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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE
ELIAS GOICOECHEA, Former Justice of
the Peace, Elko Justice Court, Elko County,
State of Nevada.

Case No.: 2022-028-P

Respondent.

MOTION FOR ENTRY OF ORDER IMPOSING DISCIPLINE
AND REQUEST FOR FORMAL HEARING IN SUPPORT OF SAME

COMES NOW, Richard I. Dreitzer, Prosecuting Officer for the Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), established under Article 6, Section 21 of the Nevada Constitution whom, in the name and by the authority of the Commission, as found in NRS 1.425 - 1.4695, respectfully submits the following Motion for Entry of Order Imposing Discipline and Request for Formal Hearing In Support of Same, in this matter.

I. Basis for Order Imposing Discipline Against Respondent

On April 18, 2023, a Formal Statement of Charges ("FSOC") was filed against the Respondent, the Honorable Elias Goicoechea, Former Justice of the Peace, Elko Justice Court, County of Clark, State of Nevada ("Respondent") in the instant proceeding. The following day, on April 19, 2023, Respondent was served with the FSOC in this matter, both via U.S. Mail to his personal residence as well as electronically, to an email address known to belong to him. Service of the FSOC upon the Respondent was, therefore, timely, pursuant to Rule 16 of the

1 Procedural Rules of the Nevada Commission on Judicial Discipline ("PRNCJD")¹

2 Because service was effectuated upon the Respondent on or about April 19, 2023,
3 pursuant to PRNCJD Rule 17, Respondent had twenty (20) days from that date in which to file
4 an Answer to the FSOC.² Hence, without the benefit of an extension or expanded deadline for
5 response, Respondent's Answer in this matter was due to be filed on or before May 9, 2023. To
6 date, *no response has been received* from the Respondent to the previously filed FSOC, nor any
7 request for additional time in which to respond.

8 Regrettably for the Respondent, his failure to respond to the instant FSOC is fatal to any
9 argument he might raise in defense of the allegations against him. As PRNCJD Rule 17 further
10 states, "...failure to answer the [FSOC] shall constitute an admission that the facts alleged in the
11 formal complaint are true and establish grounds for discipline pursuant to NRS 1.4653..." See,
12 PRNCJD 17.

13 From a statutory standpoint, the basis upon which discipline is now sought against the
14 Respondent is straightforward since all the facts and allegations set forth within the FSOC have
15 now been established as a matter of law. However, it is also important to recognize that the
16 Respondent's decision to ignore the FSOC in this matter and disregard these proceedings
17 represent yet another offense against the Revised Nevada Code of Judicial Conduct, for which
18 discipline against the Respondent is warranted.

19 PRNCJD Rule 17 references that a Respondent's failure to respond to an FSOC provides
20 a basis for discipline pursuant to NRS 1.4653. NRS 1.4653, in turn, states that "...the [NCJD]
21 may remove a judge, publicly censure a judge or impose other forms of discipline if the [NCJD]
22 determines that the judge...(a) has committed willful misconduct..." See, NRS 1.4653(1)(a).
23 The same statute defines "Willful Misconduct" as "...a knowing or deliberate violation of one or

24
25 ¹ PRNCJD Rule 16 states that "...the Respondent shall be served within ten days of filing
a copy of the Formal Statement of Charges..."

26 ² PRNCJD Rule 17 states that "... [w]ithin 20 days after service of the Formal Statement
27 of Charges, the Respondent shall file with the Commission an original and one copy of an
28 answer. The answer must set forth in ordinary and concise language all denials, affirmative
defenses, and mitigating factors upon which the Respondent intends to rely at the hearing. The
Executive Director may, for good cause, extend the time for Respondent's answer for a period
not to exceed 30 days..."

1 more of the provisions of the Revised Nevada Code of Judicial Conduct..." See, NRS
2 1.4653(5)(b)(2).

3 Canon 2 of the Revised Nevada Code of Judicial Conduct (the "Code") requires that "...a
4 judge shall perform the duties of judicial office impartially, competently and diligently..."
5 Within Canon 2, Rule 2.16(A) requires that "...a judge shall cooperate and be candid and honest
6 with judicial and lawyer disciplinary agencies..." Moreover, the Comment to Rule 2.16 states
7 that "...cooperation with investigations and proceedings of judicial and lawyer discipline
8 agencies, as required in Paragraph (A), instills confidence in judges' commitment to the integrity
9 of the judicial system and the protection of the public..." See, Code, Canon 2, Rule 2.16(A), and
10 Comment, thereto.

11 In sum, because Canon 2 of the Code (and Rule 2.16 therein), required the Respondent to
12 have cooperated with this matter and filed an Answer to the pending FSOC after having been
13 validly served, this constitutes a failure to cooperate with the processes of the NCJD, a knowing
14 and/or deliberate violation of Canon 2 and Rule 2.16 of the Code, which, in turn, meets the
15 definition of "Willful Misconduct" pursuant to NRS 1.4653. Hence, pursuant to PRNCJD Rule
16 17, the Respondent's failure to answer the FSOC in this matter constitutes a separate and
17 independent ground for discipline under NRS 1.4653 in addition to the allegations set forth
18 within the FSOC. Logically, then, the entry of an Order imposing discipline for this reason, is
19 appropriate at this time.

20 **II. Basis for Request for Formal Hearing**

21 As referenced above, pursuant to PRNCJD 17, the Respondent's deliberate failure to
22 respond to the FSOC in this matter has the legal effect of causing all of the factual allegations
23 contained therein to be established as true and grounds for discipline under NRS 1.4653.

24 Because PRNCJD Rules 18 and 22 require that the FSOC be set for public hearing before
25 the Commission itself, the undersigned Prosecuting Officer respectfully requests that this matter
26 be scheduled for such a hearing at the Commission's earliest opportunity. It is clear that the
27 Respondent's inattention to the FSOC in this matter could, theoretically, result in the simple
28 issuance of an Order wherein the entirety of the FSOC is taken as established and an additional

1 count of "Willful Misconduct" added for the Respondent's failure to so respond.

2 However, in the interests of equity and affording the Respondent every opportunity to
3 avail himself of a defense or defenses to the FSOC, the undersigned Prosecuting Officer is also
4 mindful of PRNCJD Rule 24 which states that "...the rules of evidence applicable to civil
5 proceedings apply at the hearing, and the Respondent shall be accorded due process of law", as
6 well as PRNCJD Rule 25 which states that "...counsel appointed by the Commission to present
7 the evidence against the respondent have the burden of proving, by clear and convincing legal
8 evidence, the facts justifying discipline in conformity with the averments of the formal statement
9 of charges..." PRNCJD Rules 24 and 25.

10 Hence, because of (1) the gravity of the offenses set forth against the Respondent in the
11 FSOC, (2) principles of procedural and administrative fairness and due process, and (3) since the
12 burden of proof lies with the undersigned counsel pursuant to PRNCJD 25, the undersigned
13 counsel respectfully requests a formal, public hearing wherein the Commission can take
14 testimony and consider evidence presented in an effort to "prove up" the allegations against the
15 Respondent, rather than simply falling back on the text of PRNCJD Rules in order to prevail.
16 Again, this request is made in the interest of affording Respondent every potential opportunity to
17 address the factual and legal allegations brought against him in the FSOC.

18 **III. Conclusion**

19 Based upon the foregoing, the undersigned Prosecuting Officer respectfully requests the
20 following:

21 1. That, as a consequence of Respondent's failure to respond to the properly served
22 FSOC in this matter, the Commission deem that all of the facts and allegations set forth within
23 the FSOC have now been established as a matter of law, pursuant to PRNCJD Rule 17;

24 2. That, as a consequence of Respondent's failure to respond to the properly served
25 FSOC in this matter, the Respondent be disciplined pursuant to PRNCJD Rule 17 for "Willful
26 Misconduct" pursuant to NRS 1.4653;

27 3. That the Commission set a formal, public hearing on the FSOC wherein evidence
28 can be presented and testimony taken in order to have the substance of the FSOC "proven up"

1 before the Commission, prior to a disciplinary order being entered against the Respondent or
2 other adverse action taken.

3
4 DATED: August 4, 2023

5 FENNEMORE CRAIG, P.C.

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7
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1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that a true and correct copy of this **MOTION FOR ENTRY OF**
4 **ORDER IMPOSING DISCIPLINE AND REQUEST FOR FORMAL HEARING IN**
5 **SUPPORT OF SAME** was sent via U.S. Postal Service (with sufficient postage affixed) and e-
6 mail, on this 4th day of August, 2023 addressed to:

7
8 Hon. Elias Goicoechea

9
10
11 and

12 Hon. Elias Goicoechea
13 c/o
14
15
16
17

18 By: _____



19 Richard Dreitzer, Esq.
20 Prosecuting Officer
21 Nevada Commission on Judicial Discipline
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