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7 IN THE SUPREME COURT OF NEVADA

8 THE HONORABLE MELANIE
9 ANDRESS-TOBIASSON, JUSTICE OF
10 THE PEACE, CLARK COUNTY,
NEVADA,

Case No. 77551

11 Petitioner,

12 vs.

13 THE NEVADA STATE COMMISSION
14 COMMISSION JUDICIAL DISCIPLINE,

Respondent.

15
16 **AMENDED PETITION FOR WRIT OF PROHIBITION OR, IN THE
ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

TABLE OF AUTHORITIES ii

ROUTING STATEMENT 2

RELIEF SOUGHT 2

ISSUES PRESENTED 3

FACTUAL BACKGROUND 3

LEGAL ANALYSIS 4

 I. A WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, A WRIT OF MANDAMUS SHOULD ISSUE AGAINST THE COMMISSION BECAUSE THE COMMISSION IS ACTING OUTSIDE OF IT'S CONSTITUTIONAL AND/OR STATUTORY AUTHORITY IN LIGHT OF THE FACT THAT NO FORMAL STATEMENT OF CHARGES HAS BEEN FILED AGAINST PETITIONER 4

 II. IN DIRECTING JUDGE TOBIASSON TO RESPOND TO THE INTERROGATORIES, THE COMMISSION HAS EXCEEDED IT'S AUTHORITY PRIOR TO THE FILING OF ANY FORMAL STATEMENT OF CHARGES AGAINST JUDGE TOBIASSON .. 6

CONCLUSION 10

VERIFICATION OF MELANIE ANDRESS-TOBIASSON 12

VERIFICATION OF WILLIAM B. TERRY, ESQ. 13

CERTIFICATE OF COMPLIANCE 14

CERTIFICATE OF SERVICE 15

TABLE OF AUTHORITIES

Cases

Page Number

Hickey v. District Court, 105 Nev. 729, 782 P.2d 1336 (1989) 5

State v. District Court (Armstrong), 127 Nev. ___, 267 P.3d 777 (2011) 5

Paschell v. State, 116 Nev. 911, 8 P.3d 851 (2000) 10

Statutes

NRS 1.462 6, 7

NRS 1.4667 6, 7

NRS 1.425 6

NRS 1.4695 6

NRS 34.170 5

NRS 34.320 5

NRAP 17(a)(3) 2

NRCP 26 10

Constitutional Provisions

Article VI of the Nevada Constitution 5, 6

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8 IN THE SUPREME COURT OF NEVADA

9
10 THE HONORABLE MELANIE
ANDRESS-TOBIASSON, JUSTICE OF
11 THE PEACE, CLARK COUNTY,
NEVADA,

12 Petitioner,

13 vs.

14 THE NEVADA STATE COMMISSION
COMMISSION JUDICIAL DISCIPLINE,

15 Respondent.

Case No. _____

16
17 **PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,**
PETITION FOR WRIT OF MANDAMUS

18 COMES NOW, the Appellant, HONORABLE JUDGE MELANIE ANDRESS-
19 TOBIASSON, by and through her counsel, WILLIAM B. TERRY, ESQ. and
20 ALEXANDRA ATHMANN-MARCOUX, ESQ., of the law offices of WILLIAM B.
21 TERRY, CHARTERED and files the instant petition for writ of prohibition or, in the
22 alternative, writ of mandamus.

1 DAYS AFTER SERVICE OF THE COMPLAINT...” Again, no complaint has been
2 received. It continues that the failure to respond shall be deemed an admission of all
3 relevant facts. That is precisely what the instant petition is directed to. The letter
4 continues that “I have included in the determination a list of the issues the
5 Commission wants addressed a list of questions...”

6 As part of the November 7, 2018, letter likewise attached was a document
7 signed by the Chairman of the Commission, Gary Vause, dated October 25, 2018, and
8 attached hereto and incorporated by reference herein as Exhibit “2”. It likewise
9 indicates that the Commission has made a determination that there was a reasonable
10 probability that the evidence available for introduction at a formal hearing could
11 clearly and convincingly establish grounds for discipline. It continues that
12 “Respondent is required to respond to the complaint...” Again, no complaint has been
13 filed against Judge Tobiasson. The term complaint means formal charges. Likewise
14 attached and again dated November 7, 2018, although not made part of the instant
15 record, while the questions themselves will not be set forth in the instant Petition for
16 privacy matters and confidentiality matters, the introductory portion of that letter is
17 in fact attached as Exhibit “3”. Again, while the letter itself is self-explanatory, it
18 mandates that the “Respondent is required to answer the questions separately and
19 fully in writing under oath...”

20 LEGAL ANALYSIS

21 I. A WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, A WRIT OF
22 MANDAMUS SHOULD ISSUE AGAINST THE COMMISSION BECAUSE
23 THE COMMISSION IS ACTING OUTSIDE OF IT’S CONSTITUTIONAL
AND/OR STATUTORY AUTHORITY IN LIGHT OF THE FACT THAT NO

1 FORMAL STATEMENT OF CHARGES HAS BEEN FILED AGAINST
2 PETITIONER.

3 The Nevada Supreme Court has original jurisdiction to issue writs of
4 mandamus and/or writs of prohibition. Nevada Constitution Article VI, Section 4.
5 A writ of mandamus is available to compel the performance of an act that the law
6 requires as a duty resulting from an office, trust or station or to control a manifest
7 abuse of discretion. See *State v. District Court (Armstrong)*, 127 Nev. ___, 267 P.3d
8 777 (2011). Normally, a writ will not issue if petitioner has a plain, speedy and
9 adequate remedy in the ordinary course of law. See NRS 34.170. Chapter 34
10 likewise provides that a writ of mandamus or a writ of prohibition can be filed to cure
11 a defect. It is recognized that a writ of mandamus or in the alternative a writ of
12 prohibition is an extraordinary remedy and that the decision to entertain such a
13 petition lies with the Supreme Court's discretion. See *Hickey v. District Court*, 105
14 Nev. 729, 782 P.2d 1336 (1989). The court in *Armstrong*, supra, however, has held
15 that in deciding whether to exercise its discretion the court can consider amongst
16 other things whether the petition raises an important issue of law that needs
17 clarification or alternatively will affect other cases similarly situated.

18 A writ of prohibition "arrests" the proceedings of any commission exercising
19 judicial functions when such proceedings are without or in excess of the jurisdiction
20 of such (Commission). See NRS 34.320. In the instant case the Court should issue
21 a writ of prohibition or in the alternative a writ of mandamus to the Commission
22 because it has acted outside its prescribed authority under both the Nevada
23 Constitution and any and all statutes. A writ of prohibition is necessary in the instant

1 case because without a determination by this Honorable Court Judge Tobiasson will
2 be forced, prior to a formal statement of charges to respond to a set of interrogatories
3 which is inconsistent with both the rules dealing with the Commission and the
4 Nevada Rules of Civil Procedure. Additionally, Judge Tobiasson has no other plain,
5 speedy or adequate remedy under the law since the Commission is acting outside of
6 its authority.

7 **II. IN DIRECTING JUDGE TOBIASSON TO RESPOND TO THE**
8 **INTERROGATORIES, THE COMMISSION HAS EXCEEDED IT'S**
9 **AUTHORITY PRIOR TO THE FILING OF ANY FORMAL STATEMENT**
10 **OF CHARGES AGAINST JUDGE TOBIASSON.**

11 In making the instant argument it is important to note that to date no formal set
12 of charges has been filed against Judge Tobiasson. Apparently the Commission has
13 made an initial determination that a complaint may be filed but has required Judge
14 Tobiasson to respond to the interrogatories. While the Commission terms these as a
15 set of "questions" they are not authorized under the statute prior to the time of filing
16 a formal statement of charges and are in fact nothing more than a set of
17 "interrogatories".

18 In it's letter of November 7, 2018, (Exhibit 3) the Commission relies upon
19 Nevada Constitution Article VI, Section 21(7), NRS 1.462 and NRS 1.4667 as well
20 as Commission Procedural Rule 12 in directing Judge Tobiasson to respond to the
21 interrogatories prior to the time of the filing of any formal set of charges against her.
22 First of all, Nevada Constitution Article VI, Section 21(7) does not authorize the
23 Commission to forward interrogatories to a sitting judge whether it be Judge
Tobiasson or another, prior to the filing of a formal statement of charges. While the

1 Commission cites NRS 1.462 as authority for directing Judge Tobiasson to respond
2 to the interrogatories, a review of that statute in fact shows that the Commission is
3 acting outside of the scope of its authority. NRS 1.462 indicates “proceedings before
4 the Commission are civil matters designed to reserve an independent and honorable
5 judiciary. (See Section 1). It then continues:

6 Except as otherwise provided in NRS 1.425-1.4695
7 inclusive or in the procedural rules adopted by the
8 Commission after a formal statement of charges has been
9 filed, the Nevada Rules of Civil Procedure apply...

10 In addressing this statute, no formal statement of charges has been filed against
11 Judge Tobiasson. NRS 1.4667 again cited by the Commission is also of no benefit
12 to the actions currently being undertaken by the Commission. Subsection 3 indicates
13 that “If the Commission determines that such a reasonable probability exists the
14 Commission shall require the judge to respond to the complaint in accordance with
15 procedural rules adopted by the Commission...” Again, no complaint has been filed
16 against Judge Tobiasson.

17 The procedure which the Commission is undertaking is one which they
18 normally follow in all cases prior to the time that a formal set of charges are filed.
19 Based on information and belief, the instant petition is the first time that such a
20 procedure is being challenged by one similarly situated as is Judge Tobiasson. Again,
21 if a formal statement of charges or, as NRS 1.4667 indicates, a complaint if filed
22 against Judge Tobiasson, the instant issue might not exist. A review of their own
23 procedural rule, however, does not indicate that they have the authority or power to
mandate that a sitting judge answer a set of interrogatories prior to the filing of a

1 formal complaint. What Procedural Rule 12 indicates is that initially the Commission
2 reviews reports of the investigation to make a determination whether or not there is
3 sufficient reason to require the respondent to answer. Once the Commission
4 determines that there is a reasonable probability that the evidence could show clearly
5 and convincingly grounds for discipline then it requires the respondent named in the
6 complaint to respond. Again, no complaint has been filed against the Petitioner. The
7 Rule continues that the Commission shall serve the complaint upon the respondent
8 who has a period of thirty (30) days to answer. Again, there is nothing in reference
9 to a set of interrogatories or “questions”. Under subsection 6 of that procedural rule,
10 the Commission investigator has subpoena power but again we are not talking about
11 a subpoena in the instant case.

12 In it’s own procedural rules, the Commission defines under Rule 2, subsection
13 5 a “formal statement of charges” as meaning a document filed by the designated
14 prosecuting officer. No formal statement of charges exists in the instant case.
15 Interestingly enough, while the Commission uses the term complaint there is no
16 definition of complaint in the definitional section. Again, in referring to the
17 November 7th letter, it indicates “the questions are intended to focus the issues in the
18 complaint as determined by the Commission...” The Petitioner suggests that the
19 “complaint” is in fact a formal statement of charges which does not exist in the instant
20 case. In reality what you have is the Commission already making a determination that
21 there is a potentiality of sanctions being brought against Judge Tobiasson and then
22 mandating that she respond to the interrogatories or as they call them “questions”.

1 When the procedural rules of the commission are reviewed, the word “complaint”
2 appears, as an example, in Rule 10, subsection 2 being “A complaint may be initiated
3 by information in any form from any source received by the Commission...” In effect
4 this a grievance or an allegation set forth against the judge and not a formal statement
5 of charges. A literal interpretation of their own procedural rules equates complaint
6 with grievance and a further review of their rules indicates that it is thereafter that an
7 investigation occurs. See Rule 11.

8 Procedural Rule 12, subsection 2 indicate:

9 If the Commission determines it could in all likelihood
10 make a determination that there is a reasonable probability
11 the evidence available for introduction at a formal hearing
12 could clearly and convincingly establish grounds for
13 disciplinary action, it shall require the respondent named in
14 the complaint to respond...”

15 The question is what is exactly is the respondent directed to respond to? The
16 next subsection indicates that the Commission shall serve the complaint upon the
17 respondent who shall have thirty (30) days in which to respond to the complaint.
18 Again, there is no formal statement of charges that has been filed against Judge
19 Tobiasson yet the Commission’s own procedural rules indicate “failure of the
20 respondent to answer the complaint shall be deemed an admission that the facts
21 alleged in the complaint are true and establish grounds for discipline”. That is one
22 of the additional reasons for the instant Petition. Without knowing what the formal
23 statement of charges are, how can the Commission indicate that a failure to answer
those formal statement of charges shall be deemed an admission by the respondent?

Procedural Rule 13, subsection 3 indicates “A finding of reasonable probability

1 authorizes the executive director to designate a prosecuting officer who must sign
2 under oath a formal statement of charges against the judge.” While this is part of the
3 procedural rules, that has not occurred in the instant case and no formal statement of
4 charges has been filed against Judge Tobiasson.

5 Procedural Rule 17 requires the judge to answer within twenty (20) days after
6 the service of the formal statement of charges. No rule provides that the respondent
7 must answer interrogatories and/or questions posed by the Commission. The
8 Commission’s own rules indicate that the Nevada Rules of Civil Procedure govern
9 their procedures. Under Rule 26 of the Rules of Civil Procedure, discovery only
10 occurs after the filing of a formal complaint. In the case of the Commission that
11 would be a formal statement of charges. The Rules of Civil Procedure clearly
12 indicate that the discovery process occurs after the filing of a complaint.

13 It is further submitted that not even the legislature has the power to enlarge
14 jurisdiction of any court or in this case of the Judicial Commission beyond that
15 expressed in the Constitution. See *Paschell v. State*, 116 Nev. 911, 8 P.3d 851
16 (2000).


17 CONCLUSION

18 The procedures described in the instant Petition and utilized most specifically
19 by the Commission are ones that they have utilized in the past. That does not mean,
20 however, that they are permitted to do so and the instant Petition requires a
21 determination by this Honorable Court as to whether or not the Commission is acting
22 outside the scope of their authority in mandating that a sitting judge answer
23

1 interrogatories prior to the filing of formal statement of charges. Again, Petitioner
2 has no other adequate remedy at law and would ask that this Honorable Court
3 intercede and further grant a stay until such time as this Court has made a
4 determination.

5 DATED this 3rd day of December, 2018.

6 WILLIAM B. TERRY, CHARTERED

7
8 
9 WILLIAM B. TERRY, ESQ.

10 Nevada Bar No. 001028

11 ALEXANDRA ATHMANN-MARCOUX, ESQ.

12 Nevada Bar No. 014474

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17 Attorney for Petitioner
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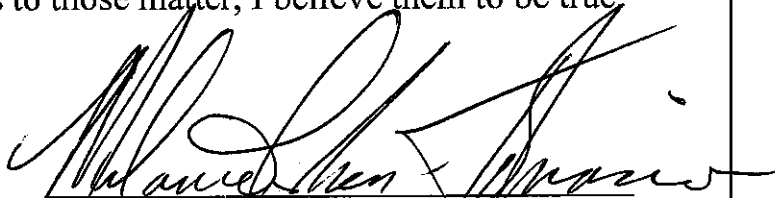
1 VERIFICATION

2 STATE OF NEVADA }
3 COUNTY OF CLARK }

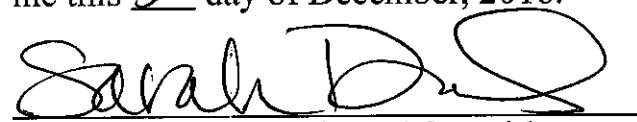
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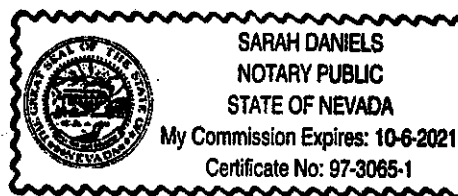
4 MELANIE ANDRESS-TOBIASSON, being first duly sworn under penalty of
5 perjury, deposes and says:

6 That I am the Petitioner in the above-entitled action; that I have read the
7 foregoing PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,
8 PETITION FOR WRIT OF MANDAMUS and know the contents thereof; that the
9 same is true of my own knowledge, except as to those matters therein contained stated
10 upon information and belief, and as to those matter, I believe them to be true

11 
12 _____
13 MELANIE ANDRESS-TOBIASSON

14 SUBSCRIBED and SWORN to before
15 me this 3rd day of December, 2018.

16 
17 _____
18 NOTARY PUBLIC in and for said
19 COUNTY AND STATE



VERIFICATION OF WILLIAM B. TERRY

STATE OF NEVADA)
COUNTY OF CLARK)

ss:

WILLIAM B. TERRY, ESQ., being first duly sworn under penalty of perjury,
deposes and says:

That I represent the Petitioner in the above-entitled action; that I have read the
foregoing PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF MANDAMUS and know the contents thereof; that the
same is true of my own knowledge, except as to those matters therein contained stated
upon information and belief, and as to those matter, I believe them to be true.

William B. Terry
WILLIAM B. TERRY

SUBSCRIBED and SWORN to before
me this 3rd day of December, 2018.

Sarah Daniels
NOTARY PUBLIC in and for said
COUNTY AND STATE



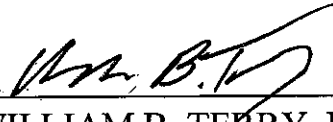
1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this petition with the formatting requirements of NRAP
3 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because this brief has been prepared and
5 proportionally spaced typeface using Corel WordPerfect X5 in Times New
6 Roman, 14 points.

7 2. Further, I hereby certify that I have read this petition, and to the best of my
8 knowledge, information, and belief, it is not frivolous or interposed of any
9 improper purpose. I understand that I may be subject to sanctions in the event
10 that the accompanying brief is not in conformity with the requirements of the
11 Nevada Rules of Appellate Procedure.

12 DATED this 3rd day of December, 2018.

13 WILLIAM B. TERRY, CHARTERED

14 
15 _____
16 WILLIAM B. TERRY, ESQ.

17 Nevada Bar No. 001028

18 ALEXANDRA ATHMANN-MARCOUX, ESQ.

19 Nevada Bar No. 014474

20 WILLIAM B. TERRY, CHARTERED

21 530 South Seventh Street

22 Las Vegas, Nevada 89101

23 (702) 385-0799

Attorney for Petitioner

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of William B. Terry, Chartered and that
3 the 3rd day of December, 2018, I did serve by way of electronic filing, a true and
4 correct copy of the above and foregoing **PETITION FOR WRIT OF**
5 **PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF**
6 **MANDAMUS** to the following:

7
8 Paul C. Deyhle
9 State of Nevada Commission on Judicial Discipline
10 P.O. Box 48
11 Carson City, Nevada 89702
12 ncjinfo@judicial.nv.gov

13 I further certify that on the 3rd day of December, 2018, I did deposit in the
14 U.S. Mail at Las Vegas, Nevada, with first class postage fully prepaid thereon a true
15 and correct copy of the **PETITION FOR WRIT OF PROHIBITION OR, IN THE**
16 **ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS** to the following:

17 Paul C. Deyhle
18 State of Nevada Commission on Judicial Discipline
19 P.O. Box 48
20 Carson City, Nevada 89702
21 ncjinfo@judicial.nv.gov

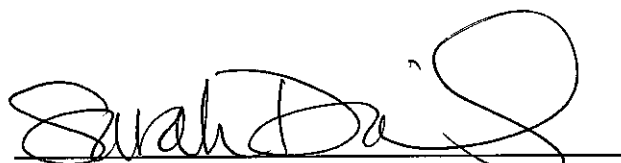
22
23

An employee of William B. Terry, Chtd.

Exhibit “1”



GARY VAUSE
Chairman

STEFANIE HUMPHREY
Vice-Chair

State of Nevada
COMMISSION ON JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, Nevada 89702
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PAUL C. DEYHLE
General Counsel and
Executive Director

November 7, 2018

PERSONAL AND CONFIDENTIAL

The Honorable Melanie Andress-Tobiasson
Las Vegas Justice Court, Dept. 10
200 Lewis Avenue
Las Vegas, NV 89155-2511

Re: Judicial Conduct Complaint, Case No. 2018-120

Dear Judge Andress-Tobiasson:

On October 25, 2018, the Nevada Commission on Judicial Discipline (the "Commission") made a determination that there was sufficient evidence to require you to respond to a complaint against you. Enclosed you will find a copy of the Commission's Determination and Questions. Copies of the complaint and all investigatory documents are contained on a CD which is also enclosed with this letter. The Commission, after an investigation and preliminary review, has determined that an answer to the complaint should be required of you as set forth in the Procedural Rules of the Commission. The Commission at this time has not made a finding of whether there is sufficient evidence to proceed to a formal hearing.

PURSUANT TO PROCEDURAL RULE 12(3) YOU ARE REQUIRED TO RESPOND TO THE SWORN COMPLAINT IN WRITING WITHIN THIRTY (30) DAYS AFTER SERVICE OF THE COMPLAINT UPON YOU. FAILURE TO ANSWER THE COMPLAINT SHALL BE DEEMED AN ADMISSION THAT THE RELEVANT FACTS ALLEGED IN THE COMPLAINT ARE TRUE AND ESTABLISH GROUNDS FOR DISCIPLINE.

The Commission has determined that you need not respond to all of the aspects of the complaint as can be determined by comparing the complaint with the Determination. In light of this and in order to help you focus your response, I have included in the Determination a list of the issues the Commission wants addressed, and a list of Questions. In essence, these frame the factual and legal issues. Please respond generally to the relevant portions of the Determination by the Commission and more specifically to the Questions.

The Honorable Melanie Andress-Tobiasson
November 7, 2018
Page 2

Pursuant to Procedural Rule 12(4), you are entitled to inspect the records of the Commission relating to the disciplinary actions against you. Accordingly, I have enclosed copies of the Commission records regarding its investigation to date on the enclosed CD.

Please remember that, pursuant to NRS 1.4683, these matters are confidential. If you have any questions concerning the contents of this letter, you or your counsel may contact me through the Commission office.

Sincerely,

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE

A handwritten signature in black ink, appearing to read "Paul Deyhle", written over a horizontal line.

Paul Deyhle
General Counsel and Executive Director

Exhibit “2”

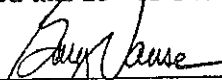
DETERMINATION BY NEVADA COMMISSION ON JUDICIAL DISCIPLINE
OF CAUSE FOR RESPONSE TO COMPLAINT
REGARDING CASE NUMBER 2018-120

Following a review of the investigation in this case, the Commission determines pursuant to NRS 1.4667 that there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against Respondent contained in the complaint. Accordingly, Respondent is required to respond to the complaint. The allegations of misconduct are as follows:

Respondent violated the Revised Nevada Code of Judicial Conduct, including Judicial Canon 1, Rule 1.1 (compliance with the law and the Code); Rule 1.2 (failing 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); Rule 1.3 (avoiding abuse of the prestige of judicial office); Canon 2, Rule 2.2 (impartiality and fairness); Rule 2.3 (bias); Rule 2.4 (external influences on judicial conduct); Rule 2.5 (competence); and Rule 2.11 (disqualification), or any single rule or any combination of those rules, by doing the following while Respondent was the Justice of the Peace for the Las Vegas Justice Court in Clark County, Nevada:

1. In 2015 -- 2016, Respondent improperly used her position as a judge to contact Las Vegas Metropolitan Police ("Metro") vice detectives regarding a sex trafficking ring involving the storefront Top Notch, Shane Valentine and Respondent's daughter.
2. Respondent called Metro vice detectives regarding the suspected sex trafficking ring and discussed the same with vice detectives who appeared before her to obtain search warrants.
3. Respondent stated that she wanted Metro to investigate the sex trafficking ring and close down the storefront in which the ring was headquartered.
4. Respondent said that she did not want to file a formal complaint with Metro but wanted to keep the matter confidential.
5. Respondent would not have had this type of access to Metro vice detectives without her position as a justice of the peace.
6. Respondent failed to immediately recuse herself, due to the connection between Respondent's daughter and Mr. Valentine, in Justice Court Case No. 15M22841X when Shane Valentine came before Respondent on domestic violence charges in 2016.

Dated this 25th of October, 2018



Gary Vause, Chairman

Exhibit “3”

November 7, 2018

QUESTIONS PERTAINING TO COMPLAINT
REGARDING JUSTICE OF THE PEACE MELANIE ANDRESS-TOBIASSON
CASE NUMBER 2018-120

TO: Justice of the Peace Melanie Andress-Tobiasson, Respondent:

(NOTE THAT ALL REFERENCES TO EITHER CANONS OR RULES PERTAIN TO THE
REVISED NEVADA CODE OF JUDICIAL CONDUCT)

This set of questions is sent pursuant to the authority of the Nevada Commission on Judicial Discipline (hereinafter referred to as "Commission"). Nev. Const. Art. 6, § 21(7); NRS 1.462, 1.4667; Commission Procedural Rule 12. Respondent is required to answer the questions separately and fully in writing **under oath. (See required form of oath attached.)** The answers shall set forth each question asked, followed by respondent's answer or response. The questions are intended to focus the issues in the complaint as determined by the Commission. References below either to Canons or Rules pertain to the Revised Nevada Code of Judicial Conduct. Should respondent deem it necessary to argue legal matters, a separate brief of no more than ten pages in total for all arguments may be attached and referenced in an answer to a question but said answer shall not contain legal argument.

The allegations of misconduct are found in the Determination of the Commission in this case entered on October 25, 2018. A copy is enclosed with these questions. Respondent is also being provided with copies of the evidentiary record considered by the Commission determining that there was sufficient evidence to require a response. Although respondent is to respond to the complaint pursuant to NRS 1.4667(3), the complaint is limited to the issues confirmed in the Determination of the Commission. Unless otherwise stated, all of the questions continue to pertain to the actions of respondent on or about 2015-2016, while Respondent was acting in her official capacity as a Justice of the Peace of the Las Vegas Justice Court, in Clark County, Nevada. The allegations center upon the incidents and people discussed in the attached I-Team interview with Respondent that was released on or about April 13, 2018, and Justice Court Case No. 15M22841X.