the public confidence in the judicial system by  
9 preventing the "premature announcement of groundless claims of judicial misconduct or disability since  
10 it can be assumed that some frivolous complaints will be made against judicial officers." *Landmark*  
11 *Communications, Inc. v. Virginia*, 435 U.S. 829, 835 (1978); *see also Jones v. Nev. Comm'n on Jud.*  
12 *Discipline*, 318 P.3d 1078 (2014) *citing to In re Flanagan*, 690 A.2d 865, 875 (Conn 1997) (holding  
13 that "Two interests must be accommodated in judicial disciplinary proceedings: (1) the review council  
14 must have broad authority to investigate the conduct of our judges in order to maintain public  
15 confidence in the judiciary; and (2) our judges must be afforded adequate process before discipline is  
16 imposed to ensure that discipline is not imposed on the basis of unfounded charges of misconduct.").  
17 Therefore, the fact that Respondent was provided an opportunity to respond to allegations in the  
18 complaint and investigatory findings while the matter was confidential, protected Respondent's due  
19 process rights.

20 Moreover, procedural due process rights attach at the adjudicatory stage, and not during the  
21 investigatory phase of the judicial discipline process. *Jones v. Nevada Comm'n on Judicial Discipline*,  
22 318 P.3d 1078, 1083 (Nev. 2014). Judicial discipline proceedings consist of two distinct phases, one  
23 investigatory and the other adjudicatory, wherein the investigatory phase is confidential and the  
24 adjudicatory phase is public. "It is during this [adjudicatory] phase that the judge's legal rights are  
25 adjudicated, not before. Accordingly, due process rights will generally not attach before a formal  
26 statement of charges is filed." *Jones* at 1083; *see also Ryan v. Comm'n on Judicial Performance*, 754  
27 P.2d 724, 729 (Cal. 1988) (stating that while "a judge certainly has the right to conduct a proper defense  
28 in disciplinary actions[,] ... the right attaches [only] once formal proceedings are instituted," not during



1 the preliminary investigation); *In re Petition to Inspect Grand Jury Materials*, 576 F. Supp. 1275, 1284  
2 (S.D. Fla. 1983), *aff'd*, 735 F.2d 1261 (11th Cir. 1984) (observing that during the judicial-misconduct  
3 investigatory stage “procedural protections are minimal at most”).

4 The Commission has protected Respondent’s due process rights. The procedures employed by  
5 the Commission in this case followed the step by step path set out in the Procedural Rules of the  
6 Commission from the initial complaint through the investigation and adjudication phase. Moreover, due  
7 process rights do not attach until the formal statement of charges issues; therefore, Respondent lacks a  
8 procedural due process constitutional challenge to the Commission’s investigatory procedures.  
9 Furthermore, the Nevada Supreme Court has de novo authority over the Commission’s adjudicatory  
10 decisions, thus there is another layer of due process protection for Respondent. Moreover, Respondent  
11 has not shown the bias required by the Nevada Supreme Court in *Davis, Mosley, and Jones* to support  
12 her assertion of a denial of due process.

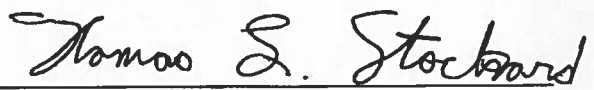
13 Respondent’s Motion to Dismiss the Complaint is therefore denied.

14 The Honorable Thomas L. Stockard is authorized to sign this Order on behalf of the full  
15 Commission.

16 IT IS SO ORDERED.

17 DATED this 25<sup>th</sup> day of May, 2018.

18 STATE OF NEVADA  
19 COMMISSION ON JUDICIAL DISCIPLINE

20   
21 Thomas L. Stockard  
22 Thomas L. Stockard, Presiding Officer

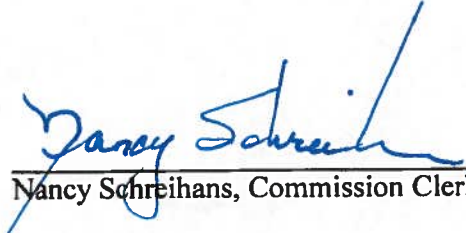
**CERTIFICATE OF SERVICE**

1 I hereby certify on this 25<sup>th</sup> day of May, 2018, I transmitted a copy of the foregoing ORDER  
2 DENYING MOTION TO DISMISS COMPLAINT, via email and by placing said document in the  
3 U.S. Mail, postage prepaid, addressed to:

4 William B. Terry, Esq.  
5 William B. Terry, Chartered Attorney at Law  
6 530 South Seventh Street  
7 Las Vegas, NV 89101-6011  
8 Info@WilliamTerryLaw.com  
9 Counsel for Respondent

10 Thomas C. Bradley, Esq.  
11 Sinai, Schroder, Mooney, Boetsch, Bradley & Pace  
12 448 Hill Street  
13 Reno, NV 89501  
14 Tom@TomBradleyLaw.com  
15 Prosecuting Officer

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
Nancy Schreihans, Commission Clerk