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7  
8 NEVADA COMMISSION ON JUDICIAL DISCIPLINE  
9 STATE OF NEVADA

10 In the Matter of

CASE NO. 2017-119-P

11 THE HONORABLE MARTIN HASTINGS,  
Las Vegas Municipal Court,  
12 County of Clark, State of Nevada,


13 Respondent.

14 MOTION TO DISMISS PURSUANT TO RULES OF CIVIL PROCEDURE RULE 12(b)  
15 AND MOTION FOR A DEFINITE STATEMENT PURSUANT TO RULES OF CIVIL  
16 PROCEDURE RULE 12(e)

17 COMES NOW the Respondent, the Honorable Martin Hastings, Las Vegas Municipal Court  
18 Judge, County of Clark, State of Nevada and moves to dismiss the case pursuant to Rule 12(b) of  
19 the Nevada Rules of Civil Procedure and further moves for a request for more definite statement  
20 under Rule 12(e) of the Nevada Rules of Civil Procedure.

21 Said motion is made and based upon the attached statutory authority and points and  
22 authorities.

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**STATUTORY AUTHORITY**

Pursuant to Rule 12 of the Nevada Rules of Civil Procedure a motion to dismiss is permissible when the Respondent alleges a “failure to state a claim upon which relief can be granted...” Under subsection (b) prior to the time of filing an answer to the complaint in the instant case, the Respondent may move for a dismissal for a failure to state a claim upon which relief can be granted.

Additionally, under RCP 12(e) the Respondent may move for a more definite statement. That statute provides in pertinent part as follows:

If a pleading to which a responsive pleading is permitted, is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point on the defects complaint of and the details desired...

**THE FORMAL STATEMENT OF CHARGES IN THE INSTANT CASE**

A copy of the Formal Statement of Charges filed against the Honorable Judge Hastings is attached hereto and incorporated by reference herein as Exhibit “1”. It is divided into subheadings including “Factual Allegations” and thereafter the “Charges of Misconduct”. Under the Charges of Misconduct there are in fact two counts that are set forth. It is the Charges of Misconduct and the individual counts that Respondent objects to and maintains that they fail to state a claim upon which relief can be granted and further that a motion for more definite statement is exceedingly applicable herein.

**ARGUMENT**

I. THE CHARGING DOCUMENT FAILS TO SET FORTH SUFFICIENT ACTS AND FACTS WITHIN THE INDIVIDUAL COUNTS TO PROVIDE SUFFICIENT NOTICE TO JUDGE HASTINGS OF THAT WHICH HE SHOULD BE PREPARED TO DEFEND AGAINST.

In filing the instant motion it is recognized that the Special Prosecutor has set forth factual allegations at pages 1 through 3 of the charging document. These facts may stand by themselves and are merely allegations. It is the charges of misconduct and the individual counts which the instant motion is directed to. Under the charges of misconduct, in conclusory terms the Special Prosecutor has alleged certain rule violations including but not limited to Judicial Canon 1, Rule 1.1 and Rule

1 1.2, Judicial Canon 2, Rule 2.1 and 2.5(B). It further alleges a violation of Rule 2.7. Thereafter the  
2 individual counts are set forth and in Count 1 it is alleged "Respondent has failed to perform his duty  
3 to act as a search warrant judge on a regular rotation or an on-call basis in violation of..." Thereafter,  
4 five individual rules are set forth without any acts and facts alleged. Under Count 2, again without  
5 asserting any facts applicable to rule violations, the allegation is that Judge Hastings violated Rules  
6 1.1, 1.2 and 2.5(B) again without any facts being set forth in the charging document to support these  
7 allegations. The specific question which the Respondent asks is how did he or, more specifically,  
8 how is the Special Prosecutor asserting that he violated, for example, Rule 1.1 in both Count 1 and  
9 2. The way that the charging document currently reads it is in conclusory language without setting  
10 forth how Judge Hastings supposedly violated any of the rules. As a result, the Special Prosecutor  
11 is free to change the theory of his prosecution as the case proceeds. As an example, in Count 1 it is  
12 alleged that he violated Rule 2.7 dealing with hearing and deciding matters assigned to the Judge.  
13 Is it the Special Prosecutor's position that Judge Hastings failed to do this during what are commonly  
14 referred to as the normal business hours of roughly 8:00 a.m. to 5:00 p.m. for the dates Monday  
15 through Thursday when Municipal Court functions or is the Special Prosecutor's allegation that  
16 Judge Hastings failed to do these acts and thus violated the Rule during times after normal hours in  
17 court. The mere fact that the factual allegations or the Special Prosecutor's "factual allegations" sets  
18 forth facts does not explain specifically how it is alleged that Judge Hastings specifically violated  
19 any of these rules. As a result, it is the position of the Respondent that the charging document is  
20 defective in that it fails to state a claim upon which relief can be granted and further that a motion  
21 for definite statement is in fact necessary. Under Rule 12(e) the Respondent is obligated to point out  
22 the defects complained of and the details desired. Based upon the instant document it is believed  
23 that the Respondent has done so. In effect the Special Prosecutor has failed to set forth specific acts  
24 and facts to demonstrate how specifically, based upon the charging document that currently exists,  
25 Judge Hastings violated any of the rules. The request of the Respondent simply is that the Special  
26 Prosecutor commit himself to a specific allegation as to each count as how Judge Hastings is alleged  
27 to have violated any of the rules which are set forth in those individual counts. This would  
28 potentially cure the defect.

1 Nevada case law supports the position of the Respondent that there must be essential  
2 allegations and specific facts set forth and that if there are not then this would support a motion to  
3 dismiss. See *Nelson v. Sierra Construction Corporation*, 77 Nev. 334, 364 P.2d 402 (1961). While  
4 it is generally recognized in reviewing a motion to dismiss a court or in this case the Commission  
5 is bound to accept all factual allegations in the complaint as true, what is missing in the instant case  
6 is that although there are factual allegations they are not part of the individual counts and they do not  
7 specifically allege how Judge Hastings violated any of these individual rules.


8 It has further been recognized that if counsel for Respondent Hastings does not bring the  
9 instant motion the objection would be considered waived. See *Union Pacific Railroad v. Adams*,  
10 77 Nev. 282, 363 P.2d 450 (1961).

11 **CONCLUSION**

12 For the above-indicated reasons, the motion to dismiss should be granted or alternatively the  
13 motion for a more specific statement should be granted.

14 DATED this 9th day of August, 2018.

15 WILLIAM B. TERRY, CHARTERED

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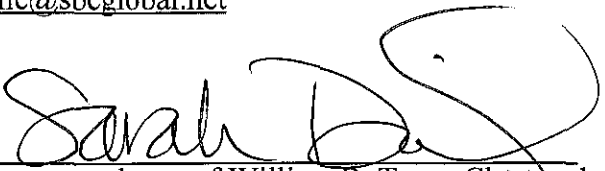
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**CERTIFICATE OF SERVICE**

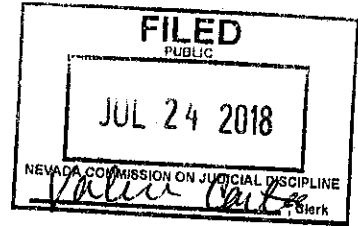
I hereby certify that on the 9th day of August, 2018, I, as an employee of WILLIAM B. TERRY, CHARTERED, that a true and correct copy of this **MOTION TO DISMISS PURSUANT TO RULES OF CIVIL PROCEDURE RULE 12(b) AND MOTION FOR A DEFINITE STATEMENT PURSUANT TO RULES OF CIVIL PROCEDURE RULE 12(e)** was emailed to the following:

Paul C. Deyhle  
Executive Director  
Nevada Commission on Judicial Discipline  
[pdeyhle@judicial.state.nv.us](mailto:pdeyhle@judicial.state.nv.us)

Brian Hutchins, Esq.  
BH Consulting, LLC  
Special Prosecutor  
[bhconsultingllc@sbcglobal.net](mailto:bhconsultingllc@sbcglobal.net)

  
As an employee of William B. Terry, Chartered

**Exhibit “1”**



1 Brian Hutchins, Esq.  
2 Bar No. 258  
3 BH Consulting, LLC  
4 P.O. Box 2366  
5 Carson City, NV 89702  
6 Telephone: (775) 883-8555  
7 bhconsultingllc@sbcglobal.net  
8 Prosecuting Officer for the Nevada  
9 Commission on Judicial Discipline

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

9 In the Matter of )  
10 )  
11 THE HONORABLE MARTIN HASTINGS, )  
12 Las Vegas Municipal Court, )  
13 County of Clark, State of Nevada )  
14 )  
15 Respondent. )

CASE NO. 2017-119-P

15 **FORMAL STATEMENT OF CHARGES**

16 Brian Hutchins appears now as Prosecuting Officer for the Nevada Commission on Judicial  
17 Discipline (“Commission” or “NCJD”), which is established under Article 6, section 21 of the Nevada  
18 Constitution, and files this Formal Statement of Charges in the name of and by the authority of the  
19 Commission as found in sections 1.425 through 1.4695 of the Nevada Revised Statutes. Respondent,  
20 the Honorable Martin Hastings, Judge of the Las Vegas Municipal Court, County of Clark, State of  
21 Nevada (“Respondent”), is informed that the following acts were committed by Respondent and warrant  
22 disciplinary action by the Commission under the Revised Nevada Code of Judicial Conduct (“the  
23 Code”).  
24

25 **FACTUAL ALLEGATIONS**

26 Respondent knowingly and in his capacity as a municipal court judge in and for the Las Vegas  
27 Municipal Court, in Clark County, State of Nevada, engaged in the following acts, or the following acts  
28

1 occurred relevant to these charges, or both:

2 A. As a result of a United States Supreme Court opinion in or about April, 2013, the Las Vegas  
3 Municipal Court implemented a telephonic search warrant process in 2014 and a business process on or  
4 about September 29, 2014 which established court staff requirements for the process. Around the same  
5 time, the judges of the Las Vegas Municipal Court, as a whole, including Respondent, made themselves  
6 available 24 hours a day, seven days a week, to respond to law enforcement officers in Las Vegas  
7 seeking a telephonic search warrant in cases primarily involving a driver suspected of driving under the  
8 influence of an illegal substance. The six judges of the Las Vegas Municipal Court, including  
9 Respondent, participated in a schedule which designated one of the judges as the "search warrant judge"  
10 who was on call at all hours for one week, with the duty rotating among the six judges every six weeks.  
11 The Las Vegas Municipal Court judges thereby had a duty to perform as a "search warrant judge."  
12 Respondent performed these duties of being available for, and reviewing, telephonic search warrant  
13 applications on his rotation until in or about March of 2015.

14  
15  
16 B. In or about August of 2015, the City of Las Vegas adopted an ordinance which essentially  
17 authorized alternate municipal court judges to perform and be compensated for handling search warrant  
18 duties. After that time and to the present, Respondent has refused to perform his duty as a search  
19 warrant judge on his rotations. Instead, since that time, Respondent has used an alternate judge every  
20 time to perform Respondent's search warrant judge duties when it was Respondent's time in the  
21 rotation.

22  
23 C. On or about August 23, 2016, and October 4, 2016, then-Chief Municipal Court Judge  
24 Cedric Kern counseled Respondent to perform his search warrant judge duties rather than use an  
25 alternate judge for the duty. Chief Judge Kern wrote a letter to Respondent on or about June 28, 2017,  
26 pointing out Respondent's use of an alternate judge for search warrant duties was excessive and  
27 indicating that this use was almost ten times the rate of the other five judges. Chief Judge Kern also  
28



1 indicated that he would have to report the matter to the Commission if the alternate judge usage  
2 continued. Respondent continued to use an alternate judge to perform the search warrant duties despite  
3 the directives of Chief Judge Kerns.

4 D. Respondent did not cooperate with the Chief Judge or the other judges, or both, regarding  
5 the handling of search warrant duties.

6 E. Respondent stated in his interview with the Commission's investigator that he will continue  
7 to use an alternate judge for his search warrant judge duties, although in his Answers to Interrogatories  
8 as to whether Respondent was willing to perform his search warrant duties if ordered by the  
9 Commission, Respondent stated that he would follow any Commission order.

10 F. Respondent's reason for using an alternate judge for his search warrant duties is based upon  
11 Respondent's inability to return to sleep after he has received a search warrant call in the middle of the  
12 night. Respondent's primary concern is about his ability to handle his daily court calendar to a high  
13 standard. Respondent stated to the Commission's investigator that, when Respondent performed his  
14 duties as the search warrant judge, he "was having problems with things in court after not getting  
15 enough sleep, starting to get short-tempered, and I was starting to miss some dates and starting to have  
16 some concerns I might be missing calls as well."

17 G. Respondent has not claimed that there was any medical reason as to why he could not  
18 perform his search warrant duties.

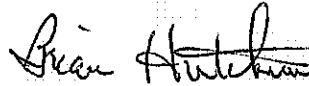
### 21 **CHARGES OF MISCONDUCT**

22 By engaging in the acts, or by failing to act, or by engaging in a combination of acts or failures  
23 to act, as alleged above, Respondent violated the Revised Nevada Code of Judicial Conduct, including  
24 Judicial Canon 1, Rule 1.1 (failing to comply with the law, including the Code of Judicial Conduct);  
25 Rule 1.2 (failing to act at all times in a manner that promotes public confidence in the independence,  
26 integrity, and impartiality of the judiciary and avoiding impropriety and the appearance of impropriety);  
27 Judicial Canon 2, Rule 2.1 (giving precedence to the duties of judicial office); Rule 2.5(B)(cooperating  
28



1 of the Honorable Martin Hastings, Case No. 2017-119-P.

2 2. I have prepared and reviewed this Formal Statement of Charges against the Honorable Martin  
3 Hastings and, pursuant to the investigation conducted in this matter and based on the contents of that  
4 investigation and following reasonable inquiry, I am informed and believe that the contents of this  
5 Formal Statement of Charges are true and accurate.

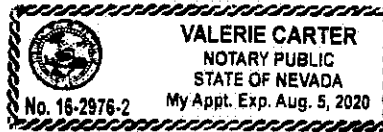
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7 Brian Hutchins, Esq.

8 Subscribed and sworn to before me, a Notary Public

9 this 24<sup>th</sup> day of July, 2018.

10  
11 By: Valerie Carter  
12 NOTARY PUBLIC



13  
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that a true and correct copy of this FORMAL STATEMENT OF CHARGES  
16 was placed in the U.S. mail, postage pre-paid, on this 24<sup>th</sup> day of July, 2018, addressed to:

17 William B. Terry, Esq.  
18 Law Offices of William B. Terry, Chartered  
19 530 South Seventh Street  
20 Las Vegas, NV 89101

21 By: Brian Hutchins  
22 Brian Hutchins, Esq.  
23 Prosecuting Officer for the Commission  
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