

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEC 22 2023

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

In the Matter of

THE HONORABLE ELIAS GOICOECHEA,
Former Justice of the Peace, Elko Justice Court,
Elko County, State of Nevada,

Respondent.


CASE NO. 87804

**CERTIFIED COPY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND
IMPOSITION OF DISCIPLINE**

Pursuant to Commission Procedural Rule 28(2), I hereby certify that the document attached hereto is a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE filed with the Nevada Commission on Judicial Discipline on December 22, 2023.

DATED this 22nd day of December, 2023.

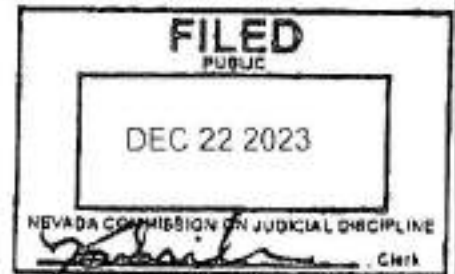
STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
P.O. Box 18123
Reno, NV 89511
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By: 
PAUL C. DEYHLE
General Counsel and Executive Director
Nevada Bar No. 6954

23-41739

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA



In the Matter of)
)
THE HONORABLE ELIAS GOICOECHEA,)
Former Justice of the Peace, Elko Justice Court,)
Elko County, State of Nevada,)
)
Respondent.)

CASE NO. 2022-028-P

FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE

On April 19, 2023, Special Counsel for the Nevada Commission on Judicial Discipline ("Commission") filed a Formal Statement of Charges ("FSOC") against the Honorable Elias Goicoechea, former Elko Justice of the Peace ("Respondent") pursuant to NRS 1.467(5) for knowing or unknowing violations of the Revised Nevada Code of Judicial Conduct ("Code"). Respondent did not file an answer to the FSOC pursuant to NRS 1.467(6) and Commission Procedural Rule ("CPR") 17.

On August 4, 2023, Special Counsel filed a Motion for Entry of Order Imposing Discipline and Request for Formal Hearing in Support of Same, but Respondent failed to respond. Consequently, on August 23, 2023, Special Counsel filed a Notice of Non-Opposition and requested a formal hearing.

On October 5, 2023, Special Counsel filed his Disclosure of Witnesses and Exhibits in Advance of Public Hearing ("Disclosure"). The Disclosure included, among other things, the Verified Statement of Complaint,¹ the Commission's Investigation Report, and investigative interview summaries and transcripts of witnesses, including officers from the Elko Police Department and Nevada Highway Patrol, and Fourth Judicial District Court Judges Mason Simons and Kriston Hill. Respondent failed to submit evidentiary objections or respond.

Pursuant to written notice, NRS 1.4673(1)(b) and CPR 18, the Commission conducted a public hearing on October 20, 2023, via Simultaneous Audiovisual Transmission utilizing the ZOOM virtual platform which was streamed live to the public via YouTube.

¹ The Verified Statement of Complaint filed against Respondent was based on information received from District Court Judges Mason Simons and Kriston Hill of the Fourth Judicial District Court in Elko, Nevada.

1 Richard I. Dreitzer, Esq. appeared as Special Counsel.² Respondent did not engage legal counsel,
2 appear at the hearing or defend himself against the allegations set forth in the FSOC. During the
3 hearing, the Commission considered all evidence and testimony presented.

4 The Commission sets forth its findings of fact and conclusions of law contemplated by its
5 procedural rules. See CPR 28.

6 **A. FINDINGS OF FACT**

7 I. The evidence established that Respondent failed to file an answer to the FSOC. Pursuant
8 to NRS 1.467(6), if a judge fails to file an answer, "the Commission shall deem such failure to be an
9 admission that the charges set forth in the formal statement: (a) Are true; and (b) Establish grounds for
10 discipline pursuant to NRS 1.4653." See also CPR 17 ("Failure to answer the Formal Statement of
11 Charges shall constitute an admission that the facts alleged in the formal complaint are true and
12 establish grounds for discipline pursuant to NRS 1.4653"); and CPR 18 ("If the Respondent or counsel
13 should fail to appear at the hearing, the [R]espondent shall be deemed to have admitted the factual
14 allegations contained in the formal complaint and shall be deemed to have conceded the merits of the
15 complaint.").

16 Accordingly, pursuant to Nevada law, by failing to answer, Respondent admitted each of
17 the facts and charges set forth in the FSOC, which is attached hereto as Exhibit "A" and incorporated
18 herein by reference, and further that they establish grounds for discipline. Notwithstanding
19 Respondent's admissions, however, the evidence submitted by Special Counsel further corroborated the
20 facts and charges.

21 Therefore, the Commission finds that Special Counsel's evidence presented at the
22 hearing clearly and convincingly established each of the following facts set forth in Paragraphs (a)
23 through (d) below:

24 (a) At all times applicable to the allegations contained in the FSOC, Respondent was a
25 Justice of the Peace for the Elko Justice Court in Elko County, Nevada, and was subject to the Code.

26 (b) The factual allegations set forth in Count One of the FSOC, by a 5 to 2 vote, have been
27

28 ² Pursuant to NRS 1.4295, "Special Counsel" is defined as, *inter alia*, the attorney designated by the Commission to file and prosecute a FSOC.

1 proven by clear and convincing evidence.

2 (c) The factual allegations set forth in Count Two of the FSOC, by a 4 to 3 vote, have been
3 proven by clear and convincing evidence.

4 (d) The factual allegations set forth in Count Three of the FSOC, by a 6 to 1 vote, have been
5 proven by clear and convincing evidence.

6 2. Discussion

7 By Respondent's failure to answer and appear, NRS 1.467(6), CPR 17 and CPR 18 each
8 mandate that the entirety of the facts and charges set forth in the FSOC be admitted as true, including
9 the allegations of consuming alcohol to the point of intoxication while performing judicial functions
10 (Counts One and Two), as well as public intoxication (Count Three). Likewise, the live testimony and
11 the Commission's investigative documents (containing numerous percipient witness statements and
12 related transcripts) noted above, presented and admitted by Special Counsel at the hearing, are deemed
13 the evidence of the case, which further independently corroborate the facts set forth in the FSOC.³

14 Respondent neither objected to the evidence submitted by Special Counsel nor proffered
15 any evidence in his own defense. Therefore, to conclude, as does the dissent, that there was not clear
16 and convincing evidence to justify the majority's decision is simply unsupported by the entirety of the
17 record, particularly given the applicability of NRS 1.467(6), CPR 17 and CPR 18.⁴

18 The dissent also notes that there is no objective standard present for intoxication. The
19 FSOC does not charge Respondent with being intoxicated under Nevada's criminal DUI statutes, which
20 would necessarily require the blood/alcohol content to exceed a predetermined legal limit. To the
21 contrary, Respondent is charged with consuming alcohol to the point of intoxication while performing
22 judicial functions under the Code based on an objective reasonable person standard, which is the
23 standard adopted by the Nevada Supreme Court to be used in interpreting the Code.

24
25 ³ The dissent appears to base their opinions solely on the testimony given by District Court Judges Simons and Hill at the
26 public hearing, but seemingly ignores all the other documentary evidence presented in the form of investigative reports and
27 investigative transcripts of numerous percipient witnesses, all of which were admitted as evidence and unopposed by
28 Respondent.

⁴ The dissent's conclusion also calls into question their respective affirmative votes, as noted herein, that Respondent's
actions (as set forth in the FSOC) constituted willful misconduct under the Code based on the very same evidence that they
claim does not otherwise exist. Moreover, if the dissent's assertion were true, then there is no basis whatsoever for
dissenting Commissioner Luis' affirmative vote on Count Three (public intoxication) of the FSOC, which found that Special
Counsel proved by clear and convincing evidence that Respondent violated the Code.

1 Notwithstanding NRS 1.467(6), CPR 17 and CPR 18, which mandate that the facts and
2 charges set forth in the FSOC be admitted as true, the evidence noted above consists of objective
3 reasonable persons (comprised of percipient witnesses) who have independently corroborated the facts
4 set forth in the FSOC.

5 **B. CONCLUSIONS OF LAW**

6 1. As to Count One of the FSOC, by a 5 to 2 vote, the Commission finds that Special
7 Counsel proved by clear and convincing evidence that Respondent violated the Code, Canon 1, Rule
8 1.1, requiring Respondent to comply with the law, including the Code, and Rule 1.2, requiring
9 Respondent to act at all times in a manner that promotes public confidence in the integrity of the
10 judiciary and avoid impropriety and the appearance of impropriety; and Canon 3, Rule 3.1(A), requiring
11 Respondent to not participate in activities that will interfere with the proper performance of
12 Respondent's judicial duties, and Rule 3.1(C), requiring Respondent to not participate in activities that
13 would appear to a reasonable person to undermine Respondent's integrity.

14 In Favor: Commissioner Chair Gary Vause, Commissioner Vice-Chair Stefanie Humphrey,
15 Commissioner Karl Armstrong, Esq., Commissioner Don Christensen, Esq., and Commissioner John
16 Krmpotic.

17 Opposed: Commissioner Hon. Stephen Bishop and Commissioner Hon. Kristin Luis.

18 2. As to Count Two of the FSOC, by a 4 to 3 vote, the Commission finds that Special
19 Counsel proved by clear and convincing evidence that Respondent violated the Code, Canon 1, Rule
20 1.1, *supra*, and Rule 1.2, *supra*; and Canon 3, Rule 3.1(A), *supra*, and Rule 3.1(C), *supra*.

21 In Favor: Commissioner Chair Gary Vause, Commissioner Vice-Chair Stefanie Humphrey,
22 Commissioner Don Christensen, Esq. and Commissioner John Krmpotic.

23 Opposed: Commissioner Hon. Stephen Bishop, Commissioner Hon. Kristin Luis and
24 Commissioner Karl Armstrong, Esq.

25 3. As to Count Three of the FSOC, by a 6 to 1 vote, the Commission finds that Special
26 Counsel proved by clear and convincing evidence that Respondent violated the Code, Canon 1, Rule
27 1.1, *supra*, and Rule 1.2, *supra*; and Canon 3, Rule 3.1(C), *supra*.

28 In Favor: Commissioner Chair Gary Vause, Commissioner Vice-Chair Stefanie Humphrey,

Commissioner Karl Armstrong, Esq., Commissioner Don Christensen Esq., Commissioner John Krmpotic and Commissioner Hon. Kristin Luis.

Opposed: Commissioner Hon. Stephen Bishop

C. IMPOSITION OF DISCIPLINE

The Commission may remove a judge, publicly censure a judge or impose other forms of discipline on a judge if the Commission determines that the judge has committed willful misconduct. NRS 1.4653(1)(a). The Commission may publicly censure a judge or impose other forms of discipline on a judge if the Commission determines that the judge has violated one or more of the provisions of the Code in a manner that is not knowing or deliberate. NRS 1.4653(2). Other forms of discipline include: public admonishment, reprimand or censure of a judge; imposition of a fine; suspension from office without pay; requiring a judge to complete a probationary period, attend training or educational courses, follow a remedial course of action, issue a public apology, comply with conditions or limitations on future conduct, or seek medical, psychiatric or psychological care or counseling; bar the judge from serving in a judicial office in the future or impose any other reasonable disciplinary action or combination of disciplinary actions that the Commission determines will curtail or remedy the misconduct of the judge. NRS 1.4677(1).

1. Willful Misconduct vs. Non-Willful Misconduct

Non-willful misconduct occurs when a judge violates the Code in a way that is not knowing or deliberate. NRS 1.4653(2). As noted above, the Commission may impose any form of discipline, except removal from office, with a finding of non-willful misconduct. The sanction of removal from office is reserved only for the most serious offenses and requires a finding of willful misconduct. Willful misconduct, as applicable in this case, is defined as a “knowing or *deliberate violation*” ... of the [Code].” NRS 1.4653(5)(b)(2) (emphasis added). “Willful misconduct” encompasses an intentional or knowing violation of the judicial canons. *In re Fine*, 116 Nev. 1001, 1021 (2000).

Having considered the arguments, testimony and documents admitted into evidence, Commission finds Respondent’s actions constituted willful misconduct under the Code.

In Favor: Commissioner Chair Gary Vause, Commissioner Vice-Chair Stefanie

Humphrey, Commissioner Karl Armstrong, Esq., Commissioner Don Christensen, Esq., Commissioner John Krmpotic, Commissioner Hon. Kristin Luis and Commissioner Hon. Stephen Bishop.

Opposed: None.⁵

2. Aggravating and Mitigating Factors

Under Nevada law, a judge may be removed, admonished, censured, reprimanded, or subject to other discipline for misconduct, depending on the misconduct's severity and taking into consideration aggravating and mitigating factors. *In re Hughes*, 136 Nev. 399, 406 (2020). Having considered the arguments, testimony and documents admitted into evidence, the Commission finds the following aggravating and mitigating factors to have been proven by clear and convincing evidence.

Aggravating Factors:

(a) That Respondent's decision to drink alcohol on New Year's Eve as the on-call justice of the peace while performing judicial functions created the potential for existing DUI prosecutions and convictions to be compromised, thereby impacting the administration of justice.

(b) That Respondent believed he should be afforded some "professional courtesy" by local law enforcement by virtue of Respondent being a law enforcement officer prior to becoming a judge.

(c) That Respondent minimized the seriousness of his actions.

Mitigating Factors:

Although Respondent was not present during the public hearing and did not proffer any evidence in mitigation, the Commission found the following mitigating factor to have been proven by clear and convincing evidence:⁶

(a) That Respondent is no longer serving as a justice of the peace in Elko County, Nevada.

3. Discussion

As noted above, the Commission may impose on a judge any statutorily authorized form of discipline, except removal from office, upon a finding that a judge's violation of the Code was not an

⁵ Interestingly, the dissent finds the evidence introduced was insufficient to prove that Respondent committed misconduct, but finds the same evidence was *sufficient* to prove that Respondent's misconduct was deliberate (i.e., willful). These two positions are incongruent.

⁶ The dissent cites to Ohio Gov. Bar. R.13(C)(9), which only applies to judges who voluntarily resign from judicial office prior to the commencement of a judge's disciplinary hearing. However, Respondent did not resign from the bench prematurely, but rather decided not to run for reelection upon the expiration of his judicial term, a decision which notably was not made while negotiating a stipulation for discipline or in anticipation of an impending trial on the merits.

1 act of willful misconduct. In this case, however, the Commission unanimously found Respondent
2 committed acts of willful misconduct. As such, an examination of all forms of discipline, including
3 removal, is warranted. The Commission notes, however, that Respondent is no longer a sitting justice
4 of the peace in Elko County, Nevada. Accordingly, as a practical matter, removal is unavailable *sine*
5 *qua non*. Nevertheless, prohibition from future judicial service is still an available disciplinary option
6 prescribed by law as authorized by the Nevada Legislature.

7 The dissent also notes that discipline in this matter should include the possibility of
8 reform through rehabilitation. While a laudable goal, such an approach is impractical in this matter and
9 belies the fact that Respondent (1) failed to file an answer to the FSOC and oppose motions filed by
10 Special Counsel, (2) neither objected to any of the evidence proffered by the Commission prior to or
11 during the public hearing, nor proffered any evidence in his own defense, and (3) failed to appear at the
12 public hearing or defend himself in any way against the allegations set forth in the FSOC.
13 Consequently, the Commission has no reason to believe that Respondent has taken any of the
14 allegations or the Commission's proceedings seriously.⁷

15 D. ORDER

16 IT IS HEREBY ORDERED, by a 5 to 2 vote of the Commissioners, pursuant to subsections
17 5(a) and (b) of Article 6, Section 21 of the Constitution of the State of Nevada, NRS 1.4653(1)(a), NRS
18 1.4677(1)(e), and Commission Procedural Rules 17, 18 and 28, after due deliberations and
19 consideration of the evidence presented and taking into consideration the totality of Respondent's
20 actions, the aggravating factors as well as the mitigating factor of no longer serving in a judicial
21 capacity, the Commission concludes the appropriate discipline shall be as follows:

22 **Respondent is barred from serving in a judicial office in the future.**

23 In Favor: Commissioner Chair Gary Vause, Commissioner Vice-Chair Stefanie Humphrey,
24 Commissioner Karl Armstrong, Esq., Commissioner Don Christensen, Esq., and Commissioner John
25 Krmpotic.

26 ⁷ The dissent references several past Commission cases for the alleged disproportionality of the discipline imposed in this
27 case, all of which are distinguishable from the instant case involving Respondent. The discipline imposed in those cases
28 were the result of either negotiated stipulations for discipline between the judges and the Commission or contested trials on
the merits where the judges took the Commission's proceedings seriously and fully participated in their own defense which,
as noted above, did not occur in this case.

1 Opposed: Commissioner Hon. Stephen Bishop and Commissioner Hon. Kristin Luis.

2 IT IS FURTHER ORDERED that the Chairman is authorized to sign this document on behalf of
3 all voting Commissioners in the majority.

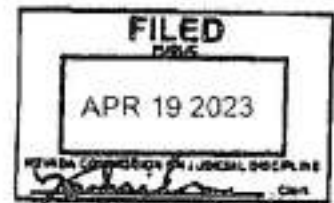
4 DATED this 22nd day of December, 2023.

5 STATE OF NEVADA
6 COMMISSION ON JUDICIAL DISCIPLINE
7 P.O. Box 18123
8 Reno, NV 89511

9 By: 

10 GARY VAUSE
11 COMMISSION CHAIRMAN
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EXHIBIT 1



FENNEMORE CRAIG, P.C.
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Las Vegas, Nevada 89148
Telephone: (702) 692-8000
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Email: rdreitzer@fcslaw.com
Prosecuting Officer for the Nevada
Commission on Judicial Discipline

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

IN THE MATTER OF THE HONORABLE
ELIAS GOICOECHEA, Former Justice of
the Peace, Elko Justice Court, Elko County,
State of Nevada,

Case No.: 2022-028-P

Respondent.

FORMAL STATEMENT OF CHARGES

COMES NOW, Richard I. Dreitzer, Prosecuting Officer for the Nevada Commission on Judicial Discipline ("Commission" or "NCJD"), established under Article 6, Section 21 of the Nevada Constitution whom, in the name and by the authority of the Commission, as found in NRS 1.425 - 1.4695, files this Formal Statement of Charges and informs the Respondent, the Honorable Elias Goicoechea, Former Justice of the Peace, Elko Justice Court, County of Clark, State of Nevada ("Respondent") that the following events occurred and acts were committed by Respondent and warrant disciplinary action by the Commission under the Revised Nevada Code of Judicial Conduct ("the Code").

FACTUAL ALLEGATIONS

1. Pursuant to Nevada law, Justice(s) of the Peace ("JP") in the State of Nevada are empowered to issue search warrants where sufficient factual showings are made by representatives of law enforcement.

2. Generally, responsibility for review and issuance of search warrants is handled on a rotational basis, with each JP in a given Court agreeing to serve as the "on-call" JP for a specified period of time. In such circumstances, the "on-call" JP is responsible to review and

1 evaluate requests for search warrants brought to them, with the understanding that such requests
2 may occur "round-the-clock" (i.e., well before or after normal work hours, as well as at night,
3 and on weekends and holidays.)

4 3. For the 2021/2022 New Year's Eve holiday in Elko County, Nevada (i.e., from
5 December 31, 2021 through January 1, 2022), Respondent was appointed as "on-call" JP.

6 4. During New Year's Eve (i.e., on the evening of December 31, 2021), Respondent
7 was observed frequenting two (2) different bars in the City of Elko, Nevada and consuming
8 alcoholic beverages – this, during Respondent's period of obligation as the "on-call" JP for that
9 holiday period.

10 5. In the early morning hours of January 1, 2022, Respondent was presented with
11 two (2) affidavits seeking search warrants for blood samples in separate DUI investigations for
12 his review and approval. The first request was submitted by Nevada Highway Patrol, while the
13 second was submitted by an Elko Police Department Officer.

14 6. Despite having consumed alcoholic beverages on December 31, 2021 just prior to
15 the two (2) affidavits being presented to him for review, Respondent nevertheless approved these
16 search warrants for the respective officers.

17 *First Search Warrant*

18 7. As to the first search warrant sought, in that instance, a Nevada Highway Patrol
19 Trooper ("Trooper") arrested a subject for DUI at approximately 12:28 AM on January 1, 2022.
20 As part of this investigation, it became necessary for the Trooper to apply for a search warrant to
21 obtain a blood sample from the Defendant in that matter.

22 8. In Elko County, Nevada, law enforcement officers complete an affidavit in
23 support of a search warrant on computers within their patrol vehicles. Standard procedure then
24 calls for these officers to speak with dispatch and ascertain the identity of that day's "on-call" JP.
25 Officers then proceed to call the "on-call" JP and advise that a warrant was being sought and that
26 the affidavit supporting the warrant was being transmitted to them via email. Finally, upon
27 review and analysis, the "on-call" JP then reaches back out to the officer seeing the search
28 warrant to communicate approval, if deemed appropriate.

9. As to this warrant, the Trooper in question followed the standard procedure for securing a search warrant, as outlined herein. After reaching out to the Respondent for word as to whether his search warrant had been approved, the Trooper spoke with the Respondent at 2:47 a.m., wherein the Respondent conveyed his approval to the Trooper. During this call, the Trooper heard loud noises and music in the background leading the Trooper to conclude that the Respondent was attending a party at the time of approval of his search warrant.

Second Search Warrant

10. As to the second search warrant sought, an Elko Police Officer ("Officer") had arrested a subject for DUI on January 1, 2022 at 2:53 a.m., and as part of his investigation, reached out to the Respondent for its approval.

11. The Officer then spoke with Respondent at 4:03 a.m. and received approval of the search warrant he had sought. During this conversation, the Officer noted that the Respondent had sounded groggy.

Pertinent Facts

12. In terms of the Respondent's actions during his time as "On-Call" JP for New Year's Eve 2021/2022;

- a. Respondent admits that he had been out with his girlfriend that night;
- b. Respondent admits to having consumed at least three (3) alcoholic beverages between 7:30 p.m. on December 31, 2021 and approximately 4:00 a.m. on January 1, 2022.
- c. Respondent admits authorizing the two (2) warrants in question during New Year's Eve 2021/2022, but mistakenly believed that both warrants were requested by the Elko Police Department, rather than one for Nevada Highway Patrol and the second for Elko Police Department.
- d. Respondent was observed in possession of a drink at the "Duncan Little Creek" bar in Elko, Nevada during New Year's Eve 2021/2022.
- e. Respondent was observed in a bar at the Maverik Casino in Elko, Nevada after midnight on January 1, 2022.

1 that would appear to a reasonable person to undermine the judge's... integrity.")

2 **COUNT TWO**

3 By engaging in the acts, or combinations of the acts described above and more
4 specifically, in Paragraphs 1 through 6, 10 through 11 and 12(a) through 12(h), engaging in the
5 consumption of alcohol to the point of intoxication while serving as "On-Call" JP on the night of
6 New Year's Eve 2021/2022 and approving a search warrant application submitted by an Officer
7 of the Elko Police Department in a criminal proceeding while intoxicated, Respondent
8 knowingly or unknowingly, violated the Code, including Canon 1 of the Code, Rule 1.1
9 (requiring the Respondent to comply with the law, including the Code itself); Rule 1.2,
10 (requiring the Respondent to act at all times in a manner that promotes public confidence in the
11 "...integrity... of the judiciary" and avoiding "...impropriety and the appearance of
12 impropriety...") and Canon 3 of the Code, Rule 3.1(A) (providing that "...when engaging in
13 extrajudicial activities, a judge shall not... participate in activities that will interfere with the
14 proper performance of the judge's judicial duties...") and Rule 3.1(C) (providing that "...a judge
15 shall not... participate in activities that would appear to a reasonable person to undermine the
16 judge's... integrity.")

17 **COUNT THREE**

18 By engaging in the acts, or combinations of the acts described above and more
19 specifically, in Paragraphs 1 through 6, 9, 11, 12(a) through 12(h) and 13, wherein the
20 Respondent appeared to be publicly intoxicated on a number of occasions, Respondent
21 knowingly or unknowingly, violated the Code, including Canon 1 of the Code, Rule 1.1
22 (requiring the Respondent to comply with the law, including the Code itself); Rule 1.2,
23 (requiring the Respondent to act at all times in a manner that promotes public confidence in the
24 "...integrity... of the judiciary" and avoiding "...impropriety and the appearance of
25 impropriety...") and Canon 3 of the Code, Rule 3.1(C) (providing that "...a judge shall not...
26 participate in activities that would appear to a reasonable person to undermine the judge's...
27 integrity.")

28 /////

1 Based upon the information above, the Commission shall hold a public hearing on the
2 merits of these facts and Counts One, Two and Three pursuant to NRS 1.4673 and, if the
3 violations as alleged are found to be true, the Commission shall impose whatever sanctions
4 and/or discipline it deems appropriate pursuant to NRS 1.4677, and other Nevada Revised
5 Statutes governing the Commission.

6
7 DATED: April, 18th 2023.

8 FENNEMORE CRAIG, P.C.

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10 

11 RICHARD I. DREITZER, ESQ., #006626
12 FENNEMORE CRAIG, P.C.
13 9275 W. Russell Road, Suite 240
14 Las Vegas, Nevada 89148
15 (702) 692-8026
16 rdreitzer@fennemorelaw.com
17 Prosecuting Officer for the Nevada
18 Commission on Judicial Discipline
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1 STATE OF NEVADA)

2) ss:

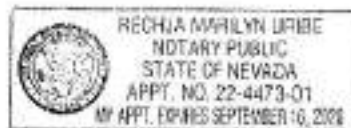
3 COUNTY OF CLARK)

4 RICHARD I. DREITZER, ESQ. being first duly sworn under oath, according to
5 Nevada law, and under penalty of perjury, hereby states:

6 1. I am an attorney licensed to practice law in the State of Nevada. I have been
7 retained by the Nevada Commission on Judicial Discipline to serve in the capacity of
8 Prosecuting Officer in the matter of Former Justice of the Peace Elias Goicoechea, Case
9 No. 2022-028.

10 2. I have prepared and reviewed this Formal Statement of Charges against
11 Former Justice of the Peace Elias Goicoechea, pursuant to the investigation conducted in
12 this matter, and based on the contents of that investigation and following reasonable
13 inquiry, I am informed and believe that the contents of this Formal Statement of Charges
14 are true and accurate.

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16 Dated this 18th day of April, 2023.



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Richard I. Dreitzer
RICHARD I. DREITZER, ESQ.

SUBSCRIBED and SWORN to before me
this 18 day of April, 2023.

Rebecca Marilyn Uribe
NOTARY PUBLIC

1 CERTIFICATE OF SERVICE

2
3 I hereby certify that a true and correct copy of this FORMAL STATEMENT OF
4 CHARGES was sent via U.S. Postal Service (with sufficient postage affixed) and e-mail, on this
5 19th day of April, 2023 addressed to:

6
7 Hon. Elias Goicoechea
8 
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12

13 By: 

14 Richard Dreitzer, Esq.
15 Prosecuting Officer
16 Nevada Commission on Judicial Discipline
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1. Background

Judge Goicoechea is charged, in a formal statement of charges, with violating the Nevada Code of Judicial Conduct. Judge Goicoechea did not respond to these charges. The prosecutor requested "a formal public hearing wherein the Commission can take testimony and consider evidence presented in an effort to "prove-up" the allegations." The Commission acquiesced to this request and conducted a hearing. At the hearing no one who observed the acts alleged testified and none of the evidence at the hearing clearly or convincingly proved the charges. In order to support discipline, charges in judicial discipline proceedings must be proven by clear and convincing evidence. NRS 1.467.¹

2. The Charges

2.1. *Admission and Discipline by Default*

The Commission would use Rule 17 to conclude Judge Goicoechea's failure to respond is an admission to the charges. The evidence produced, however, by the investigation fails to establish intoxication by clear and convincing evidence. Further, the prosecutor requested the hearing to "prove up" the charges and then failed to do so. Only conflicting and conclusory statements were provided and the only testimony at the hearing came from witnesses who did not directly observe any of the charged acts. Further, utilizing Rule 17 to conclusively prove the acts, unproven at the hearing, renders the entire hearing meaningless. As such, concerns remain regarding so much convincing weight being given to a procedural default, in light of such weak evidence. This is particularly true when severe discipline is imposed.

2.2. *Appearing to be Intoxicated is Vague*

Despite Judge Goicoechea's default, intoxication is also undefined. This vagueness is only compounded when Judge Goicoechea is not charged with being in public while intoxicated. Instead, he is charged only with "appearing to be publically intoxicated." There is a world of difference from appearing in public while intoxicated and appearing to be intoxicated in public. This distinction is likely why an appearance will not generally form the basis for discipline. *See Nev. Code Judicial*

¹ "Clear and convincing evidence means evidence establishing every factual element to be highly probable or evidence which must be so clear as to leave no substantial doubt." *Wynn v. Smith*, 117 Nev. 6, 17, 16 P.3d 424, 431 (2001). *See also Colbert v. Colbert*, 933 S.W.2d 863, 870 (Mo. Ct. App. 1996) ("The clear and convincing standard... refers to evidence which instantly tilts the scales in the affirmative when weighed against the evidence in opposition, and the fact finder's mind is left with an abiding conviction that the evidence is true."); *State v. Addington*, 588 S.W.2d 569, 570 (Tex. 1979) ("Clear and convincing evidence is defined as that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.")

Conduct R. 1.2 Comment 5 ("Ordinarily, judicial discipline will not be premised upon appearance of impropriety alone, but must also involve the violation of another portion of the Code as well").² There has been no objective standard presented for intoxication and without objective standards or criteria, decisions become arbitrary. *See e.g. Browning v. State*, 120 Nev. 347, 91 P.3d 39 (2004) (a state has an obligation to provide objective and clear standards to channel discretion); *Mosley v. Nev. Comm'n on Judicial Discipline (In re Mosley)*, 120 Nev. 908, 102 P.3d 555 (2004) ("a judge is not to be evaluated by a subjective standard, but by the standard of an objective reasonable person, because people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.").

3. Discipline

3.1 *The Discipline Imposed is Disproportionate to Other Similar Cases*

Despite the concerns above, the Commission relied on Rule 17 to conclude Judge Goicoechea violated the Code and that discipline is warranted. Yet the allegations of this case, even if proven³, cannot warrant the most severe sanction – preclusion from ever holding judicial office. The conduct in this case, while serious, pales in comparison to prior cases where this most severe sanction was imposed.⁴ Judge Goicoechea's conduct is not comparable to the most severe cases

² The fact that there are reports which may suggest other troublesome conduct, for which discipline may be proper, does not change the fact, the only charge against Judge Goicoechea, in *Comit III*, is "appearing to be intoxicated."

³ Once the Commission decided to hold the allegations proven, by Rule 17, the Commission was required to deliberate whether Judge Goicoechea's conduct was willful or not. While Judge Bishop, for the reasons set forth herein, would not have used Rule 17 to hold the allegations proven, the Commission elected to do so. Thus, for purposes of meaningfully engaging in the remaining deliberations, Judge Bishop accepted the determination. As a result, if the allegations are deemed proven, it is difficult to conclude the conduct was not willful.

⁴ In 2022, Judge Douglas G. Smith, who had previously been reprimanded, censured, fined and required to participate in education, was barred from ever holding judicial office after being found to have: (1) necessitated a new trial for failing to swear the jury; (2) privately conversing with the prosecutor during a pending trial; (3) having a witness taken into custody; (4) a pattern of failing to follow well established law; and (5) continuing to make errors after correctional instructions.

In 2019, Judge David Humke, who had previously been suspended, fined and required to participate in education, was barred from ever holding judicial office after being found to: (1) lack a basic understanding of jurisdiction; (2) ignoring statutory requirements in many cases; (3) lacked legal knowledge; (4) depriving parties of the opportunity to be heard; (5) lack diligence in performing duties; (6) display a lack of decorum with a traumatized juvenile; (7) be recalcitrant in judicial duties; and (8) lack necessary knowledge to perform basic judicial duties.

In 2017, Judge Conrad Hafen was barred from ever holding judicial office after: (1) improperly sentencing multiple defendants to jail for contempt; (2) ordering a public defender handcuffed and sentencing her client to jail without the benefit of counsel.

In 2014, Judge Steven E. Jones, who had been previously disciplined for continuing to preside in cases litigated by an attorney with whom he was "maintaining a close social and personal relationship", was barred from ever holding judicial office after being found to have: (1) entered into a conspiracy to defraud; (2) assist a co-conspirator to obtain an own recognizance release; (3) used his position as a judge to make the fraud seem legitimate to, at least, one victim; (4) take

cited, while other conduct similar to or more severe than Judge Goicoechea's conduct did not result in the most severe sanction.⁵ The penalty imposed should reflect the seriousness of the violation, the prevention of future violations, if possible, and be consistent with the imposition of penalties in prior cases of misconduct.

3.2 Mitigating Factors Exist

actions "defrauding victims of millions of dollars"; (5) being convicted of felony fraud charges; and (6) have taken "advance and effort to thwart and delay the Commission."

In 2008, Judge Elizabeth Halverson was, after a 7 day hearing, barred from ever holding judicial office, after being found to have: (1) lied under oath; (2) displayed considerable disrespect for Commission proceedings; (3) been "embittered" and "paranoid" against a fellow judge; (4) went out of her way to create conflict with a fellow judge; (5) slept through portions of three trials; (6) had improper contact with multiple deliberating juries; (7) made improper comments to the media; (8) required court staff to rub her feet, neck and shoulders; (9) demonstrated a "bizarre" relationship with staff; (10) lacked the ability to treat staff with dignity and respect; (11) surreptitiously allowing individuals access to restricted areas of the courthouse; (12) made false statements to the media; and (13) made false reports to law enforcement.

In 2008, Judge Nicholas Del Vecchio was barred from ever holding judicial office after being found to have: (1) engaging in a sexual relationship with his judicial assistant, who was also his former stepdaughter; (2) engaged in sexual liaisons during working hours; (3) took adverse actions against the assistant when the sexual relationship ended; (4) destroying evidence of the relationship before the Commission could obtain it; (5) made racially discriminatory comments about and to staff; and (6) made inappropriate comments about and to other staff, judges and attorneys.

In 2005, Judge Jeffrey Sobel was barred from ever holding judicial office after being found to have: (1) "told attorney Boyack he was f***ed because he hadn't contributed" to the judges reelection campaign; (2) required an attorney to explain his attendance at the judge's opponent's campaign event; and (3) engaged in persistent efforts to obtain campaign contributions from an attorney.

In 2004, Judge Phillip Thomas was barred from ever holding judicial office after being found to have been convicted of three driving under the influence incidents in a single year. In 2004, Judge Paul Freitag was barred from ever holding judicial office after being found to have caused numerous retrials and dismissals by leaving multiple criminal and civil cases undecided for multiple years (decades in some cases). In 2005, Judge Peter LaPorta was barred from ever holding judicial office after being found to have: (1) taking money "to effectuate an extralegal extraction of a minor"; (2) continuing to act as a *pro tempore* judge, despite being suspended by the Nevada State Bar; and (3) accruing and failing to pay many of \$8,000.00 in traffic tickets.

In 1998, Judge Frances-Ann Fine was barred from ever holding judicial office after being found to have: (1) engaged in *ex parte* communications with multiple judges in an attempt to influence their decision in a case in which she served as counsel; (2) evidenced a continuing pattern of *ex parte* communications on ultimate issues in cases; (3) continued to engage in such conduct after being previously disciplined for the same conduct; and (4) appointing a family member as mediator.

In 1995, Judge Gary Davis was barred from ever holding judicial office after being found to have: (1) borrowed money from court staff and did not promptly repay it; (2) publicly endorsed a candidate; (3) storing and selling antiques in the courthouse to support his personal business; (4) utilized court funds for his personal use; (5) playing inappropriate songs (e.g. "Jailhouse Rock") to criminal defendants awaiting arraignment; (6) took two bailiffs and a court employee to "berate" a car dealer; (7) directed court staff, during court hours, to perform translation services at his mother's business; (8) directing payment to charity in lieu of fines/fees to enhance his electability; (9) testified falsely at a hearing; (10) caused trespass; and (11) been "contumacious and contemptuous" at a Commission hearing. Nothing in this case even approaches the conduct in these cases resulting in barring from judicial office.

⁵ Judge Michael Fletcher was disciplined for: (1) being intoxicated while presiding over multiple cases on multiple occasions; (2) consuming alcohol while driving a county vehicle; (3) being intoxicated while giving a public speech; (4) being intoxicated while officiating a wedding; (5) drinking while driving; (6) being intoxicated, while possessing a firearm in the courthouse. Yet he was not barred from judicial office. Judge Charles McGee was convicted of driving under the influence, yet he was not barred from judicial office. Indeed, the only thing distinguishing Judge Goicoechea from Judges Fletcher and McGee appears to be Judge Goicoechea was not responsive to this Commission.

The Commission also found no substantial mitigating circumstances. Yet, the fact Judge Goicoechea did not contest the allegations against him or run for reelection are both highly mitigating circumstances. While mitigation is not defined for judicial discipline proceedings in Nevada, such action has been deemed mitigating in at least one other state. *See e.g.* Ohio Gov. Bar R. 13(C)(9). Judge Goicoechea voluntarily removed himself from any opportunity to repeat such conduct and voluntarily terminated his career, which he obtained through the difficulties and struggles of a contested election. While the Commission places little weight in this, the gravity and personal cost of this decision is no small thing. The Commission deems it aggravating that Judge Goicoechea's conduct "created the potential" for problems in either the search warrants or the cases resulting from the search warrants. "Potential" is, necessarily, speculative, at best, and suggests actual problems did not arise. Indeed, the lack of any allegation or evidence to suggest any actual impact is better considered mitigating. Additional mitigation includes (1) not challenging the allegations against him; (2) the lack of evidence presented at the hearing establishing actual intoxication; and (3) no pattern of performing judicial duties while intoxicated, as Counts I and II arose in a single night.

3.3. The Discipline Imposed Leaves no Possibility of Reform

To forever bar Judge Goicoechea from judicial office discounts any possibility for rehabilitation and deems him unworthy of redemption. As a society we recognize people struggle with addiction and substance abuse and we believe in the value of treatment and rehabilitation. How then can we reject the possibility of redemption?

3.4. The Discipline Imposed is Anti-Democratic

Finally, forever barring Judge Goicoechea from judicial office is an extraordinary measure and should be reserved for the most egregious and extreme circumstances, which are not present in this case. It is entirely contrary to our traditions of representative democracy. It deprives the voters of a choice in electing their judges. By barring Judge Goicoechea, forever, a commission of seven people will have substituted their judgment for that of thousands of voters. Neither current voters (nor any future voters in perpetuity) will ever be able to deem Judge Goicoechea sufficiently reformed. The Commission has, forever, taken that option away and has, in essence, said to the voters: "we cannot trust you to make the right choice regarding Judge Goicoechea, so we are making it for you... forever." We cannot make such a statement.

3.5. A Public Censure, Admonishment or Reprimand Coupled with a Treatment Requirement is Adequate

A requirement that Judge Goicoechea obtain substance abuse treatment would address concerns regarding repetition of this behavior. This requirement was adequate to address more

severe substance abuse issues in other cases.⁶ Further, publically reprimanding, admonishing or censuring Judge Goicoechea would serve to sufficiently express disapproval of Judge Goicoechea's actions. It is also important to remember, he is not currently serving as a judge. As such, in order to serve as a judge again, he must either be appointed or elected. Such public disapproval would protect the public by informing both the voters and any appointing authority aware of these matters and allow them to make their decisions, with the full knowledge of these circumstances, while respecting our democratic traditions and allowing for the possibility of redemption.

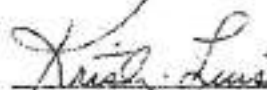
4. Conclusion

For the forgoing reasons, Judge Bishop respectfully dissents from the Commission's findings in Counts I, II, III and the discipline imposed.



Judge Stephen Bishop
Ely Justice Court

For the forgoing reasons, Judge Luis respectfully dissents from the Commission's findings in Counts I, II and the discipline imposed.



Judge Kristin Luis
Carson City Justice/Municipal Court

⁶ Judge Fletcher and Judge McGee, both described in an earlier footnote, were not removed from the bench, but were required to participate in substance abuse treatment.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 22nd day of December, 2023, I served a copy of the CERTIFIED COPY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE by email and U.S. Mail, addressed to the following:

Hon. Elias Goicoechea



Respondent

And

Hon. Elias Goicoechea



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By:


Nancy Schreihans, Commission Clerk