

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



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

7 In the Matter of)
8)
9 THE HONORABLE MARTIN HASTINGS,)
10 Las Vegas Municipal Court,)
11 County of Clark, State of Nevada)
Respondent.)

CASE NO. 2017-119-P

12 **OPPOSITION TO MOTION TO DISMISS CHARGES AND**
13 **OPPOSITION TO MOTION FOR A MORE DEFINITE STATEMENT**

14 Brian Hutchins, as Prosecuting Officer for the Nevada Commission on Judicial Discipline
15 ("Commission" or "NCJD"), submits this opposition to the motion to dismiss and the motion for
16 a more definite statement filed on August 9 by Respondent, the Honorable Martin Hastings.
17 This opposition is made and based on the points and authorities attached hereto and the record,
18 documents and pleadings on file herein.

19 **POINTS AND AUTHORITIES**

20 **I. Statement of the Case.**

21 The only pleading previously filed in this case was the Formal Statement of Charges
22 against Respondent filed on July 24, 2018, to which Respondent filed the pending motion to
23 dismiss or for a more definite statement on August 9. As such, there are no facts. The Statement
24 of Charges, consisting of only four pages, was separated into unnumbered sections with
headings: Factual Allegations, Charges of Misconduct, Count One and Count Two. The Factual

1 Allegations were divided into seven paragraphs lettered A through G for convenience. The first
2 sentence of the Charges of Misconduct incorporated the facts stated in the Statement of Facts by
3 stating: “By engaging in the acts, or by failing to act, or by engaging in a combination of acts or
4 failures to act, as alleged above, Respondent violated the Revised Nevada Code of Judicial
5 Conduct” (emphasis added). The specific rules allegedly violated were then specified with
6 the pertinent part of each rule indicated in parenthesis. After that, Counts One and Two specified
7 the offenses alleged:

8 Count One: Respondent has failed to perform his duty to act as a search warrant judge on
9 a regular rotation on an on-call basis in violation of Rules 1.1, 1.2, 2.1, 2.5(B), and 2.7.

10 Count Two: Respondent failed to cooperate with the Chief Judge of the Las Vegas
11 Municipal Court, or the other judges, or both, by not performing his duty to act as a
search warrant judge and relying on an alternate judge for that purpose, after being
counseled not to do so, in violation of Rules 1.1, 1.2, and 2.5(B).

12 II. Argument

13 Respondent asserts that the charges of misconduct are, “in conclusory terms,” alleging
14 Rule violations but that the individual rules cited in each charge “are set forth without any acts
15 and facts alleged. . . . The way that the charging document currently reads it is in conclusory
16 language without setting forth how Judge Hastings supposedly violated any of the rules. As a
17 result, the Special Prosecutor is free to change the theory of his prosecution as the case
18 proceeds.” Motion to Dismiss at 2, ln. 26 to 3, ln. 11. Respondent claims, “In effect the Special
19 Prosecutor has failed to set forth specific acts and facts to demonstrate how specifically . . .
20 Judge Hastings violated any of the rules.” *Id.* at 3, lns. 23-25. Finally, Respondent concludes,
21 “what is missing in the instant case is that[,] although there are factual allegations[,] they are not
22 part of the individual counts and they do not specifically allege how Judge Hastings violated any
23 of these individual rules.” *Id.* at 4, lns. 5-7. Respondent is mistaken in his reading of the
24 document and in his argument that the charging document is insufficient.

1 A. Pleading Standards.

2 The notice required in a Formal Statement of Charges is set forth in Commission
3 Procedural Rule 15:

4 Rule 15. Content of Formal Statement of Charges. The Formal Statement of Charges
5 must contain a clear reference to the specific provisions of statutes, the Nevada Code of
6 Judicial Conduct and the Nevada Constitution which are deemed to justify procedures
7 before the Commission, together with a clear statement of all acts and omissions which
8 are alleged to warrant action by the Commission under those provisions, identifying the
9 dates, times and places to the extent possible that the acts or omissions are alleged to
10 have occurred.

11 Nev. Comm'n on Judicial Discipline, Procedural Rule 15 (rev. 2018). This standard is similar to
12 notice pleading for any civil complaint and, pursuant to NRS 1.462(2), unless otherwise provided
13 in the statutes governing the Commission, "after a formal statement of charges has been filed, the
14 Nevada Rules of Civil Procedure apply." What the civil procedure rules require is "(1) a short
15 and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand
16 for judgment for the relief the pleader seeks." NRCP 8(a). Additionally, "Each averment of a
17 pleading shall be simple, concise, and direct. No technical forms of pleading or motions are
18 required." *Id.*, Rule 8(e). Under these standards, dismissing the complaint is not warranted
19 unless there is no doubt that the plaintiff (or prosecuting officer) would be unable to prove any
20 set of facts at all that could entitle it to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.
21 224, 228 & n.6, 181 P.3d 670, 672 & n.6 (2008)(citing cases).

22 Respondent cites to Rule 12(e) of the Nevada Rules of Civil Procedure regarding motions
23 for a more definite statement. That rule does allow a party to seek more details "[i]f a pleading
24 to which a responsive pleading is permitted is so vague or ambiguous that a party cannot
reasonably be required to frame a responsive pleading." NRCP 12(e). As will be seen below,
that standard is not reached here.

Respondent also cites to Rule 12(b)(5) of the Nevada Rules of Civil Procedure in asserting that the Formal Statement of Charges fails “to state a claim upon which relief can be granted.” Under this rule, “[a] complaint should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief.” . . . This is a rigorous standard ‘as [the supreme] court construes the pleading liberally, drawing every inference in favor of the non-moving party.’” *Holcomb Condo. HOA v. Stewart Venture*, 129 Nev. 181, 186, 300 P.3d 124, 128 (2013), *quoting Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003); *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 629, 218 P.3d 847, 850 (2009). A court must also accept all factual allegations in the complaint as true or taken at face value and a complaint cannot be dismissed unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief. *Edgar v. Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985), *citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

B. Application of Standards to the Charging Document.

The Formal Statement of Charges filed in this case clearly sets forth the acts and omissions under “Factual Allegations,” and is successful at “identifying the dates, times and places to the extent possible that the acts or omissions are alleged to have occurred.” These are then incorporated into the “Charges of Misconduct,” as pointed out above, and into both of the Counts of rule violations with a summarized factual sentence and a brief reference to each rule allegedly violated. The essential and relevant part of each rule had been set forth at the beginning of the charges.

The Factual Allegations also point out the misconduct acts which are then later referenced in the charged Counts. For example, after alleging in Paragraph A that the judges in the Las Vegas Municipal Court agreed to and participated in a schedule to be on call for search

1 warrant duty, Paragraph B then alleges that “Respondent has refused to perform his duty as a
2 search warrant judge on his rotations.” Formal Statement of Charges at 2, Ins. 18-20. Similarly,
3 after alleging in Paragraph C that Respondent was counseled by the chief judge and also received
4 a letter from the chief judge, Paragraph D alleges, “Respondent did not cooperate with the Chief
5 Judge or the other judges, or both, regarding the handling of search warrant duties.” Each of
6 these allegations form the predicate for, and are incorporated in, the two Counts of misconduct
7 on page 4.

8 All of this meets the standard of Procedural Rule 15. The only thing left would be to
9 restate all of the facts and spell out each rule again under each of the Counts which would be
10 duplicative and in violation of Rules 8(a) and 8(e) of the Rules of Civil Procedure. It is the set of
11 acts and omissions as a whole which leads to the alleged violations pointed out and summarized
12 in the individual charges and the individual Rules of Judicial Conduct cited.

13 Based on a proper reading of the complaint, and incorporating the information which
14 preceded them, each of the two charges could be read to have repeated the language prior to the
15 charges as follows:

16 Count One: According to the facts stated above alleging that Respondent had a duty to
17 perform in a schedule designating each of the six municipal court judges as the search
18 warrant judge, Respondent has failed to act as a search warrant judge on a regular
19 rotation on an on-call basis in violation of the Revised Nevada Code of Judicial Conduct,
20 including Judicial Canon 1, Rule 1.1 (this is a failure to comply with the law, including
21 the Code of Judicial Conduct); Rule 1.2 (this is a failure to act at all times in a manner
22 that promotes public confidence in the independence, integrity, and impartiality of the
23 judiciary and avoiding impropriety and the appearance of impropriety); Judicial Canon 2,
24 Rule 2.1 (this is a failure to give precedence to the duties of judicial office); Rule
2.5(B)(this is a failure to cooperate with other judges and court officials in the
administration of court business); and Rule 2.7 (this is a failure to hear and decide matters
assigned to the judge), or any single rule or any combination of those rules.

Count Two: According to the facts stated above alleging that Respondent was counseled
by the chief judge to perform his search warrant judge duties rather than use an alternate
judge for the duty and that the chief judge wrote a letter to Respondent pointing out his
improper use of an alternate judge for search warrant duties, Respondent failed to
cooperate with the Chief Judge of the Las Vegas Municipal Court, or the other judges, or

1 both, by not performing his duty to act as a search warrant judge and relying on an
2 alternate judge for that purpose, after being counseled not to do so, in violation of the
3 Revised Nevada Code of Judicial Conduct, including Judicial Canon 1, Rule 1.1 (this is a
4 failure to comply with the law, including the Code of Judicial Conduct); Rule 1.2 (this is
5 a failure to act at 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); and Rule 2.5(B)(this is a failure to cooperate with other
judges and court officials in the administration of court business), or any single rule or
any combination of those rules.

6 Had the charges been lengthened in this manner or something similar which just re-states
7 what was alleged previously, the pleading would be the kind of repetitiveness and extended
8 language that is contrary to what the rules encourage: “short and plain” and “simple, concise, and
9 direct.” Even more facts alleged previously, such as the time periods, the manner in which the
10 search warrant judge policy was adopted, and what the on-call schedule was, could have been
11 repeated to lengthen the two Counts even more.

12 Respondent’s argument that the Counts are conclusory in nature without setting forth
13 how Respondent violated any of the rules ignores a plain reading of each charge which refers to
14 specific facts and rules alleged previously. Respondent sets forth an irrelevant straw man
15 question as follows:

16 Is it the Special Prosecutor’s position that Judge Hastings failed to do this [violated Rule
17 2.7 dealing with hearing and deciding matters assigned to the Judge] during what are
commonly referred to as the normal business hours of roughly 8:00 a.m. to 5:00 p.m. for
the dates Monday through Thursday when Municipal Court functions or is the Special
Prosecutor’s allegation that Judge Hastings failed to do these acts and thus violated the
Rule during times after normal hours in court [?]

19 Motion to Dismiss at 3, lns. 13-17. A fair reading of the incorporated facts will show that the
20 court hours are not important, as it is alleged that the search warrant judge “was on call at all
21 hours for one week, with the duty rotating among the six judges every six weeks.” Formal
22 Statement of Charges at 2, lns. 9-11. Also, the judges had “made themselves available 24 hours
23 a day, seven days a week . . .” *Id.*, lns. 4-9. The duty was to hear and decide the search warrant
24 reviews and Respondent failed to do so at his time in the rotation. *Id.*, lns. 12-14, 18-21.

1 CONCLUSION

2 The Formal Statement of Charges filed in this case is a short and plain, simple, concise
3 and direct document which sets forth the pertinent facts and the Rules of Judicial Conduct and
4 then incorporates these into the concise Counts of alleged misconduct. A fair reading of the
5 charged Counts will reveal that each summary charge incorporates the facts alleged previously
6 and that the Rules referenced as having been violated are fair summaries of how the facts and
7 charges fit into the cited Rules also outlined previously. The pleading is not vague or
8 ambiguous. Respondent's motion should be denied. Should the Commission be of the opinion
9 that more detail is required, the Prosecuting Officer would ask for an opportunity to file an
10 amended Formal Statement of Charges.

11 Dated this 14th day of August, 2018.

12 Brian Hutchins
13 Brian Hutchins, Esq.
14 Prosecuting Officer for the Commission

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that a true and correct copy of this OPPOSITION TO MOTION TO
17 DISMISS CHARGES AND OPPOSITION TO MOTION FOR A MORE DEFINITE
18 STATEMENT was sent by electronic mail, on this 14th day of August, 2018, addressed to:

19 Paul C. Deyhle
20 Executive Director and General Counsel
Nevada Commission on Judicial Discipline
pdeyhle@judicial.state.nv.us

21 William B. Terry, Esq.
22 Law Offices of William B. Terry, Chartered
info@williamterrylaw.com and c/o Sarah Daniels sarah@williamterrylaw.com

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