

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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In the Matter of the)
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HONORABLE CHARLES M. McGEE,)
Senior District Judge, State of Nevada,)
)
Respondent.)

Case No. 44486

FILED

JAN 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

**CERTIFIED COPY OF STIPULATION
AND PUBLIC LETTER OF CENSURE**

Pursuant to Interim Commission Rule 28(2), I hereby certify that the documents attached hereto are true and correct copies of the Stipulation – Public Censure and Censure Letter adopted and filed by the Nevada Commission on Judicial Discipline on January 10, 2005.

DATED this 11th day of January, 2005.

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702

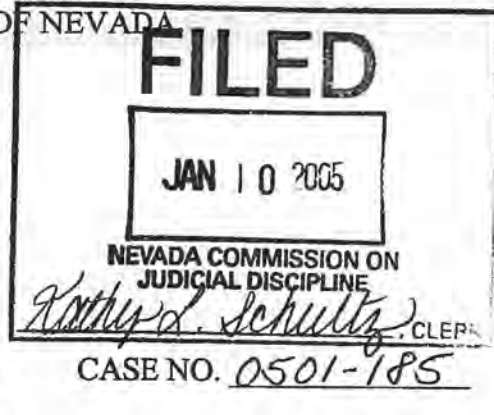
David F. Sarnowski

DAVID F. SARNOWSKI
General Counsel & Executive Director
Nevada Bar No. 0075

RECEIVED
JAN 11 2005
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

1 BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

2 STATE OF NEVADA



3
4 In the Matter of the
5 HONORABLE CHARLES M. McGEE,
6 District Judge, Second Judicial
7 District Court, County of Washoe
8 State of Nevada,
Respondent.

9 **STIPULATION – PUBLIC CENSURE**

10 In order to resolve the pending complaint against him, the respondent, does hereby
11 stipulate to the following disposition.

- 12 1. The respondent understands that at its December 1, 2004 meeting, a quorum (members
13 Brusa, Nave, Beasley, Denton and Huff) of the Nevada Judicial Discipline Commission
14 met with the respondent in a private session and after deliberating outside the
15 respondent's presence, the Commission accepted the essence of a proposed stipulation
16 proffered by the respondent. The members of the Commission who were present
17 unanimously agreed to impose the maximum discipline contemplated under the
18 proposal—a public censure and continued monitoring of respondent's compliance with an
19 ongoing program to combat alcohol abuse—as more fully set forth in this agreement. The
20 respondent understands that he is agreeing to the imposition of public discipline and
21 monitoring of his alcohol abuse prevention program because the respondent was
22 convicted on December 26, 2003 for a misdemeanor of driving while under the influence
23 of alcohol in Washoe County, Nevada, on December 9, 2003.
- 24 2. The respondent agrees to imposition of public censure, a form of discipline authorized by
25 Section 5(a), Article 6, Section 21 of the Nevada Constitution and NRS 1.4677. The
26 respondent understands that the discipline imposed will be included in a "consent order"
27 filed pursuant to Interim Commission Rule 29, and that said order must be and will be
28 filed with the clerk of the Nevada Supreme Court.

- 1 3. The respondent agrees to waive his right to file an answer in the existing
2 confidential/private proceedings, which he would otherwise be allowed to do pursuant to
3 Interim Commission Rule 12, and the Commission agrees to accept said waiver.
- 4 4. The respondent agrees for the limited purpose of effectuating this agreement, pursuant to
5 Interim Commission Rules 12 and 13, to the entry of a finding by the Commission that
6 there is a reasonable probability the evidence available for introduction at a formal
7 hearing could clearly and convincingly establish grounds for disciplinary action, on the
8 following issue:
- 9 A. Whether the respondent violated any individual canon or combination of canons,
10 including Canon 1 and 2 by virtue of his conviction of the offense of driving while
11 under the influence of intoxicating beverages.
- 12 5. The respondent agrees to waive the filing of a formal statement of charges against him by
13 a special counsel, pursuant to Interim Commission Rules 14-16, and the Commission
14 accepts said waiver.
- 15 6. The respondent agrees to waive his right to file an answer to the formal statement of
16 charges and his right to a hearing at a public session, pursuant to Interim Commission
17 Rule 17 and 18, and the Commission accepts the respondent's waiver of said right,
18 conditioned on the Commission's reservation of rights to conduct a public hearing and to
19 mandate the presence of the respondent if the Commission so chooses.
- 20 7. The respondent understands and agrees that the Commission may immediately proceed to
21 enter findings that the violation averred above in paragraph recounted in paragraph 4,
22 have been established by clear and convincing evidence, without the necessity for the
23 presentation of evidence at a public hearing pursuant to Interim Commission Rules 24
24 through 26.
- 25 8. The respondent understands and agrees that pursuant to Interim Commission Rules, the
26 Commission may enter its decision imposing discipline on the respondent. The
27 respondent understands that he has the right to a public proceeding and may appear at
28 said proceeding, with or without counsel, to present evident in mitigation and extenuation

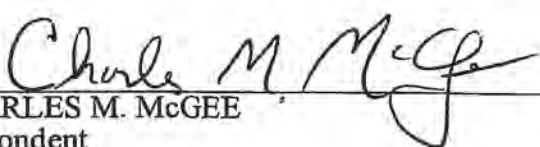
1 of punishment. The respondent further understands that if he chooses not to seek or
2 attend a public hearing, with or without counsel, he must file with the Commission a
3 written, notarized waiver of his right to personally appear and be heard. The respondent
4 understands that notwithstanding such a waiver, the Commission can mandate that a
5 public hearing be held and that he be present at any hearing, public or private.

6 9. The respondent understands that by personally appearing on December 1, 2004 and not
7 exercising it, he has waived the right pursuant to Permanent Commission Procedural Rule
8 6 to seek to disqualify any commissioner for actual or implied bias.

9 10. The respondent agrees that by accepting the terms of this agreement and the imposition of
10 the limited sanctions imposed pursuant to paragraph 2 above, he will waive his right to
11 appeal to the Nevada Supreme Court, pursuant to New Rule 3D of the Nevada Rules of
12 Appellate Procedure, a copy of which is attached hereto and incorporated herein by
13 reference.

14 11. Finally, the respondent agrees that when on January 8, 2005, he accepts the Supreme
15 Court's recall as a senior judge, he will continue to maintain a regimen of treatment at
16 respondent's expense which, at a minimum, will include three recovery meetings a week
17 and a meeting weekly with a BADA certified professional whose reports will continue to
18 be made to Chief Judge Jerry Polaha, or his designee (another judge within the Washoe
19 County District Court); and whose reports will be provided to the Commission upon
20 request. The respondent also agrees to whatever additional regimen, including periodic
21 and unannounced testing for the presence of alcohol, and reporting that is considered
22 appropriate by the Commission, the Chief Judge of the Second Judicial District Court or
23 his designee, the Administrative Office of the Courts, or the Supreme Court of the State
24 of Nevada.

25 DATED this 23^d day of December, 2004.

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28 CHARLES M. MCGEE
Respondent

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DATED this 30th day of December, 2004.

NEVADA COMMISSION ON
JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702

By: David F. Samowski
David F. Samowski, Executive Director

The undersigned Commissioners do hereby accept the terms of the stipulation between the respondent and the Executive Director set forth above, as they actually reflect the verbal agreement reached between the respondent and the undersigned members during the Commission's December 1, 2004 private hearing. We do hereby authorize the Chairman to author a document containing a public censure of the respondent for having sustained a misdemeanor conviction for driving under the influence of alcohol in December 2003; for filing in the Commission's public record and with the Clerk of the Nevada Supreme Court as part of a Consent Order of this Commission. The Chairman may also sign the consent order on behalf of the Commission.

Frank Brusa
FRANK BRUSA, Commissioner and Chairman

1-3-05
DATE

Daveen Nave
DAVEEN NAVE, Commissioner

1-4-05
DATE

Mark Denton
MARK DENTON, Commissioner

1/4/05
DATE

James Beasley
JAMES BEASLEY, Commissioner

12/27/04
DATE

David A. Huff
DAVID A. HUFF, Commissioner

12/29/04
DATE

FEB 24 2003

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE NEVADA
COMMISSION ON JUDICIAL
DISCIPLINE.

ADKT No. 346

FEB 21 2003

JANE T. BLOOM
CLERK OF SUPREME COURT
BY *J. Richo*
CHIEF DEPUTY CLERK

ORDER REPEALING THE ADMINISTRATIVE AND PROCEDURAL
RULES FOR THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
("ARJD"), AMENDING NEVADA SUPREME COURT RULES BY
ADOPTING NEW RULE 13, AND AMENDING NEVADA RULES OF
APPELLATE PROCEDURE BY ADOPTING NEW RULE 3D

WHEREAS, this court adopted Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline ("ARJD") in 1988 under a constitutional directive; and

WHEREAS, the people approved and ratified an amendment to the Nevada Constitution during the 1998 general election that removed this court's authority to promulgate rules governing proceedings before the Commission and empowered the Commission to adopt procedural rules to govern its proceedings; and

WHEREAS, the Commission has adopted procedural rules to govern its proceedings; and

WHEREAS, this court is required by the constitution to appoint two justices or judges as members of the Commission and alternates for those members; and

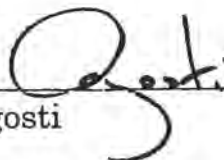
WHEREAS, this court has jurisdiction over appeals from actions taken by the Commission and may adopt rules to govern those appeals; and

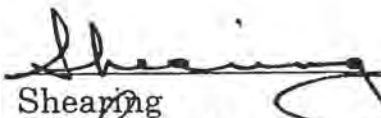
WHEREAS, it appears to this court that repeal of the ARJD, amendment of the Supreme Court Rules to add Rule 13, and amendment of the Nevada Rules of Appellate Procedure to add Rule 3D is warranted, accordingly,

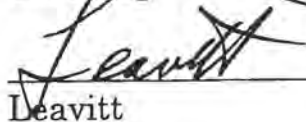
IT IS HEREBY ORDERED that the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline (Part VII of the Supreme Court Rules) shall be repealed, that new Rule 13 of the Supreme Court Rules shall be adopted and shall read as set forth in Exhibit A, and that new Rule 3D of the Nevada Rules of Appellate Procedure shall be adopted and shall read as set forth in Exhibit B.

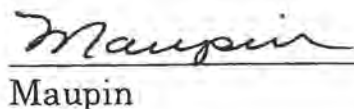
IT IS FURTHER ORDERED that the amended rules shall become effective immediately. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 21st day of February, 2003.

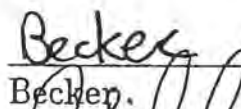

Agosti, C.J.


Shearing, J.


Leavitt, J.


Maupin, J.


Rose, J.


Becker, J.


Gibbons, J.

cc: Frank Brusa, Chair, Nevada Commission on Judicial Discipline
David F. Sarnowski, Executive Director and General Counsel,
Nevada Commission on Judicial Discipline
Administrative Office of the Courts

EXHIBIT A

NEW RULE 13 OF THE SUPREME COURT RULES

Rule 13. Appointments to the Nevada Commission on Judicial Discipline.

1. **Definitions.** In this rule, unless the context requires otherwise:

(a) "Alternate" means any judge designated by the supreme court to act in place of a specific judicial member of the commission.

(b) "Commission" means the commission on judicial discipline.

(c) "Member" shall include such alternates who have been seated in any specific meeting, case, or proceeding.

2. **Appointment of judicial members.** Two judicial members shall be appointed by the court to serve four-year terms. The judicial members must be residents of different counties and may not be members of the commission on judicial selection.

3. **Appointment of alternates.**

(a) **General provisions.** A judicial member of the commission who cannot serve by reason of disqualification, resignation, inability to attend, or any other reason shall be replaced by his or her alternate. The court shall designate a permanent alternate for each judicial member of the commission. The alternate is appointed for the same term as the judicial member and shall be a resident of a different county than the other judicial member and alternate.

(b) **Proceedings against justices of the peace or municipal judges.** Consistent with NRS 1.440(2), the court shall designate two justices of the peace or municipal judges to sit on the commission for proceedings against a justice of the peace or municipal judge. Justices of the peace or municipal judges appointed under this rule shall be designated to sit for such

proceedings in place of and to serve for the same terms as the regular members of the commission appointed by the court.

(c) **Additional substitutions.** In the event that a judicial member and his or her alternate cannot serve in a specific meeting, case or proceeding by reason of disqualification, resignation, inability to attend, or any other reason, the court shall designate a judge or justice to act and vote in the place of the absent member.

4. **Vacancies.** If a vacancy occurs, the court shall fill the vacancy for the remainder of the judicial member or alternate's unexpired term.

EXHIBIT B
NEW RULE 3D OF THE NEVADA RULES
OF APPELLATE PROCEDURE

**RULE 3D. JUDICIAL DISCIPLINE: RIGHT TO APPEAL; HOW
TAKEN; RULES GOVERNING**

(a) Definitions. As used in this rule:

(1) "Respondent" means any supreme court justice, district judge, justice of the peace, or municipal court judge or referee, master, or commissioner who is the subject of any disciplinary or removal proceedings instituted before the commission.

(2) "Service" means service by personal delivery or by registered mail or certified mail, return receipt requested.

(b) Who May Appeal. Any supreme court justice, district judge, justice of the peace, or municipal court judge or referee, master, commissioner or other judicial officer who is the subject of any disciplinary or removal proceedings instituted before the commission on judicial discipline may appeal to the supreme court from the orders set forth in subsection (c) of this rule.

(c) Appealable Decisions. An appeal may be taken:

(1) From an order of suspension from the exercise of office under NRS 1.4675.

(2) From an order of censure, removal, retirement, or other form of discipline.

(d) Notice of Appeal. An appeal to the supreme court from a commission order shall be taken by filing a notice of appeal with the clerk of the commission and serving such notice on the prosecuting counsel, if any.

Filing and service must be made within fifteen (15) days after service on the respondent of the commission's formal order of suspension, censure, removal, retirement, or other discipline, together with its formal findings of fact and conclusions of law. Upon the filing of the notice of appeal, the clerk of the commission shall immediately transmit to the clerk of the supreme court two (2) file-stamped copies of the notice of appeal.

(e) Transcripts. Any request for all or part of a transcript must be made in accordance with rules adopted by the commission in regard thereto.

(f) Applicable Rules. In all other respects an appeal from a commission order shall proceed in the same manner as a civil appeal except that the provisions of Rule 4(c) for expediting criminal appeals shall apply to all appeals from orders or actions taken by the commission. Other provisions in the Nevada Rules of Appellate Procedure apply to appeals from a commission order, unless this rule expressly provides to the contrary or application of a particular rule is clearly impracticable, inappropriate, or inconsistent. All references to the district court in applicable portions of the Nevada Rules of Appellate Procedure must be deemed references to the commission.

(g) Interlocutory Orders. Review of interlocutory orders of the commission, which are considered either by the prosecuting officer or the respondent judge to be without or in excess of jurisdiction, may be sought by way of petition for an appropriate extraordinary writ.

(h) Disqualification of Supreme Court Justices. Any justice who sat on the commission is disqualified from participating in the consideration or decision of an appeal from an action that was taken by the commission during his or her membership on the commission.

NO. RCR2003-013150
DEPARTMENT NO. 1

**In the Justice Court of Reno Township, County of Washoe,
STATE OF NEVADA**

STATE OF NEVADA	VS.	PLAINTIFF	COMPLAINT OF Christian Wilson
CHARLES MICHAEL MCGEE 83360057		DEFENDANT	DA'S NO. 322201
			ATTORNEY FOR PLAINTIFF DISTRICT ATTORNEY: Christian Wilson
			ATTORNEY FOR DEFENDENT:
			AGENCY NO: WCSO WC03-111795

CHARGING: CT. I. DRIVING UNDER THE INFLUENCE, a violation of WCC 70.3865, NRS 484.379 and NRS 484.3792, a misdemeanor; CT. II. OPERATING A VEHICLE IN A NO-PASSING ZONE, a violation of WCC 50.212 and NRS 484.301, a misdemeanor.

DATE 2003	PROCEEDINGS
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J = Judge; P = Prosecutor; D = Defendant; CR = Court Reporter; I = Interpreter;
DC = Defense Counsel; DDA = Deputy District Attorney; DAG = Deputy Attorney General;
DPD = Deputy Public Defender; CA = Conflict Attorney; PT = Pro Term Judge.

Dec. 9	Defendant released on OWN RECOGNIZANCE by the Washoe County Sheriff.
Dec. 18	Complaint filed.
Dec. 22	Authorization To Represent filed.
Dec. 23	Defendant appeared together with attorney Larry Dunn, Esq. before the Honorable Fidel Salcedo and the State was represented by Deputy District Attorney Chris Wilson. Defendant duly arraigned. Count I AMENDED BY INTERLINEATION to conform to the evidence. Defendant indicated desire to plead Guilty to Amended Count I. Defendant informed and indicated understanding of elements of said Count. The Court canvassed Defendant on Constitutional rights: the right to a speedy trial, the right to make the State prove guilt beyond a reasonable doubt, the right to confront and cross-examine the State's witnesses, the right to use the subpoena power of the Court to compel the attendance of defense witnesses, the right to remain silent, not testify at trial and not have silence held against Defendant, the right to an attorney and the right to a court appointed attorney if indigent. Defendant understood Defendant would be waiving these Constitutional rights by pleading Guilty or No Contest. Defendant informed of possible penalties. Defendant pled GUILTY. The Court found Defendant entered the plea.

plea and accepted Defendant's plea. Defendant declared GUILTY. The State moved to dismiss all other Counts. Motion GRANTED. Sentencing set for December 26, 2003, at 9:30 A.M. Defendant continued released on OWN RECOGNIZANCE.

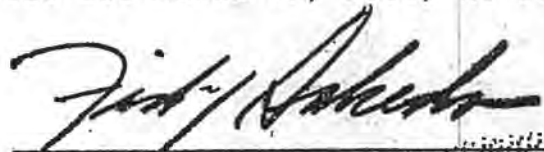
Dec. 23

Waiver of Constitutional Rights filed.

Dec. 26

Defendant appeared together with attorney Larry Dunn, Esq. before the Honorable Fidel Salcedo and the State was represented by Deputy District Attorney Christian Wilson. Imposition of Sentence proceeded. Defendant sentenced: To serve THIRTY (30) days in the County Detention Facility, CONSECUTIVE with any other jail terms; DEFENDANT IS NOT ELIGIBLE FOR ALTERNATIVE SENTENCING; To pay \$503.00 fine, \$115.00 Administrative Assessment, \$10.00 Court Facility Assessment, \$7.00 Specialty Court Assessment and \$60.00 Chemical Analysis Fee; all SUSPENDED on the following conditions: 1) To serve FORTY-EIGHT (48) hours in the County Detention Facility with credit for FOUR (4) hours previously served, CONSECUTIVELY with any other jail terms; DEFENDANT IS NOT ELIGIBLE FOR ALTERNATIVE SENTENCING; Defendant shall surrender to the County Detention Facility on December 26, 2003, at 11:30 A.M.; 2) To pay \$503.00 fine, \$115.00 Administrative Assessment, \$10.00 Court Facility Fee, \$7.00 Specialty Court Assessment and \$60.00 Chemical Analysis Fee by December 26, 2003; 3) To attend alcohol and drug free, complete and pay for a Level III alcohol and drug abuse program, a ONE (1) to THREE (3) year program; 4) To attend Victim Impact Panel by February 27, 2004; 5) To be evaluated for and complete alcohol rehabilitation program; 6) To attend A.A. meetings FIVE (5) times per week, until further order of the Court; 7) To attend professional counseling meetings for minimum of ONE (1) hour weekly; 8) To abstain from use of alcohol and drugs; 9) To submit to daily Preliminary Breathalyzer Tests for minimum of SIX (6) months; 10) To follow Dr. Howle's recommendations; 11) To maintain conditions for minimum of ONE (1) year; 12) To appear alcohol free while performing all Court orders. Defendant ordered to attend Review Hearing set for March 31, 2004, at 8:30 A.M.

SO ORDERED



JUSTICE OF THE PEACE
DEPARTMENT NO. 1

Dec. 26

Order to Attend filed.

Dec. 26

Misdemeanor Judgment and Commitment filed.

Dec. 26

Fine paid in the amount of \$503.00 plus \$115.00 Administrative Assessment plus \$10.00 Court Facility Fee plus \$7.00 Specialty Court Assessment plus \$60.00 Chemical Analysis Fee.

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA



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In the Matter of the)
)
 HONORABLE CHARLES M. McGEE,)
 Senior District Judge, State of Nevada,)
)
 Respondent.)

ACKNOWLEDGMENT OF SERVICE

I hereby acknowledge that on the 6th day of January, 2005, I was served with a copy of the original Public Censure letter on file with the Nevada Commission on Judicial Discipline in the case referenced above.

Charles M. McGee

 CHARLES McGEE
 Senior District Judge



FRANK BRUSA
Chairman

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, Nevada 89702
Telephone (775) 687-4017 • Fax (775) 687-3607
Web Site: <http://www.judicial.state.nv.us>

DAVID F. SARNOWSKI
General Counsel and
Executive Director

January 3, 2005

Honorable Charles McGee
Senior District Judge
Reno, NV

Re: Public Case Number 0501-185
Public Censure



Dear Judge McGee:

Pursuant to the authority granted me by the quorum of voting members at the Commission's December 1, 2004, meeting, I hereby issue the following letter of public censure on behalf of the Commission. This letter is contemplated by the Stipulation you signed on December 23, 2004, following your appearance before the Commission. This letter is issued in furtherance of the Commission's unanimous vote on that date and the approval of the Stipulation of each of the voting members, some of whom will sign the formal document after the date on this letter. Please note that my tenure on the Commission expires today and that my vote was one of five among those Commissioners who attended the aforesaid meeting. Therefore, like the other voting members, I have had the opportunity to examine the facts of this case and to consider the information you provided in extenuation and mitigation of punishment.

The facts underlying this disciplinary event are not complicated. You were arrested for driving under the influence of alcohol in Washoe County, Nevada, on December 9, 2003. On December 23, 2003, with the assistance of counsel, you entered a guilty plea to the misdemeanor charge filed by the Washoe County District Attorney. As a result of your guilty plea, Justice of the Peace Fidel Salcedo found you guilty and imposed a sentence that included a fine, a short jail sentence and alcohol abuse monitoring requirements. I have enclosed a copy of the court minutes reflecting the exact requirements imposed at the time of sentencing. The Commission has been informed that you have complied with all the requirements imposed by Judge Salcedo.

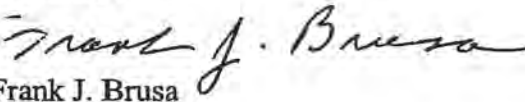
Honorable Charles McGee
January 3, 2005
Page 2 of 2

It is clear beyond any doubt that your behavior, which led to a criminal conviction, was socially aberrant. The legislature has devised a penal scheme to deal with the problem of driving under the influence. As a district judge, you have seen first-hand the effects that such crimes have on criminal defendants, their families, their victims and society as a whole. It is evident that this one incident led to personal and professional humiliation. From the standpoint of the Commission, it also demonstrated impropriety that demeaned the judicial office you have held for so long. Canon 2A, Nevada Code of Judicial Conduct. It also showed a lapse in judgment insofar as the rule that requires judges to establish, maintain and enforce high standards of conduct so necessary to protect the integrity and independence of the judiciary. Canon 1A, Nevada Code of Judicial Conduct.

The Commission appreciates the fact that you have performed valuable service for many years and that your achievements have led to well-deserved recognition. As you assume the appointed office of Senior Judge, you still have much to contribute to the citizens of Nevada who call upon the courts to resolve legal disputes. You can do so only if you maintain a course of strict sobriety that creates in reasonable minds a perception that your ability to carry out judicial responsibilities with integrity, impartiality and competence is not impaired. Therefore, the Commission has imposed a set of monitoring and testing requirements that are designed to ensure that to a reasonable degree of certainty, you do not suffer a relapse without the Commission being aware of it. Critically, the Commission will continue to insist that you cooperate with its agents so that the Commission oversight process provides both rehabilitative reinforcement and positive preventive intervention.

Should you have any questions or concerns, please feel free to contact David F. Sarnowski, the Commission's Executive Director.

Sincerely,


Frank J. Brusa
Chairman

FJB:DFS:kls

Enclosure