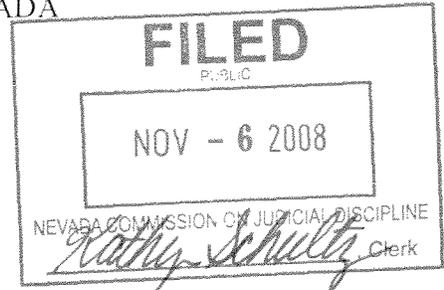


BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of the
HONORABLE NICHOLAS DEL VECCHIO,
District Court Judge,
Eighth Judicial District,
County of Clark,
State of Nevada,

Respondent.



Case No. 0802-1008

FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE

A. Preface.

The public file in this matter was opened on February 8, 2008, upon the filing of a Formal Statement of Charges by Mary Boetsch, Special Counsel. The respondent, District Judge Nicholas Del Vecchio, represented by counsel,¹ filed a Motion to Stay Judicial Discipline Proceedings on April 9, 2008. The motion was opposed. On May 14, 2008, the Commission denied the motion. On June 5, 2008, Judge Del Vecchio filed his answer to the Formal Statement of Charges. Essentially, he denied the allegations.

The matter was set for a hearing scheduled to last one week, November 3-7, 2008. On October 20, 2008, Special Counsel Boetsch filed an Amended Formal Statement of Charges. On October 21, 2008, Judge Del Vecchio appeared before the Commission in Reno with one of his two attorneys. He entered pleas either admitting the allegations in the Amended Formal Statement of Charges or by stating he would not contest the allegations. Judge Del Vecchio also agreed not to appeal the Commission's ruling to the Nevada Supreme Court in exchange for the Special Counsel's agreement to remove certain charges from contention. Following a canvass by the Presiding Officer, Commissioner (Judge) Jerome Polaha, the Commission unanimously voted to accept the respondent's pleas.

¹ Las Vegas attorneys Bruce Shapiro and Robert Dickerson have appeared on behalf of Judge Del Vecchio since the onset of the public proceedings.

1 Following brief statements by Mr. Dickerson and Ms. Boetsch with regard to sanctions, Judge
2 Del Vecchio made a personal statement to the Commission. In essence, Judge Del Vecchio agreed to
3 removal from office at the end of his term.² Following deliberations, the Commission unanimously
4 voted to remove Judge Del Vecchio from office, effective immediately. It also voted not to impose
5 any other sanction.³ The decision was announced in open session.

6 On October 23, 2008, the Commission filed a Corrected Order of Removal, which amended a
7 clerical error contained in an Order of Removal filed earlier the same day. The Corrected Order
8 indicated that the Commission would issue its Findings of Fact and Conclusions of Law, pursuant to
9 Commission Procedural Rule 28. The transcript of proceeding was filed on October 24, 2008.

10 **B. Findings of Fact.**

11 1. The allegations in Count One pertain to Judge Del Vecchio's sexual relationship with his
12 former step-daughter and Judicial Executive Assistant, Rebecca Murray.⁴ Based on the
13 respondent's stipulation to certain facts and/or his decision not to contest the remainder of the facts
14 alleged, the Commission finds that the allegations were proved by clear and convincing evidence.
15 The respondent was sexually involved with a subordinate employee, he met her for sexual liaisons
16 during working hours, and he allowed Ms. Murray to be paid her normal wage for hours expended
17 while conducting the sexual relationship. The respondent allowed Ms. Murray to work a so-called
18 "flex-schedule" in order to attend law school classes even though Chief District Judge Kathy
19 Hardcastle had informed the respondent that allowing a "flex-schedule" was impermissible. After
20 Ms. Murray ended the sexual relationship, the respondent refused to accommodate her law school
21 schedule, unlike he had done previously.

22
23 ² The Commission is aware that Judge Del Vecchio lost his seat when the electorate failed to
24 cast a sufficient number of votes for him during the August 2008 primary election. By operation of law,
25 he will be replaced by a successor chosen from the remaining two candidates regardless of the
26 Commission's disposition of this case.

27 ³ The following Commissioners participated in making the decision: Chairman Greg Ferraro,
28 Vice-Chairman Daveen Nave, Commissioner Doug Jones, Commissioner (Judge) Jerome Polaha,
Alternate Commissioner (Judge) Richard Wagner, Commissioner Karl Armstrong, and Commissioner
James Beasley.

⁴ The Commission observes that the respondent did not admit nor was he asked to admit to a
sexual relationship with Ms. Murray while the two were in a step-parent/step-child relationship, nor did
he admit nor was he asked to admit to any sexual relationship while Ms. Murray was a minor.

1 2. The allegations in Count Two pertain to Judge Del Vecchio's handling of certain nude
2 photographs he had taken of Ms. Murray and then retained for what appears to be a significant period
3 of time. Based on the respondent's stipulation to certain facts and his decision not to contest the
4 remainder of the facts alleged, the Commission finds that the allegations were proved by clear and
5 convincing evidence. During the course of an investigation by the Clark County Office of Diversity
6 (OOD) regarding a complaint Rebeccah had filed against him, Judge Del Vecchio met with an
7 investigator from that office, showed the investigator the photographs and offered to turn them over
8 to the investigator. For reasons that are not known, the investigator declined to take them. Judge Del
9 Vecchio acknowledged at the time that he was aware that an investigation by the Commission on
10 Judicial Discipline might ensue. Thereafter, he was informed that the Commission had initiated an
11 investigation yet he destroyed the photographs before the Commission could obtain them.

12 3. The allegations in Count Three pertain to certain comments made by Judge Del Vecchio to
13 or about his bailiff, Richard Tamez. Based on the respondent's stipulation to certain facts and/or his
14 decision not to contest the remainder of the facts alleged, the Commission finds that the allegations
15 were proved by clear and convincing evidence. Mr. Tamez is of Mexican heritage. Between 1999
16 until mid-2006, Judge Del Vecchio made inappropriate racial remarks as recounted in subsections (a)
17 through (e) of the amended charging document. The remarks included references to Mr. Tamez as a
18 "lazy Mexican bailiff" and a "fucking prick," and by referring to Mexican litigants as "low-down
19 Latinos that walk in the courtroom."

20 4. The allegations in Count Four pertain to Judge Del Vecchio's workplace comments about
21 or to his ex-wife, Imogene Serrano, the mother of Rebeccah Murray. Based on respondent's
22 stipulation to certain facts and/or his decision not to contest the remainder of the facts alleged, the
23 Commission finds that the allegations were proved by clear and convincing evidence. In 2005, Ms.
24 Serrano, became employed as a law clerk for another judge in the Family Court, where the
25 respondent also served as a judge. In the presence of other employees, Judge Del Vecchio discussed
26 ...
27 ...
28 ...

1 the couple's sexual history and specific sex acts with Ms. Serrano. He also tried to reinitiate a sexual
2 relationship with Ms. Serrano while she was employed in the Family Court.⁵

3 5. The allegations in Count Five pertain to remarks made by Judge Del Vecchio about his
4 former law clerk, Michael Bognar. Based on the respondent's stipulation to certain facts and/or his
5 decision not to contest the remainder of the facts alleged, the Commission finds that the allegations
6 were proved by clear and convincing evidence. Mr. Bognar had been employed by Judge Del
7 Vecchio as a law clerk for several years. Judge Del Vecchio made derogatory remarks in public
8 about Mr. Bognar, including but not limited to the fact that Mr. Bognar had failed to pass the State of
9 Nevada Bar examination.

10 6. The allegations in Count Six pertain to Judge Del Vecchio's interaction with attorney
11 Donn Prokopius, following the initiation of the OOD investigation of Rebeccah Murray's complaint.
12 Based on the respondent's stipulation to certain facts and/or his decision not to contest the remainder
13 of the facts alleged, the Commission finds that the allegations were proved by clear and convincing
14 evidence. Personnel from the OOD informed Judge Del Vecchio not to have contact in any form
15 with Ms. Murray until the investigation had been completed. Contrary to the directive, Judge Del
16 Vecchio asked Mr. Prokopius to contact Ms. Murray on the respondent's behalf. Judge Del Vecchio
17 asked Mr. Prokopius to convey an offer to Ms. Murray that she could return to her job as his Judicial
18 Executive Assistant in exchange for dropping her OOD complaint. Judge Del Vecchio asked Mr.
19 Prokopius to convey an offer to Ms. Murray that he would hire her as a judicial law clerk in exchange
20 for dropping the OOD complaint.⁶

21 7. The allegations in Count Seven pertain to Judge Del Vecchio's interaction with another
22 Family Court female employee, Beata Funk. Based on the respondent's stipulation to certain facts
23 and/or his decision not to contest the remainder of the facts alleged, the Commission finds that the
24

25 ⁵ This appears to have occurred while Judge Del Vecchio was sexually involved with Rebeccah
26 Murray although it is not clear if that is the case.

27 ⁶ The Commission accepts as true Judge Del Vecchio's in-court assertion on the record that Mr.
28 Prokopius was not an attorney who practiced before him because Mr. Prokopius was on Judge Del
Vecchio's "recusal list," that is, a list of attorneys identified by the judge whose appearance in a case
would lead to the judge's disqualification. For a discussion of the propriety and management of such
lists, see *Millen v. District Court*, 122 Nev. 1245, 148 P.3d 694 (2006).

1 allegations were proved by clear and convincing evidence. Ms. Funk was the target of sexually
2 suggestive remarks and actions by Judge Del Vecchio. Judge Del Vecchio stared at Ms. Funk's
3 breasts on multiple occasions and he told her that he wanted her to wear tight T-shirts while
4 campaigning for him.

5 8. The allegations in Count Eight pertain to Judge Del Vecchio's remarks about an African-
6 American female who was employed by the Family Court. Based on the respondent's stipulation to
7 certain facts and/or his decision not to contest the remainder of the facts alleged, the Commission
8 finds that the allegations were proved by clear and convincing evidence. Judge Del Vecchio made
9 the following comments about Ladena Gamble while mimicking her speech, to Rebecca Murray:
10 "My shit be educated" or words to that effect.

11 9. The allegations in Count Nine relate to Judge Del Vecchio's remarks about females in the
12 presence of yet another female court employee, deputy court clerk Wilma Sawtelle. Based on the
13 respondent's stipulation to certain facts and/or his decision not to contest the remainder of the facts
14 alleged, the Commission finds that the allegations were proved by clear and convincing evidence.
15 Judge Del Vecchio made the remarks recounted in subparagraphs (a)-(d), all of which directly or
16 indirectly refer to sex acts either with female attorneys or litigants who appeared before him.

17 10. The allegations in Count Ten relate to Judge Del Vecchio's sexually related comment
18 made about a female judge who served in the Family Court with him. Based on the respondent's
19 stipulation to certain facts and/or his decision not to contest the remainder of the facts alleged, the
20 Commission finds that the allegations were proved by clear and convincing evidence. Judge Del
21 Vecchio made the following remark in the presence of his bailiff, Mr. Tamez, about Family Court
22 Judge Stefany Miley: "[she] had a fine ass and you wished you could get in there" or words to that
23 effect.

24 11. The allegations in Count Eleven related to Judge Del Vecchio's interaction with a female
25 attorney who appeared in his court. Based on the respondent's stipulation to certain facts and/or his
26 decision not to contest the remainder of the facts alleged, the Commission finds that the allegations
27 were proved by clear and convincing evidence. Jennifer Abrams was a female attorney who appeared
28 in Judge Del Vecchio's court. On one occasion, Judge Del Vecchio introduced himself to Ms.

1 Abrams at the bench and then asked her to lunch. On two other occasions, he also asked her to
2 lunch. Judge Del Vecchio stated to bailiff Tamez that he wanted to be sexually intimate with Ms.
3 Abrams.

4 12. At all times relevant hereto, the incidents recounted in Counts One through Eleven
5 occurred while Nicholas Del Vecchio, the respondent, was serving as a judge in the Family Division
6 of the Eighth Judicial District Court.

7 13. At all times relevant hereto, the respondent's actions were willful within the meaning of
8 subsection 8(a) of Section 21 of Article 6 of the Nevada Constitution.

9 14. During the proceedings on October 21, 2008, Judge Del Vecchio was aware of the legal
10 consequences of his decision to either admit to the allegations or to not contest the allegations. His
11 decision was voluntary, knowing and intelligent. He made the decision with the benefit of the advice
12 of counsel.

13 **C. Conclusions of Law.**

14 1. As to Count One, the respondent's actions constitute violations of Canons 1, 2, 2(A), 2(B),
15 3(C)(1), and 3(C)(2), or any combination of those canons, of the Nevada Code of Judicial Conduct.

16 2. As to Count Two, the respondent's actions constitute violations of Canons 1, 2, 2(A),
17 2(B), and 4(A), or any combination of those canons, of the Nevada Code of Judicial Conduct.

18 3. As to Count Three, the respondent's actions constitute violations of Canons 1, 2, 2(A),
19 2(B), 3(C)(1), 3(C)(2), and 4(A), or any combination thereof, of the Nevada Code of Judicial
20 Conduct.

21 4. As to Count Four, the respondent's actions constitute violations of Canons 1, 2, 2(A),
22 2(B), 3(C)(1), 3(C)(2) or any combination of those canons, of the Nevada Code of Judicial Conduct.

23 5. As to Count Five, the respondent's actions constitute violations of Canons 1, 2, 2(A), 2(B),
24 3(C)(1), and/or 4(A), or any combination thereof, of the Nevada Code of Judicial Conduct.

25 6. As to Count Six, the respondent's actions constitute violations of Canons 1, 2, 2(A), 2(B),
26 3(C)(1), 3(C)(2) and/or 4(A), or any combination thereof, of the Nevada Code of Judicial Conduct.

27 7. As to Count Seven, the respondent's actions constitute violations of Canons 1, 2, 2(A),
28 2(B), 3(C)(1), and/or 4(A), or any combination thereof, of the Nevada Code of Judicial Conduct.

1 8. As to Count Eight, the respondent's actions constitute violations of Canons 1, 2, 2(A),
2 2(B), 3(C)(1), 3(C)(2) and/or 4(A), or any combination thereof, of the Nevada Code of Judicial
3 Conduct.

4 9. As to Count Nine, the respondent's actions constitute violations of Canons 1, 2, 2(A),
5 2(B), 3(C)(1), 3(C)(2) and/or 4(A), or any combination thereof, of the Nevada Code of Judicial
6 Conduct.

7 10. As to Count Ten, the respondent's actions constitute violations of Canons 1, 2, 2(A),
8 2(B), 3(C)(1), 3(C)(2), and/or 4(A), or any combination thereof, of the Nevada Code of Judicial
9 Conduct.

10 11. As to Count Eleven, the respondent's actions constitute violations of Canons 1, 2, 2(A),
11 2(B), 3(C)(1), 3(C)(2) and/or 4(A), or any combination thereof, of the Nevada Code of Judicial
12 Conduct.

13 12. At all times relevant hereto, the respondent's actions were willful within the meaning of
14 subsection 8(a) of Section 21 of Article 6 of the Nevada Constitution. *Matter of Fine*, 116 Nev.
15 1001, 1021, 13 P.3d 400, 413 (2000).

16 13. Pursuant to the provisions of subsection (1) of Section 21 of Article 6 of the Nevada
17 Constitution, the Commission has subject matter jurisdiction over the allegations in the Amended
18 Formal Statement of Charges. It has the authority to impose sanctions on the respondent, including
19 removal from office.

20 14. Pursuant to the service of process certification on file in the Commission's file, the
21 Commission has personal jurisdiction over the respondent.

22 **D. Imposition of Discipline.**

23 The Commission has considered the favorable fact that Judge Del Vecchio has chosen to
24 admit to certain allegations and to not contest others, rather than requiring the special counsel to
25 prove the allegations by clear and convincing evidence at a contested, public evidentiary hearing.
26 The Commission recognizes that this decision has the effect of shielding a significant number of
27 people from having to discuss their own observations of Judge Del Vecchio's conduct and
28 comments. This undoubtedly saved those people from embarrassment if not outright humiliation.

1 Likewise, this decision saved the Commission--and thus the taxpayers--from incurring certain costs to
2 conduct the evidentiary proceeding, which was scheduled to last for an entire week.

3 However, the Commission concludes that Judge Del Vecchio's decision not to contest the
4 charges, while salutary, should not shield him from the sanction of immediate removal. Up to this
5 point, Judge Del Vecchio had a full opportunity to contest the allegations against him and he availed
6 himself of the opportunity to utilize the services of able counsel to do that. Now that he has actually
7 admitted wrongdoing, the Commission has concluded that there is not a valid factual or legal basis to
8 withhold its removal order while allowing the respondent to serve out his term through January 4,
9 2009, with full pay and benefits.

10 Stated succinctly, the behavior to which Judge Del Vecchio has admitted cannot be tolerated.
11 Judge Del Vecchio's pervasive and unhealthy fixation on sex and sexual innuendo in the workplace
12 is both evident and objectionable. His repeated behavior was so boorish and crude as to be
13 unimaginable in any employment setting, much less a court of law. It went well beyond the conduct
14 limitations imposed by the Nevada Code of Judicial Conduct.

15 He utilized his position of power to carry on a sexual affair with a subordinate employee with
16 whom he claims he was in love. He ensured she was paid when she was absent from work attending
17 their sexual trysts. He ensured she was allowed to work "flex" hours even though the chief district
18 judge had prohibited such an arrangement. He acted in retaliation when the subordinate chose not to
19 continue the affair. He attempted to entice her into returning to work for him in exchange for not
20 pursuing her OOD complaint. In so doing, he violated instructions by attempting to contact her
21 through an attorney, and in so doing he compromised the attorney's integrity. He also attempted to
22 subvert the investigative process designed to protect county employees and he also destroyed
23 evidence in the form of pictures that he reasonably should have known would be of import in any
24 investigation by the Commission.

25 Not satisfied with just one target of what his attorney accurately and candidly described as
26 "locker room" behavior, Judge Del Vecchio made sexual comments about or to court employees, his
27 ex-wife, at least one fellow judge and one female attorney whose duty it was to represent her clients
28 in his court. His insulting behavior was supplemented with inappropriate references to the race and

1 ethnicity of his people directly subordinate to him as well as other employees that have absolutely no
2 valid place in today's American workplace, particularly a court whose purpose is to mete out justice
3 to litigants without regard to such factors. Additionally, he chose to insult and/or publicly embarrass
4 his former law clerk notwithstanding the fact that the man had served Judge Del Vecchio in that role
5 for a number of years. This suggests that Judge Del Vecchio was an equal opportunity offender
6 insofar as he did not need to limit the basis for his improper behavior to matters of sex and
7 race/ethnicity. Any objective reasonable observer would conclude that the behavior in question was
8 willful and a serious violation of the canons. *Matter of Halverson*, 123 Nev. ___, ___, 169 P.3d
9 1161, 1180 (2007); *Mosley v. Nevada Commission on Judicial Discipline*, 120 Nev. 908, 914, 102
10 P.3d 555, 560 (2004).

11 The Commission has a duty to afford judges due process of law during both the investigative
12 and adjudicative duties entrusted to it by our state constitution. Once due process is provided, the
13 Commission has a duty to act to protect the public and to ensure that the judicial branch of
14 government is not held up to disrepute for not taking action against an offending judge when action is
15 necessary. Here, it is evident that this case requires the most serious sanction possible. Even Judge
16 Del Vecchio seems to recognize this because he agreed to be barred permanently from seeking
17 judicial office in Nevada, albeit not at the earlier point in time chosen by the Commission.

18 Therefore, it is the unanimous determination of the Commission that District Judge Nicholas
19 Del Vecchio should be and hereby is removed from his position as a judge. By operation of law, this
20 action will act as a permanent bar to his ability to seek judicial office in Nevada.⁷

21 **E. Order and Notice.**

22 IT IS HEREBY ORDERED that the Clerk's Certificate of Mailing, found below, shall
23 constitute the notice of entry of this document pursuant to Commission Procedural Rule 34, and the
24 clerk shall promptly serve it on the respondent's counsel and the special counsel.

25 Although the respondent has agreed to waive his right of appeal, notice is hereby tendered to
26 the special counsel and the respondent pursuant to NRAP 3D, an appeal may be taken by filing a

27 _____
28 ⁷ The Commission notes that the agreement between the special counsel and the respondent
purported to prohibit Judge Del Vecchio from serving as a jurist in other jurisdictions. The Commission
has concluded it does not have the authority to impose such a sanction.

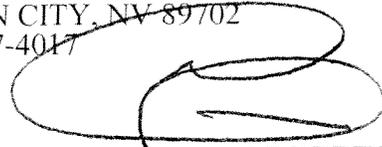
1 notice of appeal with the Clerk of the Commission and by serving such notice on opposing counsel
2 within fifteen (15) days of service of this document by the Clerk of the Commission.

3 The chairman is authorized to sign this document on behalf of the full Commission.

4 IT IS SO ORDERED.

5 DATED this 6th day of November, 2008.

6 NEVADA COMMISSION ON
7 JUDICIAL DISCIPLINE
8 P.O. BOX 48
9 CARSON CITY, NV 89702
10 (775) 687-4017



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GREG FERRARO, Commission Chairman

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and
3 that on the 6th day of November, 2008, I placed a copy of the foregoing FINDINGS OF FACT
4 CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE in the United States Mail, postage
5 prepaid, addressed to the undersigned:

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KATHY SCHULTZ, Commission Clerk