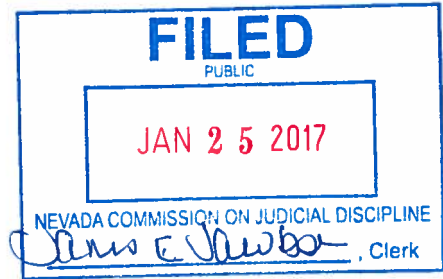


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10 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

11 IN THE MATTER OF THE HONORABLE)
12 MELANIE ANDRESS-TOBIASSON,)
13 Las Vegas Justice Court, Clark County,)
14 State of Nevada,)
15 Respondent.)

16 Case No.: 2014-094-P

17 **OPPOSITION TO RESPONDENT'S MOTION TO RECONSIDER SCHEDULING ORDER,**
18 **OR, IN THE ALTERNATIVE, NOTICE OF OBJECTION TO SCHEDULING ORDER**

19 COMES NOW Kathleen M. Paustian, Prosecuting Officer for the Nevada Commission on
20 Judicial Discipline ("Commission" or "NCJD"), established under Article 6, Section 21 of the
21 Nevada Constitution, who, in the name of and by the authority of the Commission, as found in NRS
22 1.425-1.4695, files this Opposition to Respondent's Motion to Reconsider Scheduling Order, or, in
23 the Alternative, Notice of Objection to Scheduling Order¹ ("Opposition"). This Opposition is
24 based on the information and Memorandum of Points and Authorities below and the Complaint and
25 documents on file in this case.

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28 ¹ For purposes of brevity, Respondent's Motion to Reconsider Scheduling Order, or, in the Alternative, Notice of Objection to Scheduling Order will be referred to as "Motion" in this pleading.

1 **I. MEMORANDUM OF POINTS AND AUTHORITES**

2 **A. Respondent's Motion Raises Alleged Issues Which Are Not Central to the Hearing on**
3 **February 10th.**

4 Respondent is apparently attempting to set up an argument that by establishing time
5 limitations on testimony and argument in the Scheduling Order, the Commission is being unfair to
6 her and prejudicing her ability to present her case. It is important to note that each side will
7 operate under the same time restrictions, being allowed two (2) hours to present opening argument
8 and take direct and cross examination testimony from witnesses. Each party will then be allowed
9 thirty minutes for closing argument.

10
11 Respondent is not addressing the facts that this case involves only one (1) percipient
12 witness and has only one (1) central issue, which is already before the Commission on a pending
13 Motion Requesting That The Commission Take Judicial Notice. The percipient witness, who
14 actually saw what happened, is the Respondent herself. The only other percipient witness to the
15 ex parte discussion which led to the Respondent signing the wrongful Order is the person who
16 requested the signature. That is attorney Jennifer Bolton, who, unfortunately, died on April 15,
17 2014. The central issue is comprised of the undisputed facts that, by her own admission,
18 Respondent signed and filed, on February 12, 2014, an ex parte Order for a Canadian divorce and,
19 by so doing, exceeded the statutorily limited jurisdiction of her Justice Court.

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22 The Commission will consider whether these actions by the Respondent violated the Rules
23 embodied in the Canons of the Nevada Revised Code of Judicial Conduct ("Code"), as cited in the
24 Formal Statement of Charges. The Charges state that by signing this Order, the Respondent
25 violated the Rules requiring her to uphold and apply the law and mandating that Ms. Bolton's then
26 wife, Vivian Wright Bolton, should also have had the right to be heard before the Respondent
27 signed the Order. By meeting in chambers only with Jennifer Bolton and then signing the Order
28

1 as requested by Jennifer, the Respondent allowed an attorney she knew well to influence her
2 actions and judgment, a violation of another Rule. Under the Code, the Respondent had an
3 obligation to disqualify herself in such a situation and she failed to do so. The Respondent is also
4 charged with failing to perform her official duties fairly, impartially, competently and diligently
5 under the Rules.
6

7 These are clear cut alleged violations of the Rules of the Code. The evidence to support
8 them, or refute them, can be presented in a timely manner as allowed under the Scheduling Order.
9 Respondent primarily objects to the Scheduling Order on grounds it may exclude character
10 witnesses who would offer testimony in mitigation of the stated violations of the Rules. The
11 Motion claims, p. 2, ll. 22-5,: “As far as the Respondent’s case, what the scheduling order does is
12 effectively foreclose the Respondent from calling character witnesses because there simply will be
13 an insufficient amount of time.” Such testimony would not serve to inform the Commission as to
14 whether the Respondent took the actions in question and breached the Rules. Testimony for
15 purposes of mitigation would be irrelevant.
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18 The case law citation by Respondent is not on point to the instant question regarding the
19 time allotments. Respondent admits as much by stating that her only civil cite deals with issues of
20 voir dire of prospective jury members and is thus not controlling here. However, she adds:
21 “...but what it does demonstrate is that there are limitations on a court’s actions.” See, Motion, p.
22 3, l. 25. Limitations would come to bear in this context only if the decision maker is severely
23 prejudicing one side’s ability to present relevant evidence. Furthermore, the result of such
24 prejudice would have to accrue to the benefit of the opposite side. That is not the situation here,
25 because the parties will operate under the same constraints. Plus, we cannot overlook the fact that
26 courts and administrative bodies routinely limit the taking of evidence which is redundant,
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1 duplicative and lacking in relevancy. *See, Matter of Halverson*, 123 Nev. 493 (2007). (Upholding
2 time limits for presentation of evidence in a judicial discipline case.) That is apparently the goal of
3 the Commission in issuing this Scheduling Order. Notwithstanding the foregoing, the Scheduling
4 Order states that the scheduling of hours each day is at the discretion of the Commission, so
5 additional time may be granted to either side as necessary.
6

7 II. CONCLUSION

8 The Scheduling Order treats the parties equally. There is no evidence to support a claim
9 that is it intended to prejudice the Respondent in the presentation of her case. The Commission
10 implemented the Order in the interest of judicial economy and fairness, while taking allowable
11 action to hold each party to the same evidentiary standards. The Scheduling Order must stand.
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15 DATED this 25th day of January, 2017.


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18 Kathleen M. Paustian, Esq.
19 Prosecuting Officer for the NCJD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Opposition to Motion to Reconsider Scheduling Order or, in the Alternative, Notice of Objection to Scheduling Order has been forwarded to the following parties via e-mail and U.S. mail, postage pre-paid, on this 25th day of January, 2017.

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By: 
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