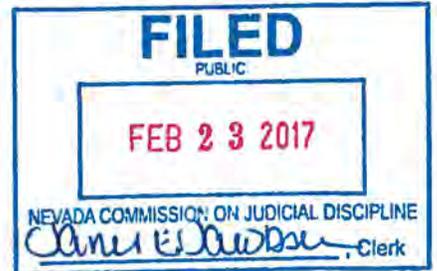


1 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

2 **STATE OF NEVADA**



3
4 In the Matter of)
5)
6 THE HONORABLE MELANIE ANDRESS-)
7 TOBIASSON,)
8 Justice of the Peace,)
9 Las Vegas Township Justice Court,)
10 County of Clark, State of Nevada,)
11 Respondent.)

CASE NO. 2014-094-P

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

12
13 Pursuant to prior written notice, the above-entitled matter came on for a formal, one-day public
14 hearing in Reno, Nevada, pursuant to NRS 1.467 and Commission Rule 18, commencing on February
15 10, 2017, before the Nevada Commission on Judicial Discipline (hereinafter, the "Commission"),
16 regarding the allegations against the Honorable Melanie Andress-Tobiasson (hereinafter "Respondent")
17 for violations of the Nevada Code of Judicial Conduct (hereinafter, the "Code").

18 Kathleen M. Paustian, Esq. served as the Prosecuting Officer to the Commission (hereinafter,
19 the "Prosecuting Officer") and was present. The Respondent appeared and was represented by William
20 B. Terry, Esq. who were present. During the disciplinary proceeding, the Commission considered all
21 evidence and testimony presented at the hearing.

22 This document contains the findings of fact and conclusions of law contemplated by
23 Commission Procedural Rule 28. The findings set forth below establish that Respondent violated
24 multiple sections of the Code.

25 **A. FINDINGS OF FACT**

26 The Commission finds that the legal evidence presented by the Prosecuting Officer at the hearing
27 clearly and convincingly established each of the following facts set forth in Paragraphs 1 through 5
28 below:

1 1. Respondent was, at all times applicable to the allegations contained in the Formal Statement of
2 Charges, a Justice of the Peace for the Las Vegas Township Justice Court located in Clark County,
3 Nevada, and whose conduct was subject to the Code.

4 2. The factual allegations in Count One of the Formal Statement of Charges regarding
5 Respondent's signing of an ex parte Order as part of a Canadian divorce for an attorney she knew and
6 who appeared before her, Jennifer Suzanne Bolton, Esq. ("Jennifer"), have been proven by clear and
7 convincing evidence.

8 The credible evidence established that Respondent was familiar with Jennifer through Jennifer's
9 appearances before her as conflict counsel and interactions at various group social gatherings. Jennifer
10 presented Respondent with a signed affidavit stating that Jennifer and her then spouse Vivian Bolton
11 ("Vivian") were separated for more than one year and that Jennifer was unable to obtain a divorce in
12 Nevada of her marriage in Canada. Jennifer represented to Respondent that Canadian law required an
13 order from a court in the jurisdiction where one of the spouses resides to issue an order finding that (1)
14 Jennifer was a resident of Clark County, Nevada, (2) Clark County did not grant legal status to a
15 marriage between same-sex couples; (3) Jennifer and Vivian had been separated for at least one year
16 and that neither spouse resided in Canada; and (4) Vivian was unreasonably withholding her consent for
17 divorce. Jennifer presented Respondent with a pre-drafted order ("Order") stating the same.

18 Respondent relied upon Jennifer's affidavit regarding the factual findings in the Order.
19 Respondent personally reviewed the Canadian Civil Marriage Act and relied upon her and Jennifer's
20 interpretation that she could sign the Order supporting Jennifer's application for a Canadian divorce.
21 On February 12, 2014, Respondent signed the Order, and Jennifer filed the same in Canada to obtain
22 her divorce.

23 The signing of the Order, ex parte, for an attorney she knew based solely upon the attorney's
24 representations as to the alleged factual findings clearly established violations of Canon 2 of the Code,
25 Rules 2.2, 2.4(B), 2.5(A), 2.9 , and 2.11(A)(1).

26 3. The factual allegations contained in Count Two of the Formal Statement of Charges
27 regarding Respondent signing the Order which was neither pending in Las Vegas Justice Court nor
28 attached to any case in the Las Vegas Justice Court, and which the Respondent had no jurisdiction over,

1 and through the Commission's Order, filed on February 2, 2017, taking judicial notice of the limited
2 jurisdiction of Justice Courts, and exclusive jurisdiction of District Courts regarding matters pertaining
3 to divorce, have been proven by clear and convincing evidence.

4 The Prosecuting Officer filed a Motion Requesting That The Commission Take Judicial Notice
5 on January 11, 2017. Opposition to Motion Requesting That The Commission Take Judicial Notice
6 and Request That Said Issue Be Held in Abeyance Until the Time of the Hearing was filed by counsel to
7 the Respondent on January 18, 2017. The Reply to Respondent's Opposition was filed by the
8 Prosecuting Officer on January 23, 2017.

9 The Commission may take judicial notice of any fact not subject to reasonable dispute in that it
10 is capable of accurate and ready determination by resort to resources whose accuracy cannot be
11 reasonably questioned. NRS 47.130. This includes the Nevada Revised Statutes. NRS 47.140. In
12 *Lemel v. Smith*, the Nevada Supreme Court stated:

13 The theory of taking judicial notice of a fact (in case where taking of judicial notice is
14 warranted) is that it is a judicial short cut, a doing away, in the case of evidence, with the
15 formal necessity for evidence because there is no real necessity for it. *Varcoe v. Lee*, 180
16 Cal. 338, 181 P. 223. What is known need not be proved. *Peterson v. Standard Oil Co.*,
17 55 Or. 511, 106 P. 337, Ann.Cas. 1912A, 625. 'Judicial notice takes the place of proof,
18 and is of equal force. As a means of establishing facts, it is therefore superior to
19 evidence. In its appropriate field, it displaces evidence, since, as it stands for proof, it
20 fulfills the object which evidence is designed to fulfill, and makes evidence
unnecessary.' *State v. Main*, 69 Conn. 123, 37 A. 80, 84, 36 L.R.A. 623, 61 Am.St.Rep.
30. Judicial notice has been applied to a wide range of subjects from the facts of ordinary
life to the arts, sciences and professions, confined only to those things which any well
informed person would be presumed to know.

21 *Lemel v. Smith*, 64 Nev. 545, 565-66, 187 P.2d 169, 179 (1947)

22 In this instance, the Commission took judicial notice of NRS 4.370 which sets the limited
23 jurisdiction of Nevada Justice Courts, and NRS 3.223 which specifically grants to the District Courts
24 original and exclusive jurisdiction in any proceeding dealing with divorce or other domestic matters.
25 These statutory jurisdictional limits are clearly matters of law upon which judicial notice can be and
26 were taken by the Commission. At the February 10, 2017 hearing, Respondent's counsel noted that the
27 judicial notice of the Commission was the law of the case but was permitted to argue that Respondent
28 thought she had the jurisdiction to sign the Order based upon the Canadian Marriage Act.

1 The credible evidence at trial established that Respondent knew that the Order was not attached
2 to any matter pending in Justice Court, lacked a Justice Court case number, and knew it pertained to
3 Jennifer's application for a Canadian divorce. The signing of the Order that recited findings of fact
4 required for a Canadian divorce exceeded Respondent's lawful judicial power as a Justice of the Peace.
5 These facts clearly established violations of Canon 2 of the Code, Rule 2.5(A).

6 4. The factual allegations contained in Count Three regarding Respondent's familiarity
7 with the domestic issues of Jennifer and Vivian have been proven by clear and convincing evidence.

8 The credible evidence established that Respondent was familiar with Jennifer through Jennifer's
9 appearances before her as conflict counsel and interactions at various group social gatherings.
10 Respondent was also familiar with Vivian through her work as an interpreter at the courthouse.
11 Furthermore, Respondent knew that Jennifer and Vivian were no longer romantically together as
12 Jennifer had introduced another woman, Hope Woods, as her girlfriend at various social gatherings.
13 Moreover, Respondent knew that Hope Woods had adopted Jennifer's children.

14 The signing of the Order for an attorney she knew regarding parties and domestic issues with
15 which she was familiar clearly established violations of Canon 2 of the Code, Rules 2.2, 2.4(B), 2.5(A),
16 2.9, and 2.11(A)(1).

17 5. The factual allegations contained in Count Four regarding Respondent's failure to
18 contact Vivian regarding the Order and its contents before Respondent signed the Order have been
19 proven by clear and convincing evidence.

20 The credible evidence established that Respondent never attempted to contact Vivian prior to
21 signing of the Order. Respondent never held a hearing regarding the underlying findings of fact in the
22 Order, but rather signed the Order based upon Jennifer's affidavit and Jennifer's word regarding the
23 factual findings in the Order and the circumstances surrounding the need for the Order.

24 The signing of the Order, ex parte, that set forth findings of fact regarding Jennifer and Vivian
25 without notice and/or a hearing for Vivian clearly established violations of Canon 2 of the Code, Rules
26 2.2, 2.4(B), 2.5(A), 2.6(A), 2.9, and 2.11(A)(1).

27 6. The Commission finds that the factual allegations contained in Count Five have not been
28 proven by clear and convincing evidence.

1 **B. CONCLUSIONS OF LAW**

2 1. As to Count One of the Formal Statement of Charges, the Commission finds that the
3 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
4 violations of Canon 2 of the Code, Rules 2.2, 2.4(B), 2.5(A), 2.9 and 2.11(A)(1).

5 2. As to Count Two of the Formal Statement of Charges, the Commission finds that the
6 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
7 violations of Canon 2 of the Code, Rule 2.5(A).

8 3. As to Count Three of the Formal Statement of Charges, the Commission finds that the
9 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
10 violations of Canon 2 of the Code, Rules 2.2, 2.4(B), 2.5(A), 2.9 and 2.11(A)(1).

11 4. As to Count Four of the Formal Statement of Charges, the Commission finds that the
12 Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute
13 violations of Canon 2 of the Code, Rules 2.2, 2.4(B), 2.5(A), 2.6(A), 2.9 and 2.11(A)(1).

14 5. As to Count Five of the Formal Statement of Charges, the Commission found that the factual
15 proof was insufficient to sustain the charges.

16 6. The Commission has both personal jurisdiction over the Respondent and subject matter
17 jurisdiction over the violations of the Code at issue in this case.

18 **C. IMPOSITION OF DISCIPLINE**

19 In consideration of the totality of Respondent's actions and her multiple violations of the Code, the
20 Commission concludes that the appropriate discipline under Commission Rule 28 as to said violations
21 shall be as follows:

22 By unanimous vote of the Commission, after due deliberation and consideration of the evidence
23 presented; Respondent's lack of prior disciplinary record; her otherwise exemplary work as a judge for
24 over seven (7) years; the one time nature of the act of signing the Order; and Respondent's volunteer
25 work and letters of commendation; but nevertheless, in light of the seriousness of Respondent
26 exceeding her jurisdictional authority, it is decided that pursuant to subsections 5(a) and (b) of Article 6,
27 Section 21 of the Constitution of the State of Nevada, NRS 1.4653(2), NRS 1.4677(1)(a) and (b), and
28 Commission Rule 28, the Respondent shall be, and she is hereby publically reprimanded for having

1 committed the acts as fully set forth above, and fined \$1,000.

2 **D. ORDER**

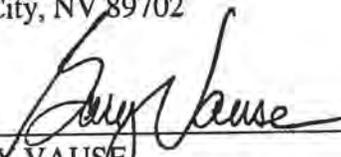
3 IT IS HEREBY ORDERED by unanimous vote of Commissioners Chairman Gary Vause, Karl
4 Armstrong, Esq., Honorable Thomas Armstrong, Bruce C. Hahn, Esq., John Krmptic, Stephanie
5 Humphrey and Honorable Patricia Lynch that Respondent be and hereby is publically reprimanded for
6 multiple violations of Canon 2 of the Code, Rules 2.2, 2.4(B), 2.5(A), 2.6(A), 2.9 and 2.11(A)(1).

7 IT IS FURTHER ORDERED that within ninety days of entry of this Order, Respondent shall
8 pay a fine of \$1,000 to the Clark County Law Library.

9 IT IS FURTHER ORDERED by unanimous vote that the Chairman is authorized to sign this
10 document on behalf of all voting Commissioners.

11 DATED this 23rd day of February, 2017.

12 STATE OF NEVADA
13 COMMISSION ON JUDICIAL DISCIPLINE
14 P.O. Box 48
15 Carson City, NV 89702

16 By: 
17 GARY VAUSE
18 COMMISSION CHAIRMAN
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 23rd day of February, 2017, I served a copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE** by email and U.S Mail, postage paid, addressed to the following:

William B. Terry, Esq.
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530 South Seventh Street
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Info@williamterrylaw.com

Kathleen M. Paustian, Esq.
Law Office of Kathleen M. Paustian
3205 Skipworth Drive
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kathleenpaustian@cox.net



Janet Jacobsen, Commission Clerk

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CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of February, 2017, I served a copy of the CERTIFIED COPY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE, filed with the Nevada Supreme Court, by United States Mail, postage pre-paid, addressed to the undersigned:

William B. Terry, Esq.
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Special Counsel



JANET E. JACOBSEN
Commission Clerk