

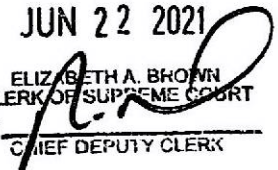
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
STATUTES AND RULES OF THE
COMMISSION ON JUDICIAL
DISCIPLINE AND UPDATE, AS
NECESSARY, THE NEVADA CODE OF
JUDICIAL CONDUCT

ADKT 0582

FILED

JUN 22 2021

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

PUBLIC COMMENTS SUBMITTED BY
NEVADA COMMISSION ON JUDICIAL DISCIPLINE

In accordance with the Petition submitted by Chief Justice Hardesty of the Nevada Supreme Court on May 19, 2021 (ADKT 0582) (the "Petition"), and the Supreme Court's Order Scheduling Public Hearing and Requesting Public Comment filed on May 20, 2021 (the "Scheduling Order"), the Nevada Commission on Judicial Discipline (the "Discipline Commission") submits the following written comments:

The Scheduling Order invites written comments regarding the *proposed amendments*. However, it is the understanding of the Discipline Commission that currently there are no proposed amendments to the Nevada Code of Judicial Conduct (the "Code") or the Discipline Commission's statutes and rules that have been submitted to date in connection with the Petition, and thus nothing on which to comment; but rather, such proposed amendments will be discussed and submitted at a later date once the commission contemplated by the Petition (the "ADKT Commission") is created and the members of that ADKT Commission are appointed by Chief Justice Hardesty pursuant to the terms of the Petition.

In the event the Petition is requesting written comments at this time on the proposed amendments set forth in AB43,¹ which the Assembly Judiciary Committee voted unanimously to delete in its entirety during the 2021 Legislative Session, the Discipline Commission's detailed opposition to such proposed amendments are contained in the Discipline Commission's public exhibits and testimony submitted during related legislative hearings before the Assembly Judiciary Committee and the Senate Judiciary Committee, respectively. The Discipline Commission would be happy to formally submit those exhibits at the appropriate time, as well as other related documents, testimony and information existing and/or developed over the course of the coming months and year following the official creation of the ADKT Commission, as further directed by the Court or the ADKT Commission.

As evidenced over the last four years and two legislative sessions by virtue of the Nevada Legislature's rejection of both AB20 in 2019 and the initial bill comprising AB43 in 2021, there is no justification or need to overhaul or revamp the entire judicial discipline system in Nevada. Likewise, there is certainly no constitutional crisis or ongoing deprivation of rights being committed at the hands of the Discipline Commission that some among the judiciary and certain closely aligned members of the press would have you believe.

The Nevada Legislature's repudiation of the foregoing bills and proposed amendments was based on and buttressed by the many long-standing legal, public policy and fiscal considerations set forth in the Discipline Commission's testimony and exhibits submitted during both the 2019 and 2021 Legislative Sessions, which are public records and can be viewed and accessed at any time on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021. By virtue of keeping an open mind in the midst of being bombarded by contrived narratives of

¹ Attached to the Petition as Exhibit "A".

impropriety concerning the Discipline Commission, as well as adhering to that very sage adage, “believe nothing that you hear and only half of what you see,” these bills and proposals were resoundingly rejected by the Nevada Legislature.

It is the opinion of the Discipline Commission that the intent of certain proponents of recent legislative bills involving the Discipline Commission, along with certain selected members of the press, is to maliciously promote false narratives of impropriety concerning the Discipline Commission in hopes that over time, such narratives eventually become accepted as fact. As the saying goes, “repeat a lie often enough, and it becomes the truth.” Perhaps these proponents have been somewhat successful in this regard, which is quite possibly the reason why we are even here today at the request of the Nevada Legislature by virtue of an amendment to AB43, and the proposed creation of the ADKT Commission contemplated by the Petition is being considered.

Nevertheless, the Commission recognizes that there are reasonable and commonsense changes under the Code and the Discipline Commission’s statutes and rules to be discussed and proposed by all sides. Accordingly, the Commission is hopeful that these proceedings will fairly and adequately represent the interests of not only the judiciary and the Discipline Commission, but also, most importantly, the public – the very people the Nevada Constitution has empowered the Commission to protect, while at the same time giving due regard to the vast body of judicial disciplinary jurisprudence and precedent that has existed and developed throughout Nevada and this country for decades.

If the entirety of these proceedings are public and fully transparent as they should be, the Discipline Commission anticipates that there will be many opportunities for professional and honest dialog over the coming months and year, which hopefully leads to a greater understanding

of the issues and challenges faced by the Discipline Commission, the judiciary and the public with respect to effectively addressing judicial misconduct in this State.

Since a larger audience with more varying viewpoints and perspectives will presumably be involved in these proceedings from the outset prior to any proposals being considered, unlike during the legislative process whereby the only proposals put forth originated from one judicial constituency, it is the Discipline Commission's expectation that the voices of those who have an agenda or an ax to grind with the Discipline Commission, which has unfortunately plagued the last several years of legislative sessions, will be muted and overcome by the voices of reason and commonsense.

In other words, the Commission would like to believe that the cream will rise to the top during these upcoming proceedings where the most reasonable proposals will be considered and weighed appropriately based on existing law and long-standing judicial disciplinary jurisprudence (developed in Nevada and throughout this country for decades), as well as very important public policy and fiscal considerations, while others stemming from unjustified resentment of the Discipline Commission, angst and ignorance of the law will remain at the bottom and will be rightly excluded.

It is important to note that the attacks against the Discipline Commission, as well as the many arguments proffered during legal proceedings before the Discipline Commission, the Nevada Supreme Court, federal courts, as well as the Nevada Legislature, and then often peddled to the press, have not changed in decades. In fact, they closely resemble and mirror the same attacks and arguments that have been propagated against judicial discipline commissions throughout this country since as early as the 1970s.

Likewise, the legal reasoning and related public policy and fiscal considerations which not only are counterintuitive to these very same attacks and arguments, but also are the foundation and very backbone of all judicial discipline organizations throughout the United States, have remained, by and large, fairly constant and unchanged over the years.

As many of you know, the Nevada Supreme Court formed an Article 6 Commission in 2006 for very similar purposes as those contemplated by the current Petition. The goals of the Article 6 Commission were to (1) increase the transparency of the Discipline Commission; (2) improve the timeliness of Discipline Commission proceedings; (3) improve the Discipline Commission's effectiveness; and (4) ensure the fair treatment of judges.

The Article 6 Commission, which was comprised of experts throughout Nevada and the United States, including Supreme Court justices, judges, lawyers and members of the public, national press associations, public interest/advocacy groups (e.g., ACLU), and others who painstakingly examined for over two (2) years the entire structure and disciplinary process of the Discipline Commission, including the Discipline Commission's statutes and procedural rules, as well as the legislative history, judicial disciplinary jurisprudence, public policy and fiscal considerations which have existed from the very outset of the first disciplinary organizations created decades ago and which continue on to this day.

Even some of the Justices of the Supreme Court and current members of the judiciary were on the Article 6 Commission and/or contributed their time and talents during those proceedings which, as they well know, led to many commonsense changes to the Discipline Commission's statutes and procedures. The Article 6 Commission issued its Article 6 Report in 2009, only 12 years ago. The conclusions, findings and reasoning set forth in the Article 6 Report have not changed and are still applicable and relevant to this day. For these reasons, the Discipline

Commission respectfully requests that the Article 6 Report, and all supporting testimony and documents created by the Article 6 Commission, be made part of the record and considered during the course of the proceedings contemplated by the Petition.

There seems to be an expectation among certain proponents of AB20 in 2019 and AB43 in 2021 that during every legislative session, the Discipline Commission should prostrate itself before the Nevada Legislature, apologize for its existence, beg forgiveness for enforcing the Code of Judicial Conduct, and then agree to every proposed bill, obstacle or scheme that would make it more difficult, time consuming and expensive (to the Discipline Commission and the taxpayers) for the Discipline Commission to do its job in protecting the public. The Discipline Commission's mission is to protect the public from judicial misconduct and maintain the integrity of the judiciary in accordance with the Code. The Discipline Commission's success in carrying this very important mission ultimately benefits not only the public but the judiciary as well.

Citizens expect judges to faithfully comply and adhere to the law, treat them with respect and dignity, conduct their personal and professional lives with integrity and honor, carry out their judicial responsibilities diligently and competently in a timely manner as they were elected or appointed to do, all in accordance with the Code, and when they violate the ethical rules that govern their judicial positions, that they be held accountable like everyone else. Judges should not be held to a lesser standard, be given special treatment, or be treated more favorably than the very citizens who appear before them in their courts.

Efforts to chip away and diminish the independence, transparency and effectiveness of the Discipline Commission is clearly afoot in Nevada. These efforts should be resisted not only for the sake of the Discipline Commission, the public and well-settled legal precedent, but for all the

men and women who don a black robe each and every day and honorably serve the citizens of this State as they were elected or appointed to do.

Make no mistake about it, there is an overwhelming majority of highly qualified, competent and respected judges at all levels of the judiciary throughout Nevada, all for whom the Commission, its staff, investigators and prosecuting officers have profound respect and admiration. The honor and integrity of these judges, and the Nevada judiciary as a whole, should not be allowed to be comprised or tarnished by false narratives and conspiracy theories that have, quite frankly, been repeatedly recycled among state legislatures and courts throughout this country for decades.

As has been stated numerous times during past legislative sessions, it is ultimately the choice of the members of the Nevada Legislature, as well as the Justices of the Nevada Supreme Court by virtue of the opinions that they author, to determine which type of judicial discipline commission should be at the helm to protect Nevada citizens. As you know, some judicial discipline commissions take a fair, but no-nonsense approach toward judicial discipline, disciplining many judges as necessary and warranted. Other commissions soft-pedal discipline, disciplining hardly anyone. The proceedings contemplated by the Petition and the proposals to be considered will ultimately determine the answer to that very important question.

The Commission stands ready to participate in and contribute to these proceedings in a professional, meaningful and timely manner. Thank you.

Submitted on behalf of the Discipline Commission by:
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Nevada Commission on Judicial Discipline