

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

2 **STATE OF NEVADA**



3
4 In the Matter of)
5 THE HONORABLE MARTIN HASTINGS,)
6 Las Vegas Municipal Court, Dept. 6,)
7 County of Clark, State of Nevada,)
8 Respondent.)
9)
10)

CASE NO. 2017-119-P

11 **ORDER DENYING MOTION TO DISMISS PURSUANT TO RULES OF CIVIL PROCEDURE**
12 **RULE 12(B) AND MOTION FOR A DEFINITE STATEMENT PURSUANT TO RULES OF**
13 **CIVIL PROCEDURE RULE 12(E)**

14 Currently before the Commission on Judicial Discipline (“Commission”) is a Motion to Dismiss
15 Pursuant to Rules of Civil Procedure Rule 12(b) and Motion for a Definite Statement Pursuant to Rules
16 of Civil Procedure Rule 12(e) (“Motion”), which was filed by counsel to the Honorable Martin
17 Hastings, Las Vegas Municipal Court, Dept. 6, of Clark County, Nevada (“Respondent”) on August 8,
18 2018. Opposition to Motion to Dismiss Charges and Opposition to Motion for a More Definite
19 Statement was filed by the Prosecuting Officer to the Commission (“Prosecuting Officer”) on August
20 14, 2018. The Reply was filed by the Respondent on August 21, 2018.

21 **STATEMENT OF FACTS**

22 The underlying Formal Statement of Charges (“FSOC”) alleges that Respondent, a Las Vegas
23 Municipal Court Judge, has been using alternate judges when he is scheduled to be the on-call search
24 warrant judge. The Las Vegas Municipal Court, as a whole, has a weekly rotating schedule wherein
25 every six (6) weeks a different judge is the 24/7 on-call search warrant judge. This was implemented on
26 or about September 29, 2014. Respondent performed these duties of being available for, and reviewing,
27 telephonic search warrant applications on his rotation until in or about March of 2015. In or about
28 August of 2015, the City of Las Vegas adopted an ordinance which authorized alternate municipal court

1 judges to perform and be compensated for handling search warrant duties. After that time and to the
2 present, Respondent has refused to perform his duty as a search warrant judge on his rotations. Instead,
3 since that time, Respondent has used an alternate judge every time to perform Respondent's search
4 warrant judge duties when it was Respondent's time in the rotation.

5 Former Chief Judge Kern spoke with Respondent on August 23, 2016, about Respondent's use
6 of alternate judges for all his search warrant judge duties, noting that a Las Vegas Metropolitan Police
7 Officer complained about the use of an alternate judge. Nonetheless, Respondent continued to use an
8 alternate judge for his search warrant judge duties. On October 4, 2016, Chief Judge Kerns counseled
9 Respondent again regarding his failure to perform his search warrant duties and his use of an alternate
10 judge. However, Respondent did not refrain from using an alternate judge to perform his search warrant
11 judge duties. On June 28, 2017, Chief Judge Kerns again counseled Respondent regarding his search
12 warrant duties, and again Respondent refused to perform such duties.

13 **I. Motion**

14 On August 8, 2018, Respondent filed his Motion alleging that in the FSOC, the Charges of
15 Misconduct fail to state a claim upon which relief can be granted and thus a motion for a more definite
16 statement is applicable. Respondent opines that the factual allegations in pages one (1) through three (3)
17 of the FSOC stand by themselves and the Charges of Misconduct are limited to Rule violations.
18 Respondent asks how he violated the listed Rules. For example, Respondent states that in Count 1, it is
19 alleged that Respondent violated Rule 2.7 dealing with hearing and deciding matters assigned to the
20 Respondent. Respondent states that he does not know if the Prosecuting Officer is stating that
21 Respondent failed to do these acts during the normal court business hours. Respondent argues that the
22 factual allegations set forth do not explain precisely how it is alleged that Respondent specifically
23 violated any of these Rules. Respondent requests that the Prosecuting Officer commit himself to a
24 specific allegation in each count as to how Respondent violated the Rules outlined in each count.
25 Respondent further argues that Nevada case law supports the position that there must be essential
26 allegations and specific facts set forth and if not, then this would support a motion to dismiss citing to
27 *Nelson v. Sierra Construction Corporation*, 77 Nev. 334, 364 P.2d 402 (1961).

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1 **II. Opposition**

2 The Prosecuting Officer in his Opposition notes that Respondent's interpretation of the FSOC is
3 mistaken. The Prosecuting Officer points out that Commission Procedural Rule 15 is similar to the
4 notice pleading standard required for any civil complaint. NRS 1.462(2). Moreover, he opines that
5 Nevada Rules of Civil Procedure require a short plain statement of the claim showing that the pleader is
6 entitled to relief and a demand for judgment of relief. Thus, he argues dismissal of a complaint is not
7 warranted unless there is no doubt that the Prosecuting Officer would be unable to prove any set of facts
8 that could entitle it to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 & fn. 6, 181
9 P.3d 670, 672 & fn. 6 (2008) (citations omitted).

10 The Prosecuting Officer asserts that NRCP 12(e) allows a party to seek more details if a
11 pleading is so vague or ambiguous that a party cannot reasonably frame a responsive pleading. The
12 Prosecuting Officer contends that NRCP 12(b)(5) is a high standard and that inferences are drawn in
13 favor of the non-moving party. *Holcomb Condo. HOA v. Stewart Venture*, 129 Nev. 181, 186,300 P.3d
14 124, 128 (2013) (citations omitted).

15 Explicitly, the Prosecuting Officer states that the FSOC sets forth the acts and omissions under
16 "Factual Allegations," and is sufficient at "identifying the dates, times and places to the extent possible
17 that the acts or omissions are alleged to have occurred." The Prosecuting Officer asserts that these are
18 then incorporated into the "Charges of Misconduct." The Prosecuting Officer plainly states that factual
19 paragraphs are incorporated into the two counts of misconduct. The Prosecuting Officer avers that this
20 meets the standard of Commission Procedural Rule 15 and NRCP 8(a) and 8(e). He further argues that
21 restating the facts in the charges section is repetitive and not short, plain, simple, concise and direct.

22 Moreover, the Prosecuting Officer argues that Respondent's example of confusion as to when
23 Respondent violated Rule 2.7 is not correct. The FSOC notes that the judges were on call 24/7, not just
24 during court hours; thus, Respondent's argument of confusion is irrelevant. He argues that the FSOC is
25 transparent in that the factual allegations are incorporated into the counts of misconduct, and therefore
26 are not vague or ambiguous.

27 **III. Reply**

28 Respondent asserts in his Reply that it is unclear in the FSOC how the facts relate to specific

1 Rule violations. Respondent points out that the FSOC is separated into two separate provisions,
2 specifically the factual analysis and those being the counts that deal with the Rule violations.
3 Respondent objects that the Prosecuting Officer set forth facts that do not specifically relate to the Rule
4 violations. The Respondent acknowledges Commission Procedural Rule 15; however, the Respondent
5 also notes that the charging document must set forth sufficient facts in reference to each of the alleged
6 Rule violations. Respondent argues that he should not be required to guess how he violated any specific
7 Rule. Respondent further notes that Commission Procedural Rule 15 indicates that there must be a " ...
8 clear statement of all acts and omissions which are alleged to warrant action by the Commission"
9 Respondent's position is that those mandates must relate to particular Rule violations.

10 ISSUE

11 Whether the FSOC provides sufficient notice to meet the notice pleading requirements of
12 Commission Procedural Rule 15 and NRCP 8.

13 STANDARD OF LAW

14 Commission Procedural Rules

15 **Rule 15. Content of Formal Statement of Charges.** The Formal Statement of Charges
16 must contain a clear reference to the specific provisions of statutes, the Nevada Code of
17 Judicial Conduct and the Nevada Constitution which are deemed to justify procedures
18 before the Commission, together with a clear statement of all acts and omissions which
19 are alleged to warrant action by the Commission under those provisions, identifying the
20 dates, times and places to the extent possible that the acts or omissions are alleged to
21 have occurred.

22 Nevada Revised Statutes

23 Nevada Rules of Civil Procedure Rule 8. General rules of pleading

24 (a) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original
25 claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain
26 statement of the claim showing that the pleader is entitled to relief, and (2) a demand for
27 judgment for the relief the pleader seeks. Relief in the alternative or of several different
28 types may be demanded. Where a claimant seeks damages of more than \$15,000, the
demand shall be for damages "in excess of \$15,000" without further specification of
amount.

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(e) **Pleading to Be Concise and Direct; Consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms
of pleading or motions are required.

1 (2) A party may set forth two or more statements of a claim or defense alternately or
2 hypothetically, either in one count or defense or in separate counts or defenses. When
3 two or more statements are made in the alternative and one of them if made
4 independently would be sufficient, the pleading is not made insufficient by the
5 insufficiency of one or more of the alternative statements. A party may also state as many
6 separate claims or defenses as the party has regardless of consistency and whether based
7 on legal or on equitable grounds or on both. All statements shall be made subject to the
8 obligations set forth in Rule 11.

9 NRCP 8

10 **Rules of Civil Procedure, Rule 12 Defenses and objections--When and how**
11 **presented--By pleading or motion--Motion for judgment on pleadings**

12 ...

13 (b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading,
14 whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the
15 responsive pleading thereto if one is required, except that the following defenses may at
16 the option of the pleader be made by motion: (1) lack of jurisdiction over the subject
17 matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4)
18 insufficiency of service of process, (5) failure to state a claim upon which relief can
19 be granted, (6) failure to join a party under Rule 19. A motion making any of these defenses
20 shall be made before pleading if a further pleading is permitted. No defense or objection
21 is waived by being joined with one or more other defenses or objections in a responsive
22 pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is
23 not required to serve a responsive pleading, the adverse party may assert at the trial any
24 defense in law or fact to that claim for relief. If, on a motion asserting the defense
25 numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can
26 be granted, matters outside the pleading are presented to and not excluded by the court,
27 the motion shall be treated as one for summary judgment and disposed of as provided in
28 Rule 56, and all parties shall be given reasonable opportunity to present all material
made pertinent to such a motion by Rule 56.

...
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21 (e) **Motion for More Definite Statement.** If a pleading to which a responsive pleading
22 is permitted is so vague or ambiguous that a party cannot reasonably be required to frame
23 a responsive pleading, the party may move for a more definite statement before
24 interposing a responsive pleading. The motion shall point out the defects complained of
25 and the details desired. If the motion is granted and the order of the court is not obeyed
26 within 10 days after notice of the order or within such other time as the court may fix, the
27 court may strike the pleading to which the motion was directed or make such order as it
28 deems just.

26 **DISCUSSION**

27 The standard of review for dismissal under NRCP 12(b)(5) is extremely rigorous. A complaint
28 will not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiffs

1 could prove no set of facts which, if accepted by the trier of fact, would entitle them to
2 relief. *See Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997). Indeed, the standard of review for
3 a dismissal under subsection b(5) is rigorous, as the court must construe the pleading liberally and draw
4 every fair inference in favor of the nonmoving party. *See id.* The court must accept the allegations in the
5 complaint as true. *See Hynds Plumbing & Heating Co. v. Clark County Sch. Dist.*, 94 Nev. 776, 587
6 P.2d 1331 (1978).

7 Furthermore, Nevada is a notice pleading jurisdiction, requiring only that the Commission give
8 respondents fair notice and bases of the claims brought against them. *See N.R.C.P. 8(e)*; *see also Crucil*
9 *v. Carson City*, 95 Nev. 583, 600 P.2d 216 (1979). “No technical forms of pleading are
10 required,” N.R.C.P. 8(e)(1), and “[a]ll pleadings shall be so construed as to do substantial
11 justice.” N.R.C.P. 8(f). The Nevada rules on pleadings do *not* even require the legal theory to be
12 correctly identified where, as here, the prayer of the complaint asks for such relief as the court finds just
13 and equitable. *See Schwartz v. Adams*, 93 Nev. 240, 563 P.2d 74 (1977). Pleadings are to be liberally
14 construed so as to place into issue matters which are fairly noticed. *Hay v. Hay*, 100 Nev. 196, 678 P.2d
15 672 (1984).

16 The Prosecuting Officer has complied with the notice pleading requirements. The FSOC has
17 clearly given Respondent fair notice of the bases of the claims against him, as well as of the relief
18 sought thereof. The Prosecuting Officer listed the factual allegations in a separate section from the Rule
19 violations; however, such a format does not fail to provide fair notice and the bases of the charges
20 brought forth against Respondent. The counts refer to the factual allegations; thus, the connection
21 between the two is achieved for notice pleading. This case is straightforward. During the timeframe at
22 issue, the FSOC alleges that Respondent failed to perform his assigned search warrant duties and failed
23 to cooperate with his fellow judges by not performing those assigned duties. The Prosecuting Officer
24 need not prove his case in the FSOC but provide fair notice of the allegations and Rule violations. The
25 factual allegations and Rule violations permit Respondent to answer the FSOC.

26 Respondent’s Motion to Dismiss Pursuant to Rules of Civil Procedure Rule 12(b) and Motion
27 for a Definite Statement Pursuant to Rules of Civil Procedure Rule 12(e) are denied.

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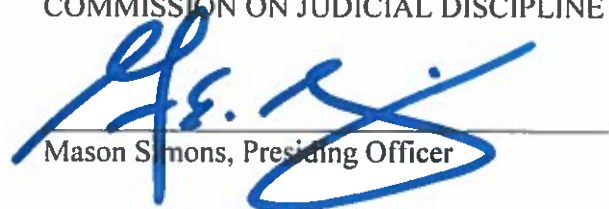
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The Honorable Mason Simons is authorized to sign this Order on behalf of the full Commission.

IT IS SO ORDERED.

DATED this 7 day of September, 2018.

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE



Mason Simons, Presiding Officer

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CERTIFICATE OF SERVICE

I hereby certify on this 10th day of September, 2018, I transmitted a copy of the foregoing ORDER DENYING 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), via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Tarah Hansen, Commission Clerk