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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

In the Matter of)
)
THE HONORABLE CHARLES WELLER,) CASE NO. 2017-025-P
District Court Judge, Second Judicial District)
Court, Family Division, County of Washoe,)
State of Nevada,)
Respondent.)

ORDER DENYING MOTION FOR DISCOVERY

Currently before the Commission on Judicial Discipline (“Commission”) is a Motion for Discovery (“Motion”), which was filed by counsel to the Honorable Charles “Chuck” Weller, Second Judicial District Court for Washoe County, Nevada (“Respondent”) on June 29, 2017. Opposition to Respondent’s Motion was filed by the Prosecuting Officer to the Commission (“Prosecuting Officer”) on July 9, 2017. The Reply to the Prosecuting Officer’s Opposition was filed by counsel for Respondent on July 11, 2018.

STATEMENT OF FACTS

The underlying complaints allege that Respondent, a Family Court Judge in Washoe County, Nevada, acted in violation of the Judicial Canons in two separate cases.¹ In both cases, such actions involved Respondent’s comments at a February 1, 2017 meeting of the Washoe County Domestic Violence Task Force (“Task Force”). The Formal Statement of Charges (“FSOC”) states that Respondent admitted to making a comment to the effect: “Women should or may be concerned about cuts to the Violence Against Women Act (“VAWA”) as it will put women back in their place.” A Task Force member stated to the effect: “Are you saying that we need to be in a place?” Respondent replied to the effect: “Yes, the kitchen and the bedroom.” (Hereinafter collectively referred to as “the comments”).

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¹ The cases were consolidated for the purposes of the hearing.

1 **I. Motion**

2 On June 29, 2018, Respondent filed his Motion seeking discovery. Respondent alleges that
3 Proposed Interrogatory Nos. 1 through 4 are intended to narrow the issues for trial; Proposed
4 Interrogatory Nos. 5 and 6 are intended to ensure that Respondent is aware of all materials generated in
5 this matter; and Proposed Interrogatory Nos. 7 through 9 are intended to determine if Respondent has
6 been afforded due process by the Commission. Respondent's Proposed Requests for Production are as
7 follows: Proposed Request for Production No. 1 is for Respondent's prior disciplinary history; Proposed
8 Request for Production Nos. 2 through 5 are for all materials generated in this matter; Proposed Request
9 for Production No. 6 seeks all information to determine if Respondent was afforded due process; and
10 Proposed Request for Production Nos. 7 and 8 seek privileged information. Respondent argues that the
11 Commission's privileged documents pursuant to Commission Procedural Rule 4 violate Nevada law,
12 while acknowledging that NRS 1.4695 permits the Commission to "establish the status of particular
13 communications related to a disciplinary proceeding as privileged or non-privileged." Respondent
14 further argues that only NRS Chapter 49 can establish a privilege and that the Commission is seeking to
15 shield its operations from judicial review.

16 Respondent acknowledges that certain information is defined by NRS 1.425 to 1.4695 as
17 "confidential." Respondent notes that the confidential information includes: "the existence of a
18 proceeding of the Commission ... until the Commission makes a determination pursuant to NRS 1.467
19 and the special counsel files a formal statement of charges" [NRS 1.4683(1)]; "all information and
20 materials, written or oral, received or developed by the Commission, its staff or any independent
21 contractors retained by the Commission in the course of its work and relating to the alleged misconduct
22 or incapacity of a judge" pursuant to NRS 1.4683(4); and, the minutes of the Commission's deliberative
23 sessions pursuant to NRS 1.4687(3). He further notes that confidential information may be made
24 available pursuant to court order or to those directly involved in the matter to the extent necessary for a
25 proper investigation and disposition of the complaint. NRS 1.4683(10)(c) and (2)(a).

26 Respondent also argues that the Commission cannot create a privilege, as only NRS Chapter 49
27 contains Nevada's privileges, and that such privileges are narrowly construed. *Ashokan v. State Dep't*
28 *of Ins.*, 109 Nev. 662, 856 P. 2d 244 (1990). Moreover, he argues that Commission Procedural Rule 4

1 is in direct conflict with NRS 1.4683(10) which provides that confidential information may be released
2 pursuant to a court order. Respondent further argues that the Commission conflated the concepts of
3 “confidential” and “privileged” pertaining to NRS 1.465, wherein a determination by the Commission
4 must be recorded in the minutes, but according to Commission Procedural Rule 4, the minutes are
5 privileged. Respondent further notes that there should be no privileged communications between the
6 Commission and the Prosecuting Officer. Respondent states that his discovery requests should be
7 granted.

8 **II. Opposition**

9 The Prosecuting Officer in her Opposition states that the Motion is not timely and is brought for
10 the purposes of delay. She emphasizes that Respondent has had seven (7) months since the filing of the
11 FSOC to request additional discovery for a hearing that is set for August 30-31. Moreover, the
12 Prosecuting Officer argues that the Commission has provided Respondent with all of the documents
13 provided to the Prosecuting Officer; and on May 10, 2018, pursuant to Commission Procedural Rule
14 19(1)(A), the parties exchanged discovery, and that pursuant to NRCP 33(a) and (b), she is objecting to
15 the proposed discovery.

16 The Prosecuting Officer states that the Nevada Rules of Civil Procedure (“NRCP”) apply to the
17 discovery requests. She argues that the discovery requests are overly broad, indefinite as to time frame
18 and without a reasonable limitation in scope. The Prosecuting Officer cites to *Schlatter v. Eighth*
19 *Judicial Dist. Ct.*, 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977) which held: “The scope of discovery
20 in civil actions is limited to matter, not privileged, ‘which is relevant to the subject matter involved in
21 the pending action,’ NRCP 26(b)(1).” Moreover, she reiterates that the Interrogatories ask for: “the
22 source of any statement and set forth a quotation of any statement”; “every prior interaction with Judge
23 Weller”; “why statements ...in the Determination...are different from statements ... in the Formal
24 Statement of Charges”; “every person with whom the Commission’s investigator(s) had contact”; “each
25 person for whom a recording was made by the Commission investigator(s)”; “every record of the
26 Commission relating to the disciplinary action”; “any authority which describes the rule making
27 procedure which the Commission is required to follow” and “each step the Commission followed in

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1 developing and adopting its current procedural rules.” The Prosecuting Officer argues that Respondent
2 is on a “fishing trip” with these discovery requests.

3 The Prosecuting Officer further notes that the Proposed Interrogatories violate the rules and
4 statutes governing proceedings before the Commission. She states that Proposed Interrogatory No. 5
5 seeks all persons with whom the Commission investigator had contact; No. 6 seeks identification of all
6 persons for whom the Commission investigator recorded and No. 7 seeks privileged work product of the
7 Commission’s counsel. The Prosecuting Officer argues that pursuant to Commission Procedural Rule
8 4(4) and NRS 1.4683(1) and (4), Proposed Interrogatory Nos. 5-7 seek information that is privileged
9 and confidential as “All communications between General Counsel or Executive Director and
10 Commission staff, prosecuting officers, or Commission Investigators” is privileged. Further, she avers
11 Proposed Interrogatory No. 7 seeks attorney-client privileged information. The Prosecuting Officer also
12 opines that Proposed Interrogatory No. 4 which seeks an explanation as to why the Commission’s
13 Determination and the FSOC are different violates NRS 1.4683 which states that all proceedings of the
14 Commission are confidential until the FSOC is filed.

15 The Prosecuting Officer further argues that the Proposed Requests for Production must be
16 denied. She avers that Proposed Request for Production No. 1 regarding “Judge Weller’s disciplinary
17 record” lacks the necessary specificity and is over-broad, making it impossible to answer. She also
18 argues that Proposed Request Nos. 2 and 3 violate Procedural Rule 4(4) and NRS 1.4683(1) because
19 they ask for the same type of investigatory materials that the Respondent requested in Proposed
20 Interrogatory Nos. 5 and 6. Moreover, she opines that Proposed Request Nos. 4, 5, 6, 7 and 8 are
21 prohibited by the limitations on irrelevant, over-broad, non-specific and burdensome discovery. *See,*
22 *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998) and NRC 26(b)(1). She
23 further argues that Proposed Request No. 7 which asks for Commission meeting minutes and Proposed
24 Request No. 8 which seeks all communications between the Executive Director, Commission staff,
25 investigators, prosecuting officer and the Commission regarding this case are all privileged
26 communications pursuant to Commission Procedural Rule 4(2) and NRS 1.4683(1) regarding
27 confidentiality of proceedings prior to FSOC being filed.

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1 **III. Reply**

2 The Respondent in his Reply argues that the Motion is timely. Respondent notes that the NRCP
3 apply in this matter, thus NRCP 26(b)(1) provides that parties may obtain discovery regarding any
4 matter that is not privileged. Respondent points out that after the pre-hearing order issued on April 10,
5 2018, the parties timely exchanged witness lists and documents on May 10, 2018, but that the
6 disclosures left Respondent with unanswered questions.

7 Respondent states that his unanswered questions will be resolved through discovery.
8 Respondent notes that the Complainants were not at the meeting in question, the investigator found the
9 complaints meritless, the FSOC differs from the Commission's determination and the FSOC states the
10 comments made were "to the effect of," therefore, Respondent is seeking discovery regarding the same.
11 Similarly, Respondent argues that he is not on a fishing expedition as he needs to know if there were
12 additional statements or information provided to the Commission. In his Reply, Respondent withdraws
13 Proposed Request for Production Nos. 6, 8 and 9 as overbroad.

14 Respondent further argues that he is not seeking privileged material because Commission
15 Procedural Rule 4 is contrary to Nevada law. Respondent notes that pursuant to NRS 1.4683(1)
16 proceedings are confidential until a FSOC is filed. Moreover, he points out that all Commission meeting
17 minutes and all information and materials, written or oral, received by the Commission or its staff or
18 independent contractors are confidential. NRS 1.4683(3) and (4). Furthermore, he emphasizes that
19 confidential information may be released pursuant to a court order or as necessary for a proper
20 investigation of the complaint. NRS 1.486(10)(c) and NRS 1.48683(2)(a). Respondent further argues
21 that Commission Procedural Rule 4 converts statutorily defined confidential information into privileged
22 information. Respondent notes there is a difference as not all confidential communications are
23 privileged. *Sloan v. State Bar of Nevada*, 102 Nev. 436, 441-443 (1986).

24 Respondent acknowledges that NRS 1.4695 permits the Commission to adopt rules regarding
25 the status of communications related to a disciplinary proceeding as privileged or non-privileged.
26 However, Respondent argues that NRS Chapter 49 limits privileges to those created by statute.
27 Therefore, he argues Procedural Rule 4 impermissibly seeks to shield the Commission from judicial

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1 review and is in conflict with NRS 1.4683(10) which provides that confidential information may be
2 released pursuant to a court order.

3 Respondent further argues lack of conformity in that NRS 1.4656 states that a determination
4 must be made by the Commission prior to the filing of a FSOC, but that Commission Procedural Rule 4
5 states that the minutes are privileged. Furthermore, he notes that Commission Procedural Rule 4
6 identifies ex parte communication between the Commission and the Prosecuting Officer as privileged;
7 however, he opines that no such communications should exist.

8 ISSUES

9 Whether the Respondent's leave for discovery should be granted by the Commission.

10 STANDARD OF LAW

11 Nevada Revised Statutes

12 **NRS 48.025. Relevant evidence generally admissible; irrelevant evidence 13 inadmissible**

- 14 1. All relevant evidence is admissible, except:
15 ...
- 16 2. Evidence which is not relevant is not admissible.

17 NRS § 48.025

18 **NRS 48.035. Exclusion of relevant evidence on grounds of prejudice, confusion or 19 waste of time**

20 1. Although relevant, evidence is not admissible if its probative value is substantially
21 outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading
22 the jury.

23 ...
24 NRS § 48.035

25 **NRS 1.4683. Confidentiality of existence of proceeding and information and 26 materials related to proceeding; issuance of explanatory statements when name of 27 judge subject of complaint is made public; exceptions to confidentiality**

28 1. Except as otherwise provided in this section and NRS 1.4675 and 239.0115, the
existence of a proceeding of the Commission must remain confidential until the
Commission makes a determination pursuant to NRS 1.467 and the special counsel files a
formal statement of charges.

2. Except as otherwise provided in this section, before the filing of a formal statement of
charges, a present or former member of the Commission, a present or former member of
the staff of the Commission or a present or former independent contractor retained by the

1 Commission shall not disclose information contained in a complaint or any other
information relating to the allegations of misconduct or incapacity. Such persons:

2 (a) May disclose such information to persons directly involved in the matter to the extent
necessary for a proper investigation and disposition of the complaint; and

3 (b) Shall conduct themselves in a manner that maintains the confidentiality of the
disciplinary proceeding.

4 3. Nothing in this section prohibits a person who files a complaint with the Commission
pursuant to NRS 1.4655, a judge against whom such a complaint is made or a witness
5 from disclosing at any time the existence or substance of a complaint, investigation or
proceeding. The immunity provided by NRS 1.465 does not apply to such a disclosure.

6 4. The confidentiality required pursuant to subsection 1 also applies to all information and
materials, written or oral, received or developed by the Commission, its staff or any
7 independent contractors retained by the Commission in the course of its work and relating
to the alleged misconduct or incapacity of a judge.

8
9 NRS § 1.4683

10 **NRS 1.4687 Public access to formal statement of charges and certain other
records; open hearings; private deliberative sessions; certain records privileged.**

11 1. Except as otherwise provided in subsection 2:

12 (a) Upon the filing of a formal statement of charges with the Commission by the
special counsel, the statement and other documents later formally filed with the
Commission must be made accessible to the public, and hearings must be open.

13 (b) If a formal statement of charges has not been filed with the Commission and the
Commission holds a hearing to suspend a judge pursuant to NRS 1.4675, any transcript of
14 the hearing and any documents offered as evidence at the hearing must be made
accessible to the public.

15 (c) If the Commission holds a hearing to order a justice of the peace or municipal
judge to forfeit his or her office pursuant to NRS 1.4654, any transcript of the hearing and
16 any documents offered as evidence at the hearing must be made accessible to the public.

17 2. Regardless of whether any formal statement of charges has been filed with the
Commission, medical records and any other documents or exhibits offered as evidence
18 which are privileged pursuant to chapter 49 of NRS must not be made accessible to the
public.

19 3. The Commission's deliberative sessions must remain private and any minutes of
such sessions must remain confidential.

20 4. The filing of a formal statement of charges does not justify the Commission, its
counsel, staff or independent contractors retained by the Commission in making public
21 any correspondence, notes, work papers, interview reports or other evidentiary matter,
except at the formal hearing or with explicit consent of the judge named in the complaint.

22 NRS § 1.4689

23 **NRS 1.4695. Rules to be adopted to establish privileged status of certain
communications**

24 The Commission shall adopt rules to establish the status of particular communications
25 related to a disciplinary proceeding as privileged or nonprivileged.

26 NRS § 1.4695

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Commission Procedural Rules

Commission Procedural Rule 4 - Privileged Communications.

The following are privileged communications and shall not be divulged to any person or court.

- 1. All communications between the Commission and its staff.
- 2. All deliberations of the Commission, including all meeting minutes of the Commission.
- 3. All communications either oral or written between General counsel and/or Executive Director and members of the Commission.
- 4. All communications between General Counsel or Executive Director and Commission staff, prosecuting officers, or Commission investigators.

Commission Procedural Rule 12 - Determination to Require an Answer

...

4. In preparing to respond to a determination of Reasonable Probability, the Respondent has the right to inspect all records of the Commission relating to the disciplinary action against the Respondent and to be fully advised as to the contents of such records. Privileged communications and work product of the Commission's counsel are not subject to inspection. To the extent practicable, the Respondent shall be supplied with all records of the Commission subject to inspection along with service of the complaint.

Commission Procedural Rule 19 - Discovery

- 1. A. Within ten (10) days after service of the notice of the Commission's Prehearing Order, the Commission and the Respondent shall exchange the following material and information within their possession or control to the extent not previously provided:
 - (a) The names and addresses of persons who have knowledge of facts relating to the complaint against the Respondent;
 - (b) Any written or recorded statements made by these persons and the substance of any oral statements claimed to have been made by the Respondent;
 - (c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations; and
 - (d) Any books, papers, documents, photographs or tangible objects pertaining to the case.
- B. Additional discovery requests shall only be permitted with leave of the Commission.
- 2. The Commission's and Respondent's obligations under this rule extends to material and information in the possession or control of any persons who, on behalf of the Commission or the Respondent, have participated in any investigation of the charges.
- 3. If, subsequent to complying with these discovery provisions, the Commission or Respondent discovers additional material or information which is subject to disclosure, the additional material or information must be promptly disclosed.
- 4. True work product of counsel is not subject to discovery.

Commission Procedural Rule 24 - Rules of Evidence and Due Process

The rules of evidence applicable to civil proceedings apply at the hearing, and the Respondent shall be accorded due process of law.

Commission Procedural Rule 26 - Cross-Examination, Evidence, and Time Restrictions

The Commission and the Respondent are each entitled to present evidence and produce and cross-examine witnesses, subject to the rules of evidence applicable to civil proceedings....

1 **DISCUSSION**

2 Respondent's discovery requests seek information already provided to Respondent, information
3 he may obtain from witnesses himself, privileged information, confidential records, and irrelevant
4 materials related to the Commission's Procedural Rules.² Moreover, it is questionable as to whether the
5 discovery requests were made in good faith. NRCPC 26(g)(2)(b). Each request will be addressed
6 separately below.

7 Proposed Interrogatory No. 1 states: "Please identify the source of any statement and set forth a
8 quotation of any statement made by Ms. Utzig which supports the assertion that Judge Weller asked her
9 'to explain and clarify his comments to others on his behalf' as alleged in Count Three of the Formal
10 Statement of Charges." The Commission notes that Respondent has been provided with the Complaints
11 and investigation report, interview transcriptions and audio of the witness interviews, as well as non-
12 privileged information, pursuant to Commission Procedural Rule 12(4). Furthermore, the Motion,
13 Opposition and Reply note that both the Prosecuting Officer and Respondent have exchanged discovery
14 pursuant to Commission Procedural Rule 19. The Prosecuting Officer has provided Respondent with all
15 discovery that she has in her possession that will be used at trial. Commission Procedural Rule 19. If
16 Respondent seeks more information regarding Ms. Utzig, Respondent may question the witness prior to
17 trial, depose the witness with Commission approval,³ and/or question her at the hearing regarding the
18 same. Therefore, this request is denied pursuant to NRCPC 26(b)(2) as the information can be obtained
19 from Ms. Utzig.

20 The same analysis applies to Proposed Interrogatory Nos. 2 and 3. Proposed Interrogatory No. 2
21 states: "Please identify the source of any statement and set forth a quotation of any statement made by
22 Judge Weller which supports the allegation that he admitted making comments to the effect 'Women
23 should or may be concerned about cuts to the Violence Against Women Act ("VAWA") as it will put
24 women back in their place' and 'Yes, the kitchen and the bedroom' as alleged under the heading
25 'Factual Allegations,' Paragraph A, of the Formal Statement of Charges." Proposed Interrogatory No. 3

26
27 ² Discovery requests relating to "due process" are currently pending review before the Nevada Supreme Court on
Respondent's Writ Petition, Case No. 76260, filed on July 3, 2018.

28 ³ Respondent must file a motion seeking permission to depose any witness in this matter. Commission Procedural Rule
19(1)(B).

1 states: "The [F]ormal Statement of Charges, at page 4, paragraph D, states 'Ms. Olsen, Ms. Chavis, and
2 Ms. Utzig all thought the comments reflected Judge Weller's view of women based upon their prior
3 interactions with Judge Weller.' Please describe every 'prior interaction with Judge Weller' which will
4 be the subject of testimony or other evidence at hearing." Respondent has been provided with all
5 information the Commission obtained through the investigation and the Prosecuting Officer has
6 disclosed any further discovery as provided through the Prehearing Order, and therefore these requests
7 are denied pursuant to NRCP 26(b)(2).

8 Proposed Interrogatory No. 4 states: "Please explain why the statements attributed to Judge
9 Weller in the 'Determination by Nevada Commission on Judicial Discipline for Response to
10 Complaints Regarding Case numbers 2017-025 and 2017-029' dated July 14, 2017, are different from
11 the statements attributed to Judge Weller in the Formal Statement of Charges." The Prosecuting Officer
12 is an independent prosecuting officer and her analysis as to formulating the FSOC is attorney work
13 product and not subject to discovery. The Nevada Supreme Court stated:

14 The work-product privilege "protects an attorney's mental impressions, conclusions, or
15 legal theories concerning the litigation, as reflected in memoranda, correspondence,
16 interviews, briefs, or in other tangible and intangible ways." *Wardleigh*, 111 Nev. at 357,
17 891 P.2d at 1188; *see also* NRCP 26(b)(3). Rather than protecting the confidential
18 relationship between attorney and client, the work-product privilege exists "to promote
19 the adversary system by safeguarding the fruits of an attorney's trial preparations from the
20 discovery attempts of the opponent." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285,
1299 (D.C. Cir. 1980) (emphasis omitted).

19 *Cotter v. Eighth Judicial Dist. Court in & for County of Clark*, 134 Nev. Adv. Op. 32, 416 P.3d 228,
20 232 (2018).

21 The Prosecuting Officer used the information that was provided to Respondent to draft the
22 FSOC. At the hearing, Respondent can delve into any discrepancies regarding the statements made at
23 the meeting. Therefore, this request is denied pursuant to NRCP 26(b)(3), Commission Procedural
24 Rules 4(4) and 12(4), and NRS 1.4683(1) and (4).

25 Proposed Interrogatory Nos. 5 and 6 seek to identify each person with whom the Commission's
26 investigator had contact during the investigation and each person who was recorded by the investigator.
27 Respondent was provided with all recordings and investigative reports, which is the relevant
28 information pertinent to trial. Any other incidental person the investigator had contact with, such as a

1 receptionist or secretary, is not relevant, and was not included in the report to the Commission. This
2 information is irrelevant and even if deemed relevant, would create confusion. NRS 48.025 and NRS
3 48.035. Furthermore, such information is confidential pursuant to NRS 1.4683(1) and (4) and privileged
4 pursuant to Commission Procedural Rule 4(4). Moreover, Respondent has been provided with all
5 information that was received from the investigator. There is no other information that the Commission
6 can produce regarding the request. Therefore, Proposed Interrogatory Nos. 5 and 6 are denied pursuant
7 to NRS 48.025, NRS 48.035, NRS 1.4683(1) and (4) and Commission Procedural Rules 4(4) and 12(4).

8 Proposed Interrogatory No. 7 states: "Please describe every record of the Commission relating to
9 the disciplinary action against the Respondent, including privileged communications and work product
10 of the Commission's counsel which are not subject to inspection, and fully describe the contents of such
11 records." This information sought is privileged and not relevant. NRS 1.4683(1) and (4) and NRS
12 48.025. Moreover, this request harkens to Respondent's Writ against the Commission, and as such is
13 best left to the writ or appellate process.⁴ This is also not a legitimate discovery request pertaining to
14 Respondent's comment. The request appears to be made in violation of NRS 26(g)(2)(b) in that it is for
15 an improper purpose, such as to harass, obscure, cause unnecessary delay and increase litigation costs.
16 The request is denied pursuant to NRS 48.025, NRS 1.4683 (1) and (4), and Commission Procedural
17 Rules 4(4) and 12(4).⁵

18 Respondent's Proposed Request for Production No. 1 seeks Judge Weller's prior disciplinary
19 record. All discipline, with the exception of any deferred discipline, is public record pursuant to statute.
20 Such information is within Respondent's knowledge and is a public record. If Respondent is seeking all
21 complaints and letters of caution issued pertaining to Respondent, those are confidential. NRS 1.4683
22 (1) and (4). Furthermore, within said records, there is privileged information pursuant to Commission
23 Procedural Rule 4(4). However, if Respondent wishes to waive such confidentiality, the prior
24 complaints and letters of caution, if any, will be produced and become part of the public record in this
25 matter. However, at this point, Proposed Request for Production No. 1 is denied based upon the fact that

26 _____
27 ⁴ Nevada Supreme Court Case No. 76260.

28 ⁵ Respondent's Proposed Interrogatory Nos. 8 and 9 were withdrawn as overbroad by Respondent.

1 Judge Weller has within his knowledge his prior disciplinary record, and NRS 1.4683(1) and (4) and
2 Commission Procedural Rule 4(4).

3 Proposed Request for Production No. 2 seeks each audio recording made by the Commission's
4 investigator(s) in relation to Case Nos. 2017-025 and/or 2017-029. The recordings were provided to
5 Respondent, along with the investigation report and interview transcripts. Therefore, this request is
6 denied as moot.

7 Proposed Request for Production No. 3 seeks all notes prepared, utilized or considered by the
8 Commission's investigator(s) in drafting or making final the "Investigation Report" in relation to Case
9 Nos. 2017-025 and/or 2017-029, dated July 4, 2017. All documents within the Commission's
10 possession regarding the investigation report have been produced to Respondent, which were the
11 investigation report, witness interview transcripts and audio recordings. All other documents requested
12 in Proposed Request for Production No. 3 in relation to the investigation are confidential pursuant to
13 NRS 1.4683 (1) and (4) and privileged pursuant to Commission Procedural Rule 4(4). Therefore, this
14 request is denied pursuant NRS 1.4683(1) and (4) and Commission Procedural Rule 4(4).

15 Proposed Request for Production No. 4 seeks every written or transcribed statement made by
16 any person who attended the February 1, 2017 meeting of the Washoe County Domestic Violence Task
17 Force. The Commission has provided Respondent with the investigative report, witness interview
18 transcripts and audio recordings. Respondent is free to seek any such information, if it exists, and
19 disclose the same to the Prosecuting Officer and she is free to do the same pursuant to NRCP. This
20 request is denied pursuant to NRCP 26(b)(2).

21 Request for Production No. 5 seeks every written or transcribed statement made by any person
22 in relation to Case Nos. 2017-025 and/or 2017-029, the conduct of Respondent at the February 1, 2017
23 meeting, or any other conduct of the Respondent which will be referenced at the hearing in this case.
24 Any such evidence is already subject to disclosure by the Prosecuting Officer pursuant to the NRCP, the
25 Commission's Prehearing Order and Commission Procedural Rules. Respondent is free to seek

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1 any such information, if it exists, and disclose the same to the Prosecuting Officer and she is free to do
2 the same. This request is denied pursuant to NRCP26(b)(2).⁶

3 Proposed Request for Production No. 7 seeks the minutes of each meeting of the Commission at
4 which any aspect of Case Nos. 2017-025 and/or 2017-029 was mentioned or discussed. Pursuant to
5 NRS 1.4687(3), deliberative sessions and minutes are confidential. Furthermore, such discussions are
6 privileged pursuant to Commission Procedural Rule 4(2). Moreover, such deliberations are not relevant
7 to the FSOC and Respondent's comments. NRS 48.025. This request is denied pursuant to NRS
8 1.4867(3), Commission Procedural Rule 4(2), and NRS 48.025.

9 Proposed Request for Production No. 8 seeks all written communications between or among the
10 Executive Director, Commission staff, prosecuting officers, Commission investigators and/or members
11 of the Commission in which any aspect of Case Nos. 2017-025 and/or 2017-029 was mentioned or
12 discussed. This information is privileged pursuant to Commission Procedural Rule 4(2) and 4(4),
13 confidential pursuant to NRS 1.4683(1) and (4), and therefore is denied based upon the same.

14 Respondent, through his request for discovery, argues that the confidentiality statutes and
15 privilege rules violate his due process rights. However, the statutory provisions stating that a record is
16 confidential are permitted under law, and furthermore, the deliberative process privilege applies to
17 records that are pre-decisional and deliberative. *DR Partners v. Board of County Commissioners*, 116
18 Nev. 616, 623, 6 P.3d 465, 469 (2000). Moreover, the Nevada Supreme Court has held that when the
19 requested record is not explicitly made confidential by a statute, the balancing test set forth in *Donrey of*
20 *Nevada v. Bradshaw*, 106 Nev. 630, 798 P. 2d 144 (1980), must be employed, explaining that
21 “[i]n *Bradshaw*, this court, at least by implication, recognized that any limitation on the general
22 disclosure requirements of NRS 239.010 must be based upon a balancing or ‘weighing’ of the interests
23 of non-disclosure against the general policy in favor of open government.” *Id.* at 622, 6 P.3d at 468.
24 However, in this instance, the statutes clearly denote the confidentiality of certain records, thus no
25 balancing test is required regarding disclosure. Moreover, the records sought are part of the deliberative
26 process. Furthermore, the Procedural Rules of the Commission were originally adopted by the Supreme

27 ⁶ Proposed Request for Production No. 6 was withdrawn as overbroad.

1 Court regarding the judicial disciplinary process, pursuant to the State Constitution, and
2 require confidentiality of charges against a judge prior to the filing of a formal statement of charges.
3 Const. Art. 6, § 21, subd. 5(d); *Whitehead v. Nevada Com'n on Judicial Discipline*, 110 Nev. 874, 883-
4 84, 878 P.2d 913, 919 (1994). In addition, the general principles of attorney-client privilege apply to the
5 discovery requests regarding general counsel, staff, and investigator. Furthermore, it is unclear how the
6 requested "due process" discovery would lead to the production of admissible evidence that is relevant
7 to the FSOC. The requested "due process" discovery does not pertain to the FSOC regarding
8 Respondent's comments, and are in violation of NRCP 26(g)(2)(b).

9 Based upon the above, Respondent's Motion for Discovery is denied as Respondent's due
10 process rights are protected through the previous disclosure of the complaints, investigation report with
11 supporting documentation, and upcoming hearing. Furthermore, the requests for confidential and
12 privileged information are denied as a matter of law, and requests regarding the implementation of
13 procedural rules are irrelevant as to Respondent's statement that women belong "in the kitchen and in
14 the bedroom."

15 The Honorable Mark Denton is authorized to sign this Order on behalf of the full Commission.

16 IT IS SO ORDERED.

17 DATED this 26th day of July, 2018.

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19 STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE

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Mark Denton, Presiding Judge
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CERTIFICATE OF SERVICE

I hereby certify on this 20th day of July, 2018, I transmitted a copy of the foregoing ORDER DENYING MOTION FOR DISCOVERY, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Tarah L. Hansen, Commission Clerk