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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 NEVADA STATE COMMISSION)
14 ON JUDICIAL DISCIPLINE,)

Respondent.)

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Special Prosecutor for Respondent

1 Within that petition at page 11 a request to stay was also made to this Honorable
2 Court to relieve Judge Tobiasson of having to respond to the interrogatories.

3 On December 10, 2018, Judge Tobiasson through her counsel filed a “Motion
4 for Extension of Time to File Response to Interrogatories/Questions” which was
5 addressed to the NCJD. Due to the fact that the NCJD the Commission would only
6 grant until December 27, 2018 to respond to the interrogatories, as a result, on
7 December 14, 2018, a request for immediate consideration of Petitioner’s application
8 to stay further proceedings before the Nevada Commission on Judicial Discipline
9 pending the Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition
10 was filed before this Honorable Court by the Petitioner. On December 20, 2018, this
11 Honorable Court granted the stay and further invited “...the Nevada District Judges
12 Association and the Nevada Judges of Limited Jurisdiction to participate in this
13 matter as amicus curiae.” The Court thereafter set forth a briefing schedule. That
14 briefing schedule allowed the Respondent Commission 28 calendar days from the
15 date of the December 20th order to respond to the writ. Independent of that Order, the
16 Commission through it’s prosecuting officer filed on January 2, 2019, a “Motion for
17 Relief from Stay”. It is that document which Judge Tobiasson objects to and asks that
18 this Honorable Court deny. It appears to the Petitioner Tobiasson that this Court has
19 indicated an interest in the issue which has been presented within the Writ and it was
20 for that reason in part that other judges associations were invited to file amicus curiae
21 briefs. To lift the stay which currently exists would provide to the Commission an
22 argument that the issue is now moot since it would mandate that the interrogatories

1 be answered. But for the fact that this Honorable Court issued a stay, it is clear the
2 intent of the Commission was to mandate that Judge Tobiasson answer the
3 interrogatories independent of the fact that the writ was pending.

4 ARGUMENT

5 I. THE SUPREME COURT OF THE STATE OF NEVADA MUST NOT 6 ELIMINATE THE STAY THAT CURRENTLY EXISTS IN THE INSTANT 7 CASE.

8 At the risk of being repetitious, this Honorable Court is asked to consider the
9 fact that no formal statement of charges has been issued against Judge Tobiasson and
10 further that it is apparent that the Commission will not grant further extensions to the
11 Petitioner in the answering of those interrogatories. The Commission has made it
12 clear that they want the interrogatories answered separate and aside from the major
13 issue which is presented within the petition filed by Judge Tobiasson. In the original
14 petition it was brought to the Court's attention that the instant case is no different
15 than any other "civil" case since the civil rules of procedure are applicable.
16 Interrogatories in the normal discovery process only occur after a "complaint" is filed.
17 By complaint, Judge Tobiasson means a formal cause of action requiring her to
18 answer within a 20 day period of time or a period of time as the rules otherwise
19 provide. Hypothetically, if Judge Tobiasson was being sued in a civil court a
20 complaint would have been filed and she would have been required to answer that
21 complaint. After the answer, the suing party is welcome to file anything that would
22 normally be applicable for purposes of discovery including interrogatories, taking a
23 deposition, etc. The mere fact that Judge Tobiasson has cooperated in the instant case

1 by allowing herself to be interviewed by the Commission's investigator should not
2 be held against her. To the contrary, she was optimistic enough to believe that once
3 the interview occurred the Commission might take no further action. That, however,
4 has turned out to be an inaccurate hope. The interrogatories mandate that she answer
5 the specific questions propounded to her by the Commission and that she be bound
6 by those answers. No normal "discovery" has been done in the instant case and once
7 a formal statement of charges is filed it is believed that the Commission will set forth
8 a scheduling order which Judge Tobiasson will comply with.

9 In the original Petition, Judge Tobiasson represented that the issue is one that
10 constantly occurs in Commission actions. The mere fact that no one has complained
11 about this should again not be construed against Judge Tobiasson. It is time that the
12 actions of the Commission come under more scrutiny. Again, the issue must be
13 important enough due to the fact that this Honorable Court invited other judges to file
14 amicus curiae briefs.

15 A. Petitioner Will Likely Prevail on the Merits.

16 There is no formal statement of charges pending against Judge Tobiasson. If
17 there is, the Commission should attach that as an exhibit. The utilization of their term
18 "complaint" is mere semantics. They have made certain temporary decisions but have
19 not filed a formal complaint, i.e. statement of charges, against Judge Tobiasson.
20 There is in effect nothing for her to answer other than the elicit interrogatories which
21 the Commission seems to feel they can mandate a judge to answer before the filing
22 of a formal statement of charges. This is inconsistent with current rules and, as a
23

1 result, Petitioner believes she will prevail on merits.

2 **B. The Petitioner Will Suffer Irreparable or Serious Injury If the Stay Is Lifted.**

3 If the stay is lifted it provides the Commission with a simplistic approach to the
4 original petition being that the matter is now moot because Judge Tobiasson has been
5 directed to respond to the interrogatories. That would be the effect of the elimination
6 of the stay. Certainly even the Commission will acknowledge that the Petitioner will,
7 as a result of the lifting of stay, suffer irreparable or serious injury or harm.

8 **C. The Respondent Will Suffer No Serious Injury or Harm If the Stay Continues
9 to Be Granted.**

10 The issue presented within the petition is one which will appear before this
11 Honorable Court again if not now decided. It would seem to Petitioner that the
12 Commission wants this question answered; that question being whether or not they
13 have the right to mandate that a judge answer interrogatories which he or she will be
14 bound to prior to the filing of formal charges. Again, once the writ is decided, should
15 the Commission wish to provide interrogatories to Judge Tobiasson, the issue will be
16 presented at that point in time after a formal set of charges is filed against her.

17 Even Rule 6 of the Procedural Rules of the Nevada Commission on Judicial
18 Discipline talks in terms of a formal statement of charges when it indicates “upon the
19 filing of the formal statement of charges said statement...” The Rule continues that
20 the executive director shall hire an investigator which obviously has been done in the
21 instant case. In their motion, the Commission at page 5, lines 23-25 indicates that the
22 executive director has the right to have an investigator do an in-person interview
23 “...or by way of written set of questions...” The Commission is asked to point out

1 where in Rule 11 of their own procedural rules are a set of interrogatories authorized.

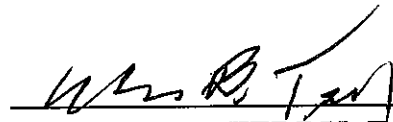
2 The Commission also argues in the motion to lift the stay that somehow
3 Petitioner was at fault for allowing herself to be interviewed by the Commissioner's
4 investigator. To the contrary, it appeared to Judge Tobiasson that this was during the
5 investigatory process which has now passed. She voluntarily participated in the
6 interview. She will not voluntarily answer the interrogatories unless the stay is lifted
7 or upon further direction of the Nevada Supreme Court because again it is her
8 position that the interrogatories are outside of the scope of the rules which are
9 applicable to someone similarly situated to her. At the time of the interview, Judge
10 Tobiasson was presented with a dilemma, that dilemma being she has a duty to
11 cooperate with the investigator but if she does not, certainly it will be construed
12 against her. Apparently, the Commission is relying upon that interview in proceeding
13 further against Judge Tobiasson by way of the instant interrogatories and further
14 actions of the Commission. Interestingly enough, while not particularly relevant to
15 the instant objection to the request to lift the stay, some of the conclusions of the
16 investigator were favorable to Judge Tobiasson yet it appears to Judge Tobiasson that
17 the Commission is not taking that into consideration since many of the proffered
18 questions in the interrogatories deal or dealt with a matter which the investigator
19 seemed to view favorably for the Judge. On the other hand, there are other opinions
20 by the investigator which Judge Tobiasson does not necessarily agree with but once
21 again are not the subject matter of the instant motion.

1 **CONCLUSION**

2 For the above-indicated reasons and the reasons set forth both in the original
3 Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition and further
4 based upon this Honorable Court's prior order filed December 20, 2018, it is asked
5 that the stay not be lifted or eliminated in the instant case.

6 DATED this 8th day of January, 2019.

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8 WILLIAM B. TERRY, CHARTERED

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