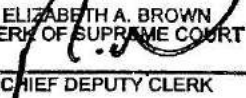


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IN THE SUPREME COURT OF THE
STATE OF NEVADA

FILED

NOV 15 2022

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

In the Matter of)
THE HONORABLE DOUGLAS E. SMITH,)
District Court Judge, Eighth Judicial District)
Court, Clark County, State of Nevada,)
Respondent.)

CASE NO. 85645

**CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT
TO BAR FROM SERVING IN A JUDICIAL OFFICE IN THE FUTURE**

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 BAR FROM SERVING IN A JUDICIAL OFFICE IN THE FUTURE filed with the Nevada Commission on Judicial Discipline on November 14, 2022.

DATED this 14th day of November, 2022.

NEVADA COMMISSION
ON JUDICIAL DISCIPLINE
P.O. Box 18123
Reno, NV 89511
(775) 687-4017

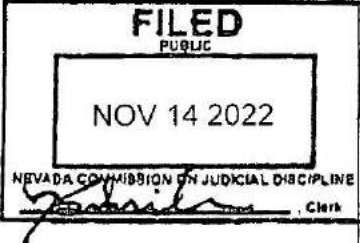
By: 
PAUL C. DEVILLE
General Counsel and Executive Director
Nevada Bar No. 6954



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FENNEMORE CRAIG, P.C.
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Prosecuting Officer for the Nevada
Commission on Judicial Discipline

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE
DOUGLAS E. SMITH, District Court Judge,
Fighth Judicial District Court, Clark County,
State of Nevada,

Case No.: 2022-027

Respondent.

**STIPULATION AND ORDER OF CONSENT TO BAR FROM SERVING IN A
JUDICIAL OFFICE IN THE FUTURE**

In order to resolve the judicial conduct complaint pending before the Nevada Commission on Judicial Discipline (the "Commission") and in order to save the time and expense of proceeding to a hearing, the Respondent, Douglas E. Smith, former District Court Judge Eighth Judicial District Court, Clark County, State of Nevada ("Respondent" or "Judge Smith"), and the Commission stipulate to the following pursuant to Commission Procedural Rule 29:

1. Respondent admits that he violated Canon 1 of the Nevada Code of Judicial Conduct (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 2.2, requiring the Respondent to uphold and apply the law, and perform all the duties of judicial office fairly and impartially, Rule 2.5(A), requiring the Respondent to perform judicial and administrative duties competently and diligently, and Rule 2.9(A), requiring the Respondent to refrain from engaging in *ex parte* communications, or considering other communications made outside the presence of

1 the parties or their lawyers, concerning a pending or impending matter, or any of these rules, in
2 his capacity as a District Court Judge in and for the Eighth Judicial District Court, in Clark
3 County, State of Nevada, by knowingly or unknowingly engaging in an act, a combination of
4 acts, or all of the following acts, which occurred during the circumstances stated below:

5 A. In 2015, Respondent presided over the trial in the matter of *State of*
6 *Nevada v. Diego Salazar* ("Salazar Matter"), which involved the kidnapping and sexual assault
7 of a child. Although the trial resulted in the conviction of the Defendant in that matter, on
8 January 24, 2018, the Nevada Supreme Court reversed and remanded the case for a new trial
9 since the record reflected that the Respondent had failed to swear in the jury, pursuant to NRS
10 16.030(5).

11 B. Thereafter, Respondent retired from his position as a District Court Judge
12 in the Eighth Judicial District Court and the Salazar Matter was set to be retried, consistent with
13 the instructions of the Nevada Supreme Court. With the Respondent's retirement, the Salazar
14 Matter was reassigned to another member of the Eighth Judicial District Court bench. Upon
15 remand, the Defendant then moved to dismiss the Salazar Matter on the basis of prosecutorial
16 misconduct, witness tampering and, among other allegations, as well as *ex parte* communications
17 between the Respondent and the Prosecutor assigned to the original trial of the Salazar Matter,
18 from which counsel for the Defendant had been excluded. This new Motion to Dismiss was
19 denied. Defendant then filed a Petition for Writ of Mandamus stemming from the new Judge's
20 denial of his Motion to Dismiss.

21 C. On April 28, 2021, the Nevada Supreme Court issued its Order Granting
22 Petition ("Salazar Writ Order"), concluding that it was "clear" that misconduct had occurred in
23 the trial of the Salazar Matter, and further ordering the District Court to conduct an evidentiary
24 hearing to "determine the extent of the prosecutorial and/or judicial misconduct..." (Salazar Writ
25 Order, Pgs. 4-5).

26 D. Within the Salazar Writ Order, the Nevada Supreme Court also concluded
27 the following:

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Diego Salazar was accused of kidnapping and sexually assaulting six-year old Z. V. The State called a witness who testified at trial to seeing Salazar and Z. V. emerge from a trailer. The witness, who was then living in another state, had an outstanding bench warrant for her arrest in a North Las Vegas drug case. Salazar voiced concerns that the State was providing benefits to the witness in exchange for favorable testimony. But the trial judge refused to allow defense counsel to question the witness about her warrant.

Following the witness's testimony, one of the prosecutors advised the judge that Assistant District Attorney Robert Daskas wished to speak with him. The judge informed the parties that Daskas contacted him directly. The judge thereafter spoke to Daskas *ex parte* in chambers, barring defense counsel from entering, and even admonished defense counsel to "...[n]ever walk in my office the way you did again".

The judge ordered the witness to be booked on the warrant, telling the parties that he had made that decision independently. When informed of an additional warrant, the judge ordered her booked on that warrant as well. But unbeknownst to defense counsel, the judge also ordered the witness to be immediately released on her own recognizance, effectively quashing the warrants.

Although the trial judge claimed to have acted alone in ordering the witness arrested and released, and although one of the two prosecutors stated she made no promises to the witness, the record lacked actual testimony, under oath, as to the essential facts. Notably, it is unclear as to what occurred during the *ex parte conference* between Daskas and the trial judge, and neither testified under oath to those facts.

The record is devoid of evidence as to whether other members of the district attorney's office (such as an investigator, the other prosecutor, a process server, etc.) may have promised the witness immunity or a related benefit in exchange for her testimony. Moreover, the record clearly suggests the witness did receive a benefit here, as she was booked and released immediately following her testimony. But the trial judge prohibited defense counsel from asking any questions whatsoever as to what benefit the witness received in relation to her outstanding warrants or in the prosecution of her outstanding cases, thereby making it impossible to know what the witness would have testified to had she been questioned on those points. The defense counsel should have been allowed to participate in the conversation with the District Attorney, but instead the trial judge severely admonished

1 the defense attorney for attempting to protect Salazar's interests,
2 implying defense counsel was facing contempt, while nevertheless
3 allowing the District Attorney to enter chambers and speak to the
4 judge alone. The trial judge's actions serve to obscure the facts,
5 making it unclear as to what any of these witnesses would have
6 said regarding the benefits the witness might have received for
7 testifying.

8 (Salazar Writ Order, Pgs. 1-4).

9 2. On May 17, 2021, Salazar pled guilty in the now-remanded case and the
10 evidentiary hearing ordered by the Nevada Supreme Court in the Salazar Writ Order never took
11 place, as Salazar's guilty plea rendered that Order moot.

12 3. Respondent admits that he had a private conversation with Assistant District
13 Attorney Robert Daskas during the course of the 2015 trial in the Salazar Matter, from which
14 Salazar's defense counsel was excluded.

15 4. Respondent contends that his private conversation with A.D.A. Daskas was not an
16 *ex parte* communication since he and A.D.A. Daskas did not discuss the Salazar Matter.
17 However, the Nevada Supreme Court concluded in the Salazar Writ Order that an *ex parte*
18 *conference had* actually occurred in this matter, notwithstanding the Respondent's contention to
19 the contrary.

20 5. Respondent further admits that he had discussed a witness with A.D.A. Daskas in
21 the Salazar Matter who had an outstanding warrant for her arrest. Respondent confirmed that he
22 had ordered this witness into custody on that warrant and released her at the conclusion of the
23 trial. Respondent failed to recall any other details within the Salazar Matter and was, therefore,
24 not in a position to dispute the factual findings made within the Nevada Supreme Court's Salazar
25 Writ Order. Respondent does contend that his actions, as described, were not intentional.

26 6. Also during his tenure as a District Court Judge, Respondent presided over the
27 trial in the matter of *State of Nevada v. Will Onie Sitton*, ("Sitton Matter") which involved the
28 robbery and murder of an elderly man. Although the trial resulted in the conviction of Sitton in
that matter, two (2) issues were raised on appeal:

A. Respondent's denial of Sitton's motion for severance of the criminal case

1 against him from the other accused defendants, and

2 B. Respondent's purported violation of Sitton's Confrontation Clause rights.

3 7. On April 19, 2019, the Nevada Supreme Court reversed and remanded the case
4 for a new trial ("Sitton Reversal and Remand Order"), finding (1) that Respondent abused his
5 discretion in the Sitton Matter by denying Defendant Sitton's oral motion for a severance of his
6 criminal proceeding from those of the other Defendants therein, and (2) that Respondent's
7 decision to admit into evidence a non-testifying co-Defendant's statements did not constitute
8 mere harmless error, after the State of Nevada failed to show (beyond a reasonable doubt) that
9 these errors did not impact the verdict of the jury.

10 8. The Sitton Reversal and Remand Order also contained a concurrence authored by
11 Nevada Supreme Court Justice James W. Hardesty ("Hardesty Concurrence"). The Hardesty
12 Concurrence supported the findings of the majority, but also identified the Respondent's
13 misconduct in the Sitton Matter as emblematic of a pattern of cases where the Nevada Supreme
14 Court was compelled to "...[reverse] a judgment of conviction based on [Respondent's] failure
15 to follow well-established law..." (Sitton Reversal and Remand Order, Pgs. 7-9).

16 9. The cases identified within the Hardesty Concurrence as part of Respondent's
17 pattern of failing to follow well-established law (and the nature of the errors identified therein)
18 were as follows:

19 A. *Brass v. State*, 128 Nev. 748 (failure to comply with *Batson v. Kentucky*);

20 B. *Perez v. State*, Docket No. 60743 (failure to comply with *Cripps v. State*);

21 C. *Orellana v. State*, Docket No. 56438 (failure to comply with *Batson*);

22 D. *Simmons v. State*, Docket No. 58016 (failure to consider claim that
23 defendant's constitutional rights were being violated by the use of a "lottery" system to select
24 alternate jurors);

25 E. *Williams v. State*, Docket No. 59741 (failure to comply with *Faretta v.*
26 *California* and SCR 253);

27 F. *Bowman v. State*, Docket No. 61801 (failure to permit a juror to ask a
28

- 1 valid question);
- 2 G. *Black v. State*, Docket No. 63880 (failure to comply with *Cripps*);
- 3 H. *Wiesner v. State*, Docket No. 64373 (denial of defendant's motion for self-
- 4 representation on grounds rejected in *Vanisi v. State*);
- 5 I. *Barral v. State*, 131 Nev. Adv. Op. 52 (2015) (failure to administer
- 6 statutorily mandated oath before jury selection);
- 7 J. *Sperke v. State*, Docket No. 67319 (failure to administer statutorily
- 8 mandated oath before jury selection);
- 9 K. *Bradford v. State*, Docket No. 62108 (reversal based on improper
- 10 dismissal of venire members before *Batson* hearing);
- 11 L. *Williams v. State*, 134 Nev. Adv. Op. 83 (failure to engage in step three of
- 12 *Batson* analysis);
- 13 M. *Salazar v. State*, Docket No. 68403 (failure to administer statutorily
- 14 mandated oath before jury selection);
- 15 N. *Miranda-Cruz v. State*, Docket No. 70960 (improper admission of
- 16 preliminary hearing testimony, failure to administer statutorily mandated oath before jury
- 17 selection and before a child testified, and failure to administer statutorily mandated oath before a
- 18 break);
- 19 O. *Cazares v. State*, Docket No. 71728 (failure to properly instruct on
- 20 elements of felony coercion, and multiple errors during jury selection); and
- 21 P. *Flowers v. State*, Docket No. 70933 (violation of *Cripps* and likelihood of
- 22 success on claim that appellate counsel should have raised the issue on direct appeal).
- 23 10. The Hardesty Concurrence also identified errors that the Respondent actually
- 24 repeated even after being informed of the nature of each respective error, which were as follows:
- 25 A. *Barral* (cited, *supra*);
- 26 B. *Salazar* (cited, *supra*);
- 27 C. *Moran v. State*, Docket No. 67881 (failure to administer statutorily

1 mandated oath before jury selection);

- 2 D. *Sperke* (cited, *supra*);
- 3 E. *Brass* (cited, *supra*);
- 4 F. *Williams* (cited, *supra*);
- 5 G. *Orellana* (cited, *supra*); and
- 6 H. *Bradford* (cited, *supra*).

7 11. The Hardesty Concurrence also noted the existence of two (2) additional
8 decisions where Respondent repeated an error he had made in other matters, but where no
9 reversal occurred since defendants in those matters had not objected at trial and had not
10 demonstrated prejudice on appeal, which were as follows:

- 11 A. *Owens v. State*, Docket No. 71532; and
- 12 B. *Washington v. State*, Docket No. 67445.

13 (Hardesty Concurrence, pgs. 7-9, notes 2, 3.)

14 12. Respondent admits that all of the reversals and remands set forth in the Hardesty
15 Concurrence (as set forth above) are true and accurate and further admits to failing to follow the
16 law in the matters specified therein, but has no other specific recollections of these matters. In
17 further response, Respondent contends that his actions, as described, were not intentional,
18 contending that Justice Hardesty did not like him because he is a Mormon and Justice Hardesty
19 dislikes Mormon judges. Respondent provided no further explanation or defense of his pattern
20 of conduct set forth within the Hardesty Concurrence, nor any response to the holdings of the
21 case cites referenced therein.

22 13. Respondent and the Commission hereby stipulate to Respondent's consent to a
23 bar from serving in a judicial office in the future pursuant to Rule 29. Notwithstanding his
24 somewhat differing view as to the significance of the cases cited against him and the underlying
25 facts of these respective matters (as noted above), Respondent nevertheless stipulates to the
26 following substantive provisions:

- 27 A. He agrees the evidence available to the Commission would establish by

1 clear and convincing proof that he violated the Code, including Canon 1, Rules 1.1 and 1.2, and
2 Canon 2, Rules 2.2, 2.5(A) and 2.9(A).

3 B. He further agrees that his actions cited in the matter of *Sitton v. State*
4 (cited, *supra*) (see, *Sitton Reversal and Remand Order* and, specifically, the Hardesty
5 Concurrence which caused the Nevada Supreme Court to reverse and remand no fewer than
6 eighteen (18) matters for retrial and specifically indicate that the basis for its reversal and remand
7 were the above-described facts), constitute an aggravating factor for purposes of imposition of
8 discipline in this matter, and merit the specific discipline stipulated to, herein.

9 C. He agrees the discipline of a bar from serving in a judicial office in the
10 future is justified and authorized by Article 6, Section 21(1) of the Nevada Constitution; NRS
11 1.428; NRS 1.4653; NRS 1.4655(2)(a), (b); NRS 1.4677(1)(c); NRS 1.4694; and Commission
12 Procedural Rule 29.

13 D. He stipulates to a bar from serving in a judicial office in the future for
14 violations of the Judicial Canons and Rules as set forth above in Paragraphs 1 – 11 and all
15 subparts therein.

16 14. Respondent and the Commission agree that the allegations set forth in these
17 matters, if proven by clear and convincing evidence, could result in disciplinary action against
18 the Respondent. Respondent agrees to waive his right to present his case in this matter before the
19 Commission and further agrees that he will not contest these allegations in a formal hearing
20 pursuant to Commission Procedural Rule 18. Respondent also agrees that this Stipulation and
21 Order of Consent to Bar from Serving in a Judicial Office in the Future (“Order”) takes effect
22 immediately, pursuant to Commission Procedural Rule 29. The Commission accepts
23 Respondent’s waiver of said right and acknowledges and agrees to the immediate effect of this
24 Order.

25 15. Respondent agrees and acknowledges that this Order will be published on the
26 Commission’s website and filed with the Clerk of the Nevada Supreme Court.

27 16. Respondent further agrees to waive (and the Commission agrees to accept
28

1 Respondent's waiver of) all of his rights pursuant to NRS 1.4673 and NRS 1.4677, including but
2 not limited to:

- 3 a. The right to proceed to hearing on the allegations against him (NRS
4 1.4673(1)).
- 5 b. The right to have any of the allegations against him proven by clear and
6 convincing evidence, with the burden of proof on special counsel (NRS
7 1.4673(2)(a)-(b)).
- 8 c. The right to receive written findings of fact and conclusions of law,
9 following a hearing, within sixty (60) days of said hearing (NRS
10 1.4673(3)).
- 11 d. The right to a determination as to whether discipline is appropriate in these
12 matters and what form that discipline should take (NRS 1.4677).

13 17. The Commission agrees to take no further action against Respondent on any
14 further matters, whether known or unknown.

15 18. The Respondent hereby further stipulates that now that he has vacated his judicial
16 office, he will neither seek nor accept judicial office in the State of Nevada at any time in the
17 future, nor will he undertake or perform any duty within the definition of "Judge" set forth in
18 NRS 1.428.

19 19. The Respondent understands and agrees that, by accepting the terms of this Order,
20 he waives his right to appeal to the Nevada Supreme Court, pursuant to Rule 3D of the Nevada
21 Rules of Appellate Procedure, which provides Respondent the right to take an appeal of this
22 Order to the Nevada Supreme Court within fourteen (14) days after service upon him (NRAP
23 3D(d)). Respondent also waives all other forms of extraordinary relief for purposes of
24 challenging this Order.

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27 ORDER

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IT IS HEREBY ORDERED that Respondent shall neither seek nor accept judicial office in the State of Nevada at any time in the future, nor undertake or perform any duty within the definition of "Judge" set forth in NRS 1.428 for violating the Code, Canon 1, Rules 1.1 and 1.2, and Canon 2, Rules 2.2, 2.5(A) and 2.9(A).


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.

November
DATED: *October 2*, 2022

November
DATED: *October 10*, 2022.

FENNEMORE CRAIG, P.C.


DOUGLAS E. SMITH
Respondent


RICHARD T. DREITZER, ESQ., #006626
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(702) 692-8026
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Prosecuting Officer for the Nevada
Commission on Judicial Discipline

1 **NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

2 The Commissioners listed below accept the terms of this Stipulation and Order of Bar
3 from Serving in a Judicial Office in the Future. They further authorize the Chairman, if
4 requested, to sign on behalf of the Commission, as a whole, this document containing the
5 Stipulation and Order of Consent to Bar from Serving in a Judicial Office in the Future.
6

7 **Signed by:**

Dated:

8 
9 _____
10 GARY VAUSE, CHAIRMAN

November 14, 2022

11 STEFANIE HUMPHREY, VICE-CHAIR

12 KARL ARMSTRONG

13 DON CHRISTENSEN

14 HON. DAVID HARDY

15 JOHN KRMPOTIC

16 HON. THOMAS STOCKARD
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CERTIFICATE OF SERVICE

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I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 14th day of November, 2022, I served a copy of the CERTIFIED COPY OF STIPULATION AND ORDER OF CONSENT TO BAR FROM SERVING IN A JUDICIAL OFFICE IN THE FUTURE by email and U.S.

Mail, addressed to the following:

TOM PITARO
ATTORNEY AT LAW
601 LAS VEGAS BLVD. SOUTH
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Counsel for Respondent

RICHARD DREITZER
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Prosecuting Officer

By: 
Nancy Schreihans, Commission Clerk