FILED

MAR 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

THE HONORABLE RICHARD SCOTTI, District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada,

Respondent.

CASE NO. 82629

CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO PUBLIC REPRIMAND

Pursuant to Commission Procedural Rule 29, I hereby certify that the document attached hereto is a true and correct copy of the STIPULATION AND ORDER OF CONSENT TO PUBLIC REPRIMAND filed with the Nevada Commission on Judicial Discipline on March 15, 2021.

DATED this 15th day of March, 2021.

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

By:
PAUL C. DEYHLE
General Counsel and Executive Director
Nevada Bar No. 6954

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Commission on Judicial Discipline

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE RICHARD SCOTTI, District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada, Respondent.	Case No.: 2019-183-P

STIPULATION AND ORDER OF CONSENT TO PUBLIC REPRIMAND

In order to resolve the judicial conduct complaint pending before the Nevada Commission on Judicial Discipline (the "Commission"), the Respondent, Honorable Richard Scotti, District Court Judge, Eighth Judicial District Court, Clark County, State of Nevada ("Respondent" or "Judge Scotti"), and the Commission stipulate to the following pursuant to Commission Procedural Rule 29:

1. Respondent admits that he violated Canon 1 of the Code, Rule 1.1, requiring the Respondent to comply with the law, including the Code itself; and Rule 1.2, requiring the Respondent to act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and avoiding impropriety and the appearance of impropriety; Canon 2 of the Code, Rule 2.8(B), requiring the Respondent to be patient, dignified and courteous, and act and speak with decorum and maintain a proper judicial demeanor, or either of these rules, in his capacity as a district court judge in and for the Eighth Judicial District Court, in Clark County, State of Nevada, by knowingly or unknowingly engaging in an act, a combination of acts, or all of the following acts, which occurred during the circumstances stated below:

A. During the period spanning March 23, 2017 and May 1, 2017, Respondent presided over the criminal trial in the matter of *State of Nevada v. Jose Azucena*, which involved allegations of multiple sex offenses against children and related charges. As characterized by the Nevada Supreme Court in the subsequent appeal in the matter of *Jose Azucena v. State of Nevada*, 136 Nev. Adv. Op. 36 (2019), "...[d]uring voir dire in this criminal case, the trial judge threw a book against the wall, cursed, and berated, yelled at, and threatened a prospective juror for expressing her belief that she could not be impartial..." *Id.*, 136 Nev. Adv. Op. 36, at pg. 2. Respondent ultimately excused the potential juror from the venire.

B. In the words of the Nevada Supreme Court, "...the trial court's statements and conduct with the prospective juror may have discouraged other prospective jurors from responding honestly about their own biases out of fear of repercussions....", adding that "...the judge created an atmosphere of intimidation and did nothing to alleviate the impact of his behavior." *Id.*

C. Respondent notes that, in his perception, the conduct in question amounted to the tossing of a small pamphlet (i.e., a "pocket" U.S. Constitution) rather than throwing a book against a wall, and that his demeanor toward the prospective juror was not threatening.

D. Ultimately, the jury convicted Defendant, Jose Azucena of twelve counts of lewdness with a child under the age of 14, seven counts of child abuse, neglect or endangerment; five counts of indecent exposure; four counts of attempted lewdness with a child under the age of 14; and one count each of first-degree kidnapping and sexual assault of a minor under 14 years of age.

E. Defendant, Jose Azucena subsequently appealed his conviction to the Nevada Supreme Court, which was reversed and remanded. On September 5, 2019, in the matter of *Jose Azucena v. State of Nevada*, 136 Nev. Adv. Op. 36 (2019), the Nevada Supreme Court specifically indicated that the basis for its reversal and remand was a direct consequence of the above-described facts.

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In the Court's words:

> ***We conclude that such behavior and statements constitute judicial misconduct*** and may have discouraged other prospective jurors from answering candidly about their own biases. Because we cannot be convinced that an impartial jury was selected under these circumstances where the judge did nothing to alleviate the intimidating atmosphere that he created, we reverse and remand for a new trial.

Id., 136 Nev. Adv. Op. 36, at pg. 2 (emphasis added.)

F. Moreover, the Nevada Supreme Court's opinion also noted that:

> "A trial judge has a responsibility to maintain order and decorum in trial proceedings." *Oade*, 114 Nev. at 621, 960 P.2d at 338. The judicial canons require a judge to "be patient, dignified and courteous to... jurors." NCJC Canon 2, Rule 2.8 (B), and to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and... avoid impropriety and the appearance of impropriety," NCJC Canon 1, Rule 1.2. We have previously "urged judges to be mindful of the influence they wield" over jurors, as a trial judge's words and conduct are likely "...to mold the opinion of the members of the jury to the extent that one or the other side of the controversy may be prejudiced." *Parodi*, 111 Nev. at 367-68, 892 P.2d at 589-90 (internal quotation marks omitted).

Id., 136 Nev. Adv. Op. 36, at pg. 6.

2. Respondent admits to all the allegations brought against him in paragraphs (I)(A) through (F) as set forth above.

3. Respondent agrees to waive his right to present his case and contest the allegations in the information set forth above in a formal hearing pursuant to Commission Procedural Rule 18. Respondent also agrees that this Stipulation and Order of Consent to Public Reprimand ("Order") takes effect immediately, pursuant to Commission Procedural Rule 29. The Commission accepts Respondent's waiver of said right and acknowledges and agrees to the immediate effect of this Order.

4. Respondent agrees and acknowledges that this Order will be published on the Commission's website and filed with the Clerk of the Nevada Supreme Court.

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5. Respondent and the Commission hereby stipulate to Respondent's consent to public reprimand pursuant to Rule 29. Notwithstanding his differing view as to the underlying facts of this matter (as noted above), Respondent nevertheless stipulates to the following substantive provisions:

A. He agrees the evidence available to the Commission would establish by clear and convincing proof that he violated the Code, including Canon 1, Rules 1.1 and 1.2, and Canon 2, Rule 2.8(B).

B. He further agrees that his words and actions in the matter of *Jose Azucena v. State of Nevada*, 136 Nev. Adv. Op. 36 (2019), (which caused the Nevada Supreme Court to reverse and remand the matter for retrial and specifically indicate that the basis for its reversal and remand were the above-described facts), constitute an aggravating factor for purposes of imposition of discipline in this matter, and merit the specific discipline stipulated to, herein.

C. He agrees the discipline of public reprimand is justified and authorized by Article 6, Section 21(1) of the Nevada Constitution; NRS 1.4653; NRS 1.4677(1)(a); NRS 1.4694; and Commission Procedural Rule 29.

D. He stipulates to a public reprimand for violations of the Judicial Canons and Rules as set forth above in paragraphs (1) (A) through (F).

6. The Respondent understands and agrees that, by accepting the terms of this Order, he waives his right to appeal to the Nevada Supreme Court, pursuant to Rule 3D of the Nevada Rules of Appellate Procedure.

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ORDER

IT IS HEREBY ORDERED that Respondent is hereby publicly reprimanded for violating the Code, Canon 1, Rules 1.1 and 1.2, and Canon 2, Rule 2.8(B).

IT IS FURTHER ORDERED that the Executive Director of the Commission take the necessary steps to file this document in the appropriate records and on the website of the Commission and with the Clerk of the Nevada Supreme Court.

MARCH 9,

DATED: February __, 2021

RICHARD SCOTTI
Respondent

MARCH 9,

DATED: February __, 2021

FENNEMORE CRAIG, P.C.

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NEVADA COMMISSION ON JUDICIAL DISCIPLINE

The Commissioners listed below accept the terms of this Stipulation and Order of Consent to Public Reprimand between the Respondent and the Commission. They further authorize the Chairman, if requested, to sign on behalf of the Commission, as a whole, this document containing the Stipulation and Order of Consent to Public Reprimand.

Signed by: **Dated:**

March 11, 2021

GARY VAUSE, CHAIRMAN

STEFANIE HUMPHREY, VICE CHAIR

KARL ARMSTRONG

DONALD CHRISTENSEN

HON. THOMAS GREGORY

JOHN KRMPOTIC

HON. THOMAS STOCKARD

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 15th day of March, 2021, I served a copy of the **STIPULATION AND ORDER OF CONSENT TO PUBLIC REPRIMAND** by email and U.S Mail, postage paid, addressed to the following:

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Nancy Schreihans, Commission Clerk