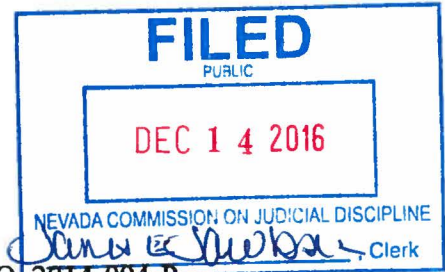


1 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

2 **STATE OF NEVADA**



3
4 In the Matter of)
5)
6 THE HONORABLE MELANIE ANDRESS-)
7 TOBIASSON,)
8 Las Vegas Township Justice Court,)
9 County of Clark, State of Nevada,)
10)
11 Respondent.)
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CASE NO. 2014-094-P

11 **ORDER DENYING MOTION FOR CHANGE OF VENUE,**
12 **OR IN THE ALTERNATIVE, FOR ELECTRONIC TESTIMONY**

13
14 TO: THE HONORABLE MELANIE ANDRESS-TOBIASSON, Respondent
15 WILLIAM B. TERRY, ESQ., Counsel for Respondent
16 KATHLEEN M. PAUSTIAN, ESQ., Special Counsel

17 Currently before the Commission on Judicial Discipline ("Commission") is a Motion for
18 Change of Venue, or in the Alternative, for Electronic Testimony ("Motion for Change of Venue") filed
19 by counsel to the Honorable Melanie Andress-Tobiasson, Justice of the Peace, Las Vegas Township
20 Justice Court for Clark County, Nevada ("Respondent"). The Motion for Change of Venue was filed by
21 Respondent on or about November 21, 2016, and Special Counsel to the Commission ("Special
22 Counsel") filed an Opposition to Respondent's Motion for Change of Venue, or in the Alternative, for
23 Electronic Testimony ("Opposition") on the same date. The Response to Respondent's Opposition to
24 Motion for Change of Venue, or in the Alternative, for Electronic Testimony ("Response") was filed by
25 Respondent on November 22, 2016.

26 **STATEMENT OF FACTS**

27 On or about November 4, 2016, the public proceeding in this matter was set at the convenience
28 of the parties, as per prior discussion, for Friday, February 10, 2017. (Order Setting Public Hearing and
Notice of Panel Members; Order Regarding Media Access ("Setting Order")). The Commission

1 exercised its authority to select the office of the State Bar of Nevada, 9456 Double R Boulevard, Suite
2 B, Reno, Nevada 89521 as the site of the hearing.

3 The underlying complaint alleges that Respondent, a Justice of the Peace in Clark County,
4 Nevada, signed an ex parte order containing findings of fact supporting the late Jennifer Bolton, Esq.'s
5 application for a Canadian divorce. Ms. Bolton was conflict counsel in Respondent's court. The ex
6 parte order was not in connection with any pending matter in Las Vegas Justice Court, and Respondent
7 rescinded the order shortly after signing the same.

8 On November 21, 2016, Respondent filed a Motion for Change of Venue. The basis for this
9 Motion for Change of Venue was NRS 13.050(2)(c) which states venue may be changed "[w]hen the
10 convenience of the witnesses and the ends of justice would be promoted by the change." Respondent's
11 basis for the request rests upon the fact that all acts alleged occurred in Clark County and all of the
12 witnesses reside in Clark County.

13 On November 21, 2016, Special Counsel filed an Opposition to Respondent's Motion for
14 Change of Venue. The Opposition stated that the location was chosen, in part, because five (5) of the
15 seven (7) Commissioners assigned to the matter reside in the northern part of Nevada, and the Reno
16 location facilitated setting a hearing date in a more timely fashion. Commission Procedural Rule 18(1)
17 states that for a formal hearing, the Commission must consult with Respondent and counsel regarding
18 scheduling the date and time of the hearing, and where possible, accommodate their schedules. This was
19 done in this instance. Furthermore, the Commission has an obligation to afford the Commissioners the
20 opportunity to observe the demeanor of the Respondent and any witnesses, and electronic testimony
21 renders such observation very difficult.

22 On November 22, 2016, Respondent, filed her Response. In her Response, she notes that the
23 date and time of hearing was discussed, however she assumed the hearing would be in Las Vegas.
24 Respondent emphasized that the Commission would be able to observe the demeanor of Respondent
25 and witnesses via electronic testimony.

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1 **ISSUE**

2 Whether the venue for the formal hearing in question should be changed from Reno, Nevada to
3 Las Vegas, Nevada based upon NRS 13.050(2)(c), and/or if the hearing should be conducted through
4 videoconference between Reno, Nevada and Las Vegas, Nevada.

5 **STANDARD FOR CHANGE OF VENUE**

6 **NRS 1.462. Proceedings before Commission; applicable rules**

- 7 1. Proceedings before the Commission are civil matters designed to preserve an
8 independent and honorable judiciary.
9 2. Except as otherwise provided in NRS 1.425 to 1.4695, inclusive, or in the procedural
10 rules adopted by the Commission, after a formal statement of charges has been filed,
the Nevada Rules of Civil Procedure apply.

11 NRS § 1.462

12 **NRS 13.050. Cases in which venue may be changed**

- 13 ...
2. The court may, on motion, change the place of trial in the following cases:

14 ...
(c) When the convenience of the witnesses and the ends of justice would be promoted
15 by the change.

16 ...
NRS § 13.050

17 **DISCUSSION**

18 **I. Venue**

19 The Nevada Supreme Court has held that the long standing rule of statutory construction
20 wherein a specific statute conflicts with a general statute, the specific statute takes precedence.
21 *Andersen Family Assocs. v. State Eng'r*, 124 Nev. 182, 187, 179 P.3d 1201, 1204 (2008). In that vein,
22 the Supreme Court held in *County of Clark v. Howard Hughes Co.*, 305 P. 3d 896 (2013) that NRS
23 361.420(2), which permitted a taxpayer to seek judicial review of a State Board's determination in any
24 court of competent jurisdiction within Nevada, prevailed over the general venue statute of NRS
25 13.030(1), which read that actions against a county may be commenced in the judicial district
26 embracing said county. The Supreme Court applied that same reasoning regarding administrative
27 agencies in *Jones v. Nev. State Bd. Of Med. Examiners*, 131 Nev. Adv. Op. 4 (Feb. 5, 2015).

1 In *Jones*, the Supreme Court examined venue within the administrative agency context. In that
2 matter, a doctor from Clark County appealed a Second Judicial District Court's (Washoe County) denial
3 of her motion for a change of venue to the Eighth Judicial District Court in Clark County. The change
4 in venue motion was denied based upon NRS 630.355 which held that the proper venue for contempt
5 was in the district court of the county in which the proceeding was being conducted, which in that
6 matter was Washoe County. The doctor argued that NRS 13.040's forum non conveniens was not
7 considered in the ruling. The Supreme Court held that NRS 630.355 prevailed as it specifically
8 addressed the issue of venue in a contempt action and thus took precedence over the general venue
9 statute of NRS 13.040, therefor, the doctor's arguments based upon forum non conveniens were
10 unavailing.

11 In *Jones*, the Supreme Court held that the venue for the petition was in the county where the
12 work of the Medical Board was taking place, and that forum non conveniens was not applicable. The
13 same holds true in this instance. The Commission is located in northern Nevada, and Commission Rule
14 18 states that respondent must be consulted regarding the scheduling of the hearing regarding date and
15 time only, and where possible accommodated. The consultation did occur regarding date and time, and
16 the location for the hearing was set in Reno, Nevada as per the Commission's authority in Commission
17 Rule 18.

18 Furthermore, Respondent's Motion to Change Venue is procedurally deficient as it lacks any
19 affidavits to support the change in venue. General allegations regarding inconvenience or hardship are
20 insufficient because "[a] specific factual showing must be made." *Eaton v. Second Judicial Dist. Court*,
21 96 Nev. 773, 774-75, 616 P.2d 400, 401 (1980), *overruled on other grounds by Pan v. Eighth Judicial*
22 *Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Respondent simply made general allegations
23 that Respondent and her unnamed witnesses are all based in Las Vegas, and it would be costly for
24 Respondent to pay for the travel for all witnesses. In order for venue to change based upon forum non
25 convenience, exceptional circumstances must be plead. *Mountain View Rec. v. Imperial Commercial*,
26 305 P.3d 881 (2013). In *Mountain View*, allegations that holding trial in Pahrump, where the underlying
27 incident occurred, would be inconvenient to witnesses and parties because the majority of the litigation
28 and discovery, including the majority of depositions, took place in Las Vegas, that physical evidence,

1 the special master, and the majority of counsel were located in Las Vegas, and that all experts located
2 outside of Pahrump would have to travel through Las Vegas to attend court proceedings in Pahrump,
3 failed to establish the existence of exceptional circumstances, thus the Nevada Supreme Court reversed
4 the trial court's decision to change venue from Nye County to Clark County. (*See id.*) The same general
5 allegations apply in this matter as the trial is a one day trial that will require only minimal travel.
6 Respondent alluded to other witnesses, however it is unclear as to whom those witnesses would be as
7 the most pertinent witness, aside from the Respondent, is dead. Respondent failed to plead and/or
8 provide an affidavit of any exceptional circumstances that would merit a change in venue.

9 Therefore, Respondent's Motion for Change of Venue is hereby denied.

10 **II. Electronic Testimony**

11 In the alternative, Respondent argues for the videoconferencing of the hearing. While the State's
12 teleconference abilities between locations provides the persons present at each location with the ability
13 to hear and communicate with the persons present at each other location, the Commission does not have
14 to grant such a request. *See generally*, NAC 284.6955(8) Hearing before Employee-Management
15 Committee Procedure, "For good cause shown, the Committee may take testimony from a person by
16 telephone or video conference whether or not the person is at a location designated on the agenda as a
17 location for the hearing."¹ While Commission's procedural rules are silent as to hearings held by a
18 means of a videoconference, it is instructive to look to the federal court's good cause standard for
19 videoconference.

20 Federal Rules of Civil Procedure Rule 43 permits for "good cause in compelling circumstances
21 and with appropriate safeguards, the court may permit testimony in open court by contemporaneous
22 transmission from a different location." While such testimony may be permitted, the Federal Rules of
23 Civil Procedure, Rule 43 Advisory Committee's Notes frown upon videoconferencing testimony
24 without good cause. The notes to the 1996 amendment to Rule 43(a) make it clear that transmission
25 cannot be justified by demonstrating that it is inconvenient for the witnesses to attend the trial. *See also*

26
27 ¹ *See also* Condominium Hotel Act, NRS 116B.860, Use of audio or video teleconference for hearings; State Board of
28 Equalization, NAC 361.667(3), Hearings: Persons required to appear; Complaints Alleging Violations of Title III of Help
America Vote Act of 2002, NAC 293.535; all noting that parties and/or witnesses may appear at hearing by teleconference.

1 *Sille v. Parball Corp.*, 2:07-CV-00901-KJD, 2011 WL 2680560, at 2 (D. Nev. July 8, 2011) The
2 Notes emphasize the importance of actual, live testimony by a witness who is present in the courtroom.
3 The Notes state that the “ceremony” of the courtroom and the actual “presence of the fact finder may
4 exert a powerful force for truth-telling.”

5 The Nevada Federal Court found that, “when the federal rule states a court may permit
6 contemporaneous transmission “for good cause in compelling circumstances” the rule really means “for
7 good cause in compelling circumstances.” *Niemeyer v. Ford Motor Co.*, 2:09-CV-2091 JCM PAL,
8 2012 WL 5199145, at 2 (D. Nev. Oct. 18, 2012). In *Niemeyer*, the court noted that video transmission
9 would “deprive jurors of the ability to make face-to-face determinations about Dr. Singer's testimony,
10 demeanor, mannerisms, and reactions to certain questions proffered by defendants.” *Id.* Additionally,
11 a blanket request for authorization for video testimony was ruled “problematic due to the fact it is
12 unclear at this juncture how many of those witnesses will actually be able to provide testimony relevant
13 to the issues in this case.” *Sille v. Parball Corp.*, 2:07-CV-00901-KJD, 2011 WL 2680560, at 2 (D.
14 Nev. July 8, 2011) Furthermore, in federal cases, monetary expenses fail the good cause test. *See*
15 *Vaughn v. Stevenson*, 2007 WL 460959, at 2-3 (D. Colo. 2007) (holding that the fact that producing a
16 witness will be expensive and time consuming does not demonstrate “good cause” much less
17 “compelling circumstances” that would warrant deviation from the preferred practice of presenting live
18 testimony in the courtroom).

19 Respondent’s “good cause” for a videoconference is monetary and/or for convenience for the
20 Respondent and unknown witnesses. Respondent’s reasons for requesting testimony by video lacks any
21 compelling reasons and specificity as to the witnesses and their unavailability to attend the hearing in
22 Reno. Monetary and convenience fail the good cause standard.

23 District courts have “inherent power to control the disposition of the causes on its docket with
24 economy of time and effort for itself, for counsel, and for litigants.” *In re Stratosphere Corp. Sec. Litig.*,
25 182 F.R.D. 614, 617 (D.Nev.1998). In this instance, the Commission controls the time, place and forum
26 of the hearing. Commission Rule 18. As the Commission sets its own procedures within the confines of
27 due process, the Commission likewise controls its own docket, and as such may deny the motion for
28

1 video conferencing, and based upon lack of good cause and lessened ability to observe the demeanor of
2 Respondent and any witnesses, the Motion for Electronic Testimony is hereby denied.

3 Respondent's Motion for Change of Venue, or in the Alternative, for Electronic Testimony is
4 hereby denied. The Honorable Thomas Armstrong is authorized to sign this order on behalf of the full
5 Commission.

6 IT IS SO ORDERED.

7 DATED this 13 day of December, 2016.

8
9 STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE

10
11 
12 Thomas Armstrong, Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of December, 2016, I transmitted a copy of the foregoing ORDER DENYING MOTION FOR CHANGE OF VENUE, OR IN THE ALTERNATIVE, FOR ELECTRONIC TESTIMONY, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Janet Jacobsen, Commission Clerk