

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

2 **STATE OF NEVADA**



3  
4 In the Matter of )  
5 THE HONORABLE DAWN HAVILAND, )  
6 Goodsprings Township Justice Court, )  
7 County of Clark, State of Nevada, )  
8 Respondent. )  
9 )  
10 )

CASE NO. 2016-078-P

11 **ORDER GRANTING RESPONDENT'S MOTION FOR LEAVE TO TAKE VIDEO**  
12 **DEPOSITION OF JEFF WELLS**

13 Currently before the Commission on Judicial Discipline ("Commission") is Respondent's  
14 Motion for Leave to Take a Video Deposition of Jeff Wells ("Motion"), filed by counsel to the  
15 Honorable Dawn Haviland, Goodsprings Township Justice Court for Clark County, Nevada  
16 ("Respondent") on June 6, 2017. On June 8, 2017, the Prosecuting Officer to the Commission  
17 ("Prosecuting Officer") filed her Notice of No Opposition to Respondent Taking the Video Deposition  
18 of Jeff Wells.

19 **STATEMENT OF FACTS**

20 The Formal Statement of Charges consists of eleven counts. The pertinent counts relating to the  
21 Motion are Counts Seven and Eight. Count Seven alleges that Respondent, in her capacity as a Justice  
22 of the Peace for Goodsprings Justice Court ("Goodsprings Court") in Clark County, Nevada, failed to  
23 properly manage the court after Respondent precipitously removed the Goodsprings Court from the  
24 Rural Court Administration. Count Eight involves the changing of the previously issued commercial  
25 vehicle warrants from the vehicle owners back to the originally cited drivers.

26 On June 6, 2017, Respondent filed her Motion for Leave to Take Video Deposition of Jeff  
27 Wells. The Motion states that Mr. Wells, in his role as Assistant County Manager for Clark County,  
28 Nevada, has budgetary and managerial oversight of all the Justice Courts in Clark County, including the

1 Goodsprings Court, and therefore, has personal knowledge of the relevant evidence pertaining to  
2 charges in Counts Seven and Eight, regarding court administration and commercial vehicle warrants.  
3 The Motion states that Mr. Wells will testify regarding the separation of the Goodsprings Court from  
4 the Rural Court Administration, and subsequent administrative activity of the Goodsprings Court.  
5 Furthermore, Mr. Wells will also testify that Respondent wanted to dismiss all of the cases with the  
6 improper warrants regarding commercial vehicle citations but that court staff refused to provide her  
7 with a list of cases.

8         The Motion notes that Mr. Wells is unavailable for the hearing set for the week of August 7,  
9 2017, due to a previously planned and paid for family vacation. Therefore, Respondent seeks leave to  
10 take a video deposition of Mr. Wells on June 21, 2017, and to be able to use same at the hearing. The  
11 Prosecuting Officer has no objections to the taking of the video deposition, or the date of the  
12 deposition. However, the Prosecuting Officer reserves the right to object to the admission at the  
13 hearing of parts or all of the video and transcript of the deposition.

#### 14         **COMMISSION PROCEDURAL RULES AND NEVADA RULES OF CIVIL PROCEDURE**

##### 15         **NRS 1.462. Proceedings before Commission; applicable rules**

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

21         NRS § 1.462

##### 22         **Commission Procedural Rule 24. Rules of evidence and due process**

23         The rules of evidence applicable to civil proceedings apply at the hearing, and the  
24 respondent shall be accorded due process of law.

##### 25         **Rules of Civil Procedure, Rule 32. Use of depositions in court proceedings**

26         **(a) Use of Depositions.** At the trial or upon the hearing of a motion or an interlocutory  
27 proceeding, any part or all of a deposition, so far as admissible under the rules of  
28 evidence applied as though the witness were then present and testifying, may be used  
against any party who was present or represented at the taking of the deposition or who  
had reasonable notice thereof, in accordance with any of the following provisions:  
...

1 (3) The deposition of a witness, whether or not a party, may be used by any party for  
any purpose if the court finds:

2 (A) that the witness is dead; or

3 (B) that the witness is at a greater distance than 100 miles from the place of trial or  
hearing, or is out of the State, unless it appears that the absence of the witness was  
procured by the party offering the deposition; or

4 (C) that the witness is unable to attend or testify because of age, illness, infirmity, or  
imprisonment; or

5 (D) that the party offering the deposition has been unable to procure the attendance of  
the witness by subpoena; or

6 (E) upon application and notice, that such exceptional circumstances exist as to make it  
7 desirable, in the interest of justice and with due regard to the importance of presenting  
the testimony of witnesses orally in open court, to allow the deposition to be used.

8 (4) If only part of a deposition is offered in evidence by a party, an adverse party may  
9 require the offeror to introduce any other part which ought in fairness to be considered  
with the part introduced, and any party may introduce any other parts.

10  
11 NRCP 32

### 12 DISCUSSION AND ORDER

13 The use of a deposition transcript at trial when a witness is unavailable is meant to be given the  
14 same weight as live testimony. *See Nicklo v. Peter Pan Playskool*, 97 Nev. 73, 624 P.2d 22 (1981).  
15 NRCP 32. NRCP 32 specifies the manner in which deposition testimony may be offered into evidence  
16 at the time of a hearing. With respect to non-party witnesses, NRCP 32(a)(3) allows the court to permit  
17 the use of a deposition at hearing, if a witness is not available to attend the hearing. Furthermore,  
18 NRCP 30(b)(4) notes that a deposition may be videotaped and presented at a hearing. Mr. Wells will  
19 be on a preplanned and prepaid vacation the week of the hearing, and Respondent described the  
20 relevancy of his testimony as it relates to the Formal Statement of Charges. The factual circumstances  
21 meet the requirements of NRCP 32(a)(3)(E), regarding the interests of justice, in order to permit the  
22 deposition to be used at the hearing, however the deposition is still subject to evidentiary objections by  
23 the Prosecuting Officer at the hearing and/or prior to the hearing regarding its admissibility.

24  
25 Therefore, Respondent's Motion for Leave to Take Video Deposition of Jeff Wells is hereby  
26 granted in that the deposition may take place, and be used at Respondent's hearing, subject to the  
27 applicable Nevada Rules of Civil Procedure and Nevada Rules of Evidence.  
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The Honorable Thomas Armstrong is authorized to sign this order on behalf of the full Commission.

IT IS SO ORDERED.

DATED this 13 day of June, 2017.

STATE OF NEVADA  
COMMISSION ON JUDICIAL DISCIPLINE

  
Thomas Armstrong, Presiding Judge



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**CERTIFICATE OF SERVICE**

I hereby certify on this 13<sup>th</sup> day of June, 2017, I transmitted a copy of the foregoing ORDER GRANTING RESPONDENT'S MOTION FOR LEAVE TO TAKE VIDEO DEPOSITION OF JEFF WELLS, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Janet Jacobsen, Commission Clerk