



BEFORE THE COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

In the Matter of the

HONORABLE GARY J. DAVIS,
Municipal Court Judge for the City of
North Las Vegas, County of Clark,
State of Nevada,

Respondent.

CASE NO.: 9502-107

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND IMPOSITION OF DISCIPLINE**

The above-entitled matter having come on for hearing on November 2-3, 1995, before the Nevada Commission on Judicial Discipline, Frank J. Cremen appearing as Special Prosecutor for the State of Nevada Commission on Judicial Discipline, and Michael D. Davidson appearing as attorney for the Respondent.

After hearing the allegations and proofs of the parties, the arguments of counsel and having considered the evidence introduced by both parties and being fully advised, the Commission states that this proceeding was a Formal Hearing pursuant to the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline for the purpose of determining whether the acts and conduct of the Respondent warrant the imposition of discipline. The Commission makes the following Findings of Fact, Conclusions of Law, and Imposition of Discipline which constitute the Decision of the Commission in this matter.

Findings of Fact

The Commission finds that the legal evidence presented by the Special Prosecutor at the Formal Hearing clearly and convincingly established each of the facts hereafter set forth in Paragraphs 1-10 of these Findings of Facts.

1. Respondent is a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada. That while serving in said capacity, Respondent borrowed money from court employees, including but not limited to, Marilyn Bell, on January 24, 1985, the sum of \$2,500.00; Linda Stiles, in August of 1993, the sum of \$500.00; Don Cola, in August of 1993, the sum of \$450.00; and Georgia Nunez, on repeated occasions, various sums including the sum of \$500.00 on September 11, 1992, the sum of \$260.00 on June 7, 1991, and the sum of \$100.00 on February 21, 1991. Respondent on several occasions did not promptly repay the loans and the employees were forced to make oral and/or written demands for payment.
2. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, on or about August 5, 1994, publicly endorsed and campaigned for Robert Archie, a candidate for judicial office in City of North Las Vegas; and willfully and deliberately testified falsely that he only went to houses where he knew the

residents when going door-to-door campaigning for Robert Archie.

3. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the years of 1981 through 1993, conducted a personal business from his judicial chambers in the North Las Vegas Municipal Court building by storing antiques throughout the courthouse and selling those antiques to persons with whom he came in contact at the courthouse. He also directed City employees and jail trustees to move antiques into and out of the courthouse.
4. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the years of 1981 through 1983, delivered his personal checks to the Office of the Clerk of the Court and took cash from fines collected through the court, utilizing those funds for his own benefit for several days and thereafter redeeming his personal check from the Clerk of the Court; and that this procedure was stopped during the early 1980's.
5. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the years of 1991 through 1993, caused to be played from a juke box which he maintained in his chambers in the North Las Vegas Municipal Court building, inappropriate songs such "Jail House Rock" and other songs related to being in prison or jail in the presence of prisoners waiting for arraignment before the court.
6. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the dates of December 9, 1992 and February 23, 1993, took Georgia Nunez who worked in the Clerk's Office of the North Las Vegas Municipal Court, and two uniformed court marshals to the automobile sales business of Friendly Ford in Las Vegas, Nevada, and berated and intimidated an employee of that company because he was angry at not having yet received automobiles ordered for the court by the City of North Las Vegas; and he threatened that employee with never purchasing another vehicle from Friendly Ford.
7. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the years 1981 and 1993, on multiple occasions, directed court employees, including but not limited to, Georgia Nunez and Linda Roybal, during normal business hours of the court, to leave the North Las Vegas Municipal Court premises and go to the nursery business owned by his mother to provide Spanish translating services, and directed other court employees, including Don Cola and Linda Stiles, to perform other personal errands for him during court hours; and that Respondent directed court personnel to chauffeur him to and from his home and to transport him during normal business hours for various purposes including but not limited to antique shopping.
8. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, between the dates March, 1991 and February, 1992, directed or suggested to persons appearing before the North Las Vegas Municipal Court who had been found guilty by that court of crimes, to contribute money to certain charities in lieu of paying fines to the City of North Las Vegas, thereby diverting money from the City Treasury of North Las Vegas, which diversion was ordered partially for the purpose of enhancing his electability.
9. That Respondent, while serving in the capacity of a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, commencing in December of 1993 and continuously thereafter, knowingly willfully and deliberately used property owned in part by him in North Las Vegas, Nevada that was zoned for residential purposes for commercial purposes, after having been personally advised in writing by the Community Planning and Development Department of the City of North Las Vegas on July 14, 1993 of the proper zoning for that property; and further, in conjunction with his commercial uses of this property, knowingly willfully and deliberately caused his agents to trespass on the property of the adjoining property owner for the purpose of hooking up water and sewer lines; that Judge Davis willfully and deliberately testified falsely before the Commission at the Probable Cause Hearing held August 3, 1995 in an attempt to mislead it, regarding who owned the trees stored at the Craig Road property in which he was a part owner.
10. That Respondent, while testifying at the Formal Hearing on November 3, 1995, wrongfully asserted his Fifth Amendment right by refusing to answer simple, non-incriminating questions posed by the Commission's Special Prosecutor, Frank Cremen. Respondent's behavior and attitude displayed when called to testify at the Formal Hearing was both contumacious and contemptuous.

From the above facts, the Commission concludes:

Conclusions of Law

1. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 1 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 4(D)(1)(a) which provides that a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position.
2. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 2 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 5(A)(1)(b) which provides that a judge shall not publicly endorse or publicly oppose another candidate for public office.
3. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 3 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 2 which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; and
 - b. Canon 4(D)(1)(a) which provides that a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position.
4. The Commission unanimously concludes that since the matters set forth in Paragraph 4 of the Findings of Fact were timely corrected when brought to the attention of court personnel that a finding of a violation of the Nevada Code of Judicial Conduct is not warranted.
5. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 5 of the Findings of Fact shows poor judgment and is inappropriate, but that the Nevada Code of Judicial Conduct was not violated.
6. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 6 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 2 which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
7. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 7 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 2 which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;
 - b. Canon 2(A) which provides that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;
 - c. Canon 4(A)(2) which provides that a judge shall conduct all of the judge's extra-judicial activities so that they do not demean the judicial office; and
 - d. Canon 4(A)(3) which provides that a judge shall conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of judicial duties.
8. The Commission concludes by a majority vote of six Commissioners, that Respondent's conduct as set forth in Paragraph 8 of the Findings of Fact, violated ARJD 11(3) and:
 - a. Canon 1 which provides that a judge shall uphold the integrity and independence of the judiciary;
 - b. Canon 2 which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;
 - c. Canon 2(A) which provides that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in

the integrity and impartiality of the judiciary;

d. Canon 4(C)(3)(b)(i) which provides that a judge shall not personally participate in the solicitation of funds or other fund-raising activities; and

e. Canon 4(C)(3)(b)(iv) which provides that a judge shall not use or permit the use of the prestige of judicial office for fund-raising.

9. The Commission concludes by a majority vote of six Commissioners, that Respondent's conduct as set forth in Paragraph 10 of the Findings of Fact, violated ARJD 11(2), ARJD 11(3) and:

a. Canon 1 which provides that a judge shall uphold the integrity and independence of the judiciary;

b. Canon 2 which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; and

c. Canon 2(A) which provides that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

10. The Commission unanimously concludes that Respondent's conduct as set forth in Paragraph 10 of the Findings of Fact, violated Rule 4 of the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline which imposes on judges the obligation of cooperating with the Commission when called to testify; and ARJD 11(3) and:

a. Canon 2(A) which provides that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Decision and Imposition of Discipline

The Nevada Commission on Judicial Discipline having made and adopted the foregoing Findings of Fact and Conclusions of Law deems it appropriate under the unique circumstances of this case to set forth its reasoning for the imposition of the discipline hereinafter imposed.

As indicated above, with the exception of Count 9 of the Formal Statement of Charges, the Commission has found by clear and convincing evidence that each of the remaining allegations of conduct contained in the Formal Statement of Charges have been established. Although the Commission finds that the conduct described in Count 4 of the Formal Statement of Charges regarding the Respondent's utilizing fines collected through the courts as a source of unauthorized loans for himself was established, this procedure was stopped in a timely fashion when it was determined that it was improper, and the Commission therefore is of the opinion that it would be inappropriate to discipline Respondent for the foregoing conduct at this time.

It is the opinion of the Commission that Respondent's conduct described in Count 10 of the Formal Statement of Charges is particularly egregious. Respondent, as the Municipal Court Judge in North Las Vegas, deliberately and knowingly violated the very ordinances that he is obligated to enforce. After inquiring of Mr. Donald Jan Brown, the Development Director for the City of North Las Vegas, as to whether property that he had an ownership interest in had commercial potential for re-zoning and being informed both verbally and in writing that the property was zoned single-family residential and that it would not be eligible for re-zoning, Judge Gary L. Davis engaged in the wholesale storage of goods and products constituting nursery stock and trees on the property. Judge Davis was then advised, in writing, that a zoning violation had occurred, and was requested to correct the situation. The City of North Las Vegas then caused citations to be issued to Judge Davis. Judge Davis continued to violate the very ordinances which he was charged with enforcing as a Municipal Court Judge. By violating the ordinances, he managed to continue to use his property in violation of the law for approximately two years. He clearly and convincingly

demonstrated that he did not respect and would not comply with the law and acted in a manner that not only did not promote public confidence in the integrity and impartiality of the judiciary, but that could have no other effect than to undermine public confidence in the judiciary.

Judge Davis, between March of 1981 and February of 1992, directed and/or suggested to persons appearing before the North Las Vegas Municipal Court who he had found guilty of a crime, that they could contribute to certain charities in lieu of paying fines to the City of North Las Vegas. The Commissioners found by clear and convincing evidence that one of Judge Davis' purpose in doing so was to enhance his electability.⁽¹⁾ He would decide not only the amount of money that the charity would receive, but which charities would be placed on his list. During the foregoing period of time, he diverted approximately \$405,916.00 from the City of North Las Vegas Treasury to his selected charities. Respondent's conduct in this regard not only violated specific Canons of the Nevada Code of Judicial Conduct as set forth in Conclusions of Law Number 8, but also violated the very spirit of Canon 1, "A judge shall uphold the integrity and independence of the judiciary." As the Preamble to the Nevada Code of Judicial Conduct points out in Paragraph 1:

"Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. ***"

The independence and integrity of the judiciary is not only undermined, but destroyed when judges subvert the purposes of the law in order to enhance their own personal popularity and electability. The confidence in the judicial system is undermined when a judge, by whim and caprice, uses the law for his own personal benefit.

Judge Davis, while testifying at the Probable Cause Hearing held on August 3, 1995, deliberately attempted to mislead the Commission. Judge Davis testified that, "My mother brought those trees in for my brother, Don, who was purchasing an [sic] RV park in Moapa Valley, and 14 acres that set above the RV park. And those trees were to go to those properties *****"⁽²⁾ Judge Davis further testified that "my brother was going to have them planted on his property in Moapa."⁽³⁾ And when asked, "Why weren't those trees taken to your mother's nursery and stored there?", he responded, "Well, because there wasn't -- at that point in time they were still going to my brother. They are his property."⁽⁴⁾ Judge Davis' testimony was contradicted at the Formal Hearing through the testimony of his brother, Don Davis. It was clearly and convincingly established by the evidence that the Judge's mother had purchased the trees and that Don Davis was to grow the trees in a joint venture with his mother for a percentage of the profit. It was also established by clear and convincing evidence that Judge Davis has an interest in the nursery business which his mother operates.

As set forth above in the Findings of Fact and Conclusions of Law, Judge Davis publicly endorsed and campaigned for a candidate running for judicial office in North Las Vegas in 1994. His conduct was a clear violation of ARJD 11(3) and the Nevada Code of Judicial Conduct, Canon 5(A)(1)(b). Judge Davis testified at the Probable Cause Hearing that he did not go to houses and talk to people who he didn't personally know.⁽⁵⁾ Exhibit 27 is a videotape of Judge Davis wearing a T-shirt espousing the candidacy of Robert Archie, who was running for judicial office. The tape shows Judge Davis walking up to a door and knocking on that door when campaigning for Robert Archie. Apparently no one

was home since his knock went unanswered. The address of the house is clearly depicted in the videotape. It is 2825 East Tonopah, North Las Vegas, Nevada. Ellen Bourquin testified at the Formal Hearing. Ms. Bourquin has lived at the foregoing address for two years. Ms. Bourquin further testified that she did not know Judge Davis, that he was never at her house that she recalls, and that she did not ask him to come to her house. She was asked no questions on cross-examination. The Commission therefore specifically found by clear and convincing evidence which the record supports that Judge Davis deliberately attempted to mislead the Commission and knowingly and willfully testified falsely before it.

At the Formal Hearing, Judge Davis wrongfully refused to testify before the Commission. He attempted to set forth a blanket Fifth Amendment right which does not exist in judicial discipline proceedings.. At first, the Judge refused to be sworn and stated that he would not speak again. Apparently he was not acting under advice of counsel.⁽⁶⁾ Judge Davis was advised by the Commission that he did not have a blanket Fifth Amendment right and could not refuse to answer questions that were put to him in regard to conduct which did not constitute a criminal offense. Thereafter, his counsel acknowledged that the Judge did not have a blanket privilege not to answer any question put to him, but that he could refuse to answer specific questions which had a potential for criminal charges being imposed.⁽⁷⁾ Thereafter, Judge Davis was called again to the stand, took the oath, and refused to testify before the Commission. For example:

"Q: (By Mr. Cremen) Judge Davis, when were you elected the first time?

A: I take my Fifth Amendment right."⁽⁸⁾

Even after being directed to answer many non-incriminating questions by the Commission, Judge Davis continued to refuse to answer.

Exhibit 33 was introduced into evidence at the Formal Hearing held on November 3, 1995. This Exhibit is a videotape of Judge Davis' refusal to testify before the Commission. The manner in which he addressed the Commission clearly and convincingly demonstrated his contumacious and contemptuous behavior towards the Commission. The commentary to Canon 2 of the Nevada Code of Judicial Conduct is particularly appropriate in this instance. It provides:

" Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. ***"

Judge Davis' conduct violated Rule 4 of the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline. It provides as follows:

"Every judge and every attorney licensed to practice law in this state is obligated to cooperate with the commission when called upon to assist in any investigation or hearing or to testify concerning any matter as to which privilege as an attorney is not claimed."

Judge Davis has demonstrated by his conduct, both his disrespect for the law and for the judicial discipline process. He has violated the law and the Canons of Ethics of the Nevada Code of Judicial Conduct, and demonstrated by his contumacious behavior before the Commission that he is unwilling to accept restrictions on his conduct which the Code points out judges should accept freely and willingly. His conduct, demeanor and behavior are unacceptable by one who holds the high office of a judge. The Commission has determined by a vote of six Commissioners that Judge Davis should be removed from office. Since the Commission determined that the appropriate discipline for the totality of his conduct is removal, it deems it unnecessary to access discipline for each specific Count of the Formal Statement of Charges that it found to be violated.

There is presently pending against the Respondent a separate Formal Statement of Charges, i.e. Case No. 9504-107. This complaint charges the judge with knowingly and willfully testifying falsely before the Commission at the Probable Cause Hearing in regard to the circumstances surrounding the loan made to him by Marilyn Bell in the amount of \$2,500.00. Because the Commission has determined that removal is the appropriate discipline in this case, it deems it unnecessary to proceed with Case No. 9504-107. The Commission therefore dismisses, without prejudice, the Formal Statement of Charges in Case No. 9404-107.

The Commission emphasizes that in determining that the appropriate discipline for Judge Davis' offenses is removal from office, it has not taken into consideration Judge Davis' wrongful assertion of a blanket Fifth Amendment privilege. Since Rule 11 which establishes the grounds for discipline does not provide that a wrongful assertion of a blanket Fifth Amendment privilege is disciplinable conduct, the Commission would not discipline the Respondent for doing so without first giving him the opportunity to remedy that conduct. However, the Commission deems it appropriate to inform the judiciary that not only does a judge not have the right to assert a blanket Fifth Amendment privilege and refuse to cooperate with the Commission or testify when called as a witness before it, but that in the event a judge does so in the future, the Commission will deem such non-cooperation to be an act of misconduct, subjecting the judge to discipline. The Commission has taken into consideration the manner in which Judge Davis behaved in wrongfully asserting a blanket Fifth Amendment privilege, but not the fact that he wrongfully refused to testify in determining that removal is the appropriate discipline to be imposed.

IMPOSITION OF DISCIPLINE

The Nevada Commission on Judicial Discipline having made and adopted the foregoing Findings of Fact and Conclusions of Law, and having set forth its Decision above, hereby ORDERS that Respondent, the Honorable Gary J. Davis, a Municipal Court Judge for the City of North Las Vegas, County of Clark, State of Nevada, be removed from office as of the date of the filing of this Decision. As set forth in Rule 30 of the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline, should the Respondent appeal, his salary and authority to exercise any of the duties of office immediately cease and he must exercise no judicial powers.

Dated this ___ day of December, 1995.

NEVADA COMMISSION ON JUDICIAL DISCIPLINE
document signed by:

FRANK BRUSA, Chairman
GUY SHIPLER, Vice-Chairman
DRENNAN A. CLARK, Commissioner
BILLY JEAN "BJ" FULLER, Commissioner
ALAN J. LEFEBVRE, Commissioner
SALLY L. LOEHRER, Commissioner

DISSENT TO IMPOSITION OF DISCIPLINE

At the second day of hearing before the Commission, Judge Gary J. Davis was called as a witness. When he was called, he stood up and engaged in the most disruptive and disrespectful behavior I have witnessed. In almost 17 years as a District Judge, I have never seen a spectacle such as Judge Davis displayed in a hearing. He was obviously pandering to the television cameras as he pointed his finger at the Commission and made grandiose and pompous pronouncements.

Following his totally inappropriate performance, he then proceeded to assert a Fifth Amendment privilege against self-incrimination, refusing to answer simple questions such as, "What is your name?" and "When were you elected?" A recess was taken and counsel for both sides were given the opportunity to see the legal authority indicating his position was a violation of the Canons of Judicial Ethics. Judge Davis still asserted his blanket privilege.

The Commission found Judge Davis violated the Canons of Judicial Ethics in his conduct as a Judge. His conduct at the hearing, and the presentation of clearly false evidence at the hearing, along with those violations, has resulted in the Commission voting to remove him from office. I agree with the findings of the Commission, but I disagree that removal is warranted. In my opinion, Judge Davis' conduct warrants severe sanctions. He has displayed an arrogance and ignorance that I find alarming in a Judge. I would prefer that he be issued a censure, be required to attend courses on ethics, and be fined. I do note, however, that there is a serious question whether the Commission could impose lesser types of discipline on a Municipal Court Judge for conduct which occurred before the adoption of the recent amendments to the Nevada Constitution concerning the powers of the Commission.

Dated this ___ day of December, 1995.

NEVADA COMMISSION ON JUDICIAL DISCIPLINE

MICHAEL R. GRIFFIN, Commissioner

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of December, 1995, I placed the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND IMPOSITION OF DISCIPLINE in the United States Mail, postage pre-paid, addressed to the following:

Michael D. Davidson, Esq.
601 E. Bridger Avenue
Las Vegas, NV 89101
Attorney for Respondent
Certified #Z-430-111-159, RRR)

Honorable Gary J. Davis
City of North Las Vegas
2240 Civic Center Drive
North Las Vegas, NV 89030
Respondent Judge
(Certified #Z-430-111-160, RRR)

Frank J. Cremen, Esq.
302 E. Carson Avenue, Suite 1004
Las Vegas, NV 89101
Commission Special Prosecutor

RHONDA AZEVEDO, Commission Clerk

1. See Formal Hearing transcript dated November 3, 1995, pages 271-272.
2. See Probable Cause Hearing transcript dated August 3, 1995, page 153.
3. See Probable Cause Hearing transcript dated August 3, 1995, page 156.
4. See Probable Cause Hearing transcript dated August 3, 1995, page 183.
5. See Probable Cause Hearing transcript dated August 3, 1995, page 164.
6. See Formal Hearing transcript dated November 3, 1995, page 339.
7. See Formal Hearing transcript dated November 3, 1995, page 345.
8. See Formal Hearing transcript dated November 3, 1995, page 349.