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8 Attorney for Respondent,
9 ERIKA BALLOU, District Court Judge

6 **BEFORE THE NEVADA COMMISSION ON**
7 **JUDICIAL DISCIPLINE**
8 **STATE OF NEVADA**

9 IN THE MATTER OF THE HONORABLE,) Case No.: 2022-124-P
10 ERIKA BALLOU, District Court Judge,) 2022-134-P
11 Eighth Judicial District Court, Clark County,)
12 State of Nevada,)
13 Respondent.)

RESPONDENT’S VERIFIED ANSWER

13 COMES NOW, Respondent, the Honorable Erika Ballou, by and through her attorney,
14 Thomas F. Pitaro, Esq. of the firm PITARO & FUMO, CHTD., and pursuant to Nevada
15 Commission on Judicial Discipline Rule 17 submits her Verified Answer to the Complaint,
16 including denials, affirmative defenses, and mitigating factors, as follows:

18 **Factual Allegations**

19 **A.**

20 On July 20, 2022, the Las Vegas Police Protective Association Metro, Inc. (LVPPA)
21 through Steve Grammas filed a complaint directed at me with the Nevada Commission on
22 Judicial Discipline, being Case No. 2022-124. This complaint alleged that (1) in September
23 2016, years before I was elected to the Judiciary, I wore a Black Lives Matter button and also
24 wore a black armband into court; (2) that comments I made on November 10, 2021, in the case
25 of State v. Bonner; and (3) that comments I made on July 11, 2022, in State v. Stringer showed
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1 I was biased and/or prejudiced against police. Out of his complaint arose Count One of the
2 Formal Statement of Charges.

3 Count One of the Formal Statement of Charges, case # 2022-124, concerned a
4 discussion I had with DDA Mendoza in the case of State v. Bonner. I do not view that
5 discussion with Ms. Mendoza as a “chastisement” of her. A fair review of the transcript of the
6 sentencing hearing shows Ms. Mendoza's was asking for prison for a defendant because his
7 fleeing at a “pre-textual” traffic stop indicated that he was "engaged in much more substantial
8 criminal behavior."
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10 I had reviewed the body cam footage of the traffic stop prior to the sentencing and
11 described during my interview what I observed. As I stated on Page 17 in my interview:
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13 One of them is being Black and being afraid. I'd also talked in here
14 about him being afraid and him I don't know if I said it in the
15 transcript because I don't remember, but when you watch the body
16 cam video, you could tell the police were nervous because of his
17 arrest history. You can also tell he's nervous. You can watch on the
18 body cam video, Marshal Bonner is basically terrified. He's saying
19 Why do you want me to get out of the car; why are you telling me
20 to get out of the car? Can I call my mother? Can I be on the phone
21 with my mother? Can I have this recorded? He's absolutely
22 terrified. There's a fight or flight response. So he chose to flee. He
23 wasn't going to fight. So he chose to flee. So there are reasons to
24 run from the police. I'm not saying that they are the right thing to
25 do. I'm saying they do exist.

26 My comments, after reviewing the body cam footage were directed to Ms. Mendoza's
27 comments. Her characterizing Mr. Bonner's action as being only susceptible to interpretation as
28 indicative of "more substantial criminal behavior" was naive. It ignored the painful truth that for
some people an encounter with the police can invoke such fear that they feel their only
alternative, rightly or wrongly, is to flee. Recognition of this fact does not show that I am biased
and/or prejudiced; it only recognizes the truth. I am not alone in this observation. Attached to
my interview was Commonwealth v. Warren, 58 N.E.3d 333 (Mass. 2016) to the same affect.

1 Mr. Bonner received probation. That was I felt an appropriate sentence. He did not get a
2 lesser sentence because he was Black. He did not get the sentence because of my alleged bias
3 and/or prejudice against police. He received it because under the individual factors in his case I
4 thought he was an appropriate candidate for probation, Interestingly, Judge Michelle Leavitt
5 came to the same conclusion. In the case that Ms. Mendoza asserted showed Mr. Bonner
6 deserved prison because he "engaged in much more substantial criminal behavior", Judge
7 Leavitt gave him probation concurrent to my probated sentence (State v. Bonner C-22-364985-
8 1).

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10 **B.**

11 On August 5, 2022, the Police Managers and Supervisors Association (PMSA) through
12 William Matchko filed another complaint directed at me with the Nevada Commission on
13 Judicial Discipline, being Case No. 2022-134. This complaint alleges that the comments I made
14 on July 11, 2022, in State v. Stringer showed I was biased and/or prejudiced against police.
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16 The essence of the complaints is that I am biased and/or prejudiced against law
17 enforcement. I am neither biased nor prejudiced concerning law enforcement nor can my
18 comments be reasonably interpreted to support that conclusion.
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20 The matter complained of in Count Two was the probation revocation hearing in State v.
21 Stringer. In this situation Mr. Stringer, who was on probation, picked up a gross misdemeanor
22 charge of battery on a police officer. He stipulated to the violation with the right to argue for
23 reinstatement.
24

25 The complainants and the interviewer seem to have the facts of this case backward. I was
26 not implying that a person should not talk to the police or that the police will not listen to
27 citizens.
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1 The fact of the matter was that the officer was talking "smack" with Mr. Stringer and
2 told him not to approach him. Mr. Stringer's problem was that he did not listen to the police
3 officer and back off as directed. Rather than walking away, as directed by the officer to not
4 come near him he walked towards the officer. The officer thought Mr. Stringer was going to hit
5 him so the officer tried to take Mr. Stringer to the ground while they grappled. (Preliminary
6 Hearing Transcript, State v. Stringer (July 7, 2022). Telling Mr. Stringer he should have
7 "walked away" was the appropriate observation based on the facts of the case. (This case, C-22-
8 366302, was resolved with Mr. Stringer getting 'credit for time served' with the same
9 prosecutor, Mr. Lo Grippo.)

10
11 My comments to Mr. Stringer, taken and understood in the context of what actually
12 happened were a criticism of Mr. Stringer's action, not the police. As it was Mr. Stringer I was
13 sentencing and not the "police", I spoke to him in a manner I hoped would get through to him
14 ("The Talk") and explain how his reckless behavior has now caused him to be sent to prison. I
15 spoke to him in words and images that I thought he would understand and hopefully would get
16 through to him.
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19 Telling a person to walk away and not to provoke an argument with the police that
20 could, would, and did cause him to pay an unnecessary price is not indicative of bias or
21 prejudice to the police. I revoked Mr. Stringer's probation and sent him to prison.
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23 What is being lost in these complaints is that I was sentencing the defendants not the
24 police. My job is to fairly and impartially sentence the individual before me. I did it in both of
25 the cases as well as in all other sentencings I perform.

26 Likewise, in the Stringer matter I revoked his probation because I felt he violated the
27 terms and conditions of his probation. I could have followed the recommendation of his defense
28 counsel and reinstated him, but I did not. My decision had nothing to do with the police; it had

1 to with Mr. Stringer not doing what he was supposed to do on probation. On the battery of the
2 police officer, in that case the State stipulated that Mr. Stringer receive credit for time served.
3 (C-22-366302-1)

4 **Denials**

5 **Count One**

6
7 1) Deny the conduct described in Page 3 lines 5-7 of the Formal Statement of
8 Charges violated Canon 1, Rule 1.1 of the Revised Nevada Code of Judicial Conduct.

9 2) Deny the conduct described in Page 3, lines 8-10 of the Formal Statement of
10 Charges violated Canon 1, Rule 1.2 of the Revised Nevada Code of Judicial Conduct.

11 3) Deny the conduct described in Page 3, lines 11-12 of the Formal Statement of
12 Charges violated Canon 2, Rule 2.2 of the Revised Nevada Code of Judicial Conduct.

13 4) Deny the conduct described in Page 3, lines 13-16 of the Formal Statement of
14 Charges violated Canon 2, Rule 2.3 (A) and/or 2.3 (B) of the Revised Nevada Code of Judicial
15 Conduct.
16

17 **Count Two**

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19 1) Deny the conduct described in Page 3 lines 19-21 of the Formal Statement of
20 Charges violated Canon 1, Rule 1.1 of the Revised Nevada Code of Judicial Conduct.

21 2) Deny the conduct described in Page 3, lines 22-24 of the Formal Statement of
22 Charges violated Canon 1, Rule 1.2 of the Revised Nevada Code of Judicial Conduct.

23 3) Deny the conduct described in page 3 lines 25-26 of the Formal Statement of
24 Charges violated Canon 2, Rule 2.2 of the Revised Nevada Code of Judicial Conduct.
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1 4) Deny the conduct described in Page 3 lines 27-28 and Page 4 lines 1-2 of the
2 Formal Statement of Charges violated Canon 2, Rule 2.3 (A) and/or 2.3 (B) of the Revised
3 Nevada Code of Judicial Conduct.

4
5 **Affirmative Defenses and Mitigating Factors**

6 1) The conduct complained of in Counts One and Two of the Formal Statement of
7 Charges is protected speech under the First Amendment to the U.S. Constitution and Article
8 One § 9 of the Nevada State Constitution.

9 2) The statements complained of in Counts One and Two of the Formal Statement
10 of Charges were made in the context of a court proceeding and are not indications of bias or
11 prejudice as they do not show that the Respondent closed her mind to the presentation of
12 evidence.

13
14 3) The statements complained of in Counts One and Two of the Formal Statement
15 of Charges are covered by the doctrine of judicial immunity as her statements her made within
16 her judicial capacity and in a proceeding over which she had jurisdiction.

17
18 4) Canon One is unconstitutionally vague and overbroad as it is applied to
19 Respondent.

20 5) A judge does not exhibit bias because she has a general opinion about legal or
21 social matters that relate to the case before her.

22
23 6) The statements complained of in Counts One and Two of the Formal Statement
24 of Charges constitute a vindictive prosecution in that the complaints leading to these charges are
25 retaliation for her political beliefs as a Black woman living in the United States. Mr. Grammas'
26 complaint to the commission starts out with a criticism of Respondent for wearing a Black
27 Lives Matter pin in court while a Public Defender, and continue to complain about law
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1 enforcement being “highly offended” over the “rhetoric” arising out of the George Floyd case.
2 (It should be noted that the police officers who killed Mr. Floyd were found guilty and some are
3 still in prison).

4 7) The statements complained of in Counts One and Two of the Formal Statement
5 of Charges are true statements and, as such, are not actionable.

6 8) Respondent did not commit willful misconduct pursuant to NRS 1.4653.

7 9) Respondent has not had any prior disciplinary complaints against her sustained.

8 10) The complaints that led to the Formal Statement of Charges seem more directed
9 at the fact that a black female person is a judge of the Eighth Judicial District who does not
10 constantly praise law enforcement to the satisfaction of the Las Vegas Police Protective
11 Association Metro, Inc. and the Police Managers and Supervisors Association no matter the
12 circumstance. However, no case is cited where I treated the police "unfairly" or showed
13 improper bias and/or prejudice in any of my rulings.

14 11) The Las Vegas Police Protective Association Metro, Inc. and the Police
15 Managers and Supervisors Association complaints appear to throw the gauntlet down to this
16 Commission. Their position is either discipline me and/or remove me from office or you too
17 will show you are "biased and prejudiced" against the police.

18 12) The allegations of the Formal Statement of Charges appear to be politically
19 motivated. Both the Las Vegas Police Protective Association Metro, Inc. and the Police
20 Managers and Supervisors Association are political advocacy groups for law enforcement. Their
21 complaints with me start well before I was a judge. They are still offended by my wearing a
22 "Black Lives Matter" pin in 2016. Complainant Grammas specifically attributes his feelings of
23 being a victim of bias and prejudice because of the public perception of some on George
24 Floyd's murder. On page 8 of his interview, he says: "You know at the height of the George
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1 Floyd case, this is the exact type of rhetoric that law enforcement has been dealing with since
2 that case. ...and we took that as highly offensive." In addition, after totally misinterpreting my
3 comments to "walk away" to Mr. Stringer, Grammas says at page 13 of his interview: "And that
4 statement right there is more cannon fodder towards the issue that's been on for the last several
5 years in our country against police officers."

6
7 13) No prosecuting agency (District Attorney or Attorney General) has sought my
8 recusal in any criminal matter for bias or prejudice against any law enforcement agency,
9 including the two political advocacy groups (LVPPA and PMSA) that have filed the instant
10 complaints against me, nor for showing preferential treatment to anyone.

11
12 14) I have never shown preferential nor unfair treatment anyone because of their race
13 or occupation. There is no evidence that I have ever done that as a sitting Judge. Contrast, the
14 allegations of prejudice and bias contained in the Formal Statement of Charges with a
15 sentencing I did in State v. Trejo (on June 15, 2022), which was between the statements in
16 Count One and Two. I said:

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18 Officer Carrigy, I want to thank you and all of your brother and
19 sister officers for what you did that day. It was really, really heroic,
20 especially, and I know I think it was Officer – I can't remember his
21 name – who his body camera showed how he had to think so
22 quickly when Ms. Serrano was running away from Mr. Trejo, that
23 he had to bring his gun up, and that really affected me. You guys
24 all did a fantastic job, and I do want to thank you for protecting the
25 community every day.

26
27 WHEREFORE, Respondent prays that Petitioner takes away nothing by virtue of its
28 Complaint and that the judgment be entered in favor of Respondent.

DATED this 11th day of April, 2024.

PITARO & FUMO, CHTD.
/s/ Thomas F. Pitaro
THOMAS F. PITARO, ESQ.
Nevada State Bar No. 1332

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VERIFICATION

I, ERIKA BALLOU, being fully sworn, deposes and says:

I am the Respondent in the above entitled-action;

I have read the foregoing RESPONDENT’S VERIFIED ANSWER and know the contents thereof;

The same is true of my own knowledge, except for those matters contained therein which are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 11th day of April, 2024.

/s/ Erika Ballou
ERIKA BALLOU
DISTRICT COURT JUDGE

