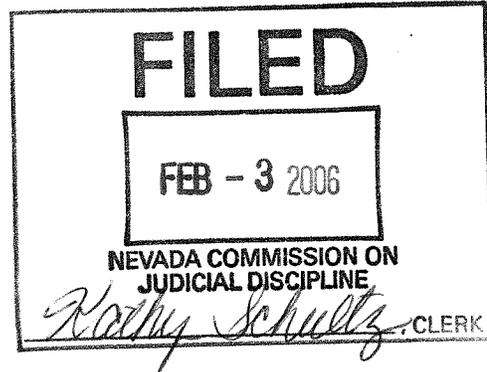


1 BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

2 STATE OF NEVADA



3
4 In the Matter of the)
5 HONORABLE DANIEL WARD,)
6 Justice of the Peace,)
7 New River Township Justice Court,)
8 County of Churchill,)
9 State of Nevada,)

10 Respondent.)

CASE NO. 0502-247

11 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND IMPOSITION OF DISCIPLINE**

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
14 (hereinafter referred to as the “hearing”) on January 18, 2006, before the Nevada Commission on
15 Judicial Discipline (hereinafter referred to as the “Commission”).¹ Attorney Mary Boetsch acted
16 as the Special Counsel and prosecuted the case against the Respondent, Justice of the Peace
17 Daniel Ward. The Respondent was present and represented by counsel, Scott Freeman.

18 After being fully advised of its obligations and duties, the Commission specifically finds
19 that the hearing was conducted according to the statutes, rules and procedures required by law.
20 The Commission hereby issues the following Findings of Fact, Conclusions of Law and
21 Imposition of Discipline pursuant to Commission Interim Rules 27 and 28; and NRS §1.4673
22 and §1.4677.

23 Following private deliberations on the day of the hearing, the Commission announced its
24 decision that the Stipulation between the Special Counsel and Judge Ward regarding the
25

26 _____
27 ¹ The following Commissioners participated in the hearing: Chairman Steve Chappell, Vice-
28 Chairman Daveen Nave, Judge Barbara Nethery, Judge Robey Willis, Wayne Chimarusti, and Karl
Armstrong. Commissioner Greg Ferraro was unavoidably absent and did not participate in the
disposition of this matter. The six attendees constituted a quorum, pursuant to Commission Interim
Rule 3(4). A copy of the transcript of the proceedings is on file with the Clerk of the Commission.

1 existence of several willful violations of the Nevada Code of Judicial Conduct was accepted
2 insofar as the parties proposed to establish the fact of one or more violations. It was also
3 sufficient to meet the burden of proof imposed on the Special Counsel. After receiving evidence,
4 including sworn testimony from Judge Ward, the Commission deliberated further as to the
5 appropriate penalty to be imposed. The Commission then announced on the record the discipline
6 to be imposed—subject to any alterations in its final written order.

7 As set forth more fully below, Judge Ward will be suspended without pay for thirty (30)
8 working days and he shall complete the period of suspension no later than May 31, 2006. He
9 will be required to personally finance, attend and successfully complete two judicial ethics
10 courses, one offered by the State Bar of Nevada in April 2006 and one offered by the National
11 Judicial College no later than the end of October 2006. He will also be the subject of a public
12 censure.

13 The votes as to both the violations and the appropriate discipline were unanimous. The
14 instant order constitutes the Commission’s final, dispositive ruling and this written order will
15 supersede any oral pronouncements issued at the conclusion of the hearing.

16 **A. Findings of Fact.**

17 1. The Respondent was, at all times applicable to the allegations contained in the Formal
18 Statement of Charges, a Justice of the Peace in the New River Township Justice Court, in the
19 County of Churchill, State of Nevada. Therefore, the Respondent was and still is a judicial
20 officer whose conduct was and is subject to the provisions of the Nevada Code of Judicial
21 Conduct.

22 2. In the Stipulation between Judge Ward and the Special Counsel, Judge Ward admitted
23 to the factual allegations contained in Counts Four through Fifteen of the Formal Statement of
24 Charges filed on August 2, 2005. Therefore, the Commission finds that the Special Counsel has
25 established by the required standard of proof, to wit, clear and convincing evidence, that the
26 violations in Counts Four through Fifteen occurred as alleged, and that each of the violations was
27 willful.

28 . . .

1 3. The following is a summary of those counts.

2 Regarding Count Four, Judge Ward admitted that he failed to disqualify himself from
3 presiding in a criminal case in which the defendant, Michelle Harrison, the girlfriend of Judge
4 Ward's son (Sean Ward), was charged with Abuse/Endangerment of a Child.

5 Regarding Count Five, Judge Ward admitted that between April and August 2003, he had
6 conversations with Michelle Harrison and Sean Ward about their use of illegal drugs; and that
7 Judge Ward conveyed to them both information related to him by another litigant, Wanda
8 Adams, to the effect that Sean and Michelle were using drugs. In other words, Wanda identified
9 herself as a witness to alleged illegal conduct and the judge conveyed that information to Sean
10 and Michelle. Judge Ward further admitted he did not relate information to the District
11 Attorney's office regarding his conversations with Michelle Harrison during the time her
12 criminal case was pending in his court.

13 Regarding Count Six, Judge Ward admitted that Sean told him Michelle had threatened to
14 accuse Sean of sexual misconduct with Michelle's daughter, and that the Judge then contacted an
15 investigator for the Nevada Division of Investigations and told the investigator there had been an
16 argument and that one or both of the pair were using drugs.

17 Regarding Count Seven, Judge Ward admitted that he had purchased a car from David
18 Banovich, Sr., a bail bondsman, knowing full well that the car had been tendered to Mr.
19 Banovich as collateral on a bond filed in a case pending before Judge Ward. Additionally, Judge
20 Ward admitted that he did not pay for the vehicle at the time it was provided by Mr. Banovich,
21 even though the bond in question was the subject of a then pending forfeiture motion based on
22 the defendant's failure to appear when ordered. Moreover, Judge Ward admitted he did not take
23 timely action on the forfeiture motion, that he instructed his staff to await the filing of a motion
24 to set aside the forfeiture, and that he had off-the-record discussions with Mr. Banovich about the
25 pending motion. Finally, Judge Ward admitted that he did not reveal to the District Attorney or
26 any state representative the fact that he had purchased the car in question; and that he did not
27 recuse himself.

28 ...

1 Regarding Count Eight, Judge Ward admitted that after the filing of formal charges in a
2 vehicular fatality case, he directed the Nevada Highway Patrol Trooper who had conducted the
3 accident investigation to perform additional investigative steps after the prosecutor's office filed
4 the complaint; and that he did so in an ex parte fashion, without the prosecutor's office knowing
5 of the directive. Additionally, Judge Ward admitted to delaying the issuance of summons in the
6 case without a valid legal excuse.

7 Regarding Count Nine, Judge Ward admitted that in a child sexual assault case, where
8 defense counsel was concerned that his client would not get a fair trial if the preliminary hearing
9 before Judge Ward were open to the public and a reporter for the local newspaper, Judge Ward
10 ordered a lengthy continuance purportedly designed to allow the parties to file briefs regarding
11 First Amendment issues; while in fact, Judge Ward himself suggested that he could manage the
12 scheduling in such a way so as to hold the hearing without the reporter knowing it. Additionally,
13 Judge Ward admitted that he had stated publicly the case had been postponed for a lengthy period
14 of time to allow the prosecutor, Mr. Smith, ample time to study for the Nevada Bar examination
15 (the prosecutor was practicing under a provisional rule allowing him to do so without having
16 passed the exam), even though Mr. Smith had never requested any such accommodation.

17 Regarding Count Ten, Judge Ward admitted that he had acted disrespectfully toward
18 attorney Valerie Cooney, who represented a female applicant seeking a protective order; that the
19 applicant had been made the target of a protective order issued by Judge Ward even though the
20 adverse party had not requested such an order; and that the judge made comments to Ms. Cooney
21 to the effect he did not have to hear domestic violence cases and that he would refuse to hear
22 them.

23 Regarding Count Eleven, Judge Ward admitted he had, in essence, "fixed" a ticket for the
24 wife of Deputy Sheriff Hickox, who had been cited by the Nevada Highway Patrol in a case
25 involving what the judge characterized as "another stupid ticket" and that he had done so without
26 being asked to do so by Deputy Hickox. Furthermore, Judge Ward admitted that he had
27 unsuccessfully approached one deputy district attorney and then approached a second prosecutor
28 . . .

1 (Russell Smith) to arrange the dismissal. He admitted that upon dismissing the ticket, his staff
2 did not return the portion of the fee allocated to the court.

3 Regarding Count Twelve, Judge Ward admitted that in essence, he “fixed” a ticket for a
4 court employee, Ms. Madrigan, by arranging with Deputy District Attorney Russell Smith to do
5 so.

6 Regarding Count Thirteen, Judge Ward admitted that after he conducted a misdemeanor
7 trial in which the state and the defendant were represented by counsel, and before rendering a
8 verdict, he initiated contact with one of the trial witnesses (Sheriff’s Sergeant Coleman) in the
9 presence of Deputy District Attorney Smith, and then solicited and obtained additional
10 information from Sergeant Coleman when neither the defendant nor his lawyer were present.
11 Furthermore, Judge Ward admitted to not making a record of this contact to put the defendant
12 and his counsel on notice of what Judge Ward identified as an ex parte contact at the time he
13 engaged in the discussion.

14 Regarding Count Fourteen, Judge Ward admitted to arranging to obtain Sean Ward’s own
15 recognizance (“OR”) release from custody on a felony charge without notifying the prosecutor or
16 defense counsel—who had previously agreed that Sean should remain in custody pending
17 preparation of an expedited pre-sentence report. Furthermore, Judge Ward admitted to having at
18 least one phone conversation with the assigned magistrate, Judge Grund, concerning the release
19 conditions to be imposed; and he admitted that he did not make a record of this ex parte
20 communication nor did he notify the respective lawyers.

21 Regarding Count Fifteen, Judge Ward admitted that he failed to timely recuse himself in a
22 case involving a defendant who was taken into custody for a DUI offense while driving a car
23 registered to Judge Ward and Sean Ward. Furthermore, Judge Ward admitted that while still
24 assigned to the case (he later disqualified himself at the insistence of the prosecutor), he had
25 stated he wanted the towing bill on his car paid before he would impose a sentence.

26 **B. Conclusions of Law.**

27 1. The Commission has both subject matter jurisdiction over the case and personal
28 jurisdiction over the Respondent.

1 2. The Commission is guided by Nevada Supreme Court precedent, which requires
2 application of the “objective reasonable person standard” when applying the canons that
3 comprise the Nevada Code of Judicial Conduct. *Mosley v. Nevada Commission on Judicial*
4 *Discipline*, 102 P. 3d 555, 560 (Nev. 2004). In light of the respondent’s stipulation to the facts
5 and the existence of violations, the Commission concludes that when the governing law is
6 applied to the facts, it is compelled to conclude that Judge Ward willfully violated the canons as
7 follows.

8 3. Proof of Count Four constitutes a violation of Canons 1, 1A, 2, 2A, 2B, 3B(1), 3B(2)
9 and 3E of the Nevada Code of Judicial Conduct.

10 4. Proof of Count Five constitutes a violation of Canons 1, 1A, 2, 2A, 2B, 3B(2), 3B(7)
11 and 4A of the Nevada Code of Judicial Conduct.

12 5. Proof of Count Six constitutes a violation of Canons 1, 1A, 2, 2A, 2B, 3B(2), 3B(7)
13 and 4A of the Nevada Code of Judicial Conduct.

14 6. Proof of Count Seven constitutes a violation of 1, 1A, 2, 2A, 2B, 3B(1), 3B(5), 3B(7),
15 3B(8), 3E(1), 4A and 4D(1) of the Nevada Code of Judicial Conduct.

16 7. Proof of Count Eight constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(7),
17 3B(8), 3E(1) and 4A(1) of the Nevada Code of Judicial Conduct.

18 8. Proof of Count Nine constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(2),
19 3B(5), 3B(7), 3B(8) and 3E(1) of the Nevada Code of Judicial Conduct.

20 9. Proof of Count Ten constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(4),
21 3B(5), 3B(7), 3B(8) and 3E(1) of the Nevada Code of Judicial Conduct.

22 10. Proof of Count Eleven constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(2),
23 3B(7) and 3B(8) of the Nevada Code of Judicial Conduct.

24 11. Proof of Count Twelve constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(2),
25 3B(7) and 3B(8) of the Nevada Code of Judicial Conduct.

26 12. Proof of Count Thirteen constitutes a violation of Canons 1, 2, 2A, 2B, 3B(2), 3B(5),
27 3B(7), 3B(8) and 3E(1) of the Nevada Code of Judicial Conduct.

28 ...

1 13. Proof of Count Fourteen constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(5),
2 3B(7) and 3E(1) of the Nevada Code of Judicial Conduct.

3 14. Proof of Count Fifteen constitutes a violation of Canons 1, 2, 2A, 2B, 3B(1), 3B(4),
4 3B(5), 3B(8) and 3E(1) of the Nevada Code of Judicial Conduct.

5 **C. Imposition of Discipline.**

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

8 By unanimous vote of the Commission, pursuant to Subsections 5(a) and (b) of Article 6,
9 Section 21 of the Constitution of the State of Nevada, NRS 1.4653(2), and Commission Interim
10 Rule 28, the Respondent shall:

11 (1) Be publicly censured.

12 (2) Attend in person a six-hour judicial ethics course offered by the State Bar of Nevada
13 in Reno on Thursday, April 20, 2006; or on Friday, April 21, 2006 in Las Vegas. Because Judge
14 Ward is not a lawyer, this requirement is conditioned upon the approval by the State Bar of
15 Respondent's attendance at an event sponsored by the State Bar. He shall personally bear all the
16 costs, including tuition, books, meals, and travel expenses, without resort to any monetary
17 assistance (other than workmen's compensation coverage) from Churchill County or any other
18 governmental entity. He may not use campaign funds to defray any part of the expenses of this
19 endeavor. He may not take administrative leave or any other form of leave that would be paid by
20 the county, including paid annual leave. Within seven (7) working days of completing the course,
21 he shall report in writing to the Special Counsel, the Executive Director of the Commission and
22 the Administrative Office of the Courts that he has completed the course.²

23 (3) Attend in person and successfully complete the several-day ethics course offered by
24 the National Judicial College entitled Ethics for Judges. He shall complete the course no later
25 than the end of October 2006. He shall personally bear all the costs, including tuition, books,
26

27 ² When the Commission orally announced what disciplinary sanctions would be imposed,
28 it did not mention this one-day course. Upon further reflection, the Commission concludes that it
would be appropriate for Judge Ward to be exposed to formal ethics training as soon as possible.

1 meals, and travel expenses, without resort to any monetary assistance (other than workmen's
2 compensation coverage) from Churchill County or any other governmental entity. He may not
3 use campaign funds to defray any part of the expenses of this endeavor. He may not take
4 administrative leave or any other form of leave that would be paid by the county. Within seven
5 (7) working days of completing the course, he shall report in writing to the Special Counsel, the
6 Executive Director of the Commission and the Administrative Office of the Courts that he has
7 completed the course.

8 3. He shall complete a thirty (30) working day suspension without pay no later than
9 May 31, 2006. He is required to coordinate his absence with the Churchill County human
10 resources department and the Administrative Office of the Courts so as to minimize the cost and
11 disruption to the county which, of necessity, will be required to procure a substitute jurist. Upon
12 completion of the suspension, he shall also provide a copy of this order to the Public Employee
13 Retirement System and sufficient personal identifying information so that PERS can adjust his
14 account to reflect this adverse action. He shall also notify the Special Counsel and the Executive
15 Director of the Commission in writing regarding: (1) his proposed suspension dates; and (2) the
16 completion of the full 30-day suspension. The latter report will be submitted no later than seven
17 (7) working days following the last day of the suspension.

18 The Commission chooses to explain its rejection of the proposed discipline, reflected in
19 the Stipulation submitted by the Special Counsel and the Respondent's counsel, Mr. Freeman. In
20 addition to a public censure and self-funded attendance at the Ethics for Judges course, the
21 lawyers proposed to place Judge Ward on probation for four years. During that time, they
22 proposed that Judge Ward would have to complete a certain amount of continuing judicial
23 education hours above and beyond the regularly required number of hours, as required by the
24 Administrative Office of the Courts. The proposal suggested that a violation of reporting
25 requirements could lead to additional sanctions. In effect, reporting violations would be treated
26 as a separate violation of probation, acts which presumably would give rise to a additional
27 disciplinary sanctions (including possible removal) via a separate proceeding, complete with due
28 process protections. Additionally, the agreement between the attorneys suggested the

1 Respondent would be subject to automatic removal if he committed violations that were proven
2 and then affirmed on any subsequent appeal to the Nevada Supreme Court.

3 The Commission believes that a combination of educational requirements and a more
4 immediate punishment is the most appropriate mix, considering the severity and number of
5 violations under consideration. Although the exact impact is unknown to the Commission, it is
6 evident that Judge Ward will be impacted immediately by the loss of direct monetary
7 compensation and fringe benefits that will flow from a thirty-working day suspension—not to
8 mention the long term impact of the suspension on his PERS benefits. This is not insubstantial,
9 although the Respondent should recognize he could have been subjected to a harsher sanction,
10 such as a more prolonged suspension or even removal.

11 Likewise, Judge Ward will have to attend two separate iterations of ethics training “on his
12 own dime,” so to speak, within the next several months. He will have to do so while in unpaid
13 status, not administrative or any other form of compensated absence. While the Commission
14 recognizes the logic of requiring an immediate immersion in a quality education course or
15 courses, it has chosen to reject a prolonged period of probation. Simply stated, the Commission
16 believes that it should not be necessary to monitor a judge over such a prolonged period of time
17 and the Commission can better expend its resources on endeavors other than monitoring the
18 educational progress of a long-tenured judge.³

19 As for the possibility of future violations, the Commission already has the authority to
20 investigate new complaints based on heretofore unknown facts. This decision is a permanent
21 part of the Respondent’s record and in appropriate circumstances, it could be considered in any
22 future disciplinary action. In that regard, the Commission can take the necessary and regular
23 steps already available to it, including suspension with or without pay, pursuant to NRS

24
25 ³ So as to make explicit what is only implicit to this point, it should be noted that virtually
26 all of the monetary sanctions imposed on or required to be borne by the Respondent will occur before
27 the general elections in early November, 2006. Under the plan proposed by the lawyers, the
28 prolonged period of “probation” could be rendered moot, and therefore inconsequential, if the
Respondent chooses to seek reelection but is not reelected by the voting residents of Churchill
County.

1 1.4675—depending on the particular facts developed through any new investigation. In short, the
2 Commission views the prospect of additional proceedings as an event that can and should be
3 addressed in due course, according to the normal investigatory and adjudicatory processes
4 already in place, including but not limited to appellate review by the Nevada Supreme Court.

5 With regard to public censure of the Respondent and the Commission's decision not to
6 impose a more serious punishment, a few pointed words are in order. The Respondent must
7 know that he came as close as any judge can to being removed from office. The sheer number
8 and diversity of violations, spread over a prolonged period of time, suggests that whatever
9 Respondent may have learned during formal classes he attended over a long period of time since
10 he took the bench was either forgotten or ignored to a large degree.⁴ It is evident that the judge
11 tried to serve in many roles that are not his to claim in our adversarial system. He is not a police
12 investigator although he once was one. He is not a prosecutor whose duty it is to evaluate the
13 relative strength of cases and to coordinate prosecutorial strategy and tactics (including
14 negotiation tactics and oversight of police investigations). He is not a defense counsel whose
15 duty it is to obtain the best outcome for their clients, including employees of the court or those
16 who routinely have contact with the court.

17 He is a judge whose job it is to adjudicate cases and controversies under the laws enacted
18 by our legislative bodies, be it at the state, county or city levels. He has an obligation to hear
19 cases, even those brought under legislative constructs (such as domestic violence matters) with
20 which he disagrees or which may lack utility in some respect. His duty is to do so while treating
21 the media, litigants, witnesses, lawyers and everyone else with courtesy, professionalism and
22 objectivity.

23 Conversely, he also has a duty to refrain from participating in cases in which personal
24 interest or acquaintance is too compelling to overcome. The Commission is not unsympathetic

25
26 ⁴ The Respondent provided his judicial educational record from the Administrative Office
27 of the Courts upon request of the Commission during the hearing. It reflects that Judge Ward has
28 taken 767.59 of judicial education, including at least 12 hours of ethics training between April 1991
and June 2005. It seems likely that the number of hours of ethics training provided to him is higher
but the course descriptions are not sufficiently specific to ascertain that fact with exactitude.

1 to the legal problems that beset the Respondent's son and his son's former girlfriend, but it is
2 evident that Judge Ward used exceedingly poor judgment in several respects. He should not
3 have inserted himself into Sean's release proceedings at all, much less in a manner unknown to
4 both lawyers in the case and in a way that compromised his fellow judge.

5 Likewise, he should not have let personal connections to long-term residents or their
6 families or his own financial interests get in the way of his duty to fairly adjudicate cases and
7 controversies between parties who are entitled to disinterested justice. It should be apparent to
8 Respondent that his non-transparent business transaction with a local bail bondsman set the stage
9 for trouble, both for himself and others. The Commission accepts Respondent's statement at face
10 value, to the effect that the bondsman has become uncooperative in completing the sales
11 transaction by refusing to accepting the Respondent's legal consideration for the car in question.
12 Given that the Respondent has now resolved his legal issues with this adjudicatory body, the
13 Commission suggests—but does not order—that the Respondent should immediately take the
14 necessary steps to complete the transaction at arms length with either the bondsman or someone
15 who has legal authority to transact business for the bondsman. If he cannot do so within a
16 reasonable time, he would be wise to divest himself of the asset he gained under a cloud of
17 ethical impropriety.

18 One final comment is warranted. The Commission has chosen to exercise its discretion
19 and not remove Judge Ward in large part because he does not have any prior disciplinary history.
20 While it should be recognized that a sufficiently serious violation or series of lesser
21 transgressions could form the basis for removal of a judge, despite a stellar record as a person
22 and a judge, the Commission unanimously believes that this was not the case to take the most
23 severe action. However, with the record of violations now in place, Judge Ward would do well
24 to avoid action or inaction that remotely approaches impropriety or that raises even an
25 appearance of impropriety.

26 **D. Order.**

27 IT IS HEREBY ORDERED that counts ONE through THREE are dismissed for lack of
28 proof.

1 IT IS HEREBY ORDERED that the Commission will not entertain or grant a stay of
2 execution of any of the forms of discipline imposed.

3 IT IS HEREBY ORDERED that the Chairman is authorized by all the members to sign
4 this decision for all the members. The signature pages for the other members shall be retained in
5 the Commission file.

6 IT IS HEREBY ORDERED that the Executive Director of the Judicial Discipline
7 Commission is to take the necessary steps to file this document in the appropriate records of the
8 Commission and with the Nevada Supreme Court.

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

12 **E. Notice.**

13 Notice is hereby tendered to the Special Counsel and the Respondent that pursuant to
14 NRAP 3D, an appeal may be taken by filing a notice of appeal with the Clerk of the Commission
15 and serving such notice on the opposing counsel within fifteen (15) days of service of this
16 document by the clerk of the Commission.

17 DATED this 3rd day of February, 2006.

18 NEVADA COMMISSION ON
19 JUDICIAL DISCIPLINE

20 By: Steve Chappell
21 Steve Chappell, Chairman
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