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7 BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
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9 IN THE MATTER OF THE HONORABLE)
10 MELANIE ANDRESS-TOBIASSON,)
Las Vegas Justice Court, Clark County,
11 State of Nevada,)
12 Respondent.
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Case No. 2014-094-P

14 **MOTION TO RECONSIDER SCHEDULING ORDER OR, IN THE ALTERNATIVE,**
15 **NOTICE OF OBJECTION TO SCHEDULING ORDER**

16 Comes now, the Respondent, the Honorable Melanie Andress-Tobiasson, by and through her
17 counsel, WILLIAM B. TERRY, ESQ., of the law offices of WILLIAM B. TERRY, CHARTERED and
18 files the instant motion to reconsider the scheduling order filed January 13, 2017, or in the alternative,
19 Respondent's Notice of Objection to said scheduling order.

20 This Motion and Objection is made and based upon the attached analysis of facts and points and
21 authorities in support hereof, and any oral arguments as maybe presented at the hearing in this matter.

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1 **ANALYSIS OF FACTS**

2 On January 13, 2017, the Respondent received the Commission's Scheduling Order for the
3 proceedings both leading up to the hearing of Judge Tobiasson and for the specific hearing of Judge
4 Tobiasson. At page 3 of the Order the following is set forth:

5 The Prosecuting officer will present evidence regarding the basis
6 of a finding of violations for two hours. Special Counsel shall include
7 an opening statement in her presentation.

8 Respondent's counsel shall have two hours to present evidence
9 to rebut the charges, as well as evidence in mitigation and extenuation
10 of discipline. Respondent's counsel shall include an opening statement
11 in his presentation. It may be reserved until the close of his case but it
12 may not be waived...

13 The Commission has already set this hearing for Reno, Nevada. On a prior occasion, counsel
14 for the Respondent filed a Motion for Change of Venue which was rejected by the Commission. Part
15 of the basis for the change of venue was that all of respondent's witnesses resided in Clark County,
16 Nevada. The Commission, through their scheduling order now gives the Respondent a total of two
17 hours to present their case. The above-quoted scheduling order makes it clear that this would also
18 include "...evidence in mitigation and extenuation of discipline..." Respondent respectfully suggests
19 that a total of two hours is an insufficient amount of time to present Respondent's defense particularly
20 if it includes evidence of mitigation and extenuation of discipline which normally would have included
21 character witnesses. At the current time, it is unknown who the Special Prosecutor will call as
22 witnesses to testify. This includes Judge Tobiasson. If the Special Prosecutor calls Judge Tobiasson
23 her counsel will be entitled to crosse examine Judge Tobiasson. The cross examination of Judge
24 Tobiasson might exceed the two hours given to the Special Prosecutor. Alternatively, should the
25 Respondent testify in her case in chief, her direct examination will be fairly extensive and it is unknown
26 what the extent of the cross examination will be. As far as the Respondent's case, what the scheduling
27 order does is effectively foreclose the Respondent from calling character witnesses because there simply
28 will be an insufficient amount of time.

It is recognized that in the past particularly calling of character witnesses by a Respondent has
been burdensome in time to this Commission. It is also recognized that certainly the Commission has
the ability to limit the number of character witnesses. Respectfully, however, to only give the

1 Respondent two hours to present their case which includes mitigation is not reasonable. The instant
2 motion is a request to have the Commission reconsider their scheduling order as far as the duration of
3 time not just for the Respondent but also for the Special Prosecutor or if said request is denied a request
4 that the Respondent's objection be noted. Should the Commission maintain the two hour maximum
5 period of time, counsel for the Respondent as part of his case in chief will make an offer of proof as to
6 what evidence could not be presented to the Commission because of the limitation of time.

7 Certain cases have recognized that there is such a thing as allowing the defense or in this case
8 the Respondent to present the full theory of their defense in any type of a proceeding. This would
9 include but not be limited to character witnesses, mitigating circumstances, etc. The role of the
10 Commission is to act as a body to determine whether or not the prosecuting officer has presented clear
11 and convincing evidence to show that the Respondent violated the portions of the Judicial Conduct
12 Code as alleged in their charging document and also to make a determination as to what sanction to levy
13 against Judge Tobiasson should such clear and convincing evidence be demonstrated. It is suggested
14 that the two hour limitation would certainly minimize if not completely eliminate certain evidence
15 which the Respondent wishes to present. In *Guitron v. State*, 131 Nev. Ad. Op. 27 (Filed May 21,
16 2015) the Court of Appeals addressed itself both to the Rape Shield Law and to the theory of the
17 defendant's case as it applies to due process. It is recognized that *Guitron* is a criminal case but due
18 process applies equally to the instant procedure and the actions of the Commission certainly affect the
19 Respondent's Sixth and Fourteenth Amendment rights both to the effective assistance of counsel and
20 to affording her due process. In a civil context, the Nevada Supreme Court has also recognized that
21 there is limitation upon a district court judge to not allow an attorney to do certain things. As an
22 example in *Whitlock v. Solomon*, 104 Nev. 24, 752 P.2d 210 (1988) this was a civil case where a district
23 court judge had severely restricted the right to voir dire. In *Whitlock* the district court had denied both
24 the defense and the plaintiff the right to participate in voir dire. Again, it is recognized that this is a case
25 dealing with voir dire but what it does demonstrate is that there are limitations on a court's actions.

26 The Commission by inference may ask the Respondent what she considers to be a reasonable
27 period of time to present her case. The honest answer which the Respondent must give is that it is
28 unknown but that respectfully the Commission should not curtail her ability to present evidence in her


1 favor.

2 **CONCLUSION**

3 For the above-indicated reasons, it is respectfully requested that the Commission reconsider it's
4 scheduling order as referred to herein or, in the alternative, that the Commission notes the Respondent's
5 objection to the scheduling order.

6 DATED this 23rd day of January, 2017.

7 WILLIAM B. TERRY, CHARTERED

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the **MOTION TO RECONSIDER**
3 **SCHEDULING ORDER OR, IN THE ALTERNATIVE, NOTICE OF OBJECTION TO**
4 **SCHEDULING ORDER** has been forwarded to the following party via electronic mail and U.S. mail,
5 postage pre-paid, on this 23rd day of January, 2017.

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7 Kathleen Paustian, Esq.
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9 Las Vegas, Nevada 89107
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An employee of William B. Terry, Chtd.