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Commission on Judicial Discipline

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE RICHARD SCOTTI, District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada, Respondent.	Case No.: 2019-183-P

FORMAL STATEMENT OF CHARGES

COMES NOW, Richard I. Dreitzer, Prosecuting Officer for the Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), established under Article 6, §21 of the Nevada Constitution, who, in the name of and by the authority of the Commission, as found in NRS 1.425 – 1.4695, files this Formal Statement of Charges and informs the Honorable Richard Scotti, District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada ("Respondent" or "Judge Scotti"), that the following acts were committed by Respondent and warrant disciplinary action by the Commission under the Revised Nevada Code of Judicial Conduct ("the Code").

FACTUAL ALLEGATIONS

During the period spanning March 23, 2017 and May 1, 2017, Respondent knowingly and in the capacity of his office as a District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada ("District Court"), engaged in the following acts, or a combination of these acts ("acts" or "actions"):

A. Respondent presided over the criminal trial in the matter of *State of Nevada v. Jose Azucena,* which involved allegations of multiple sex offenses against children and related

charges. While conducting voir dire in that matter, a prospective juror expressed to Respondent that she did not feel she could be impartial because her work as a nurse exposed her to child abuse. Respondent then became angered, and threw a book against a wall, cursed, berated, yelled at and threatened the prospective juror for creating what the Respondent appeared to believe was a contrived excuse to avoid jury service. Respondent ultimately excused the potential juror from the venire. When voir dire continued, the next prospective juror admitted that she had suffered sexual abuse as a child, yet did not raise any concerns about her ability to be impartial. Thereafter, no other prospective jurors raised any biases or any concerns about their potential impartiality.

Ultimately, the jury convicted Defendant, Jose Azucena of twelve counts of lewdness with a child under the age of 14, seven counts of child abuse, neglect or endangerment; five counts of indecent exposure; four counts of attempted lewdness with a child under the age of 14; and one count each of first-degree kidnapping and sexual assault of a minor under 14 years of age.

Defendant, Jose Azucena subsequently appealed his conviction to the Nevada Supreme Court, which was reversed and remanded. On September 5, 2019, in the matter of *Jose Azucena v. State of Nevada*, 136 Nev. Adv. Op. 36 (2019), the Nevada Supreme Court specifically indicated that the basis for its reversal and remand was a direct consequence of the above-described facts. In the Court's words:

> ***We conclude that such behavior and statements constitute judicial misconduct*** and may have discouraged other prospective jurors from answering candidly about their own biases. Because we cannot be convinced that an impartial jury was selected under these circumstances where the judge did nothing to alleviate the intimidating atmosphere that he created, we reverse and remand for a new trial.

Id., 136 Nev. Adv. Op. 36, at pg. 2 (emphasis added.)

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Moreover, the Nevada Supreme Court's opinion also noted that:

> "A trial judge has a responsibility to maintain order and decorum in trial proceedings." *Oade*, 114 Nev. at 621, 960 P.2d at 338. The judicial canons require a judge to "be patient, dignified and courteous to... jurors." NCJC Canon 2, Rule 2.8 (B), and to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and... avoid impropriety and the appearance of impropriety," NCJC Canon 1, Rule 1.2. We have previously "urged judges to be mindful of the influence they wield" over jurors, as a trial judge's words and conduct are likely "...to mold the opinion of the members of the jury to the extent that one or the other side of the controversy may be prejudiced." *Parodi*, 111 Nev. at 367-68, 892 P.2d at 589-90 (internal quotation marks omitted).

Id., 136 Nev. Adv. Op. 36, at pg. 6.

Respondent's statements and actions during the trial in the matter of *State of Nevada v. Jose Azucena,* therefore, violated Canon 1 of the Code, Rule 1.1, requiring the Respondent to comply with the law, including the Code itself; and Rule 1.2, requiring the Respondent 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; Canon 2 of the Code, Rule 2.5(A), requiring the Respondent to perform his judicial duties competently; and Rule 2.8(B), requiring the Respondent to be patient, dignified and courteous, and act and speak with decorum and maintain a proper judicial demeanor.

B. The Respondent abused his judicial authority by engaging in any or all of the acts set forth in Paragraph A, above.

COUNT ONE

By his words and actions during the trial in the matter of State of Nevada v. Jose Azucena over the period spanning March 23, 2017 and May 1, 2017, as specifically alleged above, the Respondent violated Canon 1 of the Code, Rule 1.1, requiring the Respondent to comply with the law, including the Code itself; and Rule 1.2, requiring the Respondent 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; Canon 2 of the Code, Rule 2.5(A), requiring the Respondent to perform his judicial duties competently; and Rule

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2.8(B), requiring the Respondent to be patient, dignified and courteous, and act and speak with decorum and maintain a proper judicial demeanor.

Based upon the information set forth herein, the Commission shall hold a public hearing on the merits of these facts and Count One pursuant to NRS 1.4673 and, if violations as alleged are found to be true, the Commission shall impose whatever sanctions and/or discipline it deems appropriate pursuant to NRS 1.4677 and other Nevada Revised Statutes governing the Commission.

Respectfully submitted,

DATED: September 8, 2020.

FENNEMORE CRAIG, P.C.

By: _____

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Prosecuting Officer for the Nevada Commission on Judicial Discipline

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

RICHARD I. DREITZER, ESQ., being first duly sworn under oath, according to Nevada law, and under penalty of perjury, hereby states:

1. I am an attorney licensed to practice law in the State of Nevada. I have been retained by the Nevada Commission on Judicial Discipline to serve in the capacity of Prosecuting Officer in the matter of the Honorable Richard Scotti, Case No. 2019-183-P.

2. I have prepared and reviewed this Formal Statement of Charges against the Honorable Richard Scotti, and, pursuant to the investigation conducted in this matter, and based on the contents of that investigation and following reasonable inquiry, I am informed and believe that the contents of this Formal Statement of Charges are true and accurate.

DATED: September 8, 2020

By: _____
Richard I. Dreitzer, Esq.

State of Nevada

County of Clark

Subscribed and sworn before me, a Notary Public this 8th day of September, 2020.

By: _____
NOTARY PUBLIC

NOTARY PUBLIC
TRISTA DAY
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAR. 15, 2023
No: 04-88154-1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this FORMAL STATEMENT OF CHARGES was placed in the U.S. Mail, postage pre-paid, on this 8th day of September, 2020, addressed to:

Honorable Judge Richard Scotti
District Court Department 2
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 89155-2311

By: _____
An employee of Fennemore Craig, P.C.