Marc P. Cook. Esq.
Nevada Bar No. 4574
COOK & KELESIS, LTD.
517 S. Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 737-7702
Fax: (702) 737-7712
Email: law@bckltd.com
Attorneys for Respondent
Melanie Andress-Tobiasson

Thomas R. Sheets, Esq.
Nevada Bar No. 0779
Attorney at Law
10170 W. Tropicana Avenue, Ste. 156-389
Las Vegas, Nevada 89147
Telephone: (702) 737-7702
Email: tsheetsatty@gmail.com
Attorney for Respondent
Melanie Andress-Tobiasson

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE MELANIE ANDRESS-TOBIASSON, Las Vegas Justice Court, County of Clark, State of Nevada, Respondent.	CASE NOS. 2018-120 and 2019-005

RESPONSE AND MOTION TO DISMISS FORMAL STATEMENT OF CHARGES

COMES NOW, Respondent, MELANIE ANDRESS-TOBIASSON, by and through her counsel of record, MARC P. COOK, ESQ. of the law firm of COOK &

KELESIS, LTD., and hereby submits this Response and Motion to Dismiss Formal Statement of Charges ("Response" or "Motion").

I.

INTRODUCTION

This Response to The Formal Statement of Charges seeks dismissal due to the Commission's failure to meet or otherwise comply with their own statutory requirements (NRS 1.425 *et seq.)* and procedural rules (The Procedural Rules of the Nevada Commission on Judicial Discipline). As will be discussed below, these failures are both procedural and substantive and mandate immediate dismissal. Further, the Formal Statement of Charges was knowingly filed in an untimely manner without even opposing or otherwise responding to the pending Motions to Dismiss. It is a fugitive document that does not effectuate jurisdiction for this Commission to proceed in any discipline.

Moreover, the bias in the prosecution of these charges shows total disregard for the underlying purpose of the Commission. Specifically, the manner in which this case has been prosecuted is in bad faith and contrary to statute. The failure in these charges includes, but is not limited to, filing a fugitive Formal Statement of Charges in total disregard for the fatal time restrictions which relies on allegations that contradict the Commission's own investigative file, interwoven with overreaching

extrapolations and spurious personal allegations with no legal or ethical significance. This process demonstrates a clear and quite convincing complete failure of procedure, purpose and intent.

Finally, the charges do not put Respondent on fair notice. The charges do not indicate whether they are brought pursuant to the allegations in the 2018-120 matter or the 2019-005 matter. Further, they do not indicate whether relief is being pursued under a theory of knowing conduct or unknowing conduct, notwithstanding that these theories carry significantly different disciplinary standards.

II.

STATEMENT OF FACTS

A. Parameters of Background.

In this factual statement, Respondent is limiting her responsive information to the allegations as contained in the Formal Statement of Charges. However, this background will reference the investigative file information as, pursuant to NRS 1.4667, the Commission is mandated to review the investigative report to determine how to proceed. It should be noted that NRS 1.4667 must presume that the investigative report will match the investigative evidence. Thus, the failure to consolidate the evidence with the Formal Statement of Charges will be included.

B. <u>These Charges were Investigated with No Disciplinary Recommendations</u>.

In the case *sub judice*, the factual allegations contained in the 2019-005 Complaint and the 2018-120 Complaint are substantively similar and overlapping. In response to the 2018-120 Complaint, the Commission appointed "an investigator to conduct an investigation to determine whether the allegations have merit" (NRS 1.4663(1). The Commission charged Bob Schmidt, from Spencer Investigations, a retired law enforcement supervisor of 27 years, to conduct the investigation. Mr. Schmidt is identified as a graduate of the FBI National Academy with a Bachelor's Degree in Criminal Justice and a Masters Degree in Education. He is identified as a Private Investigator with 13 years of experience with an emphasis on special investigations which involve sensitive matters. In another proceeding before the Commission (2017-025), the prosecuting officer described Mr. Schmidt as "a well-educated, experienced, and accomplished investigator."

In his investigation of the 2018-120 Complaint, Mr. Schmidt conducted multiple interviews, including interviewing Judge Tobiasson relative to the allegations contained in paragraphs 1 - 9, 11, and 15 - 16 of the Formal Statement of Charges. He further interviewed the Deputy Public Defender and Deputy District Attorney relative the allegations involving Valentine as contained in paragraphs 3, 4, 5 and 6 of the Formal Statement of Charges.

Schmidt's Investigative Report relative to the news report (2018-120) concludes that "Judge Tobiasson did nothing more than inform the police of the information she had learned about the suspected prostitution ring and did not use her position on the bench to influence LVMPD detectives."[1]

As to the issue related to paragraphs 3, 4, 5 and 6 of the formal charges, the investigator concluded as follows:

> "[w]hen Judge Tobiasson realized that Shane Valentine was in her court, she called the prosecutor and the public defender into chambers and informed them of the possible conflict with Mr. Valentine. Both the prosecutor, Hagar Trippiedi, and public defender, Marla Renteria, did not feel there would be a conflict for Judge Tobiasson to preside in Valentine's entering his plea and imposing the negotiated sentence. Judge Tobiasson again presided in the July 1, 2016 status check hearing, with the matter being reset to July 14, 2016. Judge Tobiasson subsequently recused herself from Shane Valentine's case at the July 14, 2016 hearing, noting the conflict on the record."

It should be noted that investigator Schmidt specifically included in his report that he received confirmation from the attorneys involved in the Valentine plea hearing noted that Judge Tobiasson recused herself before any adversarial hearing occurred.

Notably, the Schmidt findings clearly distinguish those actions taken by Tobiasson in her capacity as a judge, and those in her capacity as a mother. Schmidt did not seek to impugn a mother's ability to report criminal activity to the police, nor

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[1]The Schmidt Investigative Report is attached to the Exhibit index as Exhibit A.

disregard a mother's frustration when she observes what she views as unimpeded criminal conduct by sex traffickers.

C. <u>The Commission Reinvestigates the Same Charges</u>.

When the 2019-005 complaint was filed, based on substantively similar charges, the Commission, under NRS 1.4663 should have determined that any of the overlapping allegations were already investigated and were meritless pursuant to the 2018-120 investigative report. Instead, the Commission charged a substitute investigator to re-investigate the both prior complaint (2018-120) and the second complaint (2019-005), both with the same substantive charges. Moreover, it appears that Mr. Schmidt's report was totally disregarded relative to the Formal Statement of Charges as the new substitute investigator submitted a report for the 2018-120 without mention to the Schmidt report's exonerative findings.

D. <u>The Facts Refute the Charges as Alleged</u>.

Paragraphs 1-3 and 5 of the Formal Statement of Charges combine generalities about suspected criminal activity learned over a period of years. The Charges imply that all of this information was known contemporaneously, but there is no evidence to support the same. Most of the content of these paragraphs are gratuitous attempts to disparage the Judge and/or her family. The substantive content of these paragraphs is that the Respondent, as a mother, became concerned about her daughter, did some

preliminary observation to determine if criminal conduct was occurring, and when it appeared that it was, reached out to the police to report the same. The Formal Statement of Charges is drafted as though sex trafficking should go unreported, implying wrongdoing when Respondent advised Metro detectives who were on duty that,[2] "Top Knotch was an unlicensed club which was running an underage prostitution ring and that they should immediately investigate the illegal activities occurring at Top Knotch"[3] and that, "Respondent told Metro that they needed to investigate not only Top Knotch but also Valentine, because she determined he was an ex-felon who worked as a pimp and was in possession of guns and illegal drugs."[4] The tenor of these allegations notwithstanding, Respondent's anti-sex trafficking position as a mother is not inconsistent with her duties as a judge.

Moreover, Respondent's actions in this matter were unequivocally taken in her capacity as a mother. In fact, Metro Detective Grimmett was interviewed by the substitute investigator, and confirmed that the Respondent gave the police "valid information" as "a concerned citizen or as a concerned parent, a person in this

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[2] This allegation also purports that this notification was made while the detective was seeking a search warrant. However, the substitute investigator's interview with Detective Kelly Bluth belies this allegation. See Bluth interview 9:05-9:23 attached to the Exhibit Index as Exhibit B.

[3] Formal Statement of Charges, paragraph 3.

[4] Formal Statement of Charges, paragraph 5.

community."[5] He recognized that when talking to her about this case that the conversations he had with Respondent, "wasn't as a Judge, it was as a parent. ... So it wasn't as I - it wasn't a question that I proposed to the Judge per se, it was a question I proposed to Melanie Tobiasson about speaking with her daughter. . . . and she's asking questions in turn, like anybody would, well, you want to talk to my child." See Grimmett interview 18:34-19:11, attached to the Exhibit Index as Exhibit C. Further, Grimmett reported that Respondent was, "pretty upset about the way her daughter had been treated and that her name had been tossed around and she says: You know what? I'm a parent first and I understand, you know, the need for it, but, no, you know, I don't want anyone speaking to my daughter because I don't want her involved in this investigation."[6] Grimmett further advised that Respondent "was very concerned for her daughter's safety."[7]

Paragraphs 4 and 6 of the Formal Statement of Charges allege the Respondent should have recused herself from Valentine's criminal case earlier than she did. However, the substitute investigation disregards the Schmidt report findings that the Judge disclosed the potential conflict to the Deputy District Attorney and the Deputy

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[5] See Grimmett interview 18:07-18:18, attached to the Exhibit Index as Exhibit C.

[6] See Grimmett interview 12:21-12:48, attached to the Exhibit Index as Exhibit C.

[7] See Grimmett Interview 11:02 - 11:04, attached to the Exhibit Index as Exhibit C.

Public Defender prior to taking Valentine's plea, and they were both willing to go forward with the uncontested plea hearing. It further ignores that Responden recused herself immediately when a contested matter presented itself. In fact, neither the substitute investigative report nor the Formal Statement of Charges even reference the interview with Valentine's Public Defender or the Deputy District Attorney both of whom confirmed this information.

Paragraph 7 of the Formal Statement of Charges alleges that Respondent says she "kicked ***in*** the door" of Valentine's house when in reality, she "kicked the door." There was certainly no break-in reported at the Valentine house relative to the Respondent. (Frankly, a mother who merely kicks the door of someone's home who has repeatedly been trying to victimize her daughter is an act of restraint.) Moreover, there are no allegations to support that any of the Respondent's actions in his regard were in any way related to her position as a judge. There is no evidence that she droev a county vehicle to the house, wore her judicial robes, or in any way acted in any capacity other than as a mother.

The Statement of Charges then makes the mutually exclusive allegations that Respondent showed favoritism towards Metro (Paragraph 8) while simultaneously being un-judicially critical of Metro (paragraph 15). The investigative reports include statements from multiple Metro detectives discussing the process of getting search

warrants in front of judges. All advise, in form or substance, that they can go to more than one judge.

At the time the warrant at issue in the Statement of Charges was sought, the Respondent's daughter had not worked at Top Knotch for more than a year. Moreover, Exhibit 9 of the substitute investigator's 2019-005 report reveals that the warrant was sought for a Top Knotch location on Decatur Blvd., not the Chinatown location where Respondent's daughter had worked. The warrant sought to search the Decatur premises, vehicles, and certain individuals, none of whom were known to Respondent or the police officers, or were in any way related to the incidents previously reported by Respondent to the police.[8] Specifically, none of the individuals named in the warrant appear in any of the police interviews undertaken by the substitute investigator in this case related to the Respondent.

Most troubling about the allegation that Respondent's actions in issuing the warrant were inappropriate, is that Detective Grimmett advised that the individual who pursued the telephonic search warrant was Sergeant John Harney.[9] Inexplicably, however, the substitute investigator never interviewed Sergeant Harney. There was no inquiry to determine whether the contents of the search warrant (see Exhibit D to

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[8]See Exhibit D attached to the Exhibit Index.

[9] See Grimmett Interview 2:21-2:53, attached to the Exhibit Index as Exhibit C.)

the Exhibit Index) were accurate. There was no attempt to solicit non-hearsay evidence as to this factual allegation, which ends up as the basis for a specific charge of discipline. In fact, Count 3 is wholly based on the hearsay document with no effort to verify with the detective who solicited the warrant.

In fact, Respondent reviewed the warrant request on its merits, believed it met the necessary burden to execute, and believed that she could legitimately execute it. Respondent is not aware of any legal challenge to the validity of warrant based on her approval.

Paragraph 9 of the Formal Statement of Charges alleges that Respondent contacted Connie Land relative to this same sex trafficking syndicate. However, none of the actions alleged in Paragraph 9 were taken by Respondent in her capacity sa a judge. Land's own statement in this matter advises that Respondent, "did not tell me she was a judge in her message." See Land Complaint, paragraph 2. Similarly, FBI Special Agent Vanitha Pandi advised in her interview that, "[Land] didn't know Melanie Tobiasson was a judge. Eventually, she found out."[10]

Further, FBI Special Agent Richard Smith was assigned to reach out to Land relative to her complaints about the murder investigation of her daughter.[11] Agent

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[10] See Pandi interview 1:39-2:03 attached as Exhibit E to the Exhibit Index.

[11] See Smith interview 9:26-9:49 and 11:42-11:52 attached as Exhibit F to the Exhibit Index.

Smith described receiving information that Land was "a good-intentioned, good person with a big heart, but who has not – didn't interpret information accurately at times," and, "who jumps to conspiracy conclusions with pretty much any bit of information."[12] In fact, after reviewing an article on the internet posted by a blogger (as referenced in paragraphs 15 and 16 of the Formal Statement of Charges), Special Agent Smith felt that "it was such a misconstruing and fabrication of facts and circumstances that [he] discontinued any and all contact with [Land]."[13] Notably, the Commission's substitute investigator obtained this same information, yet summarized the Smith interview omitting any reference to the "misconstruing and fabrication of facts and circumstances," and instead presented allegations based on information received from Land and the blogger as though wholly credible.[14] Similarly, Detective Grimmett documents all his communications with Land because he, "... didn't play the games that Connie liked to play and the word games and [he] refused to go back and forth like that."[15]

Paragraph 10 of the Formal Statement of Charges alleges that Respondent

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[12] See Smith interview 19:41-20:01 and 20:26-20:37, attached as Exhibit F to the Exhibit Index.

[13] See Smith interview 49:27 - 50:14 attached as Exhibit F to the Exhibit Index.

[14] See Smith interview 49:27 - 50:14 attached as Exhibit F to the Exhibit Index.

[15] See Detective Grimmett interview 20:07 - 20:18, attached as Exhibit C to the Exhibit Index.

utilized a "burner" phone. First, there is nothing unethical, illegal or improper with buying a "cheap, disposable pre-paid mobile phone." Second, this was a personal phone – not a county phone. The use of a person phone for personal business not only appropriate, but if the content of personal phone use becomes subject to ethical scrutiny, no judge could ever campaign within these rules. Third, the Formal Statement of Charges notes the calls to Ms. Land but fails to note the calls to the FBI. Specifically, the substitute investigator's 2019-005 report, on page 12 paragraph 2 identifies at least 48 contacts with the FBI through this "burner phone" and 130 contacts with the FBI from Respondent's personal cell phone.[16] If the use of a "burner phone" was improper, it seems unlikely she would use it to communicate with the FBI. Further, during his interview with substitute investigator, FBI Special Agent Kevin White described a burner phone as "I'm sure it's phones that you obtain at Targets or Walmarts or something like that, disposable phones. That's what I gather would be a burner phone." See White interview 18:12 - 18:14 attached as Exhibit F to the Exhibit Index.[17] Evidently, "disposable phone" does not sound as

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[16]See Exhibit G attached to the Exhibit Index.

[17] The substitute investigator notes on page 12 paragraph 3 of the 2019-05 report (see Exhibit G attached to the Exhibit Index) that Special Agent White was not aware of what a "burner phone" was and that the substitute investigator did not find this statement credible. However, agent White advised that he had heard the term "burner phone" but asked "[w]hat is your interpretation of a burner phone." See 18:05 - 18:12 attached as Exhibit H to the Exhibit Index.

dramatic as "burner phone" so the Charges used "burner phone" to spice up this wholly inconsequential paragraph.

Paragraph 10 continues by falsely alleging "Respondent adopted 'Master of Puppets' as her cell phone identification." The prosecutor either intentionally makes this mis-statement or is utterly confused. Exhibit 31 to the substitute investigator's report shows a screen shot of a text message that clearly shows that Land – not Respondent – created and used that moniker and sent it to Respondent who thought it was a joke.[18]

Paragraph 11 continues to contort or create "facts" through colorful but empty allegations stating, "Respondent also created a false telephone account to send inappropriate text messages to a woman she believed was involved in the Land murder." First, the reference to a "false telephone account" is a misnomer at best. Presumably, this is the same second personal phone referenced in the prior paragraph. There is nothing illegal, unethical or improper about having more than one phone. Second, the only text messages from Respondent in either of the Investigative reports are the aforementioned texts with Land. There is a text message between the substitute investigator and a witness wherein he advises that he has not been

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[18] See Investigative Report, Exhibit 31 10/11/17 text attached as Exhibit I to the Exhibit Index.

forwarded that witnesses' text messages.[19] The substitute investigator describes this text in his report as "Aryanne text message that she is afraid." While this sounds ominous, the actual exhibit is a text message from the substitute investigator presumably to Aryanne which merely contains his email address and a message advising that he did not receive documents from her. There is no response from Aryanne. Certainly this admitted lack of evidence, notwithstanding the misleading reference to its content in the report, cannot support any allegation.

This paragraph continues by alleging that Respondent was involved in a murder investigation, and suggests that cooperating with a murder investigation or assisting within the bounds of the law is contrary to judicial principles. This inference is chilling and inapposite to the standards expected of even ordinary citizens. Moreover, the inference misconstrues the Respondent's involvement. First, as to the Metro investigation, the substitute investigator directly asked Detective Grimmett this question and the investigator and the Formal Statement of Charges directly ignore the Detective's answer and allege the exact opposite of what he said. Specifically, the substitute investigator asked:

> Q: Now, would you say that Judge Tobiasson inserted and involved herself in this case?

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[19] See Investigative Report Exhibit 32 attached as Exhibit J to the Exhibit Index.

Detective Grimmett: In the -

Q: In the double murder?

Detective Grimmett: **No, not by any means**. You know, what I feel is, you know, as far as inserted herself into it, I mean, and I'm just being honest with you. I think Judge Tobiasson was - I think she was upset with the way things were handled by Metro as far as when she initially provided information about Top Knotch prior to the murders happening at Top Knotch. Prior to the double murder happening, it's my understanding she had provided information to our vice unit about the activities she suspected going on at Top Knotch, and nothing was done about it. They basically ignored her.

(Emphasis added.) See Grimmett interview 16:32 - 17:12, attached as Exhibit C to the Exhibit Index.

Thus, notwithstanding receiving directly contradictory information, the Formal Statement of Charges includes this allegation in paragraph 11 and specifically cites it as the basis for Count 6, "improperly becoming personally involved in an ongoing double murder investigation." These allegations' mutually exclusive relationship with the detective's interview statement cannot be attributed to an oversight by this Commission.

When the substitute investigator asked FBI Special Agent Kevin White if Respondent provided information to the FBI public corruption squad relative to

the murder in question, the special agent could not comment. [20] Special Agent White was asked whether could not comment because there was an ongoing investigation, and confirmed, "I can tell you I can't comment on an ongoing investigation."[21] Special Agent Pandi similarly advised that she could not talk about active investigations.[22] However, the 2019-005 Report notes over 175 texts exchanges that the Respondent had with the FBI. The Commission should not disregard this information as the Formal Statement of Charges does. Similarly, the Commission cannot possibly be suggesting, as it appears they are, that Respondent should have ignored the FBI and ignored known information about sex trafficking.

The Formal Statement of Charges specifically states that "Respondent also contacted Metro officers to obtain confidential information in the ongoing murder investigation." However, this allegation is again completely refuted by the statements obtained by the substitute investigator. Specifically, the investigator asked Detective Grimmett that very question, *i.e.*, whether he provided Respondent with confidential information. Grimmett advised "no confidential

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[20] See White interview 6:52-7:01 and 9:36-9:43 attached as Exhibit H to the Exhibit Index.

[21] See White interview 7:03-7:09 attached as Exhibit H to the Exhibit Index.

[22] See Pandi statement 26:09 - 26:23 attached as Exhibit E to the Exhibit Index.

information."[23]

Further, Detective Grimmett did not believe Respondent was even requesting confidential information. When the substitute investigator asked if Respondent as a sitting judge requesting information was unusual, he advised, "no, I mean, she never really requested information about the homicide." Grimmett went on to explain how the questions were relating to her daughter.[24]

Paragraph 12 of the Formal Statement of Charges alleges that "Metro had opened an investigation to determine whether Respondent had violated any criminal statutes." However, the Commission's substitute investigator interviewed the officer who undertook that investigation. Sergeant Herring advised that the reason this investigation did not result in charges and referral to the District Attorney's office was because "we came to a point where there wasn't enough probable cause for a case submittal." See Herring Interview, p. 6, l. 6:22 - 6:26 attached as Exhibit K to the Exhibit Index.[25] Similarly, Metro Detective Michael Wilson also advised the substitute investigator that they did not have "probable cause" to go forward with any charges. See Wilson interview 12:59 - 13:44

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[23] See Grimmett Interview 12:51 - 13:00 attached as Exhibit C to the Exhibit Index.

[24]See Grimmett Interview 18:24 - 19:11, attached as Exhibit C to the Exhibit Index.

[25]Probable cause is defined as a fair probability that evidence of a crime could be found. See *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed. 2d 527 (1983).

attached as Exhibit L to the Exhibit Index.[26] Not to overstate the obvious, but a failure to meet probable cause falls far below the NRS 1.4663 and NRS 1.4657 standard of "objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated."[27]

Further, paragraphs 13 - 14 allege that on July 6, 2017, charges were dismissed by the judge against an unnamed defendant. However, a Google search would have revealed that the charges were dismissed by the District Attorney's office. Alternatively, the Commission could have looked at the record online. However, neither of those 90 second options were even necessary to prevent this false allegation. The Commission need need only look at the substitute investigator's 2019-005 report Exhibit 25, which is the actual transcript of the proceedings and which unequivocally shows that the District Attorney dismissed the charges, not the judge – "we're going to be dismissing that one today pursuant

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FBI Special Agent Pandi was told that the conduct allegedly attributed to Respondent was done by FBI agent White. See Pandi interview 8:39 - 9:04 and 9:37 - 9:47 attached as Exhibit E to the Exhibit Index. Notably, this is not included in the substitute investigators summary of Special Agent Pandi's statement. FBI Special Agent Smith advised that he believed complainant Land was trying to get a third party to come forward with an allegation against Respondent but the third party denied the allegation. See Smith interview 22:42 - 23:41 attached as Exhibit F to the Exhibit Index.

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"Reasonable Probability" means a finding by the Commission that there is a reasonable probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the respondent named in the complaint. See Procedural Rules of the Nevada Commission on Judicial Discipline, Rule 10.

to statute." See 2019-005 Investigative Report attached as Exhibit M to the Exhibit Index. The Respondent then adds "So, Mr. Danna, the DA's office is dismissing these two charges against you."[28]

Moreover, the inference in relying on communications that occurred after this hearing - with no evidence of any communication that occurred on or before this hearing does not demonstrate that Respondent knew the defendant prior to the hearing where charges were ultimately dismissed. There is no, and can be no evidence that they knew each other at the time of the hearing – only that they communicated afterwards. Moreover, paragraph 12 alleges a pen registration on Respondent's phone in July of 2017. The substitute investigator's 2019-005 report actually advises the pen register began on May 6, 2017.[29] The hearing, per paragraph 14, was on July 6, 2017. The pen register does not identify any communications until July 20, 2017. Certainly, if something unscrupulous was going to occur between these two, contact would have occurred before the hearing. Non-evidence is not evidence.

Further, the known "organized crime figure" Anthony Danna died in 1984. There are other known "Dannas" who are purported organized crime figures (and

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[28]See 2019-005 Investigative Report attached as Exhibit M to the Exhibit Index.

[29]See Exhibit G attached to the Exhibit Index.

others who are attorneys and ordinary citizens). Respondent had no information when she met Danna at a social function after the District Attorney's dismissal of charges to suggest this Anthony Danna was an organized crime figure. Presumably, the prosecutor also has no evidence to support that Danna was a known organized crime figure, particularly as the District Attorney's office voluntarily dismissed the charge.

Paragraph 15 discusses a media publication. Investigator Schmidt determined that there was nothing improper with the mother of a potential criminal victim contacting the police department to report criminal activity, or to follow upon that report. In fact, these actions are reasonable and Respondent acting as any parent should not be a basis for discipline.

Respondent said that the police were not doing enough with regard to this behavior. The Respondent's opinion in this regard is consistent with Sheriff Joseph Lombardo, who stated in his interview that the initial investigative team, "dropped the ball" and were admonished for it.[30] Sheriff Lombardo was not the only one concerned about the police investigation in this matter. Detective Grimmett advised that when he heard the circumstances regarding the Top Knotch

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[30]See Lombardo investigative statement p. 22, l. 30:01 - 30:33, attached as Exhibit N to the Exhibit Index (Lombardo noting that thereafter a new team was put in place).

homicide, "I immediately recognized it as a place or a place of business that Judge Tobiasson had already mentioned to me prior to the actual homicide itself."[31] Moreover, Detective Grimmett advised that the Sheriff and other Metro "bigwigs" met to inquire about why Respondent's information was not followed up on to try and determine what happened.[32] Grimmett described the meeting with the Sheriff and the detectives as follows:

> You get information and you did nothing with it, and now we got a murder? You know, I mean, what the hell? Pretty much how the meeting went. A lot of yelling and screaming and a lot of spit flying by the Sheriff. Because he was upset. A judge gave you some valid information and you did nothing with it. And the vice detective says, 'yeah, I walked in there and something wasn't right,' is what he said. Something wasn't right. And he says: And then what the hell did you do about it? Nothing. And now we have a murder. And a judge gave you some valid information and you - so her - her inserting herself into any of these investigations, no. She was as a concerned citizen or as a concerned parent, a person in this community, was she upset about it? That was obvious, and I couldn't blame her for it, I mean, but, no she's never inserted -

See Grimmett Interview 17:43 - 18:33, attached as Exhibit C to the Exhibit Index.

The Formal Statement of Charges does not allege any of the opinions expressed by the Respondent in her capacity as a mother were offered as anything but opinion, and importantly, does not suggest her opinions were false. The

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[31] See Grimmett Interview 4:52-5:07 attached as Exhibit C to the Exhibit Index.

[32] See Grimmett Interview 17:24 - 17:40 attached as Exhibit C to the Exhibit Index.

allegations are simply that statements were made and that, "Metro officers deny all of these claims."[33] Even putting aside the description of Grimmett's meeting with Sheriff Lombardo, the standard for judicial discipline, must be more than a mere verbal denial by officers of an agency that has a vested interest in denying the truth.

Additionally, to the extent that the allegations rely on the blogger's post, it is noteworthy that the blogger refused to provide the actual audio recordings to the substitute investigator.[34]

Finally, with regard to the emails referenced in paragraph 16, presuming the substitute investigator was in any measure competent, it should be clear that these emails do not suggest the Respondent did anything wrong, but instead, that she (correctly) believed the Commission would use the report to railroad her. Further, these emails merely urge the blogger to pull or amend the article and not involve

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[33] It is noteworthy that in February 2019, at the same time an FBI investigation was ongoing into Metro's Vice Department amid allegations that vice officers sided with certain pimps against their competitors, a sex trafficking multidisciplinary team was put together by, among others, the U.S. Attorney's office for Nevada and the Clark County District Attorney's office. This was done, according to the Clark County D.A.'s office, to: "strengthen the fight against sex trafficking" given that in 2018 alone, the D.A.'s office filed charges related to sex trafficking in 70 cases. In over 40 of those cases, the victims were 18 years of age or younger. The complaints that are at issue in this proceeding pertaining to Respondent's outreach on suspected sex trafficking were filed on June 8, 2018 and December 27, 2018, respectively.

[34] See Poppa interview 9:18 - 9:38, attached as Exhibit "O" to the Exhibit Index.

her daughter. Contrary to the Formal Statement of Charges' inference that Respondent sought publication for the entirety of this interview, she emailed the blogger advising that "[m]uch of what I said in that interview was confidential for you only to have background." See Exhibit P, attached to the Exhibit Index. In fact, the Investigative Report includes an email from Respondent imploring the blogger to take the article down. See Investigative Report exhibit 35, attached as Exhibit Q to the Exhibit Index. The interview statements are therefore taken out of context which falsifies their meaning. This obvious omission is wholly improper and Respondent hopes that it is not deliberately pursued.

III.

ARGUMENT

A. The Formal Statement of Charges Violates NRS 1.4657 and NRS 1.4663.

The Commission conducted an investigation of a complaint (2018-120) against Respondent. The Commission then assigned an investigator to investigate this complaint. The investigator's report concluded that no wrongdoing suggesting discipline was evidenced in the investigation. Thereafter, a second complaint was filed. See 2019-005, attached as Exhibit R to the Exhibit Index. This complaint addressed the same time frame and the same general issues as addressed in the

prior complaint.

Pursuant to statute, the Commission should have dismissed the 2018-120 complaint as the Investigative Report (attached as Exhibit A to the Exhibit Index) found no basis to pursue discipline. (NRS 1.4667). Further, to the extent the 2019-005 complaint contained the same allegations as the 2018-120 complaint no investigator should have been assigned. (NRS 1.4663).

Instead, the Commission, without any statutory authority, assigned a different investigator to re-investigate the previously exonerated complaint and in contravention of the "objectively verifiable evidence"standard, ordered an investigation of the 2019-005 complaint notwithstanding the previous investigative report. This action was in violation of the Commission's statutory authority and in excess of its jurisdiction. Compliance with the Commission's own governing statutes would have mandated dismissal of both complaints. Consequently, these charges must now be dismissed.

Specifically, the Commission is mandated by statute to dismiss a complaint if it is determined that the complaint does not allege "objectively verifiable evidence from which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated." Moreover, an investigator may not even be appointed unless "a complaint alleges objectively verifiable evidence from

which a reasonable inference could be drawn that a judge committed misconduct or is incapacitated." NRS 1.4633(1). Even when an investigator is appointed, the Commission is directed to initially assign an investigator to conduct an investigation to determine whether the allegations have merit. At the conclusion of the investigation, an investigator shall prepare a written report that will be reviewed by the Commission pursuant to NRS 1.4633(4). That report is part of the basis in which the Commission would make their determination as under NRS 1.4657. This Commission is not authorized to act "as an inquisitional or investigatory tribunal; it is an adjudicatory tribunal". *Whitehead v. Nevada Commission on Judicial Discipline,* 111 Nev. 70, 156, 893 P 2d. 866, 919, (1995).

All of the aforementioned factors demonstrate that even presuming that the Commission had information meeting the standard for the initial investigation, they had insufficient information to support any evidentiary standard to go forward with a bootstrapped substitute investigation.[35] "Proceedings run contrary to the [Commission], fairness, and due process when they are initiated by a complainant and then pursued by the Commission to a probable cause hearing on the basis of charges wholly uncorroborated by known fact, and supported entirely

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[35]Moreover, as will be discussed hereinbelow, retaining a separate investigator to reinvestigate the same matters is one of the several earmarks demonstrating a bias against Judge Tobiasson.

by hearsay, rumor or belief." *Whitehead v. Nevada Commission on Judicial Discipline,* 111 Nev. 70, 155, 893 P 2d. 866, 918, (1995).

The first investigation by Schmidt could not be a basis to proceed with any charges as to the issues relative to the police investigations and/or Respondents' dealings with the police and the media. Similarly, Schmidt's investigation does not support any charges relative to the Valentine recusal. There is simply no statutory basis wherein the Commission could comply with NRS 1.4667, review that initial report, then order a substitute investigation on the same facts.[36]

Further, there was certainly no evidence to support an allegation that Judge Tobiasson dismissed charges against an individual (Danna) wherein all evidence unequivocally demonstrates that the District Attorney dismissed it "pursuant to statute."[37] The Formal Statement of Charges also fails to consider the Schmidt report which recognizes what actually happened, *i.e.*, a mother reported concerns about the safety of her daughter and criminals who were targeting and attempting to victimize her daughter. The Judge rightly was concerned about sex traffickers continued criminal activity. The Sheriff actually shared those concerns.[38]

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[36] See Schmidt report attached as Exhibit A to the Exhibit Index.

[37] See Investigative Report, exhibit 25, attached as Exhibit M to the Exhibit Index.

[38] "I brought [the detectives] in when I found out about the-the information associated with Top Knotch, the clothing store, and the failure for us to investigate it . . ." See Lombardo

Detective Grimmett describes the Sheriff as very upset about the "botched" investigation. See Investigative Report 17:33-17:59, attached as Exhibit C to the Exhibit Index. A mother asking, and then insisting that police take action against criminals is not only consistent with the judicial canons, it is in keeping with the standards of this community for citizens to report crimes and hold the police department to the appropriate standard to make sure they are investigating crimes. The sex traffickers certainly are not entitled to the extra protection they have received by chilling a judge's ability to report a crime. Further, no county phones, computers or even letterhead were used by Respondent.

Additionally, the suggestion that access to the police can only be had by a judge and not an ordinary citizen is not an indictment of this judge but if true, would be an indictment of the Las Vegas Metropolitan Police Department. Clearly, it must be the position of the police department that all citizens have access to officers and detectives investigating crimes relevant to their family members or otherwise reported to them. In fact, that is their specific function. Further, judges "must be afforded the right to free speech". *Whitehead v. Nevada Commission on Judicial Discipline*, 111 Nev 70, 893 P2d 866, fn 56. (1995).

There is no manner in which the initial investigation conducted by

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interview 5:14 - 5:43 attached as Exhibit N to the Exhibit Index.

investigator Schmidt provided information that would have allowed a substitute investigation based on the same allegations. Moreover, the investigation as to the allegations in paragraph 13 and 14 could have and should have been resolved as easily as the Commission reviewing their own file (See Investigative Report exhibit 25, attached as Exhibit M to the Exhibit Index), the court website or conducting a Google search. Thus, this Formal Statement of Charges should be dismissed for failure to comply with NRS 1.4657 and NRS 1.4663.

B. <u>Dismissal is Appropriate Pursuant to NRS 1.4667.</u>

NRS 1.4667 advises that the Commission will review the investigative report (see NRS 1.4663 hereinabove) to determine whether there is a "reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for a disciplinary action against a judge." NRS 1.4667(1). As stated hereinabove, one allegation did not even meet the probable cause standard, and certainly not the clear and convincing standard. A second allegation regarding paragraphs 13-14 could have been resolved by reviewing the transcripts. As to the remaining allegations, the investigative report by Schmidt, cited hereinabove, demonstrates that he does not believe there is *any* wrongdoing by Respondent, and certainly insufficient basis to meet the "clear and convincing" standard of grounds for disciplinary action. Accordingly, this Formal

Statement of Charges cannot proceed without violating NRS 1.4667 and if the Commission is to comply with NRS 1.4667(2), it must mandate a dismissal of all charges.

C. The Formal Charges Violate NRS 1.4683 and NRS 1.4687 and Should Be Stricken and Dismissed.

The Commission and its members are required to maintain confidentiality. Permissible public statements by the Commission are narrow and designed to protect the integrity of the process and the reputation of the respondent. The Commission may issue a statement about confirming the pendency of the investigation, clarify procedural rules and explain the right to a fair hearing and advise whether the respondent denies the allegations. However, the Commission, and "its counsel and staff shall refrain from any public or private discussion about the merits of any pending or impending matter, or discussion 'which might otherwise prejudice a respondent's reputation or right to due process.'" Procedural Rules of Nevada Commission on Judicial Discipline, Rule 7 (emphasis added).

In total disregard for the mandates and intent of these regulations, the Formal Statement of Charges has significant superfluous and inflammatory allegations that have nothing to do with the sought discipline, and are specifically designed to impugn the reputation of the Respondent, her child, her parenting

skills, and as a result, damage her reputation in the community and impugn her due process rights.[39]

The salacious drafting of the Formal Statement of Charges begins in the very first paragraph. It is clear from all of the investigations that there was no evidence of a stripper pole at the club at any time while Respondent's daughter worked there. All evidence suggests that it was installed sometime thereafter. The complainant has no evidence to support this allegation. In fact, it was Detective Grimmett's understanding that Respondent's daughter was a cashier.[40]It is instead an abusive effort to try and disparage Respondent's daughter. If not, what is the legal purpose of that addition - there is none.

This is nothing more than a bad faith transparent attempt to sidestep the confidentiality restrictions to reveal otherwise impertinent (and false) information that would be confidential under the Commission's own standards. Including such irrelevant nonsense in the Formal Statement of Charges in a transparent attempt to damage the Respondent's family's reputation. The prosecutor knew this statement would be made public and included the inflammatory statement about a young woman with no legal purpose. The Commission must not tolerate this with

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[39]As will be discussed hereinbelow, this is another earmark of bias.

[40] See Grimmett's Interview 4:52 - 5:15, attached as Exhibit C to the Exhibit Index.

impunity.

These efforts to disparage the reputation of the Respondent and her family continue throughout the Formal Statement of Charges. Specifically, in paragraph 3 of the Formal Statement of Charges, the Complainant has the arrogance to comment on the Respondent's parenting skills.[41] Complainant's audacity serves no purpose as to any alleged charges in the Formal Statement of Charges. On the contrary, this shows bias, pompousness, and a complete lack of empathy for a mother in a horribly unenviable situation trying to protect her child. It further shows total disregard for the young woman.

Paragraph 3 continues by alleging that Respondent continued to contact Metro to investigate criminal activity. This is stated as though it was an allegation of some improper behavior. Respondent would submit the failure to urge police to investigate criminal activity of sex trafficking that endangers minors would be unconscionable. The Complainant suggesting sex trafficking should get one phone call and then sit back and hope it stops is reprehensible.

Paragraph 7 of the Formal Statement of Charges alleges that Respondent says she "kicked in the door" of Valentine's house when in reality, the audio says

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[41]"Despite Respondent's concerns, Respondent continued to permit her daughter to work at and/or frequent Top Knotch."

"kicked the door." This allegation relies on a transcript by a blogger who refused to provide the full accompanying recording. This is a hearsay allegation that the substitute investigator never attempted to rectify. There was certainly no break in reported at the Valentine's house relative to the Respondent. Further, there is no complaint by Valentine related to this allegation. Under the alleged circumstances, striking the door with Respondents foot instead of her fist would be an act of restraint. Similarly, there is no allegations that she drove a county vehicle to the house, wore her judicial robes or acted in any capacity other than as a mother. Alleging a pimp trying to solicit minors into prostitution suffered by having his door struck with a foot and is in need of protection or that a judge is in need of discipline for acting in a restrained parental manner is unacceptable. This allegation serves no purpose other than being a misguided effort to disparage the Judge's reputation while side-stepping the Commission's own rules of confidentiality.

Paragraphs 10 and 11 continue the efforts to disparage Respondent's personal reputation. There is nothing illegal or otherwise improper in having a second phone. Similarly, there is no possible way to discipline a judge for "knowing or unknowing" judicial violations because someone else gave them a nickname on their own phone. Moreover, it is laughably ridiculous to suggest

judges should be subject to discipline because of what someone else calls them. Both of these facts are obvious and undisputable.

However, the Formal Statement of Charges is about drama and disparagement and not the protection of the integrity of the judiciary (or protecting children from sex traffickers), thus, the Formal Statement of Charges refers to the second phone as a "burner phone" and intentionally misconstrues how cell phone contacts are kept. This is punitive, prejudicial and callous. It serves no legitimate purpose and any tolerance of this conduct by this Commission would permanently undermine any credibility this Commission ever had.

Similarly, as to paragraph 12, there is nothing authorizing discipline for an investigation that has no finding of probable cause. This is included again, solely to publicly disparage the Judge.

These efforts to disparage the Respondent by inserting improper, impertinent and immaterial information into the Formal Statement of Charges continues by suggesting something improper with regard to charges dismissed by the District Attorney and falsely attributing those charges being dismissed to the Respondent. The Commission has this transcript yet this charge was still levied, facts notwithstanding. This conduct once in a Statement of Charges would be careless. This repeated conduct is intolerably abusive and would appear to be

personal.

Finally, with regard to the emails referenced in paragraph 16, these emails do not suggest the Respondent did anything wrong but instead express the concern that the Commission would use the statements to railroad her. As is demonstrated hereinabove - the Respondent's concerns were more than justified.

Accordingly, the impertinent, improper and immaterial allegations should, at a minimum, be stricken from the Formal Statement of Charges. However, striking them would not address the damage caused to Respondent's reputation and due process rights. Accordingly, te only remedy is a dismissal of these improper charges, a clarification as to the improper investigation reports of the same, and a written public apology to the Respondent published in the same manner as the Statement of Formal Charges was publicized.

D. <u>Untimeliness</u>.

Case 2019-005 derives from a complaint filed on December 27, 2018. Complaint 2018-120 derives from a complaint filed on June 8, 2018. The Formal Statement of Charges in this matter was filed on August 31, 2020.

NRS 1.4655(3) mandates that within eighteen (18) months of receipt of the complaint pursuant to this section, the commission <u>shall</u> either dismiss the complaint (with or without a letter of caution), attempt to resolve the complaint

informally, enter into a deferred discipline agreement, with the consent of the judge impose discipline pursuant to an agreement or "(e) authorize the filing of a formal statement of the charges based on the finding that there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action."

More than nineteen (19) months have passed since the 2019-005 Complaint and well over two (2) years have elapsed since the 2018-120 Complaint. Accordingly, the Commission is not permitted to move forward in the Complaint after these eighteen (18) months expired.

Even more troubling is that the Complainants were certainly aware of this as counsel, Lisa Rasmussen, Esq., filed motions to dismiss both of these charges on August 14, 2020 prior to the filing of the Formal Statement of Charges.[42] A failure to oppose a motion is an admission that the motion is meritorious. The Commission filed these charges without ever attempting to explain how they were timely.[43] Procedural Rule 2(1) required a response within ten (10) days of the

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[42]Respondent incorporates herein by this reference the Motion to Dismiss Complaint Pursuant to NRS 1.4655 as to the Case 2018-120 and 2019-005 as filed on or about August 14, 2020. See Exhibits S and T, attached to the Exhibit Index, respectively.

[43] One can only hope that the delinquent filing of the Formal Statement of Charges on August 31, 2020 was not motivated by the realization that the Commission had failed to abide by its own time frame, including the failing to act on properly brought, meritorious motions to dismiss.

submission of the motions to dismiss. The Commission must rule on the August 14, 2020 unopposed motions and dismiss this action.

Significantly, these Motions were filed in accordance with the Commission's Procedural Rule 1 "Filing by Facsimile Transmission." See Exhibit U, attached to the Exhibit Index. Notwithstanding said compliance, the Commission on its own, and with no rule precluding the filing, refused to accept the Motions suggesting that they needed "a withdrawal of counsel from the judge's current counsel of record and a notice of counsel from you before we are able to communicate with you any further." See Exhibit V, attached to the Exhibit Index.[44] Significantly, NRS 1.462 allows the Commission to adopt their own procedural rules. The Commission did so and published the "Procedural Rules of the Nevada Commission of Judicial Discipline." No requirement as requested of Respondent's counsel exists in those rules. Further, while NRS 1.462 allows the replacement of the Nevada Rules of Civil Procedure wherein there is no applicable Commission rule, the Nevada Rules of Civil Procedure also do not make such a requirement.[45] On the contrary, Court's will usually presume that the attorney who

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[44]The refusal to accept this filing is prejudicial by creating an arbitrary requirement with no support in the Commission's Procedural Rules and shows bias as will be discussed hereinbelow.

[45]Notably, the Eighth Judicial District Court does have this rule, however, the EJDCR's are not adopted by the Commission and this matter is not before the Eighth Judicial District

appears in the case is fully empowered to act in the case on litigant's behalf. See *Stanton-Thompson Co. v. Crane*, 24 Nev. 171, 51 P.116 (1897); *Deegan v. Deegan*, 22 Nev. 185, 37 P.360 (1984); *State v. Cal. Mining Co.*, 13 Nev. 203 (1878). Accordingly, the Commission cannot decide on its own that it will not accept a motion just because the outcome of considering the same would be a dismissal of a complaint. Accordingly, not only must this matter be dismissed for being untimely, it must also be dismissed as the Motion was not only meritorious, but unopposed.

E. <u>The Formal Statement of Charges Does Not Give Fair Notice Of the Charges</u>.

The Commission does not identify in any charge whether they are proceeding on charges related to the 2019-005 Complaint or the 2018-120 Complaint. Additionally, the Commission does not identify whether they believe a charge was willful or not. As a result, the Formal Statement of Charges does not give Respondent fair notice of the nature of the charges. (See *e.g. Whitehead v. Nevada Commission on Judicial Discipline,* 111 Nev. 70 (1995).

The Commission's own rules mandate that "[a] Formal Statement of Charges must contain a clear reference to the specific provisions of statutes, the

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Court.

Nevada Code of Judicial Conduct, and the Nevada Constitution which are deemed to justify procedures before the Commission, together with a clear statement of all acts and omissions . . ." (Procedural Rules on the Nevada Commission on Judicial Discipline Rule 15). In the case *sub judice*, the Statement fails to even allege from which complaint the allegations derive. Moreover, the Formal Statement of Charges does not even address whether the Commission is pursuing factual allegations based on willful conduct,[46] or unknowing misconduct. Not only is this a significant factual omission, but it is a failure to identify the statute punishment is pursued under. Finally, as the penalties for willful misconduct allows punishment including removal (NRS 1.4653), this omission is material. Moreover, the Statement's use of "knowingly" or "unknowingly" are not proper for purposes of specific identification under the statutes.

This material failure to comply with the Commissions own rules prejudices the Respondent's ability to prepare a defense.

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[46] NRS 1.4653

(b) "Willful misconduct" includes:

(1) Conviction of any crime involving moral turpitude;

(2) A knowing or deliberate violation of one or more of the provisions of the Revised Nevada Code of Judicial Conduct; and

(3) A knowing or deliberate act or omission in the performance of judicial or administrative duties that:

(I) Involves fraud or bad faith or amounts to a public offense; and

(II) Tends to corrupt or impair the administration of justice in a judicial proceeding.

F. Bias.

The bias in proceeding in this matter is so pervasive that Respondent cannot be afforded due process by this panel. These actions have caused actual prejudice. Bias leading to actual prejudice is demonstrated by the Commission's actions in:

(1) receiving an exonerating investigative report from a qualified investigator, ignoring said report and with no statutory ability to authorize the same, directing a substitute investigator to reinvestigate these allegations;[47]

(2) filing charges that fail to put Respondent on notice of the origination of the charges (2018-120 or 2019-005), the intent to act on the charges or the punishment sought;

(3) including allegations contrary to their own evidence (*i.e.*, alleging Respondent dismissed charges wherever the record advises the District Attorney dismissed said charges; advising the Respondent inserted herself in an investigation when the detective stated the opposite; etc.);[48]

(4) including allegations designed to impugn the Respondent's reputation notwithstanding the allegation having no relation to the facts nor any legal claim

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[47]See Section III(A) The Formal Statement of Charges Violates NRS 1.4657 and NRS 1.4663, hereinabove.

[48]See Section III(B) Dismissal is Appropriate Pursuant to NRS 1.4667, hereinabove.

for relief;[49]

(5) filing the Formal Statement of Charges after the time-frame to file had expired and after the Commission was on notice that time expired without even responding to the motions to dismiss said charges and creating of their own accord a nonexistent basis to avoid accepting the motion;[50]

(6) coordinating *ex parte* conversations regarding the investigators cloaked under the guise of confidentiality tainting the Commission while the Executive Director/General Counsel is hiring (and attempting to justify) substitute investigators while coordinating his own investigation and seemingly ignoring his own notation in the initial Complaint that Respondent was acting as a mother trying to protect the victimization of her child; and,

(7) failing to recognize Respondent's rights and duties as a parent and that she was acting as a parent, not a judge - all to the benefit of the sex traffickers and at the expense of the Commission's own integrity.

The charging party has acted contrary to its own charter. When the first investigator provided a detailed investigation that exonerated the Respondent, the Complainant recruited a substitute investigator to reinvestigate those charges. The

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[49]See Section III(C) The Formal Charges Violate NRS 1.4683 and NRS 1.4687 and Should Be Stricken and Dismissed, hereinabove.

[50]See Section III(D) Untimeliness, hereinabove.

statute permits the first investigation. There was no authority for the substitute investigation. Adding to this bias, the reports by this substitute investigator include a multitude of improprieties, including implanting answers in questions on a series of substantive (and collateral) matters, improper summaries of witness testimony, conclusions inconsistent with the evidence, clear failures to include exculpatory information, and the expression of legal conclusions and opinions by an individual not qualified to reach or offer legal opinions or legal conclusions.

Bias is further demonstrated in filing charges that do not put Respondent on notice resulting in allegations that could never meet the legal standard. Further, the Commission filed these charges after the statutory eighteen (18) months had passed from the dates of the 2018-120 and 2019-005 Complaints. In fact, the Formal Statement of Charges was filed after the deadline to oppose the motions to dismiss had passed. The Motions to Dismiss were filed on August 14, 2020. The Commission did not even bother to respond to these motions. Instead, the Formal Statement of Charges was filed in the form of an improper press release. There should have been no filing of formal charges and these issues would not have been disseminated in the public with the purpose of damaging the Respondent's reputation. The Formal Statement of Charges was filed in total disregard of the timeline, and the Respondent's reputation, her family's reputation and the safety of

her daughter.

Further, in an effort to avoid the failure to comply with the statutory timeline, the Commission *sua sponte* implemented a nonexistent rule to refuse to accept the motions to dismiss. However, the motions put the Commission on notice that the charges were past the time line thus, even if they did not accept the motion, it was bad faith going forward with the Formal Statement of Charges knowing that the same were untimely. However, ignoring and refusing to accept the motion by making up preclusions is a clear demonstration of bias that has prejudiced the Respondent. Specifically, as was referenced hereinabove, the Commission on its own decided that they would not accept the motions to dismiss without a notice of appearance from counsel and a notice of withdrawal from prior counsel. However, while the Commission was authorized to adopt their own procedural rules pursuant to NRS 1.462(2), and in fact did adopt said rules, the requirement proffered by the Commission's representative in the August 20, 2020 email (see Exhibit V, attached to the Exhibit Index) does not exist. The email acknowledges that they are in receipt of the motions but creates a false reason to refuse them - needing a withdrawal of current counsel and notice from new counsel. Aside from the fact that both counsel were properly able to represent Respondent, the Commission cannot refuse the acceptance of a motion by making

up a rule.

Additionally, if there was any doubt that this was a made-up rule to prevent them from having to address the failure to meet the time lines in question, it should be noted that there was no such requirement when Mr. Gentile entered into this matter in the place of Mr. Terry, Respondent's previous counsel.

Further, this email from the Commission closes by advising that the Commission would not be able "to communicate with you any further." The initial communication that the Commission is clearly discussing in reference to the no "further" communication was clearly a communication between Ms. Rasmussen and prosecutor Mr. Bradley. As is discussed herein, the cloak of confidentiality over communications between the parties responsible for being ultimate fact-finders and the parties pursuing claims and investigating claims is so interwoven that several maintain multiple positions, *i.e.*, Deyhle as Executive Director/General Counsel and investigator, that it is clearly to the point where the Commission refers to the prosecutor's communication with Respondent's counsel as one of their own communications.

There is simply no manner in which this type of communication, including but not limited to, the creation of their own rules to avoid having to respond to dispositive motions has not clearly demonstrated bias against Respondent.

Additionally, the ex parte nature of this investigation and approval process, particularly in light of the obvious failure to consider exculpatory and explanatory evidence demonstrates bias. Further, considering that the 2018-120 Complaint was filed by the General Counsel/Executive Director who was part of the Commission and part of the investigative process and has unfettered access to the fact-finders in this case, conveying the improper information as retrieved by the substitute investigator to the fact-finders is not only ex parte, but with a confidentiality protection which precludes the Respondent of ever knowing what occurred during those ex parte conversations. By way of example, but for the blogger advising that "Paul Deyhle" requested and received documents from him prior to his interview[51] with the substitute investigator, Respondent would not have known anyone on the Commission was conducting any investigation outside of the investigation authorized by statute (and the substitute investigator authorized without statutory authority). Respondent has no way of knowing what they disclosed to other Commission members.

Significantly, the Rules provide that the Commission must review the report to ascertain whether clear and convincing grounds for discipline could be established against a judge. NRS 1.4667. However, pursuant to NRS 1.4683, the

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[51] See Poppa interview 8;08-8:19.

interaction between these parties remains confidential. Moreover, pursuant to the Procedural Rules of the Nevada Commission on Judicial Discipline, Rule 4, "all communications between Commission and its staff shall not be divulged to any person or court." The same is true with regard to communications "either oral or written between General Counsel and/or Executive Director and members of the Commission." As well as "[a]ll communications between General Counsel or Executive Director and Commission staff, prosecuting officers, or Commission investigators." This is equivalent to a secretive process and is inconsistent with the processes of this Commission which are designed to "preserve an independent and honorable judiciary." NRCP 1.462(1).

The rules permit ex parte communication between the prosecution and the fact-finder which includes the investigator and the fact-finder. It is not only that these ex parte conversations occurred, but that under the confidentiality clauses, the Respondent is not even permitted to know what occurred post ex parte conversations. This is particularly concerning here wherein there have been so many failures to comply with the rules including obvious attempts to disparage the Judge's reputation, instituting a substitute investigations after the first one did not find a basis to proceed with charges against the Judge and the manner in which those were considered and discussed. Within these rules, the information flow is

not transparent. It is confidential so that the clear and obvious taint of bias which exists cannot even be examined. Thus, these communications are not just ex parte, but they are ex parte with the burden to decide standards cloaked in confidentiality.

The Nevada Supreme Court has tolerated *ex parte* communication in certain instances. However, it is clear they are not favored. The Ninth Circuit Court in *Southwest Sun Sites, Inc. v. Green Valley Acres, Inc.*, 785 F.2d 1431 (1986), noted that ex parte communications do not void an agency decision. However, the agency decision would be voidable and the Court would consider the decision making processes potential "irrevocably tainted" to make the ultimate judgment of the agency unfair based in part on the nature of the ex parte communications. 785 F.2d at 1436. That decision is consistent and confirmed by the United States Supreme Court in *Brock v. Roadway Express, Inc.* 481 U.S. 252, 107 S.Ct. 1740, 95 L.Ed. 2d 239 (1987) in advising that "traditions of fairness that have been long honored in American juris prudence support the strongest possible presumption against ex parte proceedings." 481 U.S. at 278. In fact, the Ninth Circuit has described ex parte communications as "antiethical to the very concept of an administrative court reaching impartial decisions through formal adjudication." See *Portland Audobon Society v. The Endangered Species Committee*, 984 F.2d

1534, 1543 (1993). The Court, when considering a process not at all dissimilar to what is accepted in this judicial investigation advised as follows:

> We think it a mockery of justice to even suggest that justices or other decision makers may be properly approached on the merits of the case during the pendency of an adjudication . . . there would be no way to protect the sanctity of the adjudicatory process if we were to condone direct attempts to influence decision makers through ex parte contacts. (citations omitted) By definition, ex parte contacts cannot be addressed and rebutted through an adversarial discussion among the parties. (citations omitted) Basic fairness requires that ex parte communication play no part in Committee adjudications, which involve high stakes for all the competing interests and concern issues of supreme national importance. (citation omitted). Behind-the-scenes contact has no place in such a process . . . *Id.* More recently the Ninth Circuit in *Ayala v. Wong*, 730 F.3d 831, 861 (2013) advised that "ex parte proceedings are justifiable as 'uneasy compromises with some overriding necessity.' " (citation omitted).

Thus, while this jurisdiction's Supreme Court has accepted ex parte communications in certain circumstances, the combination of ex parte communications with the cloak of confidentiality must not be accepted. This is certainly true where as here, there is beyond *prima facie* evidence of bias in the process.

The result of this confidentiality cloak, particularly with a substitute investigator whose report only loosely resembles and in some instances, completely misrepresents a witnesses answers in rather key areas, as well as the unknown (and protected) involvement by the Executive Director/General Counsel

for the Commission over an investigation lasting over two years creates a pipeline of cloaked ex-parte confidential information and misinformation that is prejudicial to Respondent and requires the Respondent to defend the unknown.

G. <u>Violation of Judiciary Due Process</u>.

The Fourteenth Amendment of the Federal Constitution advises that no state shall "deprive any person of life, liberty, or property, without due process of law." As a predicate to determining whether a due process violation has occurred, the Nevada Supreme Court has advised that the initial step is determining whether state action impinges upon an interest in life, liberty or property. See *Mosely v. Nevada Commission on Judicial Discipline*, 117 Nev. 371, 659 (2001). Our Supreme Court has in fact concluded that the commissioned judges in this state have a protected interest in the judicial offices under the Fourteenth Amendment. *Id.*

Respondent in the case *sub judice* has had those due process rights violated. Respondent concedes that under *Mosley* Respondent must show more than just the combination of prosecutorial, investigative, and adjudicative functions to violate this due process. However, bias does exist in this case. Bias is demonstrated through a multitude of factors including the manner in which the functions in this case are commingled and the failure to comply with the Commission's own laws

in an effort to proceed with formal charges against this Respondent demonstrates a violation of due process causing incalculable damages. The Commission has failed to comply with their own rules by statute and adopted procedure. Further, the manner of avoidance from the intent of public disclosure limitations by including improper information in the Formal Statement of Charges flies in the face of the intent and purpose of the Commission itself. Accordingly, the Formal Statement of Charges must be dismissed as a violation of Respondent's judicial due process rights.

H. <u>Violation of Parental Due Process Rights</u>.

The Formal Statement of Charges exceeds the Commission's jurisdiction as it infringes on her due process rights as a parent. This Commission cannot undermine Respondent's duties, assignations and rights to protect her child from sex traffickers in an effort to enforce a personal agenda for illegitimate goals.

The Formal Statement of Charges attempts to prevent a parent from exercising her due process parental rights and seeks to limit her ability to stop sex traffickers from victimizing minors, including, potentially, her own child. Specifically, Respondent has a right, and in fact, a duty, to protect her child. Provided she exercises that right within the bounds of criminal law (and she has not been criminally indicted for any such act) her actions as a parent are protected.

The Commission cannot, under the guise of the judicial canons, seek to impugn that right. Moreover, sex traffickers do not represent a protected class of people to negate Respondent's parental due process rights.

The Commission's General Counsel/Executive Director acknowledged in the 2018-120 complaint that Respondent was attempting to protect her daughter from being victimized. Similarly, the 2019-005 complainant acknowledged to FBI Special Agent Pandi that Respondent did not identify herself as a judge. See Exhibit E attached to the Exhibit Index. Further, the Schmidt report acknowledges Respondent's activities were as a parent. See Exhibit A attached to the Exhibit Index. Similarly, Detective Grimmett understood Respondent was a concerned parent who was upset Metro botched an investigation that jeopardized her daughter's safety and the safety of many other minors who were potential victims. See Exhibit C attached to the Exhibit Index. The Formal Statement of Charges seeks to bypass this undisputed fact, and the legal ramifications of the same through their delinquent filing. However, proceeding under this Formal Statement of Charges while acknowledging that Respondent was acting as a parent violates her due process rights and exceeds the Commission's jurisdiction. Such action cannot proceed.

NRS 432B.020 defines "abuse or neglect of a child" to include: "...Sexual

abuse or sexual exploitation…of a child caused or allowed by a person responsible for the welfare of the child under all circumstances which indicate the child's health or welfare is harmed or threatened with harm. " This section of the statute goes on to define the term "allow" to mean "…to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected."

Sexual exploitation is defined in NRS 432B.110 to include forcing, allowing or encouraging a child to solicit or engage in prostitution. NRS 432B.121 describes that a person has "reasonable cause to believe" if, in light of all the surrounding circumstances which are known or should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exist, is occurring or has occurred.

NRS 432B.130 makes it clear that a parent with whom a child lives is responsible for the for a child's welfare.

NRS 432B.140 defines negligent treatment of a child as allowing the child to be subjected to "…harmful behavior that is terrorizing, degrading, painful or emotionally traumatic…is without proper care, control or supervision…or other care necessary for the well-being of the child because of the faults or habits of the

person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so."

NRS 432B.220 as it was delineated with effect through December 31, 2019 deals with the requirements to report abuse or neglect situations and specifically mandates that certain individuals make such reports upon learning of the existence of cases of potential abuse or neglect. Individuals who shall make such reports include "Any officer or employee of a law enforcement agency" an "an attorney". The statute directs that a report may also be made by any other person.

NRS 432B.230 prescribes that reports made pursuant to NRS 432B.220 may be made telephonically..."or by any other means of oral, written, or electronic communications that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report."

Nevada's custody and child support laws are founded upon a principle that the parent or in the parent's stead a court must always act in the best interests of the child or children involved.

As a parent, the Respondent had a legal duty and obligation to, among other things, protect her child from harm and to provide safety, supervision and control. Under Nevada state welfare standards "nonaccidental" abuse or neglect would be

attributable to Respondent "...arising from an event or effect that a person responsible for a child's welfare could reasonably be expected to foresee, regardless of whether that person did not intend to abuse or neglect a child or was ignorant of the possible consequences of his actions or failure to act" (NAC 432B.020).

The Nevada Parental Responsibility Law (SB 314) which was adopted in 2013 enunciated in Section one of the bill that "The liberty interest of a parent in the care, custody and management of the parent's child is a fundamental right." In *Gordon v. Geiger*, the Nevada Supreme Court held that parents have a fundamental right concerning custody of their children. *See* 402 P.3d 671, 674 (Nev. 2017). "[D]ue process of law [is] guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) . . . of the Nevada Constitution. In the case of *In Re: The Parental Rights as to J.L.N*, 118 Nev. 621, 55 P. 3d 955 (2002) the Supreme Court ruled that the authority to make decisions concerning and affecting the care, welfare and proper development of the child is known as "parental responsibility." The Court went on to find that "the parent-child relationship is a fundamental liberty interest" and the Due Process Clause of the Fourteenth Amendment protects parents' fundamental right to care for and control their children. Statutes that infringe upon this interest are...subject

to strict scrutiny and must be narrowly tailored to serve a compelling interest. (Emphasis added.)

In *Rico v Rodriguez* 121 Nev. 695, 120 P.3d 812 (2005), the Supreme Court of Nevada again embraced the principle that "Embedded within the Fourteenth Amendment is a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.'" Finally, the Nevada Supreme Court acknowledges that the United States Supreme Court has recognized fundamental interests including "the interest of parents in the care, custody, and control of their children." See *Troxel v Granville*, 530 U.S. 57, 65 (2000).

The Statement of Formal Charges brought by the Nevada Commission on Judicial Discipline is almost entirely premised on an attack on the conduct of the Respondent in seeking to use her parental discretion to affect the care and well-being of her child. It disregards Respondent's protected fundamental Due Process rights as to the care, custody and control of her child. The statement all but omits consideration of standards to be applied in the case of abuse or neglect of a child, the issue of sexual exploitation and the standards of reasonable cause and reasonable reaction. All of this is particularly glaring when, as in this case, the prosecuting officer engaged by the Executive Director/General Counsel who in

theory "independently reviews the evidence and files a Formal Statement of Charges" and who swears that he has undertaken a reasonable inquiry and is . . . "informed and believes that the contents of the Formal Statement of Charges is true and accurate" is held out in the profession to be an expert in areas of parental rights and family law. Equally glaring is that the substitute investigator engaged and directed by the Executive Director/General Counsel is touted as starting the first Sex Offender Notification Unit in the State of Nevada.

To file a Formal Statement of Charges alleging that a judge, who has a legal obligation to report criminal activity, has violated ethics rules for reporting such criminal activity to the police is suspect in and of itself. It also clearly and convincingly calls into question the true motivation behind any such complaint against any such judge.

The charges brought in this particular case, in most if not all material aspects, infringe upon and abridge Respondent's parental rights as mother. They force a Judge who happens to be a parent to choose between exercising her due process protected parental rights or staying silent for fear of being accused of engaging in conduct which may be found to violate amorphous standards of judicial conduct applied in a secretive process which in itself distorts and devalues the legal notion of due process.

As was pointed out in the discourse arising from Assembly Bill 20 submitted during the 2019 session of the Nevada Legislature by the Nevada Supreme Court and sponsored by the Assembly Judiciary Committee "due process" at the NCJD is afforded, if at all, only in the adjudicatory stage of a complaint procedure. There is less due process and transparency than in an Attorney Disciplinary proceeding before the State Bar. There is less due process and transparency than in a proceeding before the Nevada Ethics Commission. There is less due process and transparency than is accorded before virtually any and all licensing or regulatory boards and commissions in the state. There is less due process and transparency than is afforded parties to criminal and civil proceedings in Nevada.

The Respondent's actions by and large were outside the courthouse and outside her role as a Judge. Though she is an elected Judge, and one who by the way is well regarded and a credit to the bench according to evaluations vis-à-vis her and her peers, that doesn't mean she has to forfeit her constitutionally, statutorily and judicially protected due process parental rights when her child's safety and wellbeing are at stake.

The Respondent acted reasonably as parent in this case. Respondent sought to protect her daughter. No charge has been filed against Respondent under any of

the above cited statutes nor under any criminal statute. The Respondent's very reasonable and understandable reactions and conduct as a worried parent belie any rational claim that the Respondent's conduct somehow can be judged unreasonable solely because her occupation is that of Judge. Moreover, this Commission cannot overreach their jurisdiction and brings charges based, even in part, on Respondent's parenting choices, so long as those choices do not run afoul of criminal guidelines.

I. First Amendment Rights.

The First Amendment of the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Article 1 Section 9 of the Nevada Constitution grants liberty of speech to every citizen: "Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech… In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true and was

published with good motives and for justifiable ends, the party shall be acquitted or exonerated."

Canon 3 of the Nevada Code of Judicial Conduct states that:

> A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Rule 3.1 states: "A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: (A) participate in activities that will interfere with the proper performance of the judge's judicial duties; (B) participate in activities that will lead to frequent disqualification of the judge; (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; (D) engage in conduct that would appear to a reasonable person to be coercive; or (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

There is no violation of Canon 3. There is nothing in the Formal Statement of Charges that suggests the Respondent's activities as a mother, including but not limited to her exercise of free speech rights, impacted the performance of her judicial duties. There is nothing in the Formal Statement of Charges to even remotely suggest that Respondent's activities, including but not limited to her exercise of free speech rights, lead to her frequent disqualification as a judge. There is nothing in the Formal Statement of Charges to suggest a compromise of the Respondent's judicial independence, integrity, impartiality or engagement in

coercive conduct as she pursued her maternal rights including but not limited to her exercise of free speech rights. It is crystal clear that there was no use of court personnel, premises or anything else from the court as the Respondent pursued her rights and obligations as a mother including but not limited to her exercise of free speech rights.

Judges, like all citizens, can exercise their right to freedom of expression. A judge may temper his or her speech to protect the integrity of the judicial process and public confidence in the judiciary. This does not mean however that a Judge like Respondent, who is a mother, is to be deprived of her freedom of expression when it comes to a matter of dire family, and community interest, in this case a sex trafficker attempting to victimize her daughter. It is also improper to second guess the vehicle used for the purpose of expression of Respondent's motherly concerns, her moral outrage and her frustration with the investigative process. Whether her statements, made purely from a mother's perspective, are done through televised investigative reporting, an interview with a blogger or published through print media, her speech is still the protected speech of a mother addressing the issue of attempts to victimize her daughter.

A judge has a legal duty to report suspected criminal activity. A judge has a moral duty to speak out about conduct that challenges the rule of law. These

precepts are not incompatible with a mother, speaking as a mother who also happens to be a judge, exercising her constitutional rights to speak out on a purely personal family issue directly impacting the safety and wellbeing of her daughter.

The Formal Statement of Charges filed against Respondent in this matter in its clearest light is an expedient to punish Judge Tobiasson for expressing the opinions, concerns and moral outrage of Mrs. Tobiasson, the mother of a daughter targeted by sex traffickers. It is a shameful and blatant misuse of the Commission's power and authority.

Adoption of the Commission's flawed claims and the application of its proffered interpretation of its rules vis-a-vis the facts of this case would result in the unconstitutional abridgement and unlawful restraint of Respondent's rights to free expression and speech.

J. <u>The Allegations of Counts 1 through 8 are Unsupported</u>.

As stated above, the Commission does not identify in any charge whether they are proceeding related to the 2019-005 Complaint or the 2018-120 Complaint. Similarly, the Commission does not identify whether they believe a charge was knowing or without knowledge. Third, the underlying factual basis' for the charges fail as stated hereinabove. Thus, Respondent can only in a very limited fashion address the specific failures of each count.

1. Count 1

The Complainant includes nine separate paragraphs in this cause of action without identifying if the contention in each of the nine paragraphs applies to each of the allegedly violated Canons. Nonetheless, the Commission contends that the Respondent was conducting a personal investigation and repeatedly telling Metro to investigate criminal behavior. However, no police officer attested that a citizen is precluded form "repeatedly telling Metro to investigate . . . ". Further, the police admitted "dropping the ball" and "botching" the investigation and thereafter addressed their failures relative to this case. The Commission alleges this alleged conduct violates Judicial Canon 1, Rule 1.1; Rule 1.2; Rule 1.3; Judicial Canon 2, Rule 2.2; Rule 2.4; and Canon 3, Rule 3. This allegation is wholly unsupported in law and fact. Similarly, "repeatedly telling Metro to investigate" a criminal activity against active criminals - which thereafter the Formal Statement of Charges acknowledges ended in a double murder - is also inconsistent with the violation of any Judicial Canon. Moreover, this Count alleges both that because Respondent used her authority as a judge to make Metro investigate while simultaneously alleging that she had to investigate the matter on her own because Metro failed to respond. These allegations are mutually exclusive. However, the Commission also does not disclose if these are alternative theories. Further, the

Commission fails to recognize the most obvious issue. The Respondent was a mother reporting potential sex crimes against several young girls in an effort to stop the potential sex crimes and to do so before her daughter became a victim of the same. The fact that she is a judge is completely irrelevant to this reporting. A judge should not be required to leave the bench so that they can contact the police department to address crimes against their family members. This is nonsensical. Respondent was acting as a mother and certainly was not knowingly violating any judicial obligation.

2. Count 2

Count 2 Must Also Be Dismissed. This count alleges paragraphs 4, 5, and 6 relating to Valentine results in violations of Judicial Canon 1, Rule 1.1; Rule 1.2; Rule 1.3; Canon 2, Rule 2.1; Rule 2.2; Rule 2.4; and Rule 2.11. The report from investigator Schmidt demonstrates that he did not believe this met the criteria to be brought forth. He is the only one (unless some additional undisclosed ex-parte communications reveal otherwise) that interviewed the assistant district attorney and Valentine's counsel, who confirmed the Respondent's disclosure and ultimate recusal before any contested hearing. Nothing in the record indicates whether Valentine's attorney told this to Valentine or not. Instead, with no evidence, the Commission's charges assume the disclosure was both necessary and that it did

not happen. However, assumptions do not meet the standard to pursue this claim. There is no evidence to suggest that the public defender did or did not tell Valentine. Moreover, there was not substantive ruling issued by the judge in this matter and everything was disclosed to counsel. As Respondent's disclosure evidences, there was certainly no knowing violation.

3. Count 3

With regard to Count 3, the entire allegation is based on hearsay, ignores the content of their own copy of the telephonic warrant, fails to consider the different addresses of Top Knotch, that the individuals mentioned were different than Respondent disclosed as being associated with Top Knotch. It also must be made clear that her daughter had not worked there for an extended period of time when this search warrant was sought. Accordingly, with full disclosure by the Respondent, and an opportunity for the police officers to have brought this warrant to any other judge prior and subsequent to this disclosure, all parties dealt confidently with the fact that this search warrant satisfied the standard and could appropriately be signed. All the same was conducted in good faith and in good faith belief that for the specific purposes of this search warrant there was no impartiality or bias by the Court issuing the same. Thus, the charges of violating Judicial Canon 1, Rule 1.1; Rule 1.2; Judicial Canon 2, Rule 2.1; Rule 2.2; Rule

2.4; Rule 2.9(c); and Rule 2.1 must fail. In the alternative, if any violation occurred relative to this search warrant, it was certainly unintended and unknowing.

4. Count 4

The allegations in Count 4 are taken out of context, and the generic time frames used in this paragraph are designed to mislead in that these contexts were after recusal and as a mother out of genuine concern for her daughter. Moreover, it did not appear that either Valentine or Valentine's counsel complained that this contact, as interpreted by them, was a misuse of judicial authority rather than a mother's concern for her daughter. Further, this count flies in the face of the first count as it demonstrates Respondent did not seek to use her judicial authority over Metro and instead, addressed matters as a parent. Moreover, in acting as a parent, there was no intent to violate any judicial obligation. Thus, any suggestion of violating Judicial Canon 1, Rule 1.1; Rule 1.2; Rule 1.3; Judicial Canon 2, Rule 2.1; Rule 2.4; and Judicial Canon 3, Rule 3.1 must fail.

5. Count 5

This Count is based completely on a misstatement. There has been no violation of Judicial Canon 1, Rule 1.1; Rule 1.2; Rule 1.3; Judicial Canon 2, Rule 2.1; Rule 2.4; and Judicial Canon 3, Rule 3.1. Valentine's door was not kicked in.

There was no evidence that Valentine's door was kicked in. There is no violation that occurred by the mother going to Valentine's door when he was trying to victimize her daughter. Although it is noteworthy that the Complainant appears to take the position that a judge cannot call the police directly about a crime but also cannot directly deal with the attorney to make the individual stop harassing her daughter and now, in the following Count alleges that the judge cannot do anything herself in approaching the criminal. Thus, it appears to be the position of the Commission's Complainant that if a judge's family member is a victim of a crime, they cannot go to the police, go to the criminal's attorney, or even approach the criminal themselves - they're subject to some victim's standard that no one else in society is subjected. This is based on a false underlying premise that fails to meet the standard for any violation of any cannon. Nothing in this Count reflects any activity by the Respondent in her judicial capacity and certainly not knowingly.

6. Count 6

This Count appears to be similar to the prior counts but combines Counts 3, 4 and 5. Thus, it fails for the same reasons. It also appears to suggest to be based on the false allegation that the Respondent tried to impede witness testimony notwithstanding the Complainant's own investigator discussing the same with the

police officer who investigated the same who came to the conclusion that he did not have probable cause to proceed with any charges. Further, it alleges Respondent was "improperly becoming personally involved in an ongoing double murder investigation." First, the word "personally" is an admission to the Commission that, even if true, this was not in her capacity as a judge. Second, Detective Grimmett's negative answer to this question is completely ignored in this count. Further, failure to have probable cause of a charge is not evidence of clear and convincing evidence to establish the need for discipline.

7. Count 7

Count 7 is again intentionally factually misleading. There was no contact between Respondent and the "known criminal figure" identified in Count 7 at any time prior to the District Attorney dismissing these charges. Further, the Investigative report outlines that the communication stopped based on their pen register December 4, 2017, almost 3 full years before the Formal Statement of Charges was filed. There is and was no factual underlying basis for any violation under this Count.

8. Count 8

As to Count 8, first, there has been no evidence presented that any of the statements Respondent made to the media would have been in capacity as a judge

as opposed to her capacity as a mother. Similarly, there is no evidence that the nature of these statements was an abuse of her position. On the contrary, the investigator Schmidt advised that "Tobiasson did nothing more than inform the police of the information she had learned about the suspected prostitution ring and did not use her position on the bench to influence LVMPD detectives." Moreover, as was stated hereinabove, the Sheriff admitted that the investigation was not handled properly. As to the other allegations, as contained in paragraph 15, there has been no showing that the Respondent did not have a reasonable basis to make those statements at the time she made them. In fact, the Charges do not allege the statement are anything more than opinion, nor do they alleged that they were made without a reasonable basis. Instead, they merely allege theat Metro denies them (while ignoring the statements in the interviews and the fact that the FBI corruption division was investigating some of these same issues at the same time and Metro's own admissions as to the failed investigation).

IV.

CONCLUSION

Accordingly, all Counts, all charges and all allegations against the Respondent

as stated in the Formal Statement of Charges must be dismissed.

DATED this 2 day of September, 2020.

COOK & KELESIS, LTD.

MARC P. COOK, ESQ.
Nevada Bar No. 4574
517 S. Ninth Street
Las Vegas, Nevada 89101
Attorney for Respondent

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and that on the 21ST day of September, 2020, I caused to be served a true and correct copy of the foregoing **RESPONSE AND MOTION TO DISMISS FORMAL STATEMENT OF CHARGES** by the method indicated below:

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

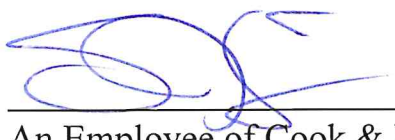
☒ **BY EMAIL:** by emailing a PDF of the document(s) listed above to the email address(es) of the individual(s) listed below.

Thomas C. Bradley, Esq.
Tom@TomBradleyLaw.com

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☒ **BY ELECTRONIC SUBMISSION**: submitted to the Nevada Commission on Judicial Discipline for electroniFFc filing to the email address listed below:

Commission on Judicial Discipline
ncjdinfo@judicial.nv.gov



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