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Summary of Jones v. Nev. Comm'n on Jud. Discipline, 130 Nev. Adv. Op. 11

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Writ of Mandamus: Judicial Discipline

Summary

The Court determined three issues: (1) whether a judge must suffer actual prejudice before challenging the investigative actions of the Nevada Commission on Judicial Discipline; (2) whether the investigatory stage of judicial discipline proceedings provide fewer due process protections than the adjudicatory stage; and (3) whether the state's public policy of favoring confidentiality in initial judicial discipline proceedings outweighs the public policies to keep government open and the public informed, even when a judge seeks to dismiss the proceedings against him.

Disposition

(1) Yes, a judge must suffer actual prejudice before challenging the investigative acts of the commission. Until actual prejudice occurs, the case is premature. (2) Yes, there are fewer due process protections available during the investigatory stage of judicial discipline proceedings. (3) No, once a judge seeks to dismiss the proceedings against him, public policies to keep government open and the public informed prevail.

Factual and Procedural History

In August 2006, the Nevada Commission on Judicial Discipline issued a verified statement of complaint against Judge Jones, alleging his involvement in two particular incidents of domestic battery and resulting temporary protective order (TPO) may have violated Canons 1, 2, and 4 of the Nevada Code of Judicial Conduct. The complaint also detailed possible instances of interference with the resulting police investigation, misuse of court personnel to render personal services, and exploitation of the judicial position through involvement in a private corporation. The Advantage Group was assigned to investigate the complaint.

In November 2010, Judge Jones was alerted to the investigation when he was interviewed by the Advantage Group, and he received a copy of the complaint in July 2012. A letter was attached to the complaint, which explained that the main allegations had been dropped, but that several other concerns had developed during the course of the investigation. The letter specifically alleged Judge Jones had violated the Nevada Code of Judicial Conduct by persuading court employees and other individuals to invest large sums of money in unsound financial schemes, some involving ex-felons. Additionally, the document alleged that Judge Jones was involved in an intimate relationship with an extern and later allowed her to appear in his courtroom without disclosing their prior relationship or recusing himself. He was also accused of misappropriating marijuana evidence and engaging in other prohibited behavior.

¹ By Jennifer Cutshall.

Discussion

Merits of the writ petition

In challenging the Commission's actions, Judge Jones argues the Commission violated procedural statutes and rules during the disciplinary investigation by (1) proceeding with the investigation despite a complaint built on hearsay and unreliable evidence, (2) assigning a biased investigator and failing to restrict him to charges relating to the complaint, and (3) extending the investigation beyond the time frames set forth in NRS 1.4655² and NRS 1.4681.³ Judge Jones asserts these improper actions have caused him to now face allegations different from those originally presented in the 2006 complaint, and therefore he has no real opportunity to mount a defense.

The Court noted due process concerns arise when a judicial office is at stake. However, due process rights are not generally implicated during purely investigatory proceedings. Rather, due process rights typically attach only after a formal statement of charges is filed. When due process concerns are absent, “relief from any procedural violations occurring during the investigatory stage may be obtained only by a showing of actual prejudice.”⁴

Here, there was no actual prejudice. Nothing prohibits an investigation based on hearsay or inadmissible evidence.⁵ Further, judges do not generally have any right to avoid charges based on new evidence discovered during the course of a legitimate investigation.⁶ Judge Jones has not shown or even asserted that the additional proposed charges were unfounded, or that they were rendered with improper motive. There is also no indication that the allegations were stated so insufficiently that Judge Jones could not respond. Because Judge Jones fails to demonstrate that writ relief is warranted, the Court declined to address his procedural challenges to the Commission's actions, calling the writ petition “premature.”

Sealing of court records and documents

Judge Jones also moved to seal the court record under Rule For Sealing and Redacting Court Records (SRCR) 3⁷ in order to prevent damage to his reputation. He argued that “the public's interest in open access to the courts should yield to the compelling interests underpinning confidentiality before the Commission.” However, in *Steffen*, the Court held “when a judge avails himself of the traditionally public forum of this court and seeks to have all proceedings against him by the Commission . . . dismissed,” the “public policies to keep government open and the public informed” prevail over “the state public policy favoring confidentiality in initial judicial discipline proceedings” because “secret judicial proceedings” would undermine public confidence in the judicial process.⁸ Accordingly, the Court denied the motion to seal and made the proceedings publicly available.

² NEV. REV. STAT. § 1.4655 (2013).

³ NEV. REV. STAT. § 1.4681 (2013).

⁴ *Ryan v. Comm'n on Judicial Performance*, 754 P.2d 724, 729 (Cal. 1988).

⁵ NEV. REV. STAT. § 1.4655 (2013).

⁶ *In re Flanagan*, 690 A.2d 865, 875-76 (Conn. 1997).

⁷ R. FOR SEALING AND REDACTING CT. RECORDS 3.

⁸ *Attorney Gen. v. Steffen*, 112 Nev. 369, 373-74, 915 P.2d 245, 248-249 (1996).

Conclusion

Because Judge Jones failed to show the Commission's investigation and complaint engendered actual prejudice, the writ was denied. Additionally, his motion to seal the court record was denied. However, the Court left the door open for a future appeal, after the case has developed factually.