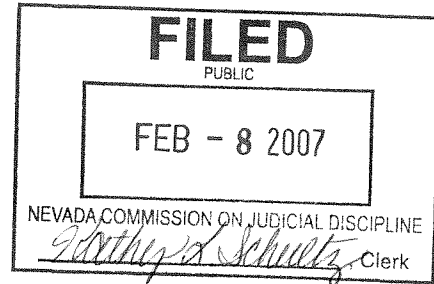


1 BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
2 STATE OF NEVADA

3
4 In the Matter of the)
5 HONORABLE GEORGE ASSAD,)
6 Municipal Court Judge,)
7 City of Las Vegas,)
8 County of Clark,)
9 State of Nevada,)
Respondent.)



CASE NO. 0602-1034

10
11 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE**

12 Pursuant to prior written notice, the above-entitled matter came on for public (formal)
13 hearing in Las Vegas pursuant to NRS §1.467(3)(c) and Interim Commission Rule 18
14 (hereinafter referred to as “the hearing”) on November 29 and 30, 2006, before the Nevada
15 Commission on Judicial Discipline (hereinafter referred to as the “Commission”).¹ Attorney
16 Mary Boetsch acted as the Special Counsel and prosecuted the case against the Respondent, Las
17 Vegas Municipal Court Judge George Assad. The Respondent was present and represented by
18 counsel, William B. Terry.

19 After being fully advised of its obligations and duties, the Commission specifically finds
20 that the hearing was conducted according to the statutes, rules and procedures required by law.
21 The Commission hereby issues the following Findings of Fact, Conclusions of Law and
22 Imposition of Discipline pursuant to Interim Rules 27 and 28; and NRS §1.4673 and §1.4677.

23 After receiving evidence regarding whether a violation or violations occurred, as well as
24 evidence in extenuation and mitigation of punishment, the Commission deliberated in private.
25

26 _____
27 ¹ The following Commissioners participated in the hearing: Chairman Steve Chappell, Vice-
28 Chairman Daveen Nave, Judge Barbara Nethery, Judge Robey Willis, Wayne Chimarusti sitting for
James Beasley, who was unavoidably absent, and Karl Armstrong. Commissioner Greg Ferraro also
was unavoidably absent. The six attendees constituted a quorum, pursuant to Commission Interim
Rule 3(4). A copy of the transcript of the proceedings is on file with the Clerk of the Commission.

1 Thereafter, the Commission announced on the record that the Special Counsel had established
2 the existence of a willful violation of the Nevada Code of Judicial Conduct. The vote as to the
3 violation of Canon 2A only, as charged in Count I was unanimous (6-0). The vote as to the
4 violation of Canon 2A only, as charged in Count II, was not unanimous (5-1). It also announced
5 on the record that the Respondent would be subject to public reprimand. The vote as to the
6 appropriate discipline was unanimous.

7 The instant order constitutes the Commission's final, dispositive ruling and this written
8 order will supersede any oral pronouncements issued at the conclusion of the hearing.²

9 **A. Findings of Fact.**

10 1. The Respondent was, at all times applicable to the allegations contained in the Formal
11 Statement of Charges, a Municipal Court Judge in the Las Vegas Municipal Court. He still
12 serves in that capacity. Therefore, the Respondent was and is a judicial officer whose conduct
13 was and is subject to the Nevada Code of Judicial Conduct.

14 2. The Commission finds that the Special Counsel established by the required standard of
15 proof, to wit, clear and convincing evidence, that the Respondent willfully violated Canon 2A,
16 and only Canon 2A, of the Nevada Code of Judicial Conduct, as set forth in Counts I and II of the
17 charging document, which is recounted verbatim immediately below. The Commission finds
18 that the Special Counsel did not prove a violation of any section of the Nevada Code of Judicial
19 Conduct with respect to the allegation contained in Count III of the charging instrument.

20 ...

21 ...

22 ...

23
24 ² On December 15, 2006, Chairman Chappell extended the time for filing this disposition
25 document for twenty days, due to a lack of a transcript. On January 5, 2007, Chairman Chappell
26 extended the time for filing the disposition document because the transcript arrived on December
27 20, 2006, during the time the Executive Director was on annual leave during a significant portion
28 of the time that expired during the year-end holidays; and because the Chairman's appointment was
scheduled to expire on January 5, 2007, thereby necessitating a delay pending the newly-elected
governor's decision on whether to reappoint the chairman, who voted at the conclusion of the
hearing.

1 3. The Formal Statement of Charges filed by the Special Counsel on April 11, 2006,
2 states:

3 COUNT ONE

4 1. That on or about March 31, 2003, there was a hearing on a traffic citation
5 issued against Mr. Joshua Madera set before you in your capacity as Municipal
6 Court Judge for the City of Las Vegas, Clark County, Nevada.

7 2. That on March 31, 2003, Ms. Anne Chrzanowski appeared in front of you on
8 behalf of Mr. Madera, who was at work; that she advised you that she was there
9 because Mr. Madera was at work and that she had spoken to someone about
10 appearing on his behalf.

11 3. That you told her that Mr. Madera had to be in court, alleging that Mr.
12 Madera had threatened your clerk; that you told Ms. Chrzanowski that she would
13 be held until Mr. Madera arrived; that you indicated that she must call Mr. Madera
14 and tell him she would go to jail if he did not appear; that Ms. Chrzanowski was a
15 non-litigant in the case [sic] involving Mr. Madera.

16 4. That your conduct as described herein constitutes violations of Canons 2(A),
17 3B(2), 3B(4) and 3B(7) of the Nevada Code of Judicial Conduct.

18 COUNT TWO.

19 5. That the allegations in paragraphs 1 through 4 are incorporated by reference
20 as though fully set forth herein.

21 6. That thereafter, you indicated by code words to your bailiff, Mr. Raul
22 Savedra, that he should take Ms. Chrzanowski into custody pending the arrival of
23 Mr. Madera; that Mr. Savedra did so, taking Ms. Chrzanowski to a room off of
24 your courtroom and having her call Mr. Madera; that after the telephone
25 conversation with Mr. Madera, Mr. Savedra cuffed Ms. Chrzanowski and placed
26 her in a holding cell pending the arrival of Mr. Madera, the actual party in the case
27 pending before you.

28 7. That you caused the detention of Ms. Chrzanowski, a non-litigant, without
any legal basis which allowed you to require that she remain at the court and/or in
custody pending the arrival of Mr. Madera.

8. That your conduct as described herein constitutes violations of Canons 2(A),
3B(2), 3B(4) and 3B(7) of the Nevada Code of Judicial Conduct.

COUNT THREE.

9. That the allegations in paragraphs 1 through 8 are incorporated herein by
reference as though fully set forth herein.

10. That your actions as described herein deprived Ms. Chrzanowski, a non-
litigant, of her right to due process of law in that you failed to afford her notice
and an opportunity to be heard, including notice that she could be
incarcerated/detained by court personnel at your direction; that you failed to afford
her minimum due process prior to directing that she be held in custody/detained
pending the arrival of Mr. Madera, the actual party in the case.

11. That your conduct as described herein constitutes violations of Canons
2(A), 3B(2), 3B(4) and 3B(7) of the Nevada Code of Judicial Conduct.

4. Discussion.

The event that gave rise to this case is documented in the municipal court's record,
specifically, a transcript which captured a brief exchange between Judge Assad and Ms.
Chrzanowski, who is identified in the transcript as "UNIDENTIFIED SPEAKER". It is
recounted below in pertinent part:

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THE CLERK: The City of Las Vegas Municipal Court is now in session. The Honorable George Assad presiding. Please be seated.
THE COURT: City versus Joshua Madera. Okay. Where is Joshua?
UNIDENTIFIED SPEAKER: He's actually--today he started his first day at work. That's why he's not here today. He's requesting if he can just have 30 days to make that payment in full.
THE COURT: Well, the problem is he threatened someone with bodily harm, essentially.
UNIDENTIFIED SPEAKER: When was this, your Honor?
THE COURT: It was Friday. He threatened her with bodily harm, one of the court clerks.
UNIDENTIFIED SPEAKER: I--
THE COURT: So unless you want to get him down here real quick, we're going to have to lock you up until he gets here. I think he knew that, so that's why he sent you here in his place.
UNIDENTIFIED SPEAKER: I-- I talked to the clerk on Friday, but I--
THE COURT: Who did you talk to?
UNIDENTIFIED SPEAKER: Some lady. She said that I could come into court for him. Didn't--she didn't say anything about him threatening a clerk.
THE COURT: And you don't know who you talked to?
UNIDENTIFIED SPEAKER: No. I don't recall, your Honor. You know what? Maybe I wrote it on the paper. I've got Debbie, extension 229-2067.
THE COURT: Well, Debbie's here and she says he didn't talk to her. So--
UNIDENTIFIED SPEAKER: Okay. Maybe he (indiscernible)--
THE COURT: I mean, there might be another Debbie.
UNIDENTIFIED SPEAKER: I have no idea.
THE COURT: Is there another Debbie down here?
THE CLERK: (Indiscernible).
THE COURT: All right.
UNIDENTIFIED SPEAKER: I have no idea.
THE COURT: All right. Well, you're going to have to go with my marshal in the back and make a phone call.
UNIDENTIFIED SPEAKER: Well--
THE COURT: Tell him you're going to jail if he doesn't get his butt down here--
UNIDENTIFIED SPEAKER: Okay.
THE COURT: --real fast.
(Recess at 03:36:42 p.m.)

Thus, the crucial facts of this case are those in the black and white transcript pages. The Respondent, who undoubtedly appeared to be the person fully in charge of the courtroom, directed Ms. Chrzanowski to accompany the bailiff to "the back" in order to contact Mr. Madera the person who should have been there in the first place and who supposedly had levied a threat to one of the court's staff members during a phone conversation the previous week. This directive was accompanied by an unprofessional admonishment to tell Mr. Madera that Ms. Chrzanowski would go to jail if he did not "get his butt down here."

...

1 It is not surprising that Ms. Chrzanowski subjectively believed that she would go to jail
2 and it is no stretch of the imagination to say that an objective reasonable person would find the
3 judge's language and directive wholly inappropriate, given the fact situation before him. The
4 judge was concerned that the minor fine in the case had not been paid for a long time after it was
5 imposed in 2000. Then, he overreacted by threatening Ms. Chrzanowski with possible
6 confinement when, after being informed via an ex parte message from his staff that the
7 defendant, Mr. Madera, had supposedly threatened one of the court's staff members, Mr. Madera
8 did not appear as he had been ordered to do.³ Unfortunately, the judge's precipitous action led to
9 further restraint on Ms. Chrzanowski's liberty, although there is a dispute as to what the judge
10 meant or did not mean when he directed her to accompany the bailiff.

11 The key witnesses as to what transpired after the judge's exchange with Ms. Chrzanowski
12 were Ms. Chrzanowski, the Respondent and his former bailiff, Raul Saavedra.⁴ It is clear that at
13 some point in time, Ms. Chrzanowski was handcuffed while in an area behind and outside the
14 view of the courtroom that served as a temporary confinement area and which also housed desks
15 occupied by court staff members who performed administrative duties. Ms. Chrzanowski
16 testified credibly that she was allowed to call Mr. Madera from a phone located in that area.
17 After she spoke to him and told him he needed to get to court, a bailiff or marshal also spoke to
18 Mr. Madera and told him to get down to court. Ms. Chrzanowski did not identify Bailiff

19
20 ³Testimony from the staff member, Debra Jakab, established that she felt threatened by
21 telephonic comments she attributed to Mr. Madera, to the effect that the defendant knew someone
22 at "Metro" (meaning the Las Vegas Metropolitan Police Department) from whom he could procure
23 Ms. Jakab's address. Upon advice from her supervisor, Mr. Williams, Ms. Jakab sent an e-mail to
24 the judge's courtroom assistant and the information was relayed to the judge prior to the hearing.
25 Although there was not any allegation in the charging instrument pertaining to violation of Canon
26 3B(7), which prohibits ex parte communications, the Commission agrees with the Special Counsel
27 that such a procedure allowed the staff to engage in impermissible ex parte contacts with a judge,
28 whose objectivity could be impacted greatly by the receipt of such information about which a
defendant might be unaware—and about which Ms. Chrzanowski clearly was unaware when she
appeared before the Respondent.

27 ⁴ At the outset of his testimony, Mr. Saavedra clarified the correct spelling of his last name
28 is S-A-A-V-E-D-R-A, which is different than the spelling in the charging instrument. The
Commission will use the correct spelling throughout the remainder of this order.

1 Saavedra as the person who spoke to Mr. Madera although she confirmed that Bailiff Saavedra
2 handcuffed her and placed her in one of the holding cells located near the area from which she
3 was allowed to call Mr. Madera. She was later released after Mr. Madera had been transported
4 by a marshal from the court who was dispatched to Mr. Madera's place of business to transport
5 him back to the court.

6 Bailiff Saavedra testified that he "cuffed" Ms. Chrzanowski in the courtroom although on
7 cross-examination he wavered by admitting he did not have a distinct recollection of doing so but
8 that it was his standard practice to do so. He also testified that he placed her in the holding cell
9 with at least one other person; and that for safety reasons, persons in the holding cells are
10 handcuffed. He denied talking to Mr. Madera on the phone although he stated that he dialed the
11 phone number to assist Ms. Chrzanowski. He insisted that he took Ms. Chrzanowski into
12 custody based on Judge Assad's "normal" way of doing things, which in this case included the
13 judge's usage of the words "you better go with my marshal." He also testified that he had been
14 trained to immediately handcuff anyone who had been taken into custody. He stated that there
15 was no question in his mind that he was to detain Ms. Chrzanowski although the judge did not
16 use the phrases "book her" or "remand her."

17 Judge Assad testified that Ms. Chrzanowski was never handcuffed in his presence nor did
18 he use any words, verbal or non-verbal actions to signal to Bailiff Saavedra. He theorized that
19 Bailiff Saavedra contrived the existence of a so-called signal in order to "cover his behind
20 because he was subject to disciplinary action for doing what he did...." In actuality, prior to the
21 Commission hearing, both Judge Assad and Bailiff Saavedra had been sued in federal court for
22 federal civil rights violations. By the time of the Commission hearing, the federal district judge
23 assigned to the case had dismissed the action against Judge Assad because he was entitled to full,
24 judicial immunity, despite Ms. Chrzanowski's contention in that case that Judge Assad acted in
25 the absence of all jurisdiction.⁵ The federal district judge also dismissed the action against the

26
27 ⁵ Ms. Chrzanowski was represented by counsel in that case, and according to the federal
28 judge's written disposition order, the ACLU apparently supported her via the filing of an *amicus curiae* brief.

1 bailiff based on quasi-judicial immunity because “[D]efendant Saavdera [sic] was acting within
2 his capacity as a Marshal by handcuffing and taking [Ms. Chrzanowski] to a holding cell in
3 compliance with the judge’s order to hold [Ms. Chrzanowski] in ‘custody until Mr. Madera came
4 to Court.’”

5 The factual resolution of whether the cuffing occurred in the courtroom or outside the
6 judge’s view is not critical, although the weight of the evidence suggests the marshal escorted
7 Ms. Chrzanowski into the holding area and cuffed her there, in order to safely place her in a cell.
8 What is critical is that this chain of events was initiated by the judge’s order directing her to
9 accompany the bailiff in order to make a phone call to her boyfriend. Ms. Chrzanowski’s
10 understandably compliant behavior was predicated upon the judge’s recorded threat that she
11 would be locked up if Mr. Madera did not arrive.

12 Despite an obvious misunderstanding between the Respondent and Bailiff Saavedra, the
13 officer’s actions were triggered by the same threatening and ill-chosen language directed at Ms.
14 Chrzanowski by Judge Assad. While it obviously would have been preferable for the bailiff to
15 obtain a clarification from Judge Assad if he believed the judge’s intent was unclear, the fact of
16 the matter is that Judge Assad had already declared that her liberty would be restrained by virtue
17 of his directive to Ms. Chrzanowski to accompany the bailiff—despite the lack of any legal
18 authority allowing the judge to issue such a declaration, at least not without a finding of contempt
19 and all the attendant due process steps to which she would have been entitled.

20 **B. Conclusions of Law.**

21 1. The Commission has both subject matter over the case and personal jurisdiction over
22 the Respondent.

23 2. The Commission is guided by Nevada Supreme Court precedent, which requires
24 application of the “objective reasonable person standard” when applying the canons that
25 comprise the Nevada Code of Judicial Conduct. *Mosley v. Nevada Commission on Judicial*
26 *Discipline*, ___ Nev. ___, 102 P.3d 555, 560 (Nev. 2004).

27 ...

28 ...

1 3. The proof adduced at the hearing was sufficient to prove violations of Canon 2A,
2 based on the existence of facts proving the allegations in Counts One and Two.⁶ An objective
3 reasonable person would conclude that the Respondent's act of directing Ms. Chrzanowski to go
4 with his bailiff in order to make Mr. Madera "get his butt" down to the court did not comply with
5 the law nor did the Respondent's action promote public confidence in the integrity and
6 impartiality of the judiciary. The Commission observes that while the judge had every reason to
7 deal with Mr. Madera sternly, or even harshly, given the offender's abject failure to pay the fine
8 imposed for traffic violations for which he had long ago admitted culpability, the Respondent had
9 no basis in law nor is the Commission aware of any authority which allows a judge to effectively
10 hold a defendant's paramour hostage pending the arrival of the defendant to court.

11 4. The proof adduced at the hearing was insufficient to prove the allegations in Count
12 Three.

13 5. Cause appearing, the Commission has by a separate written order entered concurrently
14 with this dispositive order, denied the following pre-hearing motions filed by the Respondent, all
15 of which were opposed by the Special Counsel: (1) Motion to Dismiss Based upon Incorrect
16 Characterization of Ms. Chrzanowski as a Non-Litigant; (2) Motion to Allow Expert Testimony
17 of Professor Stempel; and (3) Motion for Summary Judgment. For the purposes of this order, it
18 is sufficient to note that Ms. Chrzanowski was properly characterized in the charging instrument
19 as a "non-litigant." The fact that she had submitted herself to the court's jurisdiction as far as
20 contempt purposes is concerned (she could be sanctioned if she were to misbehave in the
21 presence of the court) is of no relevance to the Commission's assessment of this case. In sum,
22

23 ⁶ The Commission concludes that the existence of a violation based on the allegation in
24 Count Two is not dependent on the existence of certain facts alleged to exist in Paragraph 6 of the
25 Formal Statement of Charges. With respect to the so-called "code words" that were alleged to have
26 been in effect between the bailiff and the Respondent which, according to the bailiff, supposedly
27 served to trigger action by the bailiff, the Commission expressly finds that the judge and the bailiff
28 had not agreed on any such code words. Nevertheless, the Commission's legal conclusion that a
violation of Canon 2A occurred, finds a foundation in the existence of facts in the instant record
showing the Respondent used his directive authority as the judge and the bailiff's physical
intervention to coerce Ms. Chrzanowski to attempt to contact Mr. Madera.

1 Judge Assad proffered no convincing authority and the Commission is aware of none, that
2 allowed him the latitude, legally speaking, to threaten or to restrain Ms. Chrzanowski for the
3 purpose of coercing her to call her boyfriend in order to convince him to appear in court.

4 **C. Imposition of Discipline.**

5 The Commission concludes the appropriate discipline to be imposed under Commission
6 Interim Rule 28 as to two violations based on the same incident is as follows:

7 By unanimous vote of the Commission, pursuant to Subsections 5(a) and (b) of Article 6,
8 Section 21 of the Constitution of the State of Nevada, Nevada Revised Statute §1.4653(2), and
9 Commission Interim Rule 28, the Respondent shall be and hereby is publicly reprimanded.

10 In assessing the appropriate penalty, the Commission took into account the fact that there
11 were several witnesses, including an experienced lawyer for the State Bar of Nevada who
12 specializes in the disciplinary process for attorneys, who served as witnesses attesting to the
13 stellar character of the judge, particularly his devotion to ensuring a fair legal system for all
14 persons. His behavior, while clearly unreasonable, seems to have been out of character for the
15 judge and the Commission concludes he is unlikely to repeat it.⁷

16 The Respondent seemingly now understands that if he decides that coercive action is
17 necessary, he must take it against those who owe a duty to appear in court personally, pursuant to
18 lawfully issued citations and court orders. These formal Commission proceedings against Judge
19 Assad may cause him to utilize more formalistic proceedings in his own court, ones that don't
20 include substitutes for defendants, the role played by Ms. Chrzanowski. If so, this is a small
21 price to pay to ensure that a person who is the subject of the citation and consequent court
22 proceedings may legally be the only one sanctioned for failure to comply with court orders, while
23

24 ⁷ During the hearing, there were references to two other instances that occurred on the same
25 day in which a non-litigant was restrained in some fashion based upon Judge Assad's directive.
26 There is no evidence in the record to support findings that such incidents occurred and thus, the
27 Commission may conclude that the incident with Ms. Chrzanowski was certainly out of the ordinary.
28 Additionally, the Commission notes that this incident occurred during the first year of the
respondent's tenure, prior to the time he attended mandatory training at the National Judicial
College.

1 an unsuspecting substitute is not put in the same position as Ms. Chrzanowski, that of an unpaid,
2 untrained mouthpiece for the defendant.⁸

3 **D. Order.**

4 IT IS HEREBY ORDERED that the Vice-Chairman is authorized by all the members to
5 sign this decision for all the members.⁹ The signature pages for the other members shall be
6 retained in the Commission file.

7 IT IS HEREBY ORDERED that the Executive Director of the Judicial Discipline
8 Commission is to take the necessary steps to file this document in the appropriate records of the
9 Commission and with the Nevada Supreme Court.

10 IT IS HEREBY ORDERED that the Clerk's Certificate of Mailing, found below, shall
11 constitute the notice of entry of this document pursuant to Commission Interim Rule 34, and the
12 clerk shall promptly serve it on the Respondent's Counsel and the Special Counsel.

13 **E. Notice.**

14 Notice is hereby tendered to the Special Counsel and the Respondent pursuant to NRAP
15 3D, an appeal may be taken by filing a notice of appeal with the Clerk of the Commission and

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23 ⁸ The use of more formal procedures may serve an additional salutary purpose. If fewer or
24 no substitute "non-litigants" are allowed to appear even in informal municipal court proceedings
25 such as status checks on fines and other punishments, then the prospect of an unlicensed person
practicing law without a license is diminished if not eliminated.

26 ⁹ During the week of January 29, 2007, the Executive Director was informed that the newly
27 elected governor had decided to appoint a new member, rather than to reappoint Chairman Chappell.
28 Chairman Chappell's term expired on January 5, 2007 and therefore, he is not a signatory to this
final, dispositive order.

1 serving such notice on opposing counsel within fifteen (15) days of service of this document by
2 the clerk of the Commission.

3 DATED this 7th day of February, 2007.

4 NEVADA COMMISSION ON
5 JUDICIAL DISCIPLINE
6 P.O. Box 48
7 Carson City, NV 89702
8 (775) 687-4017

9 By: *Daveen Nave*
10 Daveen Nave, Vice-Chairman
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1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline
3 and on the 8th day of February, 2007, I placed the above-referenced FINDINGS OF FACT,
4 CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE in the United States Mail,
5 postage pre-paid, addressed to the undersigned:

6 Mary Boetsch, Esq.
7 448 Hill Street
8 Reno, NV 89501
9 Special Counsel

10 William Terry, Esq.
11 530 South Seventh Street
12 Las Vegas, NV 89101
13 Counsel for Respondent.

14 
15 _____
16 Kathy Schultz, Commission Clerk
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