



PAOLA M. ARMENI
Nevada Bar No. 8357
CLARK HILL PLLC
1700 South Pavilion Center Drive, Suite 500
Las Vegas, Nevada 89135
Tel: (702) 862-8300
Fax: (702) 778-9709
Email: parmeni@clarkhill.com

Attorneys for Respondent, Michele Fiore

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of the,

HONORABLE MICHELE FIORE

Justice of the Peace, Pahrump Township, County
of Nye, State of Nevada

Respondent.

COMMISSION CASE NO. 2025-108-P

THE HONORABLE JUDGE MICHELE FIORE’S MOTION TO DISMISS COUNT 1¹
OF THE FIRST AMENDED FORMAL STATEMENT OF CHARGES

Count One should be dismissed because it does not allege a cognizable violation of Canon 1, Rule 1.1 of the Revised Nevada Code of Judicial Conduct committed while Judge Fiore was serving as a judicial officer. The First Amended Formal Statement of Charges alleges that, “**after being sworn in as a judicial officer,**” Judge Fiore “failed to comply with the laws related to criminal embezzlement, civil conversion and/or unjust enrichment.” See First Amended Formal Statement of Charges (“Amended Statement of Charges”) at 3. Yet, Count One identifies no adjudicated state-law violation, relies on conduct alleged to have occurred before Judge Fiore took the bench, and attempts to recast continued nonpayment or non-notification as a new crime or civil wrong committed in office.

The pleaded chronology defeats that theory: “**after being sworn** in as a judicial officer,”

¹ Judge Fiore only addresses Count 1 as the other Counts were previously addressed in the first Motion to Dismiss that was denied by this Commission. As such, any further argument related to the remaining counts will be addressed through the appellate process if one becomes necessary.

1 Judge Fiore “failed to comply with the laws....”. The affirmative conduct underlying the
2 Commission’s theories—the solicitation and alleged diversion of donations—occurred in 2019–
3 2020, **before** Judge Fiore was sworn in as a Justice of the Peace on December 21, 2022. The
4 Amended Statement of Charges identifies no discrete post-oath act comparable to the in-office
5 conduct required by the authorities discussed below; it alleges only the persistence of an asserted
6 pre-office wrong. A limitations provision for a continuing course of conduct does not enlarge the
7 Commission’s substantive jurisdiction, and the Code cannot retroactively govern conduct that,
8 when it occurred, was subject to the criminal, civil, and public-officer oversight regimes then
9 applicable.

10 Count One is independently defective for three additional reasons. First, no state prosecutor
11 has charged Judge Fiore with embezzlement under NRS 205.300, no civil claimant has sued her
12 for conversion or unjust enrichment, and no court has entered judgment on any of those theories;
13 the mere possibility of a future proceeding is not an adjudicated violation, and the Commission
14 may not use this disciplinary case as the first trial of an uncharged crime or unfiled tort. Second,
15 the October 2024 federal wire-fraud verdict cannot supply the missing basis: before sentencing
16 and entry of judgment, Judge Fiore received a full and unconditional presidential pardon, the
17 federal court closed the case, and the Commission rescinded the guilty verdict-based suspension.
18 Third, Count One combines three distinct legal theories in a single disjunctive allegation, despite
19 their different elements and consequences. Each defect independently warrants dismissal or, at
20 minimum, an order requiring Special Counsel to elect and plead one specifically defined violation
21 and the distinct in-office act alleged to support it.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I.

24 STATEMENT OF RELEVANT FACTS

25 The Commission filed their First Amended Statement of Charges on August 7, 2026. The
26 Commission asserts its jurisdiction over Judge Fiore by stating, “Judge Fiore committed all actions
27 described in Counts 1....**while serving as justice of the peace.**” The Amended Statement of
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1 Charges alleges the following facts in support of Count One. Solely for purposes of this Motion,
2 Judge Fiore accepts those allegations as pleaded:

- 3 • 2019–2020 (before judicial office): Judge Fiore allegedly solicited donations and
4 applied the donated funds to a purpose other than the one represented to donors.²
- 5 • December 21, 2022: Judge Fiore was sworn in as a Justice of the Peace.³
- 6 • After December 21, 2022: Judge Fiore allegedly failed to notify donors that the
7 stated purpose of the donations had been abrogated, seek their instructions, or return the donated
8 funds.⁴
- 9 • October 3, 2024: A federal jury returned guilty verdicts on one count of
10 conspiracy to commit wire fraud and six counts of wire fraud.⁵
- 11 • April 23, 2025: Before sentencing and entry of judgment, Judge Fiore received a
12 “full and unconditional pardon” from the President of the United States.⁶
- 13 • April 28, 2025: The federal court vacated the sentencing date and closed the
14 criminal case “without issuing an order of dismissal.”⁷

15 Based on those allegations, Count One asserts that, “**after** being sworn in as a judicial
16 officer,” Judge Fiore “failed to comply with the laws related to criminal embezzlement, civil
17 conversion and/or unjust enrichment,” in violation of Canon 1, Rule 1.1 of the Revised Nevada
18 Code of Judicial Conduct (the “Code”).⁸

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21 ² Amended Statement of Charges at 2.

22 ³ *Id.*

23 ⁴ *Id.*

24 ⁵ *Id.* at 3.

25 ⁶ *Id.*

26 ⁷ *Id.*

27 ⁸ Amended Statement of Charges at 3.

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1 acts or omissions predating judicial service, while the Commission’s jurisdiction begins when the
2 judge enters office. NRS 1.440(2)(a). That allocation confirms the Legislature’s temporal
3 boundary: pre-office conduct is outside this Commission’s province.

4 Judge Fiore is not a licensed attorney, so NRS 1.440(2)’s specific allocation to the State
5 Bar does not apply to her. But the temporal principle it embodies governs all the same — and for
6 Judge Fiore, the pre-office conduct fell under a different oversight body entirely. When she
7 allegedly solicited the donations in 2019–2020, Judge Fiore was a public officer, and the conduct
8 of public officers is governed by the Nevada Ethics in Government Law, NRS Chapter 281A, and
9 enforced by the Nevada Commission on Ethics. A “public officer” is a person elected or appointed
10 to a position established by the Nevada Constitution, a statute, or a county or city charter or
11 ordinance that “[i]nvolves the exercise of a public power, trust or duty,” including “[t]he
12 expenditure of public money.” NRS 281A.160. The Ethics Law prohibits precisely the misuse-of-
13 position and personal-gain conduct alleged here: a public officer may not “use the public officer’s
14 ...position in government to secure or grant unwarranted privileges, preferences, exemptions or
15 advantages”, nor “use governmental time, property, equipment or other facility to benefit a
16 significant personal or pecuniary interest” NRS 281A.400(2). The Commission on Ethics retains
17 jurisdiction over a “former public officer” for such conduct, subject to a two-year limitations
18 period. NRS 281A.280(1). And Chapter 281A’s exclusion of “any justice, judge or other officer
19 of the court system” from the definition of “public officer” operates prospectively from the
20 assumption of judicial office; it does not retroactively convert pre-bench conduct into a matter for
21 this Commission. NRS 281A.160.

22 The point is not that Judge Fiore’s pre-bench conduct escaped oversight. Rather, when it
23 occurred, oversight belonged to the Commission on Ethics not the Commission on Judicial
24 Discipline. This Commission’s authority began when she assumed judicial office.

25 Courts interpreting analogous judicial codes agree. *In re Burrell*, 6 S.W.3d 869,870 (Mo.
26 1999), the Missouri Supreme Court held that a commission limited to misconduct by sitting judges
27 lacked jurisdiction. Similarly, the Georgia Supreme Court held that the Code of Judicial Conduct
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1 “simply has no application to conduct by people who are not yet judges or judicial candidates”⁹
2 because it governs conduct undertaken *while* serving as a judge. *Inquiry Concerning Coomer*, 315
3 Ga. 841,851 885 S.E.2d 738, 748-49 (2023). These decisions reinforce Nevada’s statutory
4 boundary: the alleged 2019–2020 solicitation fall outside the Code.

5 That boundary is decisive because the alleged solicitation and diversion are the acts
6 underlying each theory. Embezzlement under NRS 205.300 involves converting or appropriating
7 entrusted property; conversion requires a wrongful act of dominion over another’s property; and
8 unjust enrichment concerns the conferral and retention of a benefit. If these wrongs occurred, they
9 were complete when Judge Fiore solicited the funds and applied them to a purpose other than the
10 statue—in 2019–2020, before she took the bench and on the dates the Commission itself alleges.
11 Because the Commission's own allegations locate every operative act **before** Judge Fiore assumed
12 judicial office, Count 1 falls outside this Commission's jurisdiction and must be dismissed.

13 **B. TO THE EXTENT COUNT ONE RESTS ON POSSIBLE FUTURE STATE**
14 **PROCEEDINGS, NOT AN ADJUDICATED VIOLATION, THE COMMISSION**
15 **CANNOT ADJUDICATE AN UNPROVEN CRIME OR TORT.**

16 Count One alleges that Judge Fiore “failed to comply with the laws related to criminal
17 embezzlement, civil conversion and/or unjust enrichment”¹⁰ three distinct state-law theories. Yet
18 no state prosecutor has charged her with embezzlement, no plaintiff has sued her for conversion
19 or unjust enrichment, and no court has entered judgment on any of them. The Commission rests
20 solely on the assertion that, because the conduct did not surface until fall 2024,¹¹ the limitations
21 periods have not expired, and a proceeding is still possible.

22 That reasoning fails. An unexpired period of limitations shows only that someone *could*
23 attempt to prove a claim, it says nothing about whether Judge Fiore in fact violated any law.
24 Treating a claim that merely might be brought as a violation already established inverts the clear-

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⁹*Inquiry Concerning Coomer*, 315 Ga. 841,842 885 S.E.2d 738,743 (2023).

27 ¹⁰ Amended Statement of Charges at 3.

28 ¹¹ A fact disputed by Judge Fiore.

1 and-convincing-evidence¹² burden in NRS 1.4673(2)(a) imposes and presumes the very fact that
2 NRS 1.4673(2)(b) requires special counsel to prove.

3 It would also require the Commission to decide, in the first instance, that Judge Fiore
4 committed a state crime or tort. The Nevada Supreme Court has held that authority to define
5 sanctionable judicial misconduct rests with the Supreme Court, not the Commission, and that the
6 Commission exceeds its jurisdiction by sanctioning conduct not definitively proscribed by the
7 Commission's rules, Nevada criminal law, or the Nevada Constitution. *Whitehead v. Nevada*
8 *Comm'n on Jud. Discipline*, 110 Nev. 128, 143, 906 P.2d 230 (1994). A Rule 1.1 charge that turns
9 on the Commission's own finding of embezzlement, conversion, or unjust enrichment asks it to do
10 precisely what *Whitehead* prohibits: to supply, on an *ad hoc* basis, a substantive legal violation
11 that no court has ever adjudicated.

12 The Commission may, of course, find disciplinary facts. But labeling conduct "criminal
13 embezzlement" without a criminal adjudication converts the disciplinary hearing into a substitute
14 criminal proceeding. Nevada law grants the Commission exclusive disciplinary jurisdiction and
15 guarantees due process in formal proceedings, but it does not confer criminal jurisdiction. The
16 same limitation defeats the Commission's civil theories: it has no authority to enter, in the first
17 instance, the conversion or unjust-enrichment judgment that Count One presupposes.

18 Here, there is no state adjudication, only a prediction that one might occur. A prediction is
19 not clear and convincing evidence of a violation; it is the absence of one.

20 **C. THE ONLY IDENTIFIED LAW VIOLATION WAS THE FEDERAL WIRE-**
21 **FRAUD VERDICT, WHICH THE PRESIDENTIAL PARDON REMOVED AS A**
22 **BASIS FOR DISCIPLINE.**

23 Arguably, the only finding that Judge Fiore violated the law was the October 2024 federal
24 wire-fraud verdict.¹³ Yet, Count One does not rely on that verdict; instead, it invokes unadjudicated
25 state-law theories. In any event, the federal verdict cannot serve as a basis for discipline. Before
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27 ¹² This presents a further dilemma: a finding of criminal embezzlement is subject to proof beyond
28 a reasonable doubt, not the lower clear-and-convincing standard the Commission would apply.

¹³ Amended Statement of Charges at 3.

1 sentencing and entry of judgment of conviction, the President granted Judge Fiore “a full and
2 unconditional pardon,” and the federal court thereafter closed the case.¹⁴ A full pardon granted
3 before final judgment prevents conviction-related penalties and disabilities from attaching. *Ex*
4 *parte Garland*, 71 U.S. 333, 18 L. Ed. 366 (1866). Here, the pardon issued before sentencing and
5 before judgment of conviction.

6 The Commission has already recognized the legal effect of the pardon. As the Nevada
7 Supreme Court recounted, the Commission rescinded the felony-based unpaid suspension imposed
8 under NRS 1.4675(2)(b), which applies only when a judge is “found guilty” of a felony. Following
9 that rescission, the parties agreed the appeal was moot. *Matter of Fiore*, 588 P.3d 140 (Nev. 2026).
10 Thus, the felony verdict no longer supplies a basis for discipline.

11 Nor can the pardoned verdict be transformed into an adjudication of the underlying facts.
12 Although a pardon does not erase or reverse the historical fact that a verdict was rendered, it does
13 not constitute a judicial confession of guilt that a disciplinary body may independently treat as an
14 adjudication of the facts underlying that verdict. *Lorance v. Commandant, U.S. Disciplinary*
15 *Barracks*, 13 F.4th 1150, 1156 (10th Cir. 2021). Accordingly, the federal verdict cannot supply
16 the adjudicated violation necessary to support Count One. And because the state-law theories
17 alleged in Count One likewise have never been adjudicated, Count One rests on no adjudicated
18 state or federal law violation.

19 **D. CONTINUED NONPAYMENT IS NOT THE COMMISSION OF A CRIME OR**
20 **CIVIL WRONG “WHILE ON THE BENCH.”**

21 Recognizing that the underlying acts predate Judge Fiore’s appointment to the bench, the
22 Commission has recast the alleged misconduct as a “continuing wrong”. Its theory appears to be
23 that, so long as a victim retains an enforceable right to recover funds allegedly wrongfully retained,
24 Judge Fiore has an ongoing ethical and legal obligation to return those funds. But characterizing a
25 pre-office act as a continuing wrong cannot transform conduct that occurred before judicial office
26 into misconduct committed while in office.

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28 ¹⁴ Amended Statement of Charges at 3.

1 Even the authorities most favorable to the Commission’s continuing-conduct theory
2 require an affirmative act or omission occurring after the judge assumes office—not merely the
3 failure to undo a completed pre-office act. *In re Huckaby*, 95-0041 (La. 5/22/95), 656 So. 2d 292,
4 the Louisiana Supreme Court permitted consideration of conduct that began before judicial office
5 only because the judge committed a discrete act after taking office: he did not file his 1987 tax
6 return¹⁵ until ten days *after* becoming a judge. The court therefore emphasized that the charge was
7 “not based solely on pre-judicial conduct” and reaffirmed the governing rule that conduct
8 occurring before a judge assumes office cannot form the “sole basis” for disciplinary proceedings.”
9 *Id.* at 296. Here there is no analogous in-office act. The Amended Charges identify only an
10 omission, continued nonpayment and non-notification, which is nothing more than the persistence
11 of the alleged 2019–2020 wrong. Count One thus rests on precisely the “sole basis” that *In re*
12 *Huckaby* forbids.

13 Nevada authority is not to the contrary. In *Matter of Davis*, 113 Nev. 1204,1215 (1997),
14 the Nevada Supreme Court recognized the Commission’s “declining to consider remote acts unless
15 they were a part of a recurring pattern of conduct” but *Matter of Davis*, involved misconduct
16 committed *in office*, and its “cure” language addresses how the Commission weighs otherwise-
17 cognizable in-office conduct, not a power to reach pre-office acts through a continuing-obligation
18 theory.¹⁶

19 Nor does NRS 1.4655 provide the Commission with such authority. To the extent the
20 Commission invokes the statute’s exception for a “continuing course of conduct,” that provision
21 addresses the timeliness of a complaint; it does not expand the substantive scope of conduct subject
22 to judicial discipline. A limitations provision cannot create jurisdiction over conduct that otherwise
23 falls outside the governing disciplinary authority. The Commission therefore cannot use the
24 concept of a “continuing course of conduct” to circumvent the fundamental rule that conduct
25 occurring before judicial office cannot, standing alone, constitute judicial misconduct.

26 ¹⁵ Required by federal law. He was charged and pleaded guilty to a federal charge of failing to file
27 his tax return. *In re Huckaby*, 95-0041 (La. 5/22/95), 656 So. 2d 292, 294.

28 ¹⁶ *Matter of Davis*, 113 Nev. 1204, 946 P.2d 1033 (1997).

1 **E. COUNT ONE IS IMPERMISSIBLY DUPLICITOUS**

2 Finally, Count One improperly combines three distinct and legally different theories of
3 liability—a criminal violation of NRS 205.300 and two common-law civil theories, conversion
4 and unjust enrichment—pleaded disjunctively as “criminal embezzlement, civil conversion and/or
5 unjust enrichment.” The governing pleading requirements do not permit such a vague, catch-all
6 formulation. A formal statement of charges must identify “the specific acts of judicial misconduct,”
7 and Special Counsel must prove the grounds for discipline “in conformity with averments of the
8 formal statement of charges.” *In re Mosley*, 120 Nev. 908, 912, 102 P.3d 555 (2004).

9 Count One fails that requirement. It does not identify which legal violation allegedly
10 constitutes the misconduct; instead, it leaves Judge Fiore to defend against three alternative
11 theories with materially different elements, legal standards, and consequences. A criminal
12 embezzlement charge is fundamentally different from a civil conversion or unjust-enrichment
13 claim. Each requires proof of different facts and legal elements, and each carries different
14 substantive and procedural implications. By pleading them collectively and disjunctively, the
15 Commission has failed to identify a single, defined theory of misconduct that Judge Fiore is alleged
16 to have committed.

17 The defect is particularly consequential in a disciplinary proceeding, where Special Counsel
18 bears the burden of proving the charged grounds for discipline in conformity with the formal
19 statement of charges. Special Counsel cannot avoid that requirement by pleading “A, B, and/or C”
20 and leaving the precise violation to be determined later. The formal statement must provide
21 sufficient notice of the specific misconduct charged so that Judge Fiore can meaningfully defend
22 against it and so that the Commission can determine whether the proven facts establish the
23 violation actually charged.

24 Accordingly, Count One is facially defective because it fails to identify a specific and coherent
25 legal violation. That defect independently warrants dismissal of Count One or, at minimum, an
26 order requiring Special Counsel to elect a single legal theory and amend the charge to plead the
27 specific violation, elements, and acts upon which discipline is actually sought.

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III.

CONCLUSION

For these independent reasons, Count One cannot support discipline. It rests on pre-office conduct, identifies no qualifying post-appointment act, relies on unadjudicated state-law theories, and cannot be cured by the pardoned federal verdict. Because these are substantive defects that an amendment cannot cure, the Commission should dismiss Count One with prejudice. At minimum, Special Counsel should be required to elect and plead a single, specifically defined violation and identify the post-appointment act alleged to constitute it.

Dated this 4th day of September, 2026.

CLARK HILL PLLC

By: Paola M. Armeni, Esq.

PAOLA M. ARMENI

Nevada Bar No. 8357

1700 South Pavilion Center Drive, Suite 500

Las Vegas, Nevada 89135

Tel: (702) 862-8300

Attorneys for Respondent, Michele Fiore

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Thomas J. Donaldson
1817 N. Stewart Street, Ste. 35
Carson City, Nevada 89706
Email: tom@majlabor.com

Special Counsel for the Nevada
Commission on Judicial Discipline

Nevada Commission on Judicial Discipline
Email: ncjdinfo@judicial.nv.gov

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