

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

NOV 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY CHIEF DEPUTY CLERK

2
3 In the Matter of)
4 THE HONORABLE DAVID HUMKE,)
5 District Court Judge, Second Judicial District)
6 Court, Washoe County, State of Nevada,)
7 Respondent.)


CASE NO. 77311

8
9 **CERTIFIED COPY OF ORDER OF INTERIM SUSPENSION**

10 Pursuant to Commission Procedural Rule 9(4), I hereby certify that the document attached
11 hereto is a true and correct copy of the ORDER OF INTERIM SUSPENSION filed with the Nevada
12 Commission on Judicial Discipline on November 2, 2018.

13 DATED this 2nd day of November, 2018.

14
15 STATE OF NEVADA
16 COMMISSION ON JUDICIAL DISCIPLINE
17 P.O. BOX 48
18 CARSON CITY, NV 89702
19 (775) 687-4017

20 By: 
21 PAUL C. DEYHLE
22 General Counsel and Executive Director
23 Nevada Bar No. 6954

24 RECEIVED
25 NOV 02 2018
26 ELIZABETH A. BROWN
27 CLERK OF SUPREME COURT
28 CHIEF DEPUTY CLERK



BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of)
THE HONORABLE DAVID HUMKE,)
District Court Judge, Second Judicial District)
Court, Washoe County, State of Nevada,) CASE NO. 2018-186
Respondent.)

ORDER OF INTERIM SUSPENSION

The Nevada Commission on Judicial Discipline (hereinafter, the "Commission"), having determined that the Honorable David Humke (hereinafter, the "Respondent") poses a substantial threat of serious harm to the administration of justice, hereby suspends Respondent from the exercise of office with salary¹ pending a final disposition of the Complaint filed in the above-referenced case pursuant to NRS 1.4675(4) and Commission Procedural Rule 9.

Pursuant to prior written notice, the above-entitled matter was set for a formal, one-day public hearing before the Commission on October 30, 2018, conducted via videoconference between Reno and Las Vegas, Nevada. Kathleen Paustian, Esq. served as the Prosecuting Officer to the Commission (hereinafter, the "Prosecuting Officer") and was present in Reno. Respondent represented himself and was also present in Reno. During the hearing, the Commission considered all evidence and testimony presented.

A. STATUTORY LAW AND COMMISSION RULES APPLICABLE TO INTERIM SUSPENSIONS

NRS 1.4675 states in relevant part:

Circumstances under which a judge may be suspended with or without pay; hearing; appeal.

4. During any stage of a disciplinary proceeding, the Commission may suspend the judge from the exercise of office with salary pending a final disposition of the complaint if the Commission determines, by a preponderance of the evidence, that the judge poses a substantial threat of serious harm to the public or to the administration of justice.

¹ NRS 1.4675(4) requires the Commission to suspend Respondent with salary.

1 5. The Commission shall give the judge 7 days' notice of its intention to suspend the
2 judge pursuant to this section and shall give the judge an opportunity to respond. The
3 Commission shall hold a public hearing before ordering such a suspension, unless the
4 judge waives the right to the hearing. The decision of the Commission must be made
5 public.

6 6. A judge suspended pursuant to this section may appeal the suspension to the
7 appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme
8 Court pursuant to [Section 4 of Article 6](#) of the Nevada Constitution. If a judge appeals
9 such a suspension:

10 (a) The standard of review for such an appeal is an abuse of discretion standard; and

11 (b) The proceedings held at the appellate court of competent jurisdiction pursuant to
12 the rules fixed by the Supreme Court concerning the suspension must be open to the
13 public.

14 7. Within 60 days after a decision by the Commission to suspend a judge pursuant to
15 this section, the Commission shall:

16 (a) Have a formal statement of charges filed against the judge;

17 (b) Rescind the suspension; or

18 (c) Enter into a deferred discipline agreement with the judge pursuant to [NRS 1.468](#).

19 8. The Commission may suspend a judge pursuant to this section only in accordance
20 with its procedural rules.

21 Commission Procedural Rule 9 states:

22 **Rule 9. Suspension.**

23 1. The Commission may suspend a Judge from the exercise of the office in accordance
24 with NRS 1.4675 and NRS 1.4677(1).

25 2. The Commission shall give the Respondent seven (7) days' notice of its intention to
26 suspend. The Judge may submit documents in opposition to suspension which shall be
27 considered by the Commission. The Commission shall hold a public hearing before
28 ordering such a suspension unless the Judge waives the right to the hearing.

 3. A Respondent suspended under these rules may appeal to the Nevada Supreme
Court.

 4. The Commission shall promptly file a certified copy of the notice of suspension
with the clerk of the Nevada Supreme Court.

B. PROCEDURAL HISTORY

The above-referenced case was initiated on October 1, 2018, when a detailed Complaint (with Exhibits)² was filed against Respondent by Judge Bridget Robb, Presiding Judge of the Family Division of the Second Judicial District Court. The Commission held a special meeting to consider the Complaint and subsequently authorized the issuance of the Notice of Commission's Intent to Suspend Respondent With Salary on October 8, 2018 (hereinafter, the "Notice of Intent"). On October 16, 2018, Judge Robb filed a Supplement to Complaint (with Exhibits).³ On October 18, 2018, Respondent filed

///

² See Hearing Exhibit 1, bates stamped NCJD 0001 – 0117.

³ See Hearing Exhibit 2, bates stamped NCJD 0118 – 0139.

1 his Request for Hearing in response to the Notice of Intent, and on October 23, 2018, Respondent filed
2 his Opposition to Complaint and Notice of Suspension.

3 On October 29, 2018, Respondent filed the following motions: (i) Motion to Dismiss Complaint
4 and to Vacate Suspension Hearing (“Motion to Dismiss”); (ii) Motion to Continue Suspension Hearing
5 (“Motion to Continue”); and (iii) Motion to Disqualify Panel Members for Suspension Hearing
6 (“Motion to Disqualify”) [relating to Commissioners Bruce Hahn, Esq. and the Honorable Thomas
7 Stockard]. Oppositions to the same were filed by the Prosecuting Officer on October 29, 2018. On
8 October 30, 2018, Respondent filed a Notice of Modification of Motion to Disqualify Panel Member
9 for Suspension Hearing [withdrawing Respondent’s Motion to Disqualify Commissioner Stockard].

10 At the commencement of the hearing, the Commission considered Respondent’s Motion to
11 Disqualify Commissioner Hahn on the record and voted unanimously (with Commissioner Hahn
12 abstaining) to deny Respondent’s Motion to Disqualify and to permit Commissioner Hahn to remain on
13 the case. Commissioner Stockard, as Presiding Officer, then denied Respondent’s Motion to Dismiss
14 and Motion to Continue after providing Respondent a further opportunity to argue in support of the
15 foregoing Motions.

16 **C. FINDINGS OF FACT**

17 The Commission finds that the evidence presented by the Prosecuting Officer at the hearing
18 established, by a preponderance of the evidence, that Respondent poses a substantial threat of serious
19 harm to the administration of justice as set forth in Paragraphs 1 through 2 below:

20 1. Respondent was, at all times applicable to the allegations contained in the Complaint
21 and the Supplement to Complaint, a District Court Judge for the Family Division of the Second Judicial
22 District Court, located in Washoe County, Nevada, and whose conduct was subject to the Nevada
23 Revised Code of Judicial Conduct (the “Code”).

24 2. The credible evidence and the totality of the circumstances demonstrate that
25 Respondent: (i) significantly lacks the requisite knowledge and ability to handle both the legal and
26 administrative duties of his family court docket; (ii) issues rulings in cases where he lacks jurisdiction;
27 (iii) abdicates his duty to decide matters assigned to him and delegates such duties to others, such as
28 court clerks, attorneys and even the parties themselves; (iv) ignores basic statutory child support

1 requirements; (v) fails to properly manage his cases, including setting unnecessary status hearings and
2 failing to enter final orders in custody cases, thereby prolonging disputed issues for years; (vi)
3 demonstrates an alarming pattern of legal error throughout his decisions; (vii) lacks diligence in
4 handling cases before him; and (viii) lacks decorum in cases over which he presides.

5 Respondent's foregoing deficiencies were discovered when Senior Judge Deborah Schumacher
6 was appointed to preside over Respondent's cases while he served a three (3)-month suspension
7 without pay pursuant to the Commission's Stipulation and Order of Consent to Discipline filed with the
8 Nevada Supreme Court on June 11, 2018. After Senior Judge Schumacher advised Judge Robb of the
9 many troubling issues involving Respondent and his family law docket, Judge Robb then conducted an
10 audit of the minutes of all hearings presided over by Respondent for the six (6)-month period prior to
11 Respondent's suspension (January 1, 2018 – June 30, 2018). Following the audit, Judge Robb further
12 investigated the status of numerous cases, and based on her investigation and the concerns expressed by
13 Senior Judge Schumacher, Judge Robb filed her Complaint with the Commission.

14 On October 1, 2018, Chief Judge Scott Freeman of the Second Judicial District Court issued
15 Administrative Order 2018-16 ("Administrative Order")⁴ which, in effect, reassigned a significant
16 portion of Respondent's current caseload, including all divorce and custody cases, to the remaining
17 judges of the Family Division Bench, as well as assigned Respondent a mentor. The purpose of the
18 Administrative Order was to ensure that Respondent "obtains the knowledge and skills needed to
19 perform his judicial duties in a manner that instills and sustains the public's confidence in the judicial
20 system." The very necessity of Chief Judge Freeman having to issue the Administrative Order clearly
21 shows that Respondent currently poses a substantial threat of serious harm to the administration of
22 justice.

23 On October 15, 2018, Judge Robb filed her Supplement to Complaint based upon Respondent's
24 failure to follow the advice of his assigned mentor, Senior Judge Schumacher, upon returning to the
25 bench on October 1, 2018, as well as Respondent's continued failure to adequately supervise his
26 judicial assistant. *See* Hearing Exhibit 2, Supplement to Complaint, bates stamped NCJD 0118 - 0139.

27 ///

28 _____
⁴ *See* Hearing Exhibit 2, bates stamped NCJD 0123 – 0125.

1 The evidence demonstrates that Respondent repeatedly abdicates his duty to decide cases and
2 inappropriately delegates the same to others, such as court staff, legal counsel and family law litigants.
3 *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit B, bates stamped NCJD 0013 - 0077 (delegating
4 judicial duties to counsel); Complaint Exhibit C, bates stamped NCJD 0078 – 0082 (ordering an
5 attorney for one party in a contested case to be a mediator between both parties);⁵ and Complaint
6 Exhibit D, bates stamped NCJD 0083 - 0088 (delegating judicial duties to court staff who are not
7 qualified by position or training to undertake). Respondent also orders family law litigants to meet and
8 confer on contested issues rather than decide them himself. *See, e.g.*, Hearing Exhibit 1, Complaint
9 Exhibit F, bates stamped NCJD 0091 - 0092. As Judge Robb pointed out at the hearing, if these
10 litigants were able to solve their issues, there would be no need to appear before Respondent. *See*
11 Hearing Transcript, dated October 30, 2018 (“Hearing Transcript”).

12 Respondent also routinely sets numerous status hearings without making decisions, thereby
13 forcing litigants to return to court multiple times. Judge Robb emphasized and described the significant
14 impact this has on many litigants, particularly among low-income litigants, since they must take the day
15 off from work to attend a court proceeding. *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit G, bates
16 stamped NCJD 0093 - 0095); *see also* Hearing Transcript.⁶

17 Even when Respondent makes decisions in cases, the evidence demonstrates that they are often
18 legally incorrect. The overwhelming documentary and testimonial evidence reveals that Respondent
19 lacks a basic understanding of jurisdiction. For example, in Case No. FV16-00683 (cited by Judge
20 Robb in her Complaint), Respondent placed a minor child, then age five (5) months, with the biological
21 father’s parents in Utah. *See* Hearing Exhibit 1, Complaint Exhibit A, bates stamped NCJD 0009 –
22 0012, and Hearing Transcript.

23 Respondent placed the minor child with its paternal grandparents in Utah without (i) the
24 commencement of a formal guardianship proceeding, (ii) establishing jurisdiction over the paternal
25 grandparents in Utah, (iii) the paternal grandparents being granted guardianship of the minor child; or
26

27 ⁵ Attorneys are advocates for their clients, not mediators between adverse parties.

28 ⁶ Judge Robb states in her Complaint that “[t]hese litigants cannot afford to lose time and wages from their employment, or to place their employment in jeopardy because of excessive leave.” *See* Hearing Exhibit 1, Complaint, bates stamped NCJD 0006.

1 (iv) any finding of parental fault on the part of the biological parents. Furthermore, the biological
2 parents neither relinquished their parental rights over their minor child, nor were such rights ever
3 formally terminated. The minor child remained with the paternal grandparents in Utah for more than
4 two years despite the parents' repeated attempts to restore custody to them. *Id.*

5 The evidence further demonstrates that Respondent has ignored the statutory requirements
6 pertaining to child support in many cases, which the Commission finds troubling given that Respondent
7 is a family court judge.⁷ Even when Respondent does address child support, Respondent often fails to
8 follow the law. For example, Respondent shifted the entire health insurance burden to the party
9 receiving child support, while assessing a 100% downward deviation to the party paying child support
10 based on the amount of the health insurance premium. *See* Hearing Exhibit 1, Complaint Exhibit E,
11 bates stamped NCJD 0089 - 0090. Respondent's lack of legal knowledge in this area of law deprives
12 children and their caregivers of much needed and legally required child support payments. *See* Hearing
13 Transcript.

14 Moreover, Respondent's lack of legal knowledge extends to improperly dismissing court cases
15 "with prejudice", which is not the norm in family court. *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit
16 H, bates stamped NCJD 0096 - 0099. Respondent also appears to not understand the legal effect and
17 importance of Extended Protective Orders ("EPOs"). For example, Respondent ordered that a protected
18 party under an EPO supervise the adverse party's visitation with her child while the EPO was still in
19 effect. *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit I, bates stamped NCJD 0104 - 0109. *See also*
20 Hearing Transcript.

21 The evidence further demonstrates that Respondent continually fails to grasp and understand the
22 need for proper service of notice in cases before him. In failing to address service issues in several
23 cases, Respondent has held trials where parties never received notice of the trial, thus depriving them of
24 their opportunity to be heard. *See, e.g.*, Case No. FV14-01531 (cited by Judge Robb in her Complaint).⁸
25 Moreover, as a family law judge, the division of assets is a fundamental task for a judge to decide;
26 however, in one case, Respondent arbitrarily allocated a retirement account between parties without

27 ⁷ Respondent often orders counsel or the litigants to set child support themselves, or simply ignores child support altogether.
28 *See* Hearing Exhibit 1, Complaint, bates stamped NCJD 0006 (fn. 5 case citations omitted), and Hearing Transcript.

⁸ *See* Hearing Exhibit 1, Complaint, p. 5, bates stamped NCJD 0007.

1 considering the marital contribution to the same. *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit K,
2 bates stamped NCJD 0113 - 0115.

3 In addition to failing to apply the law correctly, Respondent lacks diligence in handling his
4 caseload. In some cases, hearings were held, but no orders were ever entered. *See, e.g.*, Case Nos.
5 DV17-01189, DV15-00720, DV18-00082, FV17-01709, and DV13-01353 (cited by Judge Robb in her
6 Complaint).⁹ The failure to enter orders, or to do so timely, denies finality to families on sensitive and
7 personal issues, thereby preventing them from getting on with their lives, planning for the future, and
8 providing stability for their minor children subject to custody and visitation orders.

9 The evidence further demonstrates that Respondent lacks proper decorum in the courtroom. In
10 one such case, Respondent's behavior in court towards a traumatized juvenile litigant resulted in the
11 filing of a joint complaint by both a Chief Deputy Public Defender and a Chief Deputy District
12 Attorney. *See, e.g.*, Hearing Exhibit 1, Complaint Exhibit L, bates stamped NCJD 0116 - 0117. The
13 complaint stated that both counsels were "surprised and disheartened" by Respondent's behavior. *See*
14 *also* Hearing Transcript.

15 In addition to the failings listed above, the evidence further demonstrates that Respondent has
16 been recalcitrant in correcting his legal deficiencies since returning to the bench on October 1, 2018,
17 following his suspension. *See* Hearing Exhibit 2, Supplement to Complaint, bates stamped NCJD 0118
18 - 0139, and Hearing Transcript.

19 Senior Judge Schumacher specifically discussed guardianship cases with Respondent on
20 October 2, 2018, providing him with bench card check lists to ensure that all necessary issues were
21 addressed in Respondent's cases and proper findings made, while also emphasizing that he must make
22 decisions in his cases without deferring or delegating them to others. Respondent failed to take Senior
23 Judge Schumacher's advice, and later that same day in open court, in Case No. GR18-00279 (cited in
24 Judge Robb's Supplement to Complaint, p. 2), Respondent turned to his clerk and asked if she found
25 the petition for guardianship "to be compliant with the statute, generally." *See* Hearing Exhibit 2,
26 Supplement to Complaint Exhibit O, JAVS Video, bates stamped NCJD 0132.

27 ///

28 _____
⁹ *See* Hearing Exhibit 1, Complaint, p. 6, fn. 8, bates stamped NCJD 0008.

1 Respondent has a duty to know the law and whether a petition for guardianship complies with
2 the law, not his court clerk. Respondent's inability to follow a simple bench card check list, know the
3 law, and follow the advice of his judicially assigned mentor indicates to the Commission that
4 Respondent will continue to pose a substantial threat of serious harm to the administration of justice if
5 he is permitted to return to the bench.

6 Respondent has been on the bench for approximately three and a half years, yet the evidence
7 demonstrates that Respondent lacks the necessary knowledge to perform the most basic judicial duties.
8 Despite Senior Judge Schumacher and Judge Robb's counsel that Respondent, as the judge, must make
9 decisions, Respondent continues to defer to staff to prepare a "step up visitation" plan in custody cases.
10 *See* Hearing Exhibit 2, Supplement to Complaint Exhibit P, JAVS Video, bates stamped NCJD 0134,
11 and Hearing Transcript.¹⁰

12 Moreover, after his three (3)-month suspension, Respondent continues to fail to supervise his
13 judicial assistant "which has caused problems with case statistics, customer service and a failure to
14 timely enter orders." *See* Hearing Exhibit 2, Supplement to Complaint, bates stamped NCJD 0120.
15 Respondent has a duty to manage his staff and ensure that his department operates efficiently. *See also*
16 Hearing Transcript.

17 Judge Robb, as Presiding Judge of the Family Division, concludes in her Supplement to
18 Complaint, that:

19 Judge Humke's actions and inactions in the past two weeks demonstrate to me
20 that he is not willing or able to perform the most basic and necessary functions of his
21 position. He does not know how to make findings of fact and conclusions of law at the
22 end of a hearing. Because he does not know how to perform his job, he delegates it to
23 court staff even after repeated instructions that this action is not appropriate. He lacks
24 basic legal knowledge about the family area of law and he has failed to educate himself. I
25 am informed and believe he comes to the bench unprepared for his hearings and without
26 having adequately reviewed the files and when given the tools to assist with preparation,
27 he has delegated that preparation to a court clerk.

28 It is my opinion that even after 3-1/2 years in his position, Judge Humke lacks the
legal knowledge, judicial experience, and administrative skill to be a District Judge.
Further, he lacks the desire or work ethic necessary to obtain these necessary judicial
attributes. These failures diminish the public's respect for the Bench and are an
embarrassment to me, and I believe, to my colleagues.

Hearing Exhibit 2, Supplement to Complaint, p. 2 (bates stamped NCJD 0120).

¹⁰ *See also* Hearing Exhibit 2, Supplement to Complaint, p. 3.

1 Each of the foregoing conclusions were further supported and buttressed by the extensive and
2 detailed testimony of both Judge Robb and Senior Judge Schumacher, as well as by the totality of the
3 evidence admitted at the hearing. *See* Hearing Transcript.

4 **D. CONCLUSIONS OF LAW**

5 The Commission determines that the Prosecuting Officer has proven by a preponderance of the
6 evidence that Respondent's actions constitute a substantial threat of serious harm to the administration
7 of justice pursuant to NRS 1.4675(4) and Commission Procedural Rule 9. These actions implicate
8 violations of Canon 1, Rule 1.1 (failing to comply with the law, including the Code); Rule 1.2 (failing
9 to act at all times in a manner that promotes public confidence in the independence, integrity, and
10 impartiality of the judiciary and avoiding impropriety and the appearance of impropriety; Canon 2,
11 Rule 2.5(A) and (B) (performing judicial and administrative duties competently and diligently, and
12 cooperating with other judges and court officials in the administration of court business); Rule 2.6(A)
13 (right to be heard); Rule 2.7 (responsibility to decide); Rule 2.8(B) (failure to be patient, dignified, and
14 courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the
15 judge deals in an official capacity), and Rule 2.12 (supervisory duties).

16 **E. IMPOSITION OF INTERIM SUSPENSION**

17 By unanimous vote of the Commission, after due deliberation and consideration of the detailed
18 and extensive evidence presented and the totality of circumstances involving Respondent, it is
19 determined, by a preponderance of the evidence, that Respondent poses a substantial threat of serious
20 harm to the administration of justice pursuant to NRS 1.4675(4) and Commission Procedural Rule 9.
21 Accordingly, in order to protect the public and prevent further serious harm to the administration of
22 justice, Respondent is hereby suspended with pay pending a final disposition of the Complaint filed in
23 the above-referenced case.

24 **F. ORDER**

25 IT IS HEREBY ORDERED by unanimous vote of Chairman Gary Vause, Vice-Chair Stefanie
26 Humphrey, Joseph Sanford, Bruce Hahn, Esq., Karl Armstrong, Esq., the Honorable Mark Denton and

27 ///

28 ///

1 the Honorable Thomas Stockard that Respondent be, and hereby is, suspended with salary from the
2 exercise of judicial office pending a final disposition of the Complaint filed in the above-referenced
3 case.

4 IT IS FURTHER ORDERED that this Order shall be effective immediately on the date of entry
5 and Respondent shall cease performing all judicial duties at such time.

6 IT IS FURTHER ORDERED that the Executive Director of the Commission shall take the
7 necessary steps to file this Order in the appropriate records and on the website of the Commission and
8 with the Clerk of the Nevada Supreme Court.

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

11 DATED this 2nd day of November, 2018.

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

17 By:  _____
18 GARY VAUSE
19 COMMISSION CHAIRMAN
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and
3 that on the 2nd day of November, 2018, I served a copy of the **ORDER OF INTERIM SUSPENSION**
4 by email and U.S Mail, postage paid, addressed to the following:

5 Honorable David Humke
6 Second Judicial District Court
7 75 Court Street
8 Reno, NV 89501
david.humke@washoecourts.us
Respondent

9 Kathleen Paustian, Esq.
10 Law Offices of Kathleen M. Paustian
11 1912 Madagascar Lane
12 Las Vegas, NV 89117
kathleenpaustian@cox.net
Prosecuting Officer

13
14 
15 _____
16 Nancy L. Schreihans, Commission Clerk
17
18
19
20
21
22
23
24
25
26
27
28