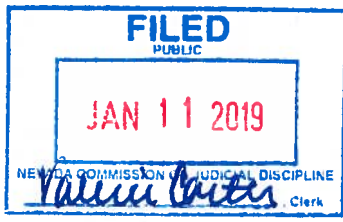


1 Kathleen M. Paustian, Esq., SBN 3785
2 Law Office of Kathleen M. Paustian
3 1912 Madagascar Lane
4 Las Vegas, NV 89117
5 Telephone: (702) 321-2222
6 kathleenpaustian@cox.net
7 Prosecuting Officer for the Nevada
8 Commission on Judicial Discipline



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

8 IN THE MATTER OF THE HONORABLE)
9 DAVID HUMKE, District Court Judge,)
10 Second Judicial District Court, Family Division,) CASE NO.: 2018-186-P
11 Washoe County, State of Nevada,)
12 Respondent.)

13 **STIPULATION AND ORDER OF CONSENT TO DISCIPLINE**

14 In order to resolve Case No. 2018-186-P pending before the Nevada Commission on Judicial
15 Discipline (the "Commission"), David Humke, District Court Judge, Second Judicial District Court,
16 Family Division, Washoe County, State of Nevada ("Respondent"), waives the determination of
17 Reasonable Probability and the filing of a Formal Statement of Charges, and Respondent and the
18 Commission stipulate to the following pursuant to Commission Procedural Rule 29 ("Rule 29"):

19 1. The Respondent admits he violated the Revised Nevada Code of Judicial Conduct ("the
20 Code"), including Judicial Canon 1, Rule 1.1, requiring him to comply with the law, including the Code;
21 Rule 1.2, requiring him to promote confidence in the independence, integrity and impartiality of the
22 judiciary, avoiding impropriety and the appearance of impropriety; Canon 2, Rule 2.5(A), requiring that
23 he perform judicial and administrative duties competently and diligently, and (B), cooperate with other
24 judges and court officials in the administration of court business; Rule 2.6(A), requiring him to give
25 every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard
26 according to law; Rule 2.7, requiring him to hear and decide matters assigned to him; Rule 2.8(B),
27 requiring him to be patient, dignified, and courteous to litigants, lawyers, court staff and others with
28 whom he deals in an official capacity, and Rule 2.12(A), requiring him to ensure that court staff act

1 consistent with his obligations under the Code, by knowingly, willfully and deliberately engaging in any
2 or all, or any combination of, the following acts listed below:

3 A. On June 11, 2018, the Nevada Supreme Court filed the Commission's Certified
4 Copy of Stipulation and Order of Consent to Discipline ("First Stipulation") in
5 Commission Case No. 2016-150-P against Respondent. The First Stipulation, among
6 other discipline, suspended Respondent for three (3) months without pay. Respondent
7 served this suspension from July 1 to October 1, 2018.

8 B. On November 2, 2018, after an Interim Suspension Hearing before the full
9 Commission, the Nevada Supreme Court filed the Commission's Certified Copy of Order
10 of Interim Suspension ("Interim Suspension Order") in Commission Case No. 2018-186
11 against Respondent. The Interim Suspension Order found that Respondent posed a
12 substantial threat of serious harm to the administration of justice pursuant to NRS
13 1.4675(4).

14 C. The Interim Suspension Order noted that Respondent's actions implicated
15 violations of the Code, including Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.5(A) and
16 (B), 2.6(A), 2.7, 2.8(B), and 2.12(A).

17 D. The Interim Suspension Order found by a preponderance of the evidence that
18 Respondent's actions constituted a substantial threat of serious harm to the administration
19 of justice because Respondent significantly lacked the requisite knowledge and ability to
20 carry out the legal and administrative duties of his family court docket. The evidence
21 proved that Respondent issued rulings in cases over which he lacked jurisdiction;
22 abdicated his duty to decide matters assigned to him, while delegating such duties to
23 others, including court clerks, attorneys and, in some cases, the parties themselves;
24 ignored basic statutory child support requirements; failed to properly manage his cases,
25 including repeatedly holding status hearings, while failing to enter final orders, thereby
26 prolonging disputed issues for years; demonstrated a pattern of legal error throughout his
27 decisions; failed to exhibit diligence in handling cases before him; and lacked decorum in
28 cases over which he presided.

1 E. The foregoing problems and deficiencies were discovered when Senior Family
2 Court Judge Deborah Schumacher was appointed to preside over Respondent's cases
3 while he served his three (3) month disciplinary suspension. Senior Judge Schumacher
4 advised Family Court Presiding Judge Bridget Robb of the issues she had discovered
5 regarding Respondent's family law docket. Judge Robb conducted an audit of the
6 minutes of all hearings presided over by Respondent for the six (6) month period prior to
7 Respondent's suspension. Following the audit, Judge Robb further investigated the status
8 of numerous cases. Based on her investigation and the concerns expressed by Senior
9 Judge Schumacher, Judge Robb filed a Verified Complaint with the Commission on
10 October 1, 2018.

11 F. On October 1, 2018, Chief Judge Scott Freeman of the Second Judicial District
12 Court issued Administrative Order 2018-16 ("Administrative Order") which reassigned a
13 significant portion of Respondent's caseload, including all divorce and custody cases, to
14 the remaining judges of the Family Division. The Administrative Order also assigned
15 Judge Schumacher to mentor Respondent. The stated purpose of the Administrative
16 Order was to ensure that Respondent "obtains the knowledge and skills needed to
17 perform his judicial duties in a manner that instills and sustains the public's confidence in
18 the judicial system."

19 G. On October 16, 2018, Judge Robb filed a Supplement to her Complaint based
20 upon Respondent's failure to follow the advice of his mentor upon returning to the bench
21 on October 1, 2018. The Supplement also documented Respondent's continued failure to
22 adequately supervise his judicial assistant.

23 H. Before and after his disciplinary suspension, Respondent repeatedly abdicated his
24 duty to make decisions and decide cases, and inappropriately delegated the same to
25 others, including court staff, legal counsel and family law litigants. In at least one case,
26 he ordered an attorney for one party in a contested case to be a mediator between both
27 parties when the other side was not represented by counsel. Respondent also repeatedly

28 ///

1 ordered family law litigants to meet and confer on contested issues rather than decide
2 them himself.

3 I. The evidence demonstrates that Respondent lacks a basic understanding of
4 jurisdiction. Respondent placed a five (5) month old child with its paternal grandparents
5 in Utah without: (i) establishing jurisdiction over the paternal grandparents, (ii)
6 commencing a formal guardianship proceeding, (iii) making any finding of parental fault
7 on the part of the biological parents, and (iv) making any effort to terminate the parental
8 rights of the biological mother or father. The minor child remained with the paternal
9 grandparents in Utah for more than two (2) years despite the parents' repeated attempts to
10 restore custody to them. Senior Judge Schumacher finally resolved the case by returning
11 the child to its parents when she presided over the Respondent's cases during his
12 disciplinary suspension.

13 J. Respondent ignored the statutory requirements pertaining to child support in
14 many cases. When he did address child support, he often failed to follow the law. For
15 example, Respondent shifted the entire health insurance burden to the party receiving
16 child support, while assessing a 100% downward deviation to the party paying child
17 support, based on the amount of the health insurance premium.

18 K. Respondent's lack of legal knowledge extended to improperly dismissing cases
19 "with prejudice". This is not the procedural norm in family court, because child custody
20 and/or support cases often need to remain open for years. Respondent also did not
21 understand the legal impact of extended protective orders ("EPOs"). For example,
22 Respondent ordered that a protected party under an EPO supervise the adverse party's
23 visitation with her child while the EPO was still in effect.

24 L. Respondent failed to address the lack of proper notice in several cases and held
25 trials where parties never received notice of the proceeding, thus depriving them of their
26 opportunity to be heard.

27 ///

28 ///

1 M. Decisions regarding the division of assets are fundamental tasks for a family
2 judge. However, in at least one case, Respondent arbitrarily allocated a retirement
3 account between parties without considering the marital contribution to the same.

4 N. Respondent lacked diligence in handling his caseload. In some cases, hearings
5 were held, but orders were either never entered or were not timely entered. The failure to
6 properly enter orders, or to do so in a timely fashion, denies finality to families on
7 sensitive and personal issues, thereby preventing them from getting on with their lives,
8 planning for the future, and providing stability for their minor children subject to custody
9 and visitation orders.

10 O. Respondent lacked proper judicial decorum on the bench. In one such case,
11 Respondent's behavior in court towards an already traumatized juvenile litigant resulted
12 in the filing of a joint complaint by a Chief Deputy Public Defender and a Chief Deputy
13 District Attorney. The complaint stated that both counsels were "surprised and
14 disheartened" by Respondent's behavior.

15 P. Respondent was recalcitrant in correcting his legal deficiencies after returning to
16 the bench on October 1, 2018, following his disciplinary suspension. Senior Judge
17 Schumacher specifically discussed guardianship cases with Respondent on October 2,
18 2018, providing him with bench card check lists to ensure that all necessary issues were
19 addressed in Respondent's cases and proper findings made, while also emphasizing that
20 he must make decisions in his cases without deferring or delegating them to others.
21 Respondent failed to take Senior Judge Schumacher's advice. Judge Robb's Supplement
22 to Complaint and the courtroom video recording indicate that later that same day, in Case
23 No. GR18-00279, Respondent turned to his clerk and asked if she found the petition for
24 guardianship "to be compliant with the statute, generally."

25 Q. Respondent has been on the bench for approximately three and a half years, yet
26 lacks the necessary knowledge to perform basic judicial duties. After his three (3)-month
27 disciplinary suspension, Respondent continued to fail to perform his duties diligently and
28

///

1 competently, and to adequately supervise his judicial assistant, which caused problems
2 with the gathering of case statistics, customer service, and the timely entry of orders.

3 2. Respondent admits to all the allegations brought against him in paragraphs (I)(A)
4 through (Q) as set forth above.

5 3. Respondent agrees to waive his right to present his case before the Commission,
6 contesting the allegations in the information set forth above, in a formal hearing, pursuant to
7 Commission Procedural Rule 18. The Respondent also agrees that this Stipulation and Order of Consent
8 to Discipline (“Order”) takes effect immediately, pursuant to Rule 29. The Commission accepts the
9 Respondent’s waiver of said right and acknowledges and agrees to the immediate effect of this Order.
10 Respondent further agrees to appear before the Commission in a public proceeding, if required by the
11 Commission, to discuss this Order in more detail and answer any questions from the Commissioners.

12 4. The Respondent agrees and acknowledges that this Order will be published on the
13 Commission’s website and filed with the Clerk of the Nevada Supreme Court, pursuant to Rule 29.

14 5. Respondent and the Commission hereby stipulate to the Respondent’s voluntary
15 resignation from his judicial office, effective January 31, 2019, and to a bar from Respondent serving in
16 judicial office in the future pursuant to the Nevada Constitution, Article 6, Section 21, 1 and 5(a) and (b)
17 (“Section 21”); NRS 1.4653 (1) and (2); NRS 1.4677(1)(e) and (f); NRS 1.4694; and Rule 29.
18 Respondent stipulates to the following substantive provisions:

19 A. Respondent agrees the evidence available to the Commission would establish by
20 clear and convincing proof that he violated Canon 1, Rules 1.1 and 1.2; Canon 2, Rule
21 2.5(A) and (B); Rule 2.6(A); Rule 2.7; Rule 2.8(B) and 2.12(A).

22 B. Respondent agrees that the discipline of voluntary resignation from his judicial
23 office and bar from serving in a judicial office in the future is authorized by Article 6,
24 Section 21 of the Nevada Constitution; NRS 1.4653 (1) and (2); NRS 1.4677(1) (e) and
25 (f); NRS 1.4694; and Rule 29.

26 C. Respondent stipulates and consents to voluntarily resigning from his judicial
27 office, effective January 31, 2019, and to a bar from his serving in a judicial office in the
28 future for violations of the Code Rules as set forth in paragraphs 1(A) through (Q) above.

1 Respondent agrees to never again seek, either through election or appointment, any
2 judicial office in the State of Nevada, including, but not limited to, a seat on any
3 municipal, justice of the peace, district or appellate court bench, or as a special or hearing
4 master or any other position requiring the exercise of adjudicative authority within the
5 State of Nevada.


6 6. Respondent understands and agrees that by accepting the terms of this Order, he waives
7 his right to appeal to the Nevada Supreme Court pursuant to Rule 3D of the Nevada Rules of Appellate
8 Procedure.

9 **ORDER**

10 IT IS HEREBY ORDERED that Respondent will voluntarily resign from his judicial office,
11 effective January 31, 2019, and that he is barred from serving in a judicial office in the future pursuant
12 to Rule 29 for violating the Code, including Canon 1, Rules 1.1 and 1.2; and Canon 2, Rules 2.5 (A) and
13 (B); 2.6(A); 2.7; 2.8(B) and 2.12 (A).

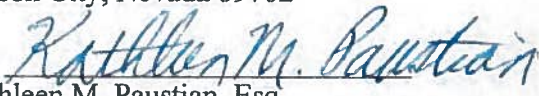
14 IT IS FURTHER ORDERED that this Order shall be effective immediately on the date of entry.

15 IT IS FURTHER ORDERED that the Commission's Executive Director take the necessary steps
16 to file this document in the appropriate records and on the website of the Commission and with the
17 Clerk of the Nevada Supreme Court.

18 
19 _____
The Honorable David Humke
Respondent

20 Dated this 1st day of Jan, 201~~8~~⁹

21 NEVADA COMMISSION ON
22 JUDICIAL DISCIPLINE
23 P.O. Box 48,
Carson City, Nevada 89702

24 By: 
25 Kathleen M. Paustian, Esq.
Prosecuting Officer

26 Dated this 12 day of Jan., 201~~8~~⁹

27 
28

1 The Commissioners listed below accept the terms of this Stipulation and Order of Consent to
2 Discipline between Respondent and the Commission. They further authorize the Chairman, if
3 requested, to sign on behalf of the Commission, as a whole, this document containing the Stipulation
4 and Order of Consent to Discipline.

5 **NEVADA COMMISSION ON JUDICIAL DISCIPLINE:**

6 **Signed by:** **Dated:**
7  January 11, 2019

- 8 GARY VAUSE, CHAIRMAN
9 KARL ARMSTRONG
10 HON. MARK DENTON
11 BRUCE HAHN
12 STEFANIE HUMPHREY
13 HON. THOMAS STOCKARD
14 JOSEPH SANFORD

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 14th day of January, 2019, I served a copy of the **STIPULATION AND ORDER OF CONSENT TO DISCIPLINE**, filed with the Nevada Supreme Court, by United States Mail, postage paid, addressed to the following:

David Humke
2140 Ox Circle
Washoe Valley, NV 89704
dehumke@gmail.com
Respondent

Kathleen Paustian, Esq.
Law Offices of Kathleen M. Paustian
1912 Madagascar Lane
Las Vegas, NV 89117
kathleenpaustian@cox.net
Prosecuting Officer



Valerie Carter, Commission Clerk