

1 BEFORE THE COMMISSION ON JUDICIAL DISCIPLINE

2 STATE OF NEVADA

3
4 In the Matter of the)
5)
6 HONORABLE PAUL FREITAG)
7 Former Justice of the Peace,)
8 Sparks Township Justice Court,)
9 County of Washoe,)
10 State of Nevada,)
11 Respondent.)



10 **FINDINGS OF FACT, CONCLUSIONS OF LAW, IMPOSITION OF DISCIPLINE**
11 **AND CONSENT ORDER**

12 Pursuant to prior written notice, the above-entitled matter came on for public (formal)
13 hearing in Carson City pursuant to NRS §1.467(3)(c) and Interim Commission Rule 18 (hereinafter
14 referred to as the "hearing") on September 23, 2004, before the Nevada Commission on Judicial
15 Discipline (hereinafter referred to as the "Commission"). David F. Sarnowski, General Counsel to
16 and Executive Director of the Commission, appeared in lieu of a Special Counsel. The respondent,
17 the Honorable Paul Freitag, appeared in person, but he was not represented by counsel. The
18 Commission considered the Stipulation in Lieu of Formal Statement of Charges ("Stipulation") filed
19 on July 28, 2004, which the respondent signed. The Commission also considered the General
20 Counsel's Memorandum Regarding Status of Cases Left Undecided by the Respondent
21 ("Memorandum"), filed on September 8, 2004.

22 Neither the respondent nor the General Counsel adduced proof regarding violations since
23 they were admitted in the Stipulation. The General Counsel submitted the matter of punishment
24 without argument and the respondent made a statement in mitigation and extenuation. Having
25 carefully considered the Stipulation, the Memorandum and the statements by the respondent, and
26 after being fully advised of its obligations and duties, the Commission specifically finds that the
27 hearing was conducted according to the statutes, rules and procedures required by law and hereby
28 issues the following Findings of Fact, Conclusions of Law and Imposition of Discipline pursuant to

1 Commission Interim Rules 27 and 28; and, NRS §1.4673 and §1.4677. In order to resolve the
2 pending complaint against him, the respondent proceeding without counsel stipulated to the
3 following terms, among others:

4 1. The respondent stipulated that he has already resigned/retired from judicial office.
5 He agreed never to seek appointive or elective judicial office in Nevada, and to the
6 entry of an order by the Commission permanently barring him from judicial office
7 due to said agreement. Additionally, the respondent agreed to imposition of public
8 censure, a form of discipline authorized by Section 5(a), Article 6, Section 21 of the
9 Nevada Constitution and NRS 1.4677. The respondent understood that the discipline
10 imposed will be included in a "consent order" filed pursuant to Interim Commission
11 Rule 29, and that said order must be and will be filed with the clerk of the Nevada
12 Supreme Court.

13 2. The respondent agreed to present a written apology addressed to the litigants
14 impacted by his failure to decide cases assigned to him, and that in the sole discretion
15 of the Commission, it could deliver a copy or copies for distribution to said litigants
16 and/or their counsel (if any) and for other public distribution and public access.

17 3. The respondent agreed to accept the imposition of a monetary fine of \$2000.00 to be
18 paid to the Washoe County Law Library.

19 4. The respondent agreed for the limited purpose of effectuating this agreement prior
20 to it becoming public, pursuant to Interim Commission Rules 12 and 13, to the entry
21 of a finding by the Commission that there is a reasonable probability the evidence
22 available for introduction at a formal hearing could clearly and convincingly establish
23 grounds for disciplinary action, on the following issues:

24 A. Whether the respondent violated any individual canon or combination of
25 canons, including Canons 3B(1), 3B(8), and 3C(1) of the Nevada Code of
26 Judicial Conduct, by failing to decide one or more cases assigned to him prior
27 to the time he retired in the spring of 2003.

28 ...

1 B. Whether the respondent violated any individual canon or combination of
2 canons, including Canons 3B(1), 3B(8), and 3C(1) of the Nevada Code of
3 Judicial Conduct, by failing to decide one or more cases assigned to him prior
4 to the expiration of a limited term appointment lasting from May 9, 2003 to
5 October 30, 2003.

6 5. The respondent agreed to waive the filing of a formal statement of charges against
7 him by a special prosecutor, pursuant to Interim Commission Rules 14-16, and the
8 Commission accepted said waiver.

9 6. The respondent agreed to waive his right to file an answer to the formal statement of
10 charges and his right to a hearing at a public session, pursuant to Interim Commission
11 Rules 17 and 18, and the Commission accepted the respondent's waiver of said right,
12 conditioned on the Commission's reservation of rights to conduct a public hearing
13 and to mandate the presence of the respondent if the Commission so chooses. The
14 Commission chose to conduct a public hearing.

15 7. The respondent understood and agreed that the Commission could immediately
16 proceed to enter findings that the violations recounted in paragraph 5(A)-(D) above,
17 were established by clear and convincing evidence, without the necessity for the
18 presentation of evidence at a public hearing pursuant to Interim Commission Rules
19 24 through 26.

20 On the date of the hearing, the Commission deliberated and voted in private. The chairman
21 announced the terms of the sanctions imposed, which were consistent with and based upon the
22 Respondent's stipulations as recounted above. The following findings and conclusions are now
23 entered as part of the record.

24 A. **Findings Of Fact**

25 The Commission finds that the Stipulation and Memorandum considered at the hearing
26 clearly and convincingly established each of the following facts.

27 1. That Respondent was, at all times applicable to the allegations addressed in the
28 Stipulation, a Justice of the Peace for the Sparks Township, located in the County of Washoe, State

1 of Nevada; or he was a senior justice of the peace acting under appointment of the Nevada Supreme
2 Court for several months in 2003. Therefore, the Respondent was a judicial officer whose conduct
3 was subject to the provisions of the Nevada Code of Judicial Conduct (hereinafter the "Code").

4 2. A two-page document marked as Exhibit A to the Memorandum was provided by the
5 clerk of the Sparks Justice Court to the Commission's investigator during the course of the
6 investigation. It shows that at the time the respondent retired no fewer than twelve (12) criminal and
7 criminal-related matters were left undecided, and that no fewer than thirty-six (36) small claims and
8 other civil matters were left undecided. Of the criminal cases, six (*State v. Mark McCombs*, *State*
9 *v. Charles Malberg*, *State v. Jeremy McCaskill*, *State v. Thomas Yore*, *State v. William Morrison*,
10 *and State v. Eleanor Spainhour*) involved charges that had been the subject of bench trials conducted
11 between May 1996 and July 2001 by the Respondent. All six have been or still are the subject of
12 litigation before the Respondent's successor judge. In each case, the successor judge has been or is
13 faced with the issue of whether to allow retrials or whether he must dismiss the charges due to the
14 Respondent's delay in issuing verdicts. Another case (*State v. Joyce Keiffer*) involved a case in
15 which defendant had been assessed for mental competency no later than May 2000, but which was
16 never litigated thereafter. The successor judge had to dismiss the charges due to the delay. Another
17 case (*State v. Mario Espinola*) involved a bond forfeiture matter which had last been heard in
18 January 1999, and which had laid dormant since then despite the fact that the amount in dispute was
19 more than \$50,000.

20 The respondent tried thirty-five (35) small claims or other civil cases and yet there clearly
21 is no record of a verdict in twenty-nine (29) of those cases. There are at least six cases in which
22 there may have been a decision or verdict, but there is virtually no legible or otherwise sufficient
23 record to show what the judgment may have been or who may have prevailed. There are cryptic
24 notes in a few of the files suggesting that there were money judgments but there is no formal record
25 showing what steps may have been taken to document the judgments and notify the parties.

26 The civil trials occurred from December 1993 to March 2003. The number of trials that
27 occurred in each year, by date of submission, is as follows: 1993-2, 1994-5, 1995-2, 1996-0, 1997-3,
28 1998-6, 1999-5, 2000-7, 2001-0, 2002-2, and 2003-3. The amounts in dispute ranged from a low

1 of \$200.00 and a high of \$5000.00. The total amount sought in all cases combined was
2 approximately \$83,000.00. Despite the issuance of inquiry letters to the litigants by the successor
3 judge, the following limited responses occurred: both litigants in a case responded-1; one of two
4 litigants in a case responded-11, neither litigant in a case responded-17. There were approximately
5 six cases in which a status inquiry letter was not issued, apparently due to notations by staff in the
6 file or for other reasons. In the thirty-six cases, only eight of the litigants or their counsel submitted
7 post-trial inquiries asking about the status of the case. Three cases produced two separate inquires
8 and one persistent litigant inquired five different times as to the status of her case from January 2001
9 to March 2003. There is a note in that file (*Jennie Lew v. Sheperdcrafts Inc.*, #74,271) apparently
10 made by a court staff member when the plaintiff inquired for the fifth time, that says: "3/18/03
11 Please, Please, Please look at this file and give her your decision—she has been so nice and so
12 patient".

13 **B. Conclusions of Law**

14 The Commission unanimously concludes that the evidence suffices to prove the charges
15 addressed in the Stipulation, as follows:

- 16 (1) A violation of Canons 3B(1), 3B(8) and 3C(1) of the Code by failing to
17 decide one or more cases assigned to him prior to the time he retired in the
18 spring of 2003.
- 19 (2) A violation of Canons 3B(1), 3B(8) and 3C(1) of the Code by failing to
20 decide one or more cases assigned to him prior to the expiration of a limited
21 term appointment as a senior judge lasting from May 9, 2003 to October 30,
22 2003.

23 The Commission concludes that the Respondent's willful failure to decide so many cases
24 over such a prolonged period denied the litigants their right to a fair adjudication at all, not to
25 mention a prompt one. Nothing presented by the Respondent by way of mitigation or extenuation
26 could begin to account for much less explain good reasons for this many cases to have been ignored.
27 Given the Respondent's failure to perform his duty at all, there is simply no step short of a
28 permanent ban on his access to judicial office in Nevada that will protect the integrity of the system.

1 Other sanctions are appropriate as well, despite the Respondent's cooperation during the adjudicatory
2 phases of this case.

3 **C. Imposition of Discipline**

4 The Commission concludes that the appropriate discipline imposed under Commission
5 Interim Rule 28 as to said charges shall be as follows:

6 By unanimous vote of the Commission, pursuant to Subsections 5(a) and (b) of Article 6,
7 Section 21 of the Constitution of the State of Nevada, NRS 1.4653 (2), and Commission Interim
8 Rule 28, the Respondent shall: (1) Be permanently barred from serving as an elected or appointed
9 judicial officer in Nevada; (2) Pay within three months of entry of this order a fine of \$2000.00,
10 to the Washoe County Law Library; (3) Be publicly censured; and (4) Issue a written apology via the
11 Commission, addressed to the litigants impacted by his failure to decide cases assigned to him.

12 **D. Order**

13 IT IS HEREBY ORDERED, pursuant to the consent of the Respondent, that he is publicly
14 censured and permanently barred from seeking or holding judicial office in Nevada.

15 IT IS HEREBY ORDERED, pursuant to the consent of the Respondent, that the Executive
16 Director of the Judicial Discipline Commission take the necessary steps to file this document in the
17 appropriate records of the Commission and with the Nevada Supreme Court.

18 IT IS HEREBY ORDERED that the Clerk's Certificate of Mailing, found below, shall
19 constitute notice of entry of this document pursuant to Commission Interim Rule 34, and the clerk
20 shall promptly serve it on the Respondent.

21 **E. Notice**

22 NOTICE is hereby tendered to the Respondent that pursuant to NRAP 3D, an appeal may
23 be taken by filing a notice of appeal with the clerk of the Commission and serving such notice on

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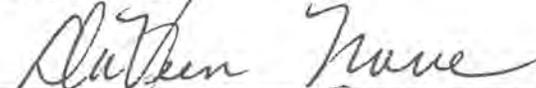
1 the prosecuting counsel within fifteen (15) days of service of this document by the clerk of the
2 Commission.

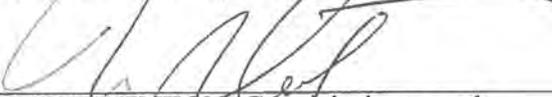
3 DATED this 7th day of October, 2004.

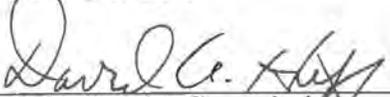
4 **NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

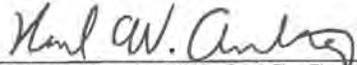
5 
6 FRANK BRUSA, Commissioner and Chairman

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8 STEVE CHAPPELL, Commissioner and
9 Vice-Chairman

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11 DAVEEN NAVE, Commissioner

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13 MARK DENTON, Commissioner and
14 Presiding Officer

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16 DAVID HUFF, Commissioner

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18 KARL ARMSTRONG, Commissioner

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20 WAYNE CHIMARUSTI, Commissioner

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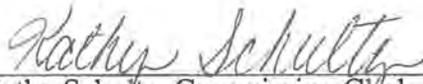
CERTIFICATE OF MAILING

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I hereby certify that on the 7th day of October, 2004,

I placed the above-referenced FINDINGS OF FACT, CONCLUSIONS OF LAW, IMPOSITION OF DISCIPLINE AND CONSENT ORDER in the United States Mail, postage pre-paid, addressed to the undersigned:

Paul Freitag, Esq.
P. O. Box 626
Sparks, NV 89432



Kathy Schultz, Commission Clerk