



1 PAOLA M. ARMENI
Nevada Bar No. 8357
2 GIA N. MARINA
Nevada Bar No. 15276
3 **CLARK HILL PLLC**
1700 South Pavilion Center Drive, Suite 500
4 Las Vegas, Nevada 89135
5 Tel: (702) 862-8300
Fax: (702) 778-9709
6 Email: parmeni@clarkhill.com
7 Email: gmarina@clarkhill.com
Attorneys for Respondent, Michele Fiore

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

9 **STATE OF NEVADA**

10 In the Matter of the

COMMISSION CASE NO. 2025-108

11 HONORABLE MICHELE FIORE

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

14 Respondent.
15

16 **THE HONORABLE JUDGE MICHELE FIORE'S OPPOSITION TO THE**
17 **COMMISSION'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF KEITH R.**
18 **FISHER AND EXPERT STATEMENT OF KEITH R. FISHER**

19 Respondent, the Honorable Judge Michele Fiore, by and through her attorneys of record
20 Paola M. Armeni, Esq. and Gia N. Marina, Esq., of the law firm of Clark Hill PLLC, hereby
21 submits this Opposition to the Nevada Commission on Judicial Discipline's Motion in Limine to
22 Exclude Testimony of Keith R. Fisher and Expert Statement of Keith R. Fisher, filed on September
23 23, 2026.

24 Stripped of its evidentiary labels, the Motion reads as a substantive rebuttal to Mr. Fisher's
25 opinions, not as a genuine objection to their admissibility. Nearly the entire filing is devoted to
26 arguing the merits, marshaling authority in an effort to convince the Commission that Mr. Fisher's
27 analysis is wrong. That is the content of a competing expert opinion or of closing argument. It is
28

1 not a basis to keep Mr. Fisher off the stand. If Special Counsel believes Mr. Fisher is mistaken
2 about his opinions, the relief is to rebut him at the hearing, not to silence him before it begins.

3 Special Counsel asks the Commission to do something the rules of evidence do not permit:
4 to resolve contested legal questions by silencing the witness who addresses them, before the
5 hearing has begun. The Motion is not really an evidentiary objection. It is a preview of Special
6 Counsel's merits position — that the Commission may discipline pre-office conduct and that the
7 presidential pardon does not bar Count 3 — repackaged as a request to exclude the opposing view.
8 That is not the function of a motion in limine.

9 Two features of this proceeding defeat the Motion. First, the factfinder is the Commission
10 itself — a specialized, legally sophisticated tribunal, not a lay jury. The dangers the Motion invokes
11 under NRS 48.035 — unfair prejudice and confusion of the issues — *are dangers of juries*. They
12 have little or no application before professional adjudicators who can hear an opinion, test it, and
13 give it exactly the weight it deserves. Second, the Nevada Supreme Court has already held, in a
14 case arising from this very Commission, that expert testimony on specialized legal and judicial-
15 ethics questions “can provide assistance to the Commission and should be admitted if it is helpful.”
16 *In re Assad*, 124 Nev. 391, 185 P.3d 1044 (2008).

17 Mr. Fisher is a qualified expert — a point the Motion effectively concedes. His Expert
18 Statement addresses genuinely contested questions that Special Counsel's own Motion litigates
19 across six pages and dozens of authorities. Special Counsel's disagreement with Mr. Fisher's
20 conclusions is an argument for cross-examination and for the weight the Commission assigns his
21 testimony — not for exclusion. The Motion should be denied.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. STATEMENT OF RELEVANT FACTS**

24 On May 28, 2026, Judge Fiore served her Initial Disclosures in this matter, designating
25 Keith R. Fisher as an expert witness. On September 16, 2026,¹ Judge Fiore served her First
26

27 ¹ The report could not be submitted until the expert could review and analyze the First Amended
28 Formal Statement of Charges filed on August 7, 2016 and the subsequent briefing.

1 Supplemental Disclosures containing the report of Mr. Fisher. A true and correct copy of Mr.
2 Fisher's Expert Statement is attached hereto as **Exhibit A**.

3 Professor Fisher's Expert Statement addresses a range of issues bearing on the Charges.
4 For example, he opines that the Commission lacks jurisdiction to discipline conduct antedating
5 judicial office, grounding that view in Article VI, Section 21 of the Nevada Constitution, its
6 allocation of authority among the branches, and the defined term "judge" used throughout the
7 governing statutes and the Code of Judicial Conduct ("CJC"). *See* Exhibit A, at ¶¶ 23-24; 44.

8 Beyond jurisdiction, Professor Fisher addresses the merits and sufficiency of the Charges.
9 He opines that CJC Rule 1.1 is inapposite and that "law" — a defined term of art under the CJC
10 — imposed no duty on Respondent to notify donors, seek instructions, or make restitution. *Id.* at
11 ¶ 50. He opines that a formal statement of charges must set forth the "specific acts" of misconduct
12 required by NRS 1.4267 (*id.* at ¶ 45), that the Charges fail the fair-notice pleading standard the
13 Nevada Supreme Court applies under NRCP 12(b)(5), and that the presidential pardon is only one
14 of four independent grounds he identified for the charges' legal insufficiency. *Id.* at ¶ 58. He further
15 opines that any finding of judicial misconduct must be supported by clear and convincing evidence
16 under NRS 1.4673(2)(a) (*id.* at ¶ 57), and, as to Count 3, that the presidential pardon bears on the
17 use of the jury verdict as a predicate for discipline. *Id.* at ¶ 55.

18 Finally, Professor Fisher opines on procedural and due-process questions: the complaint-
19 initiation requirement of NRS 1.4655(1) (*id.* at ¶ 59); the three-year limitations bar of NRS
20 1.4655(2), given that the charged conduct is alleged to have occurred in 2019 and 2020, more than
21 six years before the Charges (*id.* at ¶ 63); and the notice concerns arising from the Commission's
22 withholding of the identity, number, and substance of the complaints against Respondent. *Id.* at ¶
23 60.

24 **II. LEGAL ARGUMENT**

25 **A. Legal Standard**

26 Proceedings before the Commission are civil matters, and once a formal statement of
27 charges has been filed, the Nevada Rules of Civil Procedure govern except as otherwise provided
28 by statute or by the procedural rules adopted by the Commission. *See* NRS 1.462(2). The rules of

1 evidence applicable to civil proceedings likewise apply at the formal hearing on the charges. NRS
2 1.4673(2)(c); *see also* Nev. Const. art. VI, § 21(7) (the Commission “shall adopt rules of procedure
3 for the conduct of its hearings”).

4 Nevada law disfavors the categorical exclusion of otherwise relevant evidence through an
5 overbroad motion in limine. *See Rish v. Simao*, 132 Nev. 189, 195–98, 368 P.3d 1203, 1207–09
6 (2016) (reversing an in limine ruling that broadly prohibited the defendant from presenting a
7 particular defense and explaining that the district court improperly construed prior precedent as
8 categorically precluding relevant evidence and argument). It is well within a tribunal’s discretion
9 to deny an overbroad motion in limine, and “[o]rders in limine which exclude broad categories of
10 evidence should rarely be employed.” *Renown Health v. Holland & Hart, LLP*, 135 Nev. 705, 437
11 P.3d 1059 (2019) (unpublished disposition). “A better practice is to deal with questions of
12 admissibility of evidence as they arise.” *Id.* (quoting *Sperberg v. Goodyear Tire & Rubber Co.*,
13 519 F.2d 708, 712 (6th Cir. 1975)).

14 Expert testimony is governed by NRS 50.275, which permits a qualified witness to testify
15 where “scientific, technical or other specialized knowledge will assist the trier of fact to understand
16 the evidence or to determine a fact in issue.” *See* NRS 50.275. An expert must satisfy three
17 requirements: qualification, assistance, and limited scope. *Hallmark v. Eldridge*, 124 Nev. 492,
18 498, 189 P.3d 646, 650 (2008). Weaknesses in an expert’s testimony “goes to the weight, not the
19 admissibility, of the evidence.” *Mathews v. State*, 134 Nev. 512, 516, 424 P.3d 634, 639 (2018).

20 **B. The Motion is a Merits Argument in the Guise of an Evidentiary Objection.**

21 Special Counsel spends a significant amount of time arguing over the *merits* of Mr. Fisher’s
22 opinion. *See* Motion, at 2:19-21 (“Yet, he completely ignores the majority rule in the United
23 States....); 3:17-22 (“Although Mr. Fisher claims he reviewed the Formal Statement of Charges
24 and First Amended Formal Statement of Charges, obviously, he could not comprehend the
25 content....); 4:3-4 (“Clearly, Mr. Fisher is clueless about Nevada law and related judicial opinions
26 from other states.”)²; 4:27-28 (“Those cases, cited with approval and relied upon by the Court, are

27
28 ² This statement completely ignores Professor Fisher’s credentials which include being a prior Distinguished Fellow at the National Judicial College in Reno, Nevada as well as serving as a 2022

1 dispositive of Mr. Fisher's contention."); 5:27-28 ("Similarly, here, the Commission's proceedings
2 are not punishment, but a consequence."). But arguments over the expert's opinions and
3 conclusions are not reason to exclude the expert witness. Indeed, the entire Motion is devoid of
4 *any* reason to exclude Mr. Fisher.

5 Special Counsel's central premise is that "both the Nevada Supreme Court and the
6 Commission have already considered and decided the issues presented in the 'Expert Statement.'" *See*
7 *Motion in Limine*, at 6:16-17. That is, again, a preclusion argument about the merits, not a
8 reason the evidence is inadmissible. Further, Special Counsel's statement is flatly **wrong**.

9 First, the Commission's July 31, 2026 Order Denying Motion to Dismiss and Granting
10 Leave to Amend was an interlocutory order on the pleadings. *See Renown Reg'l Med. Ctr. v.*
11 *Second Jud. Dist. Ct. in & for Cnty. of Washoe*, 580 P.3d 756, 761 (Nev. 2025) ("Generally, the
12 Supreme Court will not consider writ petitions that challenge interlocutory orders denying motions
13 to dismiss...."). The Commission's interlocutory determination that the charges survive dismissal
14 does not render irrelevant every legal analysis inconsistent with the arguments the Commission
15 rejected at the pleading stage. The admissibility of Mr. Fisher's testimony instead turns on the
16 standards governing expert testimony, including whether his specialized knowledge will assist the
17 trier of fact and whether his opinions are relevant and reliably derived. *See Hallmark v. Eldridge*,
18 124 Nev. 492, 498–500, 189 P.3d 646, 650–51 (2008); NRS 50.275.

19 Further, the Nevada Supreme Court did **not** already decide "the issues presented in the
20 'Expert Statement.'" Notwithstanding the fact that Mr. Fisher's report contains *multiple* opinions
21 outside of those presented by Special Counsel, which is more fully demonstrated below, the
22 Nevada Supreme Court's decision pertaining to jurisdiction was regarding *interim* suspension.
23 Indeed, the Court specifically held that the Commission had jurisdiction under NRS 1.440(2)(b)
24 to impose an *interim suspension with salary* pursuant to NRS 1.4675(4). *Matter of Fiore*, 588
25 P.3d 140 (Table), 2026 WL 982515 (Nev. 2026). And that is exactly what NRS 1.4675(4)

26
27 _____
28 advisor to a special commission created by the Nevada Supreme Court to review the judicial
disciplinary process in Nevada, study the rules of governing judicial discipline and updating if
necessary the Nevada Code of Judicial Conduct.

1 contemplates – a suspension from the exercise of office with salary “pending a final disposition of
2 the complaint....” *See* NRS 1.4675(4). Importantly, however, the Court added:

3 Because the Commission has not yet imposed any discipline or even filed a formal
4 statement of charges to initiate formal disciplinary proceedings, we decline to
5 entertain the petition for writ of mandamus as it is premature. We also decline to
6 entertain the petition for a writ of prohibition because, *at this early point in the
process, it remains to be seen whether formal proceedings will be brought and
whether any potential formal proceedings “are without or in excess” of the
Commission’s jurisdiction.*

7
8 *See Matter of Fiore*, 588 P.3d 140 (Table), 2026 WL 982515 (Nev. 2026). Thus, the Nevada
9 Supreme Court has not decided these issues, as the Appeal occurred prior to any formal statement
10 of charges being filed.

11 Whether prior rulings foreclose Mr. Fisher’s positions is a question for the hearing and,
12 ultimately, for review. It is not, however, a basis to strike the testimony that frames those positions.
13 Judge Fiore is entitled to develop her defense at the hearing and to make her record. Excluding her
14 expert now would prejudice that defense on an incomplete record. *See Renown Health v. Holland
& Hart, LLP*, 135 Nev. 705, 437 P.3d 1059 (2019).

15 The proper way to meet an opposing expert is rebuttal — cross-examination, argument,
16 and, where a party wishes, its own expert witness. As the Nevada Supreme Court has held,
17 challenges to the soundness of an opinion “concern only the weight, and not the admissibility, of
18 the testimony.” *Sheriff, Humboldt Cnty. v. Acuna*, 107 Nev. 664, 819 P.2d 197 (1991). If Special
19 Counsel believes Mr. Fisher is mistaken about the Commission’s authority over pre-office conduct
20 or the effect of the pardon, the answer is to rebut him at the hearing, not to silence him before it
21 begins. Special Counsel had every opportunity to retain an expert of its own and chose not to.
22 Having elected to forgo its own expert, Special Counsel cannot use a motion in limine to remove
23 the only expert of record and leave the Commission with a one-sided presentation. Admissibility
24 disputes of this kind are best resolved “as they arise” at the hearing. *Renown Health*, 135 Nev. at
25 *3.

26
27 **C. Mr. Fisher’s Testimony is Relevant Under NRS 48.025.**

28 Special Counsel made no argument as to the relevance of Mr. Fisher’s testimony. Instead,

1 the Motion blithely states:

2 Bottom line, both the Nevada Supreme Court and the Commission have already
3 considered and decided the issues presented in the “Expert Statement.” Thus, the
4 report has no tendency to make the existence of any fact that is not of consequence
5 to the determination of the action more or less probable than it would be without
the evidence, and, hence, is not relevant and not admissible in accordance with NRS
48.025(2).

6 *See* Motion, at 6:16-20. However, as Judge Fiore has demonstrated *supra*, this statement is wrong.

7 As Special Counsel failed to make any other argument as to relevance, this argument fails.

8 Even setting aside Special Counsel’s failure to argue the point, Mr. Fisher’s testimony is
9 plainly relevant. Relevance is the threshold for admissibility: “[a]ll relevant evidence is
10 admissible” unless a statute or constitutional provision provides otherwise, and “[e]vidence which
11 is not relevant is not admissible.” NRS 48.025(1)-(2). “Relevant evidence” is defined broadly as
12 evidence “having any tendency to make the existence of any fact that is of consequence to the
13 determination of the action more or less probable than it would be without the evidence.” NRS
14 48.015. That is a deliberately low bar. As the Nevada Supreme Court recently reaffirmed,
15 relevance “is a low threshold, and relevant evidence needs only to advance the ball ever so
16 slightly.” *Richt v. State*, 142 Nev. Adv. Op. 32, 588 P.3d 1256, 1263 (2026). Evidence need not be
17 dispositive, or even strong, to be relevant; it need only make a consequential fact marginally more
18 or less probable.

19 Mr. Fisher’s Expert Statement clears that threshold easily. His opinions bear directly on
20 issues of consequence to this action — the very questions the Commission must resolve in deciding
21 whether Judge Fiore may be disciplined. He opines on whether the Commission may premise
22 discipline on conduct antedating judicial office and on the legal effect of the presidential pardon
23 on the jury verdict underlying Count 3. *See* Exhibit A, at ¶¶ 23-24, 55. His report does not stop
24 there. He also opines on the meaning of the Code of Judicial Conduct and whether Rule 1.1 and
25 the defined term “law” imposed any duty on Judge Fiore (*id.* at ¶ 50); on whether the Charges
26 satisfy the “specific acts” and fair-notice pleading requirements of NRS 1.4267 and NRCP
27 12(b)(5) (*id.* at ¶¶ 45, 58); on the clear-and-convincing burden of proof governing any finding of
28 misconduct under NRS 1.4673(2)(a) (*id.* at ¶ 57); and on statutory-timeliness and due-process

1 defects in the Commission's handling of the case (*id.* at ¶¶ 59, 63, 60). Each of these opinions goes
2 to a fact of consequence — whether the charged conduct can support discipline, whether the
3 Charges are legally sufficient, whether Special Counsel can carry its burden of proof, and whether
4 the proceeding itself comports with the governing statutes. Testimony that addresses the governing
5 legal framework for the Charges plainly has a “tendency” to make those consequential facts more
6 or less probable, and it therefore satisfies NRS 48.015. The Motion's premise that Mr. Fisher
7 merely re-argues jurisdiction and the pardon does not survive a reading of the Expert Statement
8 itself and Special Counsel only moves to exclude a small portion of his proposed testimony, yet
9 seeks to exclude him wholesale as an expert, which is not appropriate.

10 **D. There is No Danger of Unfair Prejudice, Confusion, or Waste of Time Before This**
11 **Commission. Mr. Fisher is Qualified and His Testimony Will Assist the**
12 **Commission.**

13 Special Counsel's fallback, without *any* argument whatsoever, is as follows:

14 Alternatively, if the Commission finds the report relevant, it is not admissible
15 because its probative value is substantially outweighed by the danger of unfair
16 prejudice or of confusion of the issues at the hearing pursuant to NRS 48.035(1).
17 Further, if the Commission finds the report relevant, it should be excluded because
18 its probative value is substantially outweighed by considerations of a waste of time
at the hearing pursuant to NRS 48.035(2). Finally, Mr. Fisher, is qualified as an
“expert,” he is incapable of offering any scientific, technical or other specialized
knowledge that will assist the Commission to understand the evidence or to
determine a fact in issue at the hearing in this matter pursuant to NRS 50.275.

19 *See* Motion, at 6:20-27. This conclusory statement should be disregarded in its entirety because it
20 contains absolutely no argument or analysis. Notwithstanding the errant omissions, Special
21 Counsel's argument that any probative value is outweighed by the danger of unfair prejudice or of
22 confusion of the issues fails because those dangers presuppose a jury, which is not present here.

23 Indeed, the Nevada Supreme Court has defined “unfair prejudice” under NRS 48.035 as
24 “an appeal to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual
25 ability to evaluate evidence.” *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 933, 267 P.3d 777, 781
26 (2011) (internal citations omitted). The Commission is not a jury susceptible to emotional appeal.
27 It is a professional tribunal that decides cases on the law and the record. For that reason, the NRS
28 48.035(1) weighing has little application to a proceeding tried to the Commission.

1 As the Fifth Circuit explained in construing the federal counterpart to NRS 48.035, the
2 balancing of probative value against unfair prejudice “has no logical application to bench trials,”
3 and excluding relevant evidence before a professional factfinder on that ground “is a useless
4 procedure,” because the same adjudicator who could weigh and discard improper inferences from
5 a jury “can also exclude those improper inferences from his mind in reaching a decision.” *Gulf*
6 *States Utilities Co. v. Ecodyne Corp.*, 635 F.2d 517 (5th Cir. 1981). The Ninth Circuit has adopted
7 this language finding that “[i]n a bench trial, the risk that a verdict will be unfairly affected by the
8 admission of improper evidence is far less than in a jury trial.” *Towe v. US Dep’t of Treasury*, 168
9 F.3d 502 (9th Cir. 1999) (citing to *Gulf States Utilities Co. v. Ecodyne Corp.*, 635 F.2d 517 (5th
10 Cir. 1981)). The Commission is fully capable of hearing Mr. Fisher, weighing his opinions, and
11 disregarding anything it finds unhelpful. There is no jury here to confuse or inflame.

12 Nor is admitting a single defense expert a “waste of time.” NRS 48.035 asks the tribunal
13 to act as a gatekeeper, assessing evidence on a case-by-case basis, and excluding evidence only
14 where its benefit “is substantially outweighed by the unfair harm it might cause.” *Talley v. State*,
15 141 Nev. Adv. Op. 61, 580 P.3d 101 (2025). Testimony on the disputed legal frameworks central
16 to the charges is not a needless consumption of time; it is directed to the core issues the
17 Commission must decide. If anything, resolving these questions on a full hearing record is more
18 efficient — and more protective of the record — than excluding the evidence and litigating the
19 consequences later.

20 Finally, Mr. Fisher is qualified, and his testimony will assist the Commission. Special
21 Counsel does not seriously dispute Mr. Fisher’s qualifications and that concession is dispositive
22 of the qualification requirement under NRS 50.275. *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d
23 646 (2008). To the extent Special Counsel suggests his “expertise is dubious,” (*see* Motion, at
24 2:17) any such weakness “goes to the weight, not the admissibility, of the evidence.” *Mathews v.*
25 *State*, 134 Nev. 512, 424 P.3d 634 (2018).

26 The assistance requirement is likewise satisfied. The Nevada Supreme Court has squarely
27 held — in a matter arising before this Commission — that judicial-ethics and legal expert
28 testimony “can provide assistance to the Commission and should be admitted if it is helpful.” *In*

1 *re Assad*, 124 Nev. 391, 185 P.3d 1044 (2008). The Court explained why such testimony aids a
2 specialized factfinder: an expert whose career is devoted to the field “will likely be more familiar
3 with those materials” than Commission members with varied full-time employment, and, unlike a
4 scholarly article cited in a brief, “a testifying expert witness...can be cross-examined by counsel
5 and questioned by the Commission members.” *Id.* at 403. The Court accordingly cautioned the
6 Commission to evaluate proffered expert testimony “based on the substance of the proposed
7 testimony and the facts of the case, rather than maintain a position that such testimony should
8 routinely be rejected simply because the Commission is not ‘compelled’ to admit it in every case.”
9 *Id.* That is precisely what Special Counsel asks the Commission to do here.

10 Special Counsel’s implicit objection — that Mr. Fisher’s opinions concern legal questions
11 the Commission must decide — is not a ground for exclusion. The Nevada Supreme Court rejected
12 the identical “usurpation” argument in the Commission context, holding that NRS 50.295
13 “expressly permits expert testimony concerning the ultimate issue to be decided,” and that expert
14 testimony would “completely usurp” the Commission’s role “only if the Commission members
15 allowed the expert’s opinion to supplant their own evaluation and judgment.” *Id.* The Commission
16 is presumed to do no such thing. To the extent any discrete opinion were thought to state a pure
17 legal conclusion rather than to assist the Commission’s understanding, the appropriate course is to
18 give that opinion its due weight — or to address it through the Commission’s questioning and
19 cross-examination — not to bar the witness wholesale.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9

10

11

12

13

14

15

16

17

18

19

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

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

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

An employee of CLARK HILL PLLC

EXHIBIT A

EXHIBIT A

EXPERT STATEMENT OF KEITH R. FISHER

1. I am a law professor at the St. Thomas University College of Law in Miami Gardens, Florida, where I am currently teaching core curriculum courses in Civil Procedure and Constitutional Law, as well as Regulation of Financial Institutions, Judicial Decision-Making, and Professional Responsibility (the latter covering both legal ethics and judicial ethics). I have been engaged by counsel for the Respondent, Hon. Michele Fiore (“Fiore”), to provide expert testimony relating to judicial ethics and related legal issues in connection with the Formal Statement of Charges filed by the Nevada Commission on Judicial Discipline (the “Commission”) on April 24, 2026 against Respondent in Case No. 2025-108-P (the “Charges”). The Charges were filed against Respondent while she was serving as a Justice of the Peace for the Pahrump Township Justice Court, Nye County, Nevada.
2. The Charges aver that Respondent was sworn in as a Justice of the Peace on or about December 21, 2022. The gravamen of the Charges is that in 2019 or 2020, Respondent, prior to ever becoming a judicial officer, essentially misappropriated funds she had solicited, in her capacity as a Las Vegas City Councilwoman, and that had been donated for the purpose of erecting a statue honoring the memory of two slain Las Vegas Metropolitan Police officers. After it became clear that, for reasons neither explicated in the Charges or otherwise known to me, the donated funds could not be used for their intended purpose, Respondent was prosecuted in connection with the solicitation of the donations, not by state or local authorities but by federal prosecutors. The indictment was filed in the United States District Court for the District of Nevada on July 16, 2024. Fiore was tried before a jury, which entered a guilty verdict against her. Nevertheless, no final judgment of conviction was ever entered against her, because prior to the entry of any such final judgment and pronouncement of a sentence by the trial court, and prior to the filing of the Charges, Respondent received a full and unconditional presidential pardon.

Relevant Background and Qualifications

3. An honors graduate of Princeton University and Georgetown University Law Center, I have been a member in good standing of the District of Columbia Bar since 1980. Before entering academia full-time, I practiced law in Washington, D.C., where I concentrated in financial regulatory matters, M&A transactions, and appellate litigation (the latter predominantly in the United States courts of appeals and the Supreme Court of the United States). My interest in matters relating to professional ethics began during the banking and savings and loan crises of the late 1980s and early 1990s, when I served as Chair of an American Bar Association (ABA) Task Force on the Liability of Counsel Representing Depository Institutions, as well as a delegate from the ABA Business Law Section to a larger ABA Working Group on Lawyers Representing Regulated Clients.
4. For the past eleven years, I have been teaching judicial ethics to judges at all court levels (including trial, appellate, and administrative) all over the United States and overseas as well. From September 2015 to August 2021, I served as Principal Consultant and Senior Counsel for Domestic and International Court Initiatives at the National Center for State Courts (NCSC). While at NCSC, I worked as part of its Center for Judicial Ethics and also served as counsel to two committees of the Conference of Chief Justices: the Amicus Committee (which files amicus briefs in the U.S. Supreme Court and in the federal appeals courts on issues of interest to the state judiciaries, including cases involving state codes of judicial conduct) and the Professionalism Committee (which deals, *inter alia*, with the regulation of the legal profession, including the admission and regulation of foreign lawyers). I also served as counsel to the four state Chief Justices appointed by Chief Justice John Roberts to serve on the Federal-State Jurisdiction Committee of the Judicial Conference of the United States.
5. From August 2021 to June 2025, I was the first (and, as of the date hereof, the only) Distinguished Fellow at the National Judicial College in Reno, Nevada, where I organized and/or taught at a variety of courses for judges around the country and also conducted bespoke judicial ethics trainings for various judiciaries, judicial conferences, and judicial groups. One such training was a

full day of judicial ethics for Nevada judges held in Las Vegas in October 2024, which was attended by over 30 Nevada judges from all over the State, including one Justice of the Nevada Supreme Court. When teaching judicial ethics in particular states, I customarily tailor the presentations to the version of the canons of judicial conduct (or similarly named codex) in force in the particular jurisdiction. Since leaving the National Judicial College and returning to law school teaching, I have continued to teach judges, particularly on issues of judicial ethics, both in the United States and overseas.

6. In addition, I have provided remedial ethics trainings for judges who were subject to disciplinary orders from state judicial conduct commissions requiring them to receive such training. Moreover, I have been qualified in a court of law to testify as an expert witness on constitutional law, legal ethics, judicial ethics, and judicial conduct commissions. I have also served as an expert consultant to individual judges on judicial ethics matters, on occasion to lawyers in connection with the filing of allegations of judicial misconduct to judicial conduct commissions in their respective States, and to certain States on issues relating to their judicial conduct commissions.
7. In 2022, I was also appointed by former Nevada Chief Justice Paraguirre to serve as an advisor to a special commission created by the Nevada Supreme Court, at the behest of the legislature, to review the judicial disciplinary process in Nevada, study the rules governing judicial discipline, and update (as and if necessary) the NEVADA CODE OF JUDICIAL CONDUCT, *available at* www.lasc.org/Court_Rules?p=CJC [hereinafter referred to as the “CJC”], which, like most such codes in the several states, is largely modeled on the provisions of the American Bar Association’s MODEL CODE OF JUDICIAL CONDUCT [hereinafter referred to as the “Model Code”].
8. As an outgrowth of my work at NCSC, I was invited by former Colorado Chief Justice Rebecca Kourlis to serve as a delegate to a special convening of judicial ethics experts, under the aegis of the Institute for the Advancement of the American Legal System, to consider best practices and propose guidelines to support, improve, and facilitate the functioning of state judicial conduct commissions across the country. I have also served as a member of the American Bar Association (ABA) Standing Committee on Ethics and

Professional Responsibility, as Chair of the Professional Responsibility Committee of the ABA Business Law Section, and as the Executive Editor for Ethics and Legal Opinions of BUSINESS LAW TODAY. Prior to that, I was an academic advisor to two other ABA standing committees: the Standing Committee on Judicial Independence and the Standing Committee on Federal Judicial Improvements; with regard to the former, I served as the Reporter for the Standing Committee's Judicial Disqualification Project, which culminated in a 2010 report and recommendation to the ABA House of Delegates. I was also the principal author of two *amicus curiae* briefs filed by the ABA (one at the certiorari stage, the other at the merits stage) in *Caperton v. Massey Coal Co.*, 556 U.S. 868 (2009) (dealing with judicial disqualification from cases in which a litigant has made substantial contributions to a judge's election campaign).

Documents Reviewed

9. I have no personal knowledge with respect to any of the factual issues in this case. All of the factual information that forms the basis for the opinions expressed herein was obtained from documents provided to me by Respondent's counsel, from my years of experience in dealing with judicial ethics and judicial conduct commissions in multiple U.S. jurisdictions (including Nevada), and from the official website of the Commission. With respect to documents relating to this case, when preparing this statement I have reviewed (in no particular order) copies of the following [hereinafter sometimes referred to, collectively, the "Documents"]:
 - A. The Charges;
 - B. Respondent's Motion to Dismiss (dated May 15, 2026);
 - C. Commission's Opposition to the Motion to Dismiss (dated May 26, 2026);
 - D. Respondent's Reply to the Opposition to the Motion to Dismiss (dated June 2, 2026);
 - E. Respondent's Verified Answer to the Statement of Charges (dated May 15, 2026);

- F. First Amended Statement of Charges (dated August 7, 2026) [hereinafter referred to as the “Amended Charges”];
- G. Respondent’s Verified Answer to the First Amended Statement of Charges (filed August 28, 2026);
- H. Order Denying Motion to Dismiss and Granting Leave to Amend the Formal Statement of Charges (dated July 31, 2026);
- I. Verified Statement of Complaint, Nevada Commission on Judicial Discipline (filed on Commission form by Executive Director Paul C. Deyhle) (dated May 2, 2025);
- J. The federal indictment in *United States v. Fiore*, Case 2:24-cr-00155-RFB-DJA (D. Nev., filed July 16, 2024) [hereinafter referred to as the “Indictment”];
- K. Certified copy of Order Suspending Fiore from the Exercise of Judicial Office with Salary, Case No. 89037 (Nevada Commission on Judicial Discipline, July 24, 2024);
- L. Commission Order (1) Rescinding Respondent’s Suspension from the Exercise of Judicial Office Without Salary Pursuant to NRS 1.4675(2)(b); (2) Suspending Respondent from the Exercise of Judicial Office With Salary Pursuant to NRS 1.4675(4) (filed May 19, 2025) [hereinafter referred to as the “Rescission Order”];
- M. *In the Matter of the Honorable Michele Fiore*, Nos. 89037, 90650, 90810, Order Dismissing Appeal, Denying Petition, and Affirming Interim Suspension (Nev. Sup. Ct., April 10, 2026) [hereinafter referred to as the “*Fiore Interim Ruling*”];
- N. Procedural Rules of the Nevada Commission on Judicial Discipline (any such rule cited herein by number preceded by “Commission Rule”); and
- O. For informational purposes, certain miscellaneous published press accounts, where available online, of the criminal trial based on the Indictment.

In addition, I have reviewed pertinent provisions of the Nevada Constitution (*e.g.*, NEV. CONST. art. VI, § 21, establishing the Commission); pertinent provisions of the Nevada Revised Statutes (*e.g.*, NEV. REV. STAT. §§ 1.425 – 1.4695); and the provisions of the CJC, both on its own and, where pertinent, in comparison with the current (as of the date hereof) version of the Model Code.

Content of this Expert Statement

10. The opinions expressed herein are necessarily based on the accuracy and completeness of the facts that have been made available to me. Those facts are derived from the documents I have reviewed (identified above), which include certain press accounts relating to the Indictment and the trial based on the Indictment. To the extent that any facts are materially different from what is stated herein or are materially incomplete, the conclusions I have drawn from them may be subject to change. In addition, this statement contains *only* my opinions as a nationally recognized expert on judicial ethics and related matters; nothing contained herein constitutes, or should be misinterpreted as constituting, the rendering of legal advice on any subject relating to the laws of the State of Nevada.

Pertinent Facts

11. In 2014, two Las Vegas police officers, Alyn Beck and Igor Soldo, were killed in the line of duty. In 2015, prior to Fiore's election as a Las Vegas Councilwoman, the City Council approved a measure, sponsored by Councilman Steven Ross of Ward 6, to name a new park in honor of the deceased Officer Beck.
12. In 2017, when Councilman Ross retired, Fiore was elected to replace him. She served as an elected Councilwoman for Ward 6 in the City of Las Vegas for two terms until 2022.
13. According to press accounts, in December 2022 Fiore was unanimously selected by Nye County commissioners to fill a vacancy for Justice of the Peace in Pahrump Justice Court through 2025. The vacancy was occasioned

- by the death of the former holder of that office, Hon. Kent Jaspersen. Fiore was sworn in as Justice of the Peace on or about December 21, 2022.
14. Sometime thereafter, for reasons, and based on information from sources, of which I am unaware, the U.S. Attorney's office for the District of Nevada investigated some of Fiore's conduct during the period when she was serving as a Las Vegas City Councilwoman. On July 16, 2024, Fiore was indicted for wire fraud and conspiracy to commit wire fraud.
 15. The Indictment charged that between July 2019 and January 2020, Fiore raised approximately \$80,000 in donations toward erecting a statue in honor of Officer Beck. The Indictment charged Fiore with misappropriating the funds for personal use.¹ According to the Indictment, all of the conduct giving rise to the Indictment took place while Fiore was a City Councilwoman and before she was ever elected to judicial office or ever served as a judge in Nevada. The Indictment itself, however, was returned while Fiore was serving as Justice of the Peace in Nye County.
 16. Following the Indictment, on July 18, 2024, the Commission issued a Notice of Intent to Suspend Fiore with Salary (the "Notice"). The Notice contains no charges filed against Fiore by the Commission but was issued pursuant to NEV. REV. STAT. § 1.4675(1)(a). Fiore's trial counsel notified the Commission that, pursuant to NEV. REV. STAT. § 1.4675(5), Fiore waived her statutory right to a public hearing on the Notice.
 17. Press accounts reported that, on or about October 3, 2024, Fiore was found guilty by a jury of the offenses charged. Following the verdict, the Commission modified its suspension of Fiore to be without pay.
 18. On April 23, 2025, prior to sentencing or any judgment of conviction being entered, Fiore received an unconditional pardon from the President of the United States. The following month, on May 19, 2025, the Commission determined that Fiore's conviction-related suspension without pay was no

¹ In that connection, the peculiar allegation in the Charges that "the specific purpose of the donations was abrogated" – Charges at 2, ¶¶ (B)-(C) – is at best meaningless and at worst disingenuous. The same allegation is reiterated in the Amended Charges, at 2, ¶¶ (B)-(C). The verb "abrogate" means "to abolish by formal or official means; annul by an authoritative act"; or, alternatively, "to put aside, put an end to." Nothing of the kind took place. The creation of statue, which was the purpose for the donations, was not abrogated but was actually completed. The Charges and the Amended Charges, in fact, acknowledge this, in each case at 2, ¶ (A).

longer warranted, because the “state cannot punish the pardoned offender for the conviction that was pardoned,” Rescission Order at 3-4 (citing *Bjerkman v. United States*, 529 F.2d 125, 129 (7th Cir. 1975)), and once again modified the suspension to be with pay. The Commission declined to lift the suspension, however, finding that Fiore’s return to judicial office would pose “a substantial threat of serious harm to the public and to the administration of justice.” The Commission’s order noted vaguely that the Commission had “received additional complaints against Fiore” since the pardon but did not identify who had filed the complaints, how many such complaints had been filed, or what they alleged.

19. Fiore sought review of the Commission’s actions in the Nevada Supreme Court. On April 10, 2026, that Court denied review. In a brief opinion, the Fiore Interim Ruling observed, “There has been no filing of a formal statement of charges by the Commission, no adjudication of any formal charges, and no discipline imposed regarding any formal charges. Moreover, the interim suspension order clearly explains that the Commission based the suspension on an allegation that Judge Fiore has engaged in misconduct during her time as a judicial officer.”
20. The Court also declined to issue a writ of mandamus or a writ of prohibition regarding a complaint of judicial misconduct, but the Court found it premature to “seek[] to foreclose the Commission from investigating her and potentially considering formal disciplinary proceedings. Because the Commission has not yet imposed any discipline or even filed a formal statement of charges to initiate formal disciplinary proceedings, we decline to entertain the petition . . . as it is premature. We also decline to entertain the petition for a writ of prohibition because, at this early point in the process, it remains to be seen whether formal proceedings will be brought. . . .”
21. Within two weeks of that decision, however, it became clear that the Commission had been planning to bring formal proceedings and to file formal charges. Thus, on April 24, 2026, just over a year after the presidential pardon, the Commission filed the Charges.

Jurisdictional Defects in the Charges

22. At one time, the Commission was not permitted to initiate judicial misconduct complaints *sua sponte* but could only proceed on the basis of a sworn, written complaint filed by an actual complainant (which could not include the Commission's own hired lawyer). *See In re Petition for a Writ of Prohibition*, 111 Nev. 70, 94, 893 P.2d 866, 880 (Nev. 1995). The underlying policy was that, commensurate with due process, judges are entitled to fair notice of what may give rise to a judicial conduct proceeding and ought not to be subjected to disciplinary proceedings predicated solely upon the vagaries of notions of judicial propriety harbored by individuals appointed from time to time to the shifting membership of the Commission. Since then, while the rules have changed to allow the Commission to initiate a complaint of misconduct *sua sponte*, the fundamental requirements of due process haven't changed, and "an ad hoc approach to judicial discipline, however well-intentioned," 111 Nev. at 142, 893 P.2d at 911. is impermissible, and the Commission is not free to disregard the language of the Nevada Constitution and duly enacted statutes.
23. Statutory and CJC definitions of the term "judge" – all of which are committed by the Nevada Constitution to bodies other than the Commission – along with the language of substantive provisions of the CJC on which the Commission relies in the Charges, demonstrate that the Commission lacks jurisdiction over Fiore.
24. Article VI, Section 21 of the Nevada Constitution, in authorizing and establishing both the Commission and the CJC, very clearly delineates the responsibilities regarding ethical standards and discipline for judicial officers in the State of Nevada. While the Constitution tasks the Nevada Supreme Court with the responsibility for adopting the CJC, NEVADA CONST. art. VI, § 21(6), the duty of establishing the grounds for censure and other disciplinary action that the Commission may impose is unambiguously vouchsafed to the Nevada Legislature. *Id.* § 21(5)(b).
25. Article VI, § 21(8) goes on to provide, "No justice or judge may by virtue of this Section [*i.e.*, NEVADA CONST. art. VI, § 21 as a whole, which is the source of all the creation of the Commission and of all authority that may be

exercised by the Commission, pursuant to action by the Legislature] be (a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance. . . .” Nevada recognizes the canon of construction “*noscitur a sociis*,” which holds that words in a legal document “should be known by the company it keeps.” The Nevada Supreme Court had frequently endorsed this principle, because “it is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another_ in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent.” *S. Nev. Homebuilders Ass’n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (internal quotation marks omitted). *See Sylver v. Regents Bank, N.A.*, 129 Nev. 282, 287, 300 P.3d 718, 722 (2013) (using the *noscitur a sociis* canon to interpret the term “undue means” based on the other words listed with it – to wit: “corruption” and “fraud” – in NEV. REV. STAT. § 38.241 as requiring proof of intentional misconduct); *AZG Ltd. P’ship v. Dickinson Wright PLLC*, 574 P.3d 929 (Nev. 2025) (interpreting the words “under your control” in NEV. REV. STAT. § 31.290 by reference to the words that precede it – “in your possession” and “in your charge” – to hold that a client’s *chose in action* is not under the attorney’s control).

26. The same principle has, for well over 100 years, been applied by State high courts to interpreting the language of State constitutions. *See, e.g., Koike v. Board of Water Supply*, 44 Haw. 100, 109-110, 352 P.2d 835, 841 (1960); *State ex rel. Crutcher v. Koln*, 332 Mo. 1229, 1239-1240, 61 S.W.2d 750, 754-755 (1933); *Ball v. Paquin*, 140 N.C. 83, 95, 52 S.E. 410, 414 (1905) *People ex rel. Kocourek v. Chicago*, 193 Ill. 507, 510, 62 N.E. 179, 180 (1901); *In re Burns*, 155 N.Y. 23, 29-30, 49 N.E. 246, 248 (1898); *Dike v. State*, 38 Minn. 367, 368, 38 N.W. 95, 96 (1888); *See also* THEODORE SEDGWICK & JOHN NORTON POMEROY, STAT. AND CONST. LAW 220 (1874).
27. Applying the *noscitur a sociis* canon of construction to the limitation on removal of a judge set forth in NEVADA CONST. art. VI, § 21(8), the term “willful misconduct” must be interpreted in accordance with its companions, “willful or persistent failure to perform the duties of his office” and “habitual intemperance.” The latter two can only be understood as describing conduct

of a judge while in office. Therefore, known by these companions, the term “willful misconduct” must likewise be interpreted as referring to willful misconduct during service as a judge and not any misconduct that antedates judicial office.

28. Turning now to the authority granted in NEVADA CONST. art. VI, § 21(5)(b), the Nevada Legislature has, in furtherance of that constitutional provision, enacted statutes in the Nevada Revised Code that prescribe the powers and duties of the Commission, created substantive provisions relating to judges and judicial conduct that govern and circumscribe the authority and discretion of the Commission, and – just as importantly -- defined key terms.
29. The word “Judge” is defined as including the following (and only the following):
 1. A justice of the Supreme Court;
 2. A judge of the Court of Appeals;
 3. A judge of the district court;
 4. A judge of the municipal court;
 5. A justice of the peace;
 6. Any other officer of the Judicial Branch of this State, whether or not the officer is an attorney, *who presides over judicial proceedings*, including, but not limited to, a magistrate, court commissioner, special master or referee; and
 7. Any person who *formerly served* in any of the positions described in subsections 1 to 6, inclusive, if the conduct at issue for purposes of NRS 1.425 to 1.4695, inclusive, occurred while the person was serving in such a position.

NEV. REV. STAT. § 1.428 (emphasis supplied). This provision consists of seven numbered paragraphs as the components of the defined term “judge.” Construed as a whole, the statute manifestly includes only people who (in paragraphs (1) through (6) are currently serving in one of the listed categories (paragraph (6), for example, uses the present tense in describing “[a]ny other officer . . . who presides over judicial proceedings) or, in the case of paragraph (7), “formerly served” (using the past tense) in any of the capacities covered by paragraphs (1) through (6). Conspicuously absent is any use of the future tense or any indication that someone who subsequently becomes

included in one of the seven enumerated categories qualifies as a “judge” for purposes of NEV. REV. STAT. §§ 1.425 to 1.4695, inclusive.

30. Confirmation that the Commission’s jurisdiction is intended to cover alleged misconduct during the period when the individual in question is already a judge is found in NEV. REV. STAT. § 1.440(2), which provides that, if the judge is a lawyer licensed to practice in Nevada, it is the State Bar of Nevada – not the Commission – that has “jurisdiction over disciplinary action for acts or omissions that occurred *before* the date on which the judge entered upon the duties of office,” *id.* § 1.440(2)(a) (emphasis supplied), while the Commission has jurisdiction “over the public censure, removal, involuntary retirement and other discipline imposed as a result of an act or omission that occurs *on and after* the date on which the judge enters upon the duties of office.” *Id.* § 1.440(2)(b) (emphasis supplied).²
31. The Commission, in its order dismissing Fiore’s motion to dismiss, seeks to evade the plain language of § 1.440(2) by reference not to a Nevada decision but a decision of the Nebraska Supreme Court, *State ex rel. Nebraska State Bar Ass’n v. Krepela*, 259 Neb. 395, 405 (2000), which is cited for the proposition that the Nebraska Commission on Judicial Qualifications could discipline a sitting judge for conduct which occurred five years before the judge took office). *See* Order Denying Motion to Dismiss at 10. That case, involving the Commission’s Nebraska counterpart, is completely inapposite, because it is offered to promote an obvious fallacy, namely that because a foreign (in the corporate law sense) counterpart may discipline a judge for conduct antedating judicial service, the Commission can too. But Nebraska, unlike Nevada, has no statute limiting the jurisdiction of the counterpart in the way that § 1.440(2) limits the Commission’s jurisdiction. Thus *Krepela* does not even constitute persuasive authority, much less binding authority.

² Fiore is not a lawyer, but even so, as a public official, she was bound by a separate code of ethics, the Ethics in Government Law, which comprises chapter 281A of the Nevada Revised Statutes and which applies to both state and local public officers and employees. *See* NEV. REV. STAT. §§ 281A.150 (defining “public employee”), 281A.160 (defining “public officer”). Thus, rather than the State Bar, it was the Nevada Commission on Ethics that had the authority to commence a proceeding against Fiore. That it did not do so – and, for that matter, that the competent prosecutorial authorities of State of Nevada did not bring any criminal charges against her – is rather a striking indication that the allegations of misconduct may not be as serious or as clear-cut as the Charges would have one believe.

32. The Nevada statutes are not the only place where the term “judge” is defined for present purposes. The other place is the CJC itself. The CJC’s definition (which was, of course, adopted by the Nevada Supreme Court) of the term “judge”³ is *in pari materia* with the legislature’s definition. The language provides, in pertinent part, “A judge, within the meaning of this Code, is anyone who *is authorized* to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, or referee.” CJC, *Application*, § I, ¶ (2). (Emphasis supplied).⁴ Once again, the use of the present tense (“is authorized”) pretermits any possibility of using the term “judge” to refer to someone who is not yet authorized to perform judicial functions.
33. This approach is underscored by the accompanying commentary to the CJC, which explains that the CJC’s Rules “have been formulated to address the *ethical obligations of any person who serves a judicial function* and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.” CJC, *Application* § I, cmt [1] (emphasis supplied). From this it is clear that conduct by someone who is not serving a judicial function is not addressed by the Rules.
34. The commentary goes on to explain that “determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, *depends upon the facts of the particular judicial service.*” *Id.* cmt. [2] (emphasis supplied). If there is no judicial service, particular or otherwise, relating to the operative facts, then no such Rules apply.
35. Consistent with the logical, temporal import of these provisions is the “Time for Compliance” language in Part V, which states, “A person to whom this Code becomes applicable shall comply immediately with its provisions” CJC, *Application*, § V. Prior to the time the CJC “becomes applicable” – *i.e.*, prior to the time an individual becomes a judicial officer subject to the CJC –

³ Unlike most other defined terms in the CJC, the definition of “judge” is found not in the *Terminology* section but in the *Application* section.

⁴ The definitional provision excludes people serving as administrative law judges or hearing officers of state agencies, who otherwise would meet the functional language of the definition. Note however, that administrative law judges and hearing officers of federal agencies are not excluded and thus would be “judges” for purposes of the CJC.

no such compliance is called for or expected. To the extent that the Charges are inconsistent with that common-sense principle, they are unfounded, arbitrary and capricious, and not in accordance with law; and any sanction predicated on such Charges would be a denial of due process of law as guaranteed by the Fourteenth Amendment, U.S. CONST. amend. XIV, and NEV. CONST. art. I, § 8, ¶ 2.

36. In a similar vein, the CJC explicates the limits of its coverage at the outset: “The Code of Judicial Conduct establishes standards for the ethical conduct of *judges and judicial candidates*.” CJC, *Preamble*, ¶ (3) (emphasis supplied). Both terms in the emphasized language are terms of art. Thus the Preamble makes clear that the CJC applies only to the conduct of “judges” as that term is defined, and to “judicial candidates” – another defined term which “means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election to office.” CJC, *Terminology*. In short, the CJC does not apply to the conduct of any person (e.g., an attorney licensed to practice in the State) who might – someday -- become a judge, but only to people who either actually are serving judges or who have already publicly announced their candidacy for judicial office. Fiore fit neither category when the misconduct for which she was prosecuted took place.
37. The limitation on the applicability of the CJC is further underscored in the continuation of paragraph (3) of the Preamble which provides, “The Code is intended . . . to provide guidance and assist *judges* in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating *their* conduct through disciplinary agencies. *Id.* (emphasis supplied).
38. The Charges assert violations of Rules 1.1 and 1.2 of the CJC. Both of those Rules fall under Canon 1 of the CJC, which provides, “A *judge* shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” (Emphasis supplied). Once again, we are dealing with a defined term in the CJC. In order

to violate Canon 1, the conduct or misconduct at issue must be that of a “judge” within the meaning of the CJC.

39. The Commission’s own rules are not to the contrary. Commission Rule 10.2 allows for the filing of a complaint of judicial misconduct by the Commission’s own Executive Director. (According to the Fiore Interim Ruling, the Executive Director did just that). Yet the Rule only permits such a filing “if the Commission receives information in any form or from any source that alleges objectively verifiable evidence from which a reasonable inference can be drawn that a *judge* [not someone not yet a judge] committed *judicial* misconduct [not some other kind of misconduct].” (Emphasis and editorial content supplied).
40. Although Fiore is not charged with violations of Rules under other Canons of the CJC, it is important, for purposes of interpreting of the CJC as a cohesive and organic document, to note that all of the Canons are “of a piece” in that each of them specifically refers to the defined term “judge” and to conduct that is unambiguously by a “judge” *qua* judge.

A. Thus, Canon 2 provides, “A *judge* shall perform the duties of judicial office impartially, competently, and diligently.” (Emphasis supplied) The language of the CJC is, clearly and sensibly, directed at those individuals – and only those individuals – who are empowered to perform the duties of judicial office.

B. Canon 3 provides, “A *judge* shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” (Emphasis supplied). Nothing could be clearer than that this language, like other CJC provisions, unambiguously deals with extrajudicial conduct by a judge and only by a judge, since it would be absurd to regulate “extrajudicial” conduct with respect to someone who is not empowered to engage in judicial conduct.

C. Canon 4 provides, “A *judge* or *candidate for judicial office* shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.” (Emphasis supplied). Both italicized terms, as noted previously, are specifically defined in the CJC, and, again, it would be nonsensical (and, indeed, unconstitutional) to seek to preclude someone who is

neither of those things from engaging in political activity or political campaign activity that is inconsistent with judicial independence, integrity, or impartiality.

41. In short, nothing in the language of Article VI, Section 21 of the Nevada Constitution, nothing in the Nevada statutes duly enacted pursuant to the authority conferred in Nevada Const. art. VI, § 21, and nothing in the actual language of the CJC (including, conspicuously, key terms sedulously defined therein) provides any grant of authority to the Commission to conduct a proceeding based entirely on matters that took place before a judge assumed judicial office. Nor can one find any constitutional authority conferred upon this Commission to impose sanctions with respect to conduct that occurred prior to assumption of judicial office.
42. The federal courts have likewise focused on the statutory definition of “judge”⁵ under applicable federal statutes and have consistently held⁶ that the judiciary has no jurisdiction under those statutes to consider conduct that antedates a judge’s ascension to the bench. Indeed, the Ninth Circuit (in which Nevada is situated) has given a particular strict construction to the requirement that a federal judge only be subject to a misconduct investigation for conduct while on the federal bench. See, e.g., *In re Complaint of Judicial*

⁵ The Judicial Conduct and Disability Act addresses “complaints” and defines the term “judge”: 28 U.S.C. § 351(a) provides, “Any person alleging that *a judge* has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.” The federal statute defines “the term ‘judge’” for its purposes as “a circuit judge, district judge, bankruptcy judge, or magistrate judge.” *Id.* § 351(d)(1). One who does not (or has not yet) been appointed to serve in any of these roles cannot be the subject of a complaint under § 351(a). See *In re Complaint Under the Judicial Conduct and Disability Act*, Nos. 10-16-90009 (DC-16-90009) & 10-16-90017 (10th Cir. Jud. Council 2017) (complaints filed against former Chief Judge Richard W. Roberts of the U.S. District Court for the District of Columbia based on allegations relating to a time, 17 years prior to his appointment to the bench, when he served as a federal prosecutor in Utah).

⁶ The Code of Conduct for United States Judges is drawn from the same A.B.A. Code of Judicial Conduct that forms the template for the CJC. Unlike the States, however, the federal judiciary has no conduct commissions. Instead, complaints of judicial misconduct deemed worthy of investigation are referred to the circuit council for a circuit other than the one in which the respondent judge sits.

Misconduct, Nos. 09 90269 & 10-90043, Order at 1 (9th Cir. 2010) (Kozinski, C.J.) (dismissing misconduct complaint because conduct occurring before appointment as federal judge is not cognizable under the statute); *In re Complaint of Judicial Misconduct*, 570 F.3d 1144, 1144 (9th Cir. 2009) (explaining that “the plain language of the Judicial Conduct and Disability Act limits its scope to conduct by federal judicial officers” and dismissing conduct that antedated appointment to federal bench, even though judge in question had been a state judge at the time); *In re Complaint of Judicial Misconduct*, 366 F.3d 963, 964 (9th Cir. 2004) (“intended to deal with misconduct relating to the judicial office or judicial conduct”); *In re Charge of Judicial Misconduct*, No. 89-80031, Order at 2 (9th Cir. 1989) (Goodwin, C.J.) (concluding judge’s pre-appointment conduct was “beyond the administrative jurisdiction of the chief judge and the circuit judicial council”). The other federal circuits are in accord. *See, e.g., In re Complaint of Judicial Misconduct*, No. 34, Order at 2, 4 (Fed. Cir. 1990) (Markey, C.J.) (dismissing allegations of pre-appointment misconduct, as the statute is concerned only with the conduct of judges); *In re Charge of Judicial Misconduct*, Nos. 10-90014 & 10-90015, Order at 3 (2d Cir. 2010) (Jacobs, C.J.) (dismissing complaint alleging pre-appointment conduct, which does not constitute cognizable judicial misconduct); *In re Complaints of Judicial Misconduct or Disability*, Nos. 04-35 & 05-16, Order at 8-9 (3d Cir. 2005) (Seirica, C.J.) (dismissing as not cognizable under the statute allegations that the judge made false statements during Senate confirmation hearings); *In re Complaint of Judicial Misconduct*, No. 06-6-351-02, Order at 1-2 (6th Cir. 2006) (Boggs, C.J.) (dismissing the misconduct complaint for lack of jurisdiction over conduct antedating appointment to the federal bench); *In re Complaint Against a Judicial Officer*, No. 07-7-352-47, Mem. at 1 (7th Cir. 2007) (Easterbrook, C.J.) (dismissing allegations based on a judge’s conduct when he was a teenager); *Memorandum of Reasons for Order of Dismissal of Complaint in Proceeding No. 92-10-372-10*, Order at 1 (10th Cir. 1992) (McKay, C.J.) (no jurisdiction over pre-appointment conduct).

43. In addition – and once again from the jurisdictional perspective – the Charges do not specify any particular sanction or indicate that any particular sanction is being sought. Based, however, on the fact that the Commission has

continued the pre-existing suspension of Fiore in place, it is reasonable to assume that a possible, indeed likely, sanction would be removal from the bench. If that is so, the Commission would be without power to impose such a sanction, which the Legislature has only authorized where a “judge” has “committed *willful misconduct*.” NEV. REV. STAT. § 1.4653(1)(a) (emphasis supplied).

- A. Here, once again, the misconduct for which Fiore was prosecuted was not committed while she was a judge and does not, therefore, constitute the predicate for removal under that statute.
- B. Nothing in the CJC addresses any putative obligation of restitution, and, in the absence of any allegation by the Commission that such an obligation exists under the terms of a Nevada statute or a court order, the failure to comply with such non-existent obligation cannot constitute a violation of “Law” (as that term is defined in the CJC) or otherwise constitute a violation of the CJC. In that regard, no judicial officer now or heretofore serving in the State of Nevada has been or would be on notice that failure to comply with a restitution obligation not established by law would constitute a violation of the CJC, which means that a sanction predicated on such an alleged failure of compliance would constitute a denial of due process of law under the Fourteenth Amendment to the U.S. Constitution. *See also* NEV. CONST. art. I, § 8, cl.2.
- C. Moreover, since the Charges do not (and cannot) establish that there was any judgment of conviction entered, any knowing or deliberate violation of one or more provisions of the CJC⁷, or any knowing or deliberate act or omission in the performance of judicial or administrative duties, then there was no “willful misconduct” as that term is defined in NEV. REV. STAT. § 1.4653(1)(b).

44. All in all, the Nevada Constitution’s creation of the Commission, the authorization to the legislative branch to provide statutory authorizations for

⁷ Even assuming, *arguendo*, that some court judgment against Fiore had established an obligation of repayment or restitution, financial obligations standing alone do not constitute a cognizable claim of misconduct under the CJC.

the conduct of the Commission's business, and the authorization to the highest court in the State to craft a code of judicial conduct, reflect a delicate balancing of separation of powers concerns that focus on the conduct of that subset of the population who serve as judicial officers. Anyone can file a complaint – a term that is liberally defined – of judicial misconduct with the Commission, even including the Executive Director of the Commission under prescribed circumstances, against a *judge*, and the term “judge” is itself a defined term that is used consistently throughout the statutes and the CJC. The Commission is given authority to investigate and where necessary prosecute complaints only if they allege that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the judiciary and the business of the courts (or – not implicated here, that a *judge* is unable to discharge all the duties of judicial office by reason of mental or physical disability). This regime thereby effectively excludes any complaint aimed at a judge's conduct before he or she became a judicial officer. That is perfectly consistent with the underlying policies arising from the separation of powers. Those who select a judge have the responsibility and the authority to ensure that all requisite qualifications are met, and, in states (like Nevada) where judges face some form of election, allegations of misconduct that antedate judicial service may legitimately be taken into account by the electorate. The system thus functions well (Fiore did, after all, lose her recent bid for judicial election) and does not contemplate – nor does it require – the granting of broader enforcement powers to a non-elected Commission that could lead to judicial misconduct proceedings based on youthful indiscretions (*e.g.*, shoplifting from a convenience store) or even adult misbehavior (*e.g.*, marital infidelity, failure to make timely child support payments, or driving under the influence) that have nothing to do with the effective and expeditious administration of justice.

Legal Insufficiency of the Charges and the Amended Charges

45. The term “formal statement of charges” is defined as “a document setting forth the specific acts of *judicial* misconduct or incapacity, including any amendment thereto” (emphasis added). NEV. REV. STAT. § 1.4267. As a

general proposition, proceedings before the Commission are initiated, pursuant to Commission Rule 14, by a formal statement of charges, such as the Charges in this case. However, neither the Charges nor the Amended Charges set forth any specific facts of *judicial* misconduct. “Judicial misconduct” can only be understood to refer to misconduct by someone while he or she is a judicial officer. This common sense, plain-meaning construction of the term is confirmed by the entirety of the statutory phrase, “judicial misconduct *or incapacity*.” The only reasonable concern with “incapacity” is a judge’s inability (because of age or physical or mental impairment) to perform the judicial function. The legislature left no room for argument on that point by scrupulously defining the word “incapacitated” to mean “unable to perform the duties of office because of advanced age or mental or physical disability.” NEV. REV. STAT. § 1.4267. Thus, instead of alleging “*judicial* misconduct,” the Charges and the Amended Charges set forth allegations concerning putative misconduct that was *pre-judicial* (in both senses of that word).

46. The Nevada Rules of Civil Procedure generally apply to proceedings before the Commission, absent specification of a different procedure by statute or in the Commission Rules. NEV. REV. STAT. § 1.462(2). These procedures include dismissal under NEV. R. CIV. P. 12(b)(5) for failure to state a claim upon which relief can be granted.
47. There is no indication that the complaint giving rise to the Charges complies with the requirements of Commission Rule 10, which requires allegation of “specific facts which, if true, establish grounds for discipline” The rule goes on to define “specific facts” as including, without limitation, “the date, time and location of the alleged judicial misconduct” Nothing near that level of specificity is reflected in the Charges. Instead, the Charges are largely a farrago of vague and at times incoherent allegations that give the appearance of constituting a desperate but futile effort to “shoehorn” a cursory description of facts that gave rise to the Indictment into one or more cognizable claims of judicial misconduct. Moreover, neither the Charges nor the Amended Charges specifies the relief requested.
48. Following Fiore’s motion to dismiss (and notwithstanding that the Commission denied the motion), the Commission, in apparent recognition of

the weakness of its legal theory and its vulnerabilities under the Nevada statutes and rules of civil procedure, filed the Amended Charges in a desperate attempt to “beef up” an impression of ongoing misconduct after Fiore had assumed judicial office. Thus, the Amended Charges make explicit reference to (i) “criminal embezzlement,” as defined in NEV. REV. STAT. § 205.300; (ii) “civil conversion” as described under Nevada case law; and (iii) “unjust enrichment,” also as described under Nevada case law. The intellectual bankruptcy of these belated allegations are manifest, in that (A) Fiore was never even charged by competent authorities⁸ with – much less convicted of – “criminal embezzlement” or any other criminal offense under the laws of the State of Nevada; (B) no one, including without limitation any of the individuals who donated funds as charged in the Indictment, has ever filed a civil complaint or otherwise alleged that Fiore committed any civil conversion, and no Nevada court has ever entered a judgment of conversion against her; and (C) no one, including (once again) any of the individual donors, has ever filed a civil complaint in contract or quasi-contract or otherwise alleged (or sought a remedy against Fiore for) unjust enrichment, and no Nevada court has ever entered a judgment to that effect. The Commission could just as well, and equally arbitrarily and ridiculously, accuse Fiore of all kind of misbehavior, ranging from patent infringement to drunk and disorderly conduct to failing to willfully taking a dog in public without a leash. Without, however, a final judgment from a court of competent jurisdiction of misconduct that would give rise to the conclusion that Fiore violated CJC Rule 1.1, all the new allegations in the Amended Charges are just a pernicious form of wishful thinking on the part of the Commission and its hired counsel – pernicious in that they deprive judicial

⁸ Obviously, the Commission lacks legal or constitutional competence to charge anyone with a criminal offense. Furthermore, the Commission has no authority arbitrarily to pick and choose uncharged criminal offenses for which a judge has never been tried or convicted and simply allege them *ipse dixit* in order to bootstrap onto its allegations of misconduct postulated, theoretical, or imagined criminal misconduct in a misguided and thoroughly inappropriate attempt to create out of whole cloth a basis for a claim that, for example, the judge failed to comply with the “Law” in violation of CJC Rule 1.1. Nothing in our system of constitutional jurisprudence confers upon the Commission the authority of the Star Chamber so as to punish individuals for any action that the Commission may on a certain day decide is unlawful.

- officers of any basis for knowing what constitutes judicial misconduct and blatantly violate established due process norms.
49. The asserted violations of the CJC in the Charges, and again in the Amended Charges, are (i) Rule 1.1, which provides, “A judge shall comply with the law, including the Code of Judicial Conduct”; and (ii) Rule 1.2, which provides, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”
50. Rule 1.1 is inapposite, since the Commission can point to no facts (and has alleged none in the Charges) suggesting that Fiore, while a judge, failed to comply with the “law” or the CJC. The term “law” for this purpose is a term of art, defined as encompassing “court rules as well as statutes, constitutional provisions, and decisional law.” CJC, *Terminology*. The Charges sought to finesse this rather obvious shortcoming by positing that Fiore owed some vague duty “to notify the donors that the purpose of their donations was abrogated” (which, as explained above, is simply not accurate), or “to request instructions as to alternative use of the donations” or “to return the donations.” No such duty exists under “law.” As a result of the presidential pardon, no criminal sentence and no court judgment was ever imposed, and therefore Fiore was under no court order or instruction to make restitution of any kind, much less to come up with some “alternative use of the donations.” The Charges do not even make a pretense of substantiating the existence of any such duty under “law,” and an ill-conceived and ill-defined *ipse dixit* conjured out of whole cloth by a “special counsel”⁹ hired by the Commission certainly does not satisfy the CJC definition of “law.” Indeed, even if, contrary to fact, there had been a court order to Fiore to make restitution, the effect of the full presidential pardon would be to absolve her of any ongoing obligation to make restitution payments. *See, e.g., Fordham v. Georgia Dept. of Admin. Svces*, 2023 WL 5747709 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 808 (2024).

⁹ A “special counsel” is an attorney who is not an employee of the Commission but is essentially a contract lawyer who is designated by the Commission to perform certain statutorily identified tasks, including, for present purposes, filing and prosecuting a formal statement of charges. *See* NEV. REV. STAT. § 1.4295(2).

51. Rule 1.2 is likewise inapposite, since the Commission can point to no facts (and has alleged none in the Charges) suggesting that Fiore, while a judge, failed to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary or failed, while a judge, to avoid impropriety and the appearance of impropriety. In the first place, it is clear that there was no cognizable act of misconduct under the CJC, because no misconduct took place at any time after Fiore became a “judge.” The Charges once again seek to finesse that crucial requirement by implying some continuing duty on Fiore’s part where none exists. There was no continuing course of conduct on Fiore’s part that extended into the term of her judicial service once it commenced, and certainly no pattern of recurring judicial misconduct.
52. The effect of the presidential pardon, according to the U.S. Supreme Court, is that “in the eye of the law the offender is as innocent as if he had never committed the offense.” *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1866); *United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1869). The U.S. Supreme Court’s articulation of the effect of the pardon power of the President of the United States under U.S. CONST. art. II, § 2 is the law of the land, immutable, and no wishful or fanciful thinking by the Commission can change that result. The Commission seeks to evade the ramifications of the presidential pardon in its order denying Fiore’s motion to dismiss by blithely relying on *In re Sang Man Shin*, 125 Nev. 100, 110, 206 P.3d 91, 98 (2009) for the proposition that, under Nevada law, the effect of a pardon does not erase the historical fact of a conviction. Such an argument has no force where there is no conviction. Here, all that happened in the federal criminal trial was a jury verdict, but there never was any actual conviction: The full and complete presidential pardon was issued prior to federal court’s entering a judgment of conviction and passing any sentence. *Sang Man Shin*, which at best had only tangential relevance, is therefore entirely inapposite, and the Commission’s reliance on it in the order denying the motion to dismiss ignores the facts of this matter and therefore constitutes error.
53. The “appearance of impropriety” standard, like the other standards, refers to conduct while serving as a judge, and applies broadly to the judge’s behavior not just inside the courthouse but outside the courthouse – in modern parlance

“24/7, 365 days a year.” The history of this standard demonstrates, beyond cavil, that it has no applicability to conduct that antedates judicial office.

- A. The 1924 Canons of Judicial Ethics were hortatory, not mandatory, and exhorted *judges* (not people who were not yet judges) to avoid conduct that could create appearance problems and thereby undermine public confidence in the courts. Canon 4 declared that a *judge’s* official conduct should be “free from ... the appearance of impropriety.” Eleven other canons cautioned *judges* to avoid conduct that could create “suspicion” of misbehavior or “misconceptions” of the judicial role that might “appear” or “seem” to interfere with judicial duties, or that could “create the impression” of bias. Thus, for example, Canon 19 opined that in order to “avoid[] the suspicion of arbitrary conclusion [and] promote[] confidence in his judicial integrity,” judges should explain the basis for their rulings. Canon 25 urged a judge to avoid creating “any reasonable suspicion that he is using the power or prestige of his office” to advance his private interests. Canon 26 counseled the judge against maintaining relationships that would “arouse the suspicion that such relations warp or bias his judgment.” Canon 28 warned judges against engaging in political activities that could give rise to the “suspicion of being warped by political bias.” Canon 30 advised each candidate for judicial office to do nothing “to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.” Canon 33 encouraged each judge to avoid conduct that could “awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.” Canon 34 provided that “in every particular [a judge’s] conduct should be above reproach.” ABA CANONS OF JUDICIAL ETHICS (1924). Plainly, these Canons referred only to conduct while serving as a judicial officer.
- B. After the tumultuous 1960s, which saw frequent calls for the impeachment of Chief Justice Earl Warren, the forced resignation of Justice Fortas, pressure for a less hortatory and more

enforceable set of judicial ethics principles led to adoption of the 1972 ABA Code of Judicial Conduct. This coincided with the initial creation and adoption by the states of judicial conduct commissions. However, confusion occasioned by the recurrent use of the term “should” (as opposed to “shall”) in Code provisions, including those calling for judges to avoid the appearance of impropriety, led to 1990 amendments and the Model Code, which substituted “shall” for “should” whenever mandatory standards of conduct were contemplated. This included Canon 2, which declared that “A *judge* shall avoid impropriety and the appearance of impropriety in all of *the judge’s* activities.” (Emphasis added). The studied, deliberate repetition of the defined term “judge” demonstrates that the ukase against impropriety and its appearance applies only to currently serving judicial officers.

- C. Criticism of the “appearance of impropriety” as vague and unenforceable led to calls for its deletion from the Model Code. When the ABA revisited the Model Code after the turn of the century, its Commission on the 21st Century Judiciary, which had studied recurring anti-court sentiment and its effect on state judiciaries, emphasized the importance of restoring public confidence in courts under attack, with the observation that “If adequately publicized ... codes of conduct can reassure the public that there are established ethical constraints on judicial conduct.”¹⁰ Ultimately, the 2007 revision of the Model Code relocated the “appearance of impropriety” language to Canon 1 supplemented it with the separate language of Model Rule 1.2 that “a judge shall avoid impropriety and the appearance of impropriety in all *the judge’s* activities.” (Emphasis added). As before, the deliberate redundancy of the language is retained and makes clear that the Code is addressing only the conduct, both on and off the bench, of individuals who are *currently* serving as judicial officers or, in rare

¹⁰ ABA, JUSTICE IN JEOPARDY: REPORT OF THE COMMISSION ON THE 21ST CENTURY JUDICIARY 57 (2003).

cases, individuals who are former judges,¹¹ but there are no cases applying this standard to conduct of an individual at a time before he or she became a judge.

D. Nevada has followed the ABA's lead, and the CJC "appearance of impropriety" language is identical and identically situated in Canon 1.

54. The focuses of the actual language of CJC Rule 1.2 are on judicial "independence," "integrity," and "impartiality." Each of these is a term of art in the CJC.

- A. "Independence" means "a judge's freedom from influence or controls other than those established by law." Nothing about the facts of this matter implicate judicial independence.
- B. "Impartiality" means "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." Nothing about the facts of this matter implicate Fiore's impartiality.
- C. "Integrity" means "probity, fairness, honesty, uprightness, and soundness of character." One can imagine that the proponent of the Charges would seek to emphasize single out some of those terms, e.g., "honesty," "uprightness," or "soundness of character," and find them incompatible with the conduct that gave rise to Fiore's prosecution. Doing so, divorced from the context of the other words in the list, would be irreconcilable with the canon *noscitur a sociis*. Words like "probity" and "fairness" are manifestly adjectives intended to be applied to a "judge." To give the definition of "integrity" the meaning intended by the drafters of the CJC, one must look to the definition as a whole. One cannot, for example, focus on the word "honesty" and claim a violation of Rule 1.2 based on the fact that a judicial officer in his or her youth told one or more lies. The CJC recognizes that there is a major

¹¹ See, e.g., Inquiry Concerning Armstrong, Hearing Panel appointed by Minnesota Supreme Court (Oct. 31, 2011), available at www.bjs.state.mn/file/news/armstrong-findings-and-recommendations.pdf.

distinction between lies told by a judge – such as lies to counsel, lies to parties before the court, lies to judicial colleagues – and lies that all human beings have told in their lives. Consequently, it would be inappropriate and incompatible with a cogent interpretation of the CJC to single out certain terms as part of an effort to characterize the events that gave rise to Fiore’s prosecution as judicial misconduct.

55. Count 3 of the Charges, which refers to the jury verdict, is nugatory. The effect of the presidential pardon renders the jury verdict, like the rest of the federal court proceeding, a nullity. It cannot, therefore, be the basis for a claim of judicial misconduct.
56. Moreover, the attempt in the Charges (and, subsequently, in the Amended Charges) to fabricate judicial misconduct out of a non-existent financial obligation completely contrived in the Charges (such as some species of restitution where no such obligation was imposed by law) is too extravagant a notion to be seriously maintained. Otherwise, any judge who has been delinquent on a financial obligation (e.g., a late or missed payment on a credit card bill, or even an isolated instance of a bounced check¹² due to insufficient funds) would be subject to judicial discipline. As noted above, the attempt by the Commission’s Special Counsel to create a factual predicate where none exists for judicial misconduct verges in fact on prosecutorial misconduct, as well as a fundamental denial of Fiore’s right to due process of law under the U.S. and Nevada Constitutions.
57. A factual finding of judicial misconduct must be supported by clear and convincing evidence. NEV. REV. STAT. § 1.4673(2)(a). *See In re Halvorsen*, 123 Nev. 493, 510, 169 P.3d 1161, 1173 (2007); *Goldman v. Nevada Comm’n on Judicial Discipline*, 108 Nev. 251, 263, 830 P.2d 107, 115 (1992).¹³ *See*

¹² *But cf. Judicial Discipline & Disability Comm’n v. Thompson*, 341 Ark. 253, 261, 16 S.W.3d 212, 215 (2000) (judge, among multiple instances of significant misconduct, wrote 59 insufficient checks in a 4-year period and repeatedly failed to respond to requests to make the checks good until notified by prosecutor’s office that an affidavit for an arrest warrant had been filed). Note that the individual involved in this Arkansas case was, unlike Fiore, already a judge when the multiple instances of misconduct occurred.

¹³ This is also the evidentiary standard in other jurisdictions. *See, e.g., In Re Hanson*, 532 P.2d 303, 308 (Alaska 1975); *Geiler v. Comm’n on Judicial Qualifications*, 10 Cal. 3d 270, 275, 515 P.2d 1, 4, 110 Cal. Rptr. 201, 204 (1973); *In Re Jones*, 728 P.2d 311, 313 (Colo. 1986); *In Re*

also Commission Rule 25 (imposing this burden of proof on Special Counsel). Cf. NEV. REV. STAT. § 1.4267(1) (requiring the Commission, after a judge responds to a complaint (as Fiore did here), to make “a finding of whether there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the judge”).

58. For the foregoing reasons, neither the Charges nor the Amended Charges assert cognizable claims of judicial misconduct under the CJC. Particularly when one considers that the burden of proof is clear and convincing evidence -- and given (A) the legal effect of the presidential pardon, especially prior to the entry of any final judgment or sentence in Fiore’s case;¹⁴ (B) the plain language of the CJC; (C) the vagueness of the language employed in the Charges and the incoherence of the fabricated criminal and civil charges in the Amended Charges; and (D) the Nevada statutory requirement that instances of judicial misconduct be set forth with specificity – the Commission’s allegations are legally insufficient in that they fail assert a set of facts that would entitle the Commission to impose a sanction under the CJC and thus do not appear to meet the standards of NEV. R. CIV. P. 12(b)(5) as interpreted by the Nevada Supreme Court. *See, e.g., Vacation Village, Inc. v. Hitachi American, Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994), quoting *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) (“The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give *fair notice of the nature and basis of a legally sufficient claim and the relief requested*”) (emphasis supplied). *Accord, Breliant v Preferred Equities Corp.*, 109 Nev.

Rome, 218 Kan. 198, 206, 542 P.2d 676, 684 (1975); *Judicial Performance Com'n v. Walker*, 565 So.2d 1117, 1119 (Miss. 1990); *In re Garner*, 466 So.2d 884, 886 (Miss. 1985); *In Re Jordan*, 290 Ore. 303, 306-307, 622 P.2d 297, 299 (1981); *In re Nowell*, 293 NC 235, 237 S.E.2d 246, 254 (1977); *In re Laughlin*, 153 Tex 183, 265 S.W.2d 805, 809 (1954).

¹⁴ According to some press accounts, Fiore has alleged that the federal prosecution was politically motivated, as a kind of retaliation for her very public and outspoken stance against federal authorities in connection with the Bundy ranch and a notorious armed standoff relating to cattle grazing on federal land in Nevada. If, in this era of “lawfare” (particularly of the sort directed against President Trump and his supporters), there is even a scintilla of evidence to support Fiore’s allegations, the Commission should be chary of placing much reliance on the allegations of the Indictment.

842, 846, 858 P.2d 1258, 1260 (1993). In sum, as neither the Charges nor the Amended Charges appear to satisfy this standard, they should be dismissed.

Potential Procedural Defaults by the Commission

59. The Nevada Legislature has required that there must be a filing of a complaint in order for the Commission to initiate an inquiry regarding the alleged misconduct of a judge. NEV. REV. STAT. § 1.4655(1). The Legislature has defined “complaint” as “information in any form and from any source that alleges or implies judicial misconduct or incapacity.” NEV. REV. STAT. § 1.4263.
60. According to the *Fiore Interim Ruling*, the Commission first began to investigate Fiore in July 2024. While there is a stray reference to “allegations of ongoing misconduct occurring during her time as a judicial officer,” *id.* at 2, no information is provided as to the source of any such allegations and whether (and if so, when) they came from a complaint filed by a third party or originated from the Commission *sua sponte*.¹⁵ Also, as noted above, the Commission’s suspension order vaguely referred to the Commission having “received additional complaints against Fiore” since the pardon but did not identify who had filed the complaints, how many such complaints had been filed, or what they alleged. This failure of specificity and deliberate withholding of information regarding what, if anything, was being alleged against Fiore is, in itself, troubling from a due process perspective, as Fiore’s current and future career prospects are being placed in jeopardy without adequate notice of the charges against her and access to information that would enable her to defend against whatever is being alleged against her.
61. A series of statutes prescribes time limits during which the Commission must perform (or cause to be performed) certain actions, including actions relating to a formal statement of charges. Some leeway is provided to the Commission in NEV. REV. STAT. §1.4681, however. Thus, § 1.4681(1) allows the Commission to “extend the limitations on time set forth in NRS 1.425 to 1.4695, inclusive, for good cause shown.” There is no indication, however, that the Commission has taken any official action to extend such time

¹⁵ The statutory definition of “complaint” is broad enough to encompass both possibilities.

limitations in Fiore's case, or that good cause exists for doing so. Indeed, the "yo-yo" effect of an interim suspension with pay, then an interim suspension without pay, then back to suspension with pay after the presidential pardon (but an unwillingness to dissolve the suspension altogether) evidences a protracted awareness by the Commission of the facts and circumstances of Fiore's case that would render unlikely any showing of good cause.

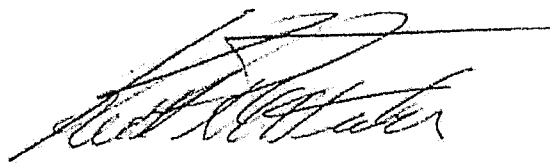
62. Moreover, the Commission's discretion under NEV. REV. STAT. §1.4681 is not unlimited. Indeed, § 1.4681(3) provides, in pertinent part, "The fact that an investigation has been conducted more than 24 months after the date the complaint was filed with the Commission is prima facie evidence of an unreasonable delay, which may be rebutted." The problem with applying this language is that the factual information relating to the dates of filing of complaints, and consequently of compliance with statutory timeframes, is deliberately being withheld by the Commission
63. Potentially an even more serious procedural lapse, however, revolves around NEV. REV. STAT. § 1.4655. According to the Indictment, the conduct giving rise the Charges occurred in 2019 and 2020. *See* Indictment at 9, ¶ 41 (alleging conduct occurring beginning as early as July 2019 and continuing until on or about January 31, 2020). That is more than 6 years prior to the to the Charges. Yet, § 1.4655(2) forbids the Commission from considering complaints arising from acts or omissions that occurred more than 3 years before the date of the complaint or more than 1 year after the complainant knew or in the exercise of reasonable diligence should have known of the conduct, whichever is earlier. Currently, the Commission has failed adequately to disclose factual information necessary in order to assess which of these two dates came first, but clearly there is a significant possibility that the timing of the Commission's action against Fiore ran afoul of this statute.
64. Furthermore, if in fact the Commission received a complaint from a third party at an earlier time (a possibility suggested by the language from the Fiore Interim Ruling at 2, quoted above ("allegations of ongoing misconduct occurring during her time as a judicial officer"), filing a formal statement of charges was required within 18 months after receipt of such complaint. NEV. REV. STAT. § 1.4655(3)(e). Again, further information is required in order to ascertain the Commission's compliance with this provision.

65. Finally, Fiore's Verified Answer to the Charges was filed on May 15, 2026. The Commission is required by statute to provide Fiore with a hearing held not later than sixty days thereafter, which would have been July 15, 2026. NEV. REV. STAT. § 1.4673(1)(a). That provision admits of no exceptions to this deadline. On the other hand, as noted above, § 1.4681(1) allows the Commission to "extend the limitations on time set forth in NRS 1.425 to 1.4695, inclusive, for good cause shown." Here again, however, it is questionable whether the Commission, which has unilaterally been completely in control of the timing of the decision whether to file a formal statement of charges and the date when the Charges were actually filed, could reasonably make a showing of good cause.
66. If the facts establish that the Commission failed to adhere to one or more of these statutory requirements and deadlines, there would arguably be a denial of procedural due process that would require dismissal of the Charges.

* * * *

67. In conclusion, nothing in the language or structure of Nevada's constitutional, statutory, or CJC provisions governing the judicial branch gives the Commission a roving authorization to transmogrify any conduct whatsoever that antedates judicial service into judicial misconduct. The Charges should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith R. Fisher", with a long horizontal line extending to the right.

Keith R. Fisher
September 4, 2026