


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE HONORABLE ELIZABETH
HALVERSON, DISTRICT JUDGE,
Petitioner,
vs.
NEVADA COMMISSION ON JUDICIAL
DISCIPLINE,
Respondent.

No. 50822

FILED

MAR 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of prohibition or mandamus challenges the Nevada Commission on Judicial Discipline's delay in filing a formal statement of charges against petitioner, District Judge Elizabeth Halverson, after having temporarily suspended her. Halverson asks that we issue a writ of prohibition or mandamus compelling the Commission to "dismiss all pending charges" against her or, alternatively, to vacate the interim suspension. We directed the Commission to file an answer, which it timely filed.

We may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise or manifest abuse of discretion.¹ A writ of prohibition may be issued to compel a tribunal to cease performing acts beyond its legal authority.² Neither mandamus nor

¹NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).

²NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

08-06774

prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.³ Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within our discretion.⁴ Moreover, petitioner bears the burden of demonstrating that extraordinary relief is warranted.⁵

Having reviewed the petition and answer, we are not persuaded that extraordinary relief is warranted. Petitioner has not demonstrated that her due process rights have been violated, as she has articulated no prejudice other than speculative damage to her reelection campaign, which is not the type of interest that is protected by due process.⁶

We note that the Commission seemingly ascribes the delay between the July interim suspension and the December probable cause finding, resulting in the January formal charges, to its construction of NRS 1.4663 and 1.4667 as requiring that the investigation be complete before a finding of probable cause is made and formal charges filed. While

³NRS 34.170; NRS 34.330.


⁴Smith, 107 Nev. at 677, 818 P.2d at 851.

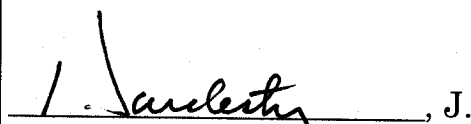
⁵See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

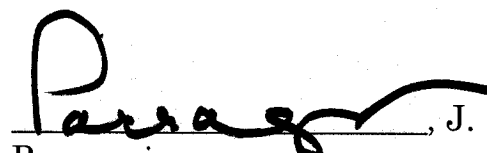
⁶See Matter of Del Rio, 256 N.W.2d 727, 733-34 (Mich. 1977); see also Kloepper v. Com'n on Judicial Performance, 782 P.2d 239, 245 (Cal. 1989) (holding that two-year delay in filing formal charges did not deprive a judge of due process in the absence of demonstrated prejudice such as a loss of recall by witnesses); Disciplinary Proceeding Against Michels, 75 P.3d 950, 957-59 (Wash. 2003) (rejecting judge's due process objection to 120-day suspension, based on two-year delay in notifying judge of allegations against him, despite judge's argument, adopted by the dissent, that he could have modified his conduct had he been informed sooner).

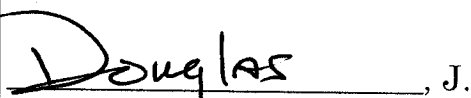
we disagree with the Commission's position that the statutes require the investigation to be complete before formal charges are filed and that formal charges cannot be supplemented if supported by additional investigation, and while the Commission admits that nothing in the governing statutes prohibits the Commission from amending or supplementing formal charges if additional investigation warrants doing so, the Commission's procedure was based on a reasonable reading of NRS 1.4663 and NRS 1.4667.⁷ Accordingly, we deny the petition.

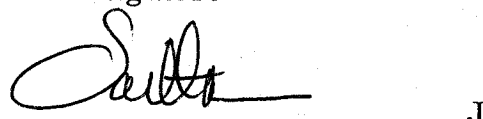
It is so ORDERED.⁸


Maupin


Hardesty


Parraguirre


Douglas


Saitta

⁷See Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) (stating that deference should be accorded to the interpretation of a statute by an entity charged with administration of that statute, so long as the interpretation is within the statute's language). We note that the Legislature is free to amend the statutes to require expedited proceedings when an interim suspension has been imposed.

⁸The Honorable Mark Gibbons, Chief Justice, and the Honorable Michael Cherry, Justice, voluntarily recused themselves from participation in the decision of this matter.

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Dorothy Nash Holmes
Nevada Commission on Judicial Discipline