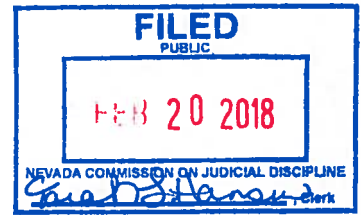


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ORIGINAL

8 NEVADA COMMISSION ON JUDICIAL DISCIPLINE
9 STATE OF NEVADA

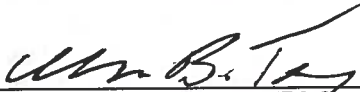
10 In the Matter of)
11 THE HONORABLE RENA HUGHES,) CASE NO. 2016-113-P
12 Eighth Judicial District Court, Family Division,)
13 Department J, County of Clark, State of Nevada,)
14 Respondent.)

15 **MOTION TO TRANSFER HEARING TO LAS VEGAS, NEVADA OR, IN THE**
16 **ALTERNATIVE, TO DO SAID HEARING BY VIDEO**

17 COMES NOW, the Honorable Rena Hughes, Eighth Judicial District Court, Family Division,
18 Department J, County of Clark, State of Nevada, and moves that this Honorable Commission allow
19 the actual hearing on the instant matter to be transferred to Las Vegas, Nevada or, in the alternative,
20 to do said hearing based upon video.

21 Said Motion is made and based upon the attached analysis of facts and points and authorities.

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1 ANALYSIS OF FACTS

2 The Honorable Rena Hughes is currently a Respondent before this Honorable Commission.
3 On January 25, 2018, the Commission filed its order setting a public hearing for May 29, 2018 at the
4 hour of 8:00 a.m. in Reno, Nevada. Respondent is a sitting judge in the Eighth Judicial District
5 Court, Family Division. Based on the affidavit attached, changing this venue from Reno, Nevada to
6 Las Vegas, Nevada in Clark County will promote both the convenience of the witnesses and the ends
7 of justice.

8 If the hearing is held in Reno, it will come at a rather significant cost to the Eighth Judicial
9 District Court. Judges Charles Hoskin and Diane Steel are anticipated to testify, as well as Senior
10 Judge Gloria O'Malley. Judge Hoskin is anticipated to be called as a witness in the matter regarding
11 Hearing Master Henry as well, which will require him to be out of the jurisdiction for at least two
12 days, but likely three days, including travel. Similarly, the other judges, including Respondent, will
13 be out of the jurisdiction for one to two days. This will cost the Eighth Judicial District at least
14 \$1,000 per day, per judge to replace them during their absence.

15 Respondent has calculated the expected cost that she personally will have to pay if the
16 hearing is held in Reno, Nevada. Looking at the current prices for airline tickets, overnight
17 accommodations, meals, and transportation, she expects it to cost upwards of \$4,000, which is a
18 cumbersome amount to pay in order to properly present her case.

19 The Respondent recognizes that several of the Commissioners would need to travel if the
20 hearing is held in Las Vegas. However, currently only two of the seven panelists chosen for this
21 hearing live in Reno. One resides in Carson City, another in Yerington, and the final three panelists
22 reside in Las Vegas. If the hearing is held in Reno, five of the seven panelists must travel; on the
23 other hand, if held in Las Vegas, only four of the five panelists would need to travel. The total miles
24 to be traveled by the panelists, if the hearing is held in Reno would be approximately 1,459, while
25 if it is held in Las Vegas would be 1,702. While the miles covered by the Commission's panelists
26 slightly favors a Reno location, it pales in comparison to the total miles covered (and cost of
27 transporting) Respondent's witnesses from Las Vegas to Reno for the hearing.

28 Additionally, the Commission members who are required to travel for hearings do not do so

1 at their own expense. "While engaged in the business of the Commission, each member and
2 employee of the Commission is entitled to receive the per diem allowance and travel expenses
3 provided for state officers and employees generally." NRS 1.430(2). The Commission allocates a
4 portion of its yearly budget to travel costs. The Commission budget legislatively approved for fiscal
5 year 2016 allocated \$34,510 for travel, while the fiscal year 2017 budget allocated \$33,526.
6 Although that is a finite amount of money that must be distributed among various cases, the
7 Commission was able to complete 169 cases in FY 2016 and 181 in FY 2017, all well within its
8 budget. In fact, "the Commission was able to return to the General Fund \$168,858 and \$144,449 of
9 FY 2016 and FY 2017 legislatively approved funds, respectively." See the Commission on Judicial
10 Ethics 2016-2017 Biennial Report. If the hearing is held in Reno, it will personally cost Respondent
11 nearly 12% of the Commission's entire travel budget for the 2017 fiscal year.

12 Finally, and most importantly, one of Respondent's essential witnesses will be unable to
13 attend the hearing in Reno, although she would be able to testify in Las Vegas if the hearing were
14 to be conducted there. Respondent's court reporter, Tiffany Skaggs, is indispensable to Respondent's
15 presentation of her case because she has personal knowledge of the events that occurred on June 15,
16 2016, which are at issue in this matter. Ms. Skaggs is scheduled to fly out of the country on May 30,
17 2018, which is the day after the hearing. It is impractical and not feasible for her to make a trip to
18 Reno and back the day before she takes an international flight. As a result, she will be unavailable
19 if the hearing takes place in Reno. However, if the hearing is held in Las Vegas, Ms. Skaggs will be
20 able to attend the hearing when she is needed without added fear or pressure that she will miss her
21 flight the next day.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I. Venue

24 A. The Commission's Procedural Rules afford too much discretion.

25 The Commission has previously relied on *Jones v. Nev. State Bd. of Med. Exam'rs*, to deny
26 a motion for change in venue based on the rule therein that when a general venue statute and a
27 specific venue statute conflict, the specific statute takes precedence. *Jones v. Nev. State Bd. of Med.*
28 *Exam'rs*, 342 P.3d 50, 52 (Nev. 2015). See Order Denying Motion for Change of Venue or in the

1 Alternative, For Electronic Testimony, *In re the Honorable Melanie Andress-Tobiasson*, No. 2014-
2 094-P, at 3-4 (December 14, 2016). In the *Jones* case, the Nevada State Board of Medical Examiners
3 initiated a contempt proceeding in the Second Judicial District Court against a Las Vegas physician
4 after she failed to comply with the Board's investigation of her pursuant to an administrative
5 complaint against her. She appealed the denial of her motion to change venue from the Second
6 Judicial District Court (in Washoe County) to the Eighth Judicial District Court (in Clark County).
7 The court had denied her motion to change venue based on NRS 630.355(1), which states that the
8 proper venue for contempt is in the district court of the county in which the proceeding is being
9 conducted, which in that case was Washoe County. The Supreme Court affirmed the denial of her
10 motion to change venue, holding that NRS 630.355 took precedence in this situation over the general
11 jurisdiction statute NRS 13.040 because it specifically addresses proper venue when a party fails to
12 comply with proceedings before the Nevada State Board of Medical Examiners. *Id.* at 53.

13 Applying the same legal theory of *Jones* to judicial discipline proceedings before the
14 Commission, the Commission has denied a motion to change venue, stating that Commission Rule
15 18 takes precedence over the general venue statute NRS 13.040. However, the *Jones* case is not
16 entirely on point. In *Jones*, despite the fact that NRS 630.355 applies to procedures regarding an
17 administrative agency, the two conflicting procedural rules were both adopted by the Nevada
18 legislature, and therefore sit on equal footing. In the present situation, one of the conflicting rules,
19 NRS 13.040, has been adopted by the legislature and enacted into law, while the other, Commission
20 Rule 18, is a rule adopted by the Commission on Judicial Discipline and by the Nevada Supreme
21 Court by court order in 1988.

22 Certainly, the Nevada courts have the power to make their own procedural rules, which the
23 Nevada Supreme Court has consistently held. *State v. Second Judicial Dist. Court*, 116 Nev. 953,
24 959-60, 11 P.3d 1209, 1212-13 (2000). See *Whitlock v. Salmon*, 104 Nev. 24, 26, 752 P.2d 210, 211
25 (1988), holding that the judiciary has the inherent power to govern its own procedures, which
26 includes the right to adopt and promulgate rule of procedure. See also *Galloway v. Truesdell*, 83
27 Nev. 13, 23, 422 P.2d 237, 244 (1967), holding that the Judicial Department has regulating powers
28 that are within the province of the judicial function, such as "promulgating and prescribing any and

1 all rules necessary or desirable to handle the business of the courts or their judicial functions."
2 Moreover, if a court-promulgated rule of procedure conflicts with a pre-existing procedural statute,
3 then the rule supersedes the statute. *State v. Second Judicial Dist. Court*, 116 Nev. at 959-60, 11 P.3d
4 at 1212-13; see also SCR 249(2).

5 We argue, however, that Commission Procedural Rule 18 affords too much discretion to the
6 Commission in determining venue and can result in unfair and, quite frankly, illogical settings for
7 disciplinary hearings. Comparatively, the procedural rules governing attorney disciplinary
8 proceedings have been promulgated by the Supreme Court and are included in the Supreme Court
9 Rules (SCR 98-123). The rule governing proper venue for these disciplinary hearings state that
10 "venue shall be the county in which the attorney resides or maintains his or her principal office for
11 the practice of law, where the alleged offense was committed or where the parties have stipulated."
12 SCR 105(2)(c). This more closely resembles the general venue statute NRS 13.040, which calls for
13 a determination of venue based on the defendant's residency. "In all other cases, the action shall be
14 tried in the county in which the defendants, or any one of them, may reside at the commencement
15 of the action. NRS 13.040. These rules give reasoned guidance as to proper venue in these types of
16 cases, instead of leaving it solely up to the discretion of the tribunal before which the parties must
17 appear. Additionally, some procedural rules may have an impact on substantive rights. In the present
18 case, the facts and circumstances regarding the inability of a key witness to attend and the high cost
19 to transport all witnesses there may prevent Respondent from adequately defending herself.
20 Especially where procedural rules have the potential to impact a defendant's due process rights, such
21 as where a chosen venue will prevent a defendant from fully presenting her case, proper venue
22 should be determined in a way that most fully protects her due process rights.

23 B. Respondent overcomes the standard for a change of venue.

24 Because the Commission's Rules of procedure are silent regarding change of venue, Nevada
25 civil procedure applies. NRS 1.462(2). NRS 13.050 states that "the court may, on motion, change
26 the place of trial... when the convenience of the witnesses and the ends of justice would be promoted
27 by the change." NRS 13.050(2)(c). In supporting one's motion to change venue, general allegations
28 regarding inconvenience or hardship are insufficient because "[a] specific factual showing must be

1 made." *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 75, 616 P.2d 400, 401 (1980), overruled
2 on other grounds by *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).
3 A motion for change of venue based on forum non conveniens must be supported by affidavits so
4 that the district court can assess whether there are any factors present that would establish
5 exceptional circumstances that weigh strongly in favor of another forum. *Id.*

6 Respondent has attached an affidavit delineating the exceptional circumstances in this case
7 that weigh strongly in favor of a change of venue from Reno, Nevada to Las Vegas, Nevada.
8 Respondent plans to call numerous witnesses who play an important role in the functioning of the
9 Family Division of the Eighth Judicial District, including two District Court Judges and a Senior
10 Judge, and Respondent herself will also be in attendance. Requiring all of these individuals to leave
11 the jurisdiction for one to two days (or three days in Judge Hoskin's case), will have a negative effect
12 on the functioning of the courts. With so many important individuals unavailable from the same
13 department, a portion of the Eighth Judicial District Family Division will either need to cease
14 operations or compensate a large number of substitutes, or some combination of both, which will
15 be costly. Additionally, if the circumstances are such that the judges' dockets must be cleared for
16 lack of available substitutes, the litigants are unfairly affected and are denied justice. If the hearing
17 is moved to Las Vegas, then these judicial officers will be able to perform their duties while they are
18 not needed as witnesses, and they can report to their offices before and after they testify, greatly
19 minimizing the negative effects of their absence. Allowing the proper functioning of one division
20 of the Eighth Judicial District by moving the venue of this public hearing definitely promotes the
21 ends of justice.

22 Respondent would be unreasonably financially burdened by the cost of presenting her case
23 in Reno. As detailed earlier and in her affidavit, transporting all witnesses to testify and the ancillary
24 costs, which include meals, travel, and hotel stays will total in excess of \$4,000. It would not be fair
25 or just to require her to pay these exorbitant costs to present her case in front of the Commission,
26 especially when all events of the case occurred in Las Vegas and all witnesses involved reside or
27 work in Las Vegas.

28 Finally, one of Respondent's key witnesses, Tiffany Skaggs, will be unavailable to travel to

1 Reno on May 29, 2018 due to a trip out of the country she will be taking the next day. However, she
2 can be available to testify that day if the hearing is held in Las Vegas. As an essential witness, Ms.
3 Skaggs's testimony will be crucial to Respondent's defense. As a result, holding the hearing in Reno
4 will prevent Respondent from fully presenting her case, resulting in a violation of her due process
5 rights. This is an exceptional factor that weighs strongly in favor of another venue. Therefore, a
6 change in venue from Reno to Las Vegas will promote the ends of justice.

7 C. Holding the Hearing in Reno, Nevada constitutes an abuse of discretion.

8 Although Commission Procedural Rule 18(1) leaves the proper venue for a judicial hearing
9 up to the sole discretion of the Commission, not granting the change of venue would constitute an
10 abuse of discretion, considering the facts and circumstances of this case. "Where discretion is
11 conferred, it must really be exercised as such; the court cannot act oppressively or arbitrarily under
12 pretense of exercising discretion. Such arbitrary or oppressive action under color of exercising
13 discretion is called abuse of discretion." *Goodman v. Goodman*, 68 Nev. 484, 487-88, 236 P.2d 305,
14 306 (1951). Moreover, an abuse of discretion occurs if the district court's decision is arbitrary or
15 capricious or if it exceeds the bounds of law or reason. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d
16 998, 1000 (2001).

17 In this case, several compelling reasons exists for a change in venue. The relative burdens
18 imposed on either side are markedly unequal. Holding the hearing in Reno will burden the Eighth
19 Judicial District Family Division's functioning, inconvenience a number of witnesses, critically
20 interfere with Respondent's due process rights, and cost the Respondent an excessive and
21 unwarranted amount of money to defend her case. It would also require more Commission panelists
22 to travel for the hearing, since only two of the seven panelists live in Reno, while three of the seven
23 reside in Las Vegas. Even if the Commission's decision to hold the hearing in Reno was not
24 determined arbitrarily, the imposition of such a high burden on Respondent and her witnesses,
25 compared with the relatively less significant inconvenience to the Commission and its panelists
26 would exceed the bounds of reason.

27 **II. Electronic Testimony**

28 In the alternative, Respondent requests that she and all witnesses residing or working in Las

1 Vegas may testify remotely by way of videoconference technology. The Commission's procedural
2 rules are silent regarding videoconferencing testimony; therefore, Nevada civil procedure applies.
3 NRS 1.462(2). The Nevada Supreme Court has adopted Nevada Rules of Civil Procedure Rule 43,
4 which states that "in every trial, the testimony of witnesses shall be taken in open court... The court
5 may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit
6 presentation of testimony in open court by contemporaneous transmission from a different location."
7 NRCP 43(a). All pertinent language in this rule mirrors the Federal Rule of Civil Procedure Rule 43.
8 Looking to the FRCP, Rule 43 Advisory Committee Notes to the 1996 Amendment, the Committee
9 points out that presenting live testimony in court is an important aspect of trial because the "very
10 ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling." Fed.
11 R. Civ. P. 43(a) advisory committee's note (1996). Respondent recognizes the value that in-person
12 testimony has; however, all witnesses anticipated to testify are officers of the court. The anticipated
13 witnesses are judges and court staff who routinely facilitate court proceedings, and they understand
14 the importance of testifying truthfully during proceedings under oath.

15 The 1996 Committee Notes also state that "the most persuasive showings of good cause and
16 compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected
17 reasons, such as accident or illness, but is still able to testify from a different place," and "a party
18 who could reasonably foresee the circumstances offered to justify transmission of testimony will
19 have special difficulty in showing good cause and the compelling nature of the circumstances." *Id.*
20 While the notes indicate it is more difficult to prove good cause and compelling circumstances when
21 the unavailability is foreseeable, this does not mean it is impossible. Respondent argues the same
22 compelling circumstances for remote testimony as to why venue should be moved to Las Vegas.
23 Namely, the functioning of the Family Division of the Eighth Judicial District will be negatively
24 impacted. Assuming there would be adequate coverage to fill in for several judges, it will come at
25 a large cost to the Eighth Judicial District. Otherwise, it will come at great cost to the litigants whose
26 court dates will need to be shifted. Arguably, this is not the sort of anticipated situation the
27 Committee had in mind when it determined that foreseeable circumstances are less likely to meet
28 the good cause and compelling reasons standard.

1 Although the Committee notes state that “transmission cannot be justified merely by showing
2 that it is inconvenient for the witness to attend the trial,” one of Respondent’s most important
3 witnesses is unavailable due to a previously scheduled trip out of the country, which goes beyond
4 mere inconvenience. This also has a negative effect on Respondent’s ability to fully present her case,
5 which encroaches upon her due process rights. Furthermore, the personal cost to Respondent, which
6 is expected to exceed \$4,000 is prohibitive and unjustifiable, especially considering she would be
7 required to present her case in a venue completely foreign to this case, since all events relating to the
8 case and all witnesses reside or work in the Las Vegas area.

9 The 1996 Committee Notes favor video transmission over telephonic transmission, and
10 Respondent agrees. Videoconferencing would allow the Commission to view each witness as though
11 they were sitting in-person at the hearing. Direct and cross examination with documents and exhibits
12 is possible, as is questioning by the panelists. The Commission would be able to observe witnesses’
13 demeanor, facial expressions, reactions to questions, body language, voice inflections, etc., which
14 are all important elements in the fact-finder’s task. Beyond these capabilities, the only reason to have
15 testimony in-person is the effect that the ceremonial aspect has on the witness to testify truthfully.
16 However, we have already argued that this aspect is unnecessary, since the witnesses in this case are
17 all officers of the court who understand the significance of truthful testimony (or actually enforce
18 this requirement in their own courtrooms). All safeguards can and will be taken to ensure accurate
19 identification of the witnesses and accurate transmission of the testimony, as well as safeguards
20 against any influence by persons present with the witness.

21 The Commission has agreed to videoconferencing in at least four previous matters, including
22 In the Matters of the Honorable Douglas Smith, the Honorable Dawn Haviland, the Honorable
23 Catherine Ramsey, and the Honorable William Kephart. Granted, these matters were resolved prior
24 to a contested hearing. However, the Commission still required these individuals to appear before
25 the Commission in a public proceeding by videoconference to discuss the stipulations and answer
26 any questions from the Commissioners. This indicates that the Commission has successfully
27 conducted public proceedings through videoconferencing several times, and was able to effectively
28 discuss the stipulations and orders for discipline, including examination of the judges with their


1 attorney. In conclusion, knowing the Commission has the capability to conduct a hearing through
2 videoconferencing, compelling reasons exist to allow remote testimony, and safeguards will be in
3 effect to protect from any unwanted effects of out-of-court testimony, if this hearing is not held in
4 Las Vegas, Nevada then Respondent and her witnesses should be allowed to testify by video
5 transmission from Las Vegas.

6 **CONCLUSION**

7 Based on the arguments above, it is respectfully requested that this Motion for Change of
8 Venue be granted or, in the alternative, that electronic testimony from Clark County, Las Vegas,
9 Nevada be allowed.

10 DATED this 13th day of February, 2018.

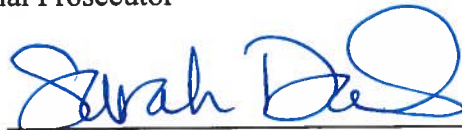
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22 Attorney for Respondent
23
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28

1 CERTIFICATE OF MAILING

2 I hereby certify that on the 13th day of February, 2018, I, as an employee of WILLIAM B.
3 TERRY, CHARTERED, that a true and correct copy of the foregoing **MOTION TO TRANSFER**
4 **HEARING TO LAS VEGAS, NEVADA OR, IN THE ALTERNATIVE, TO DO SAID**
5 **HEARING BY VIDEO** was deposited in the United States Mail at Las Vegas, Nevada, postage
6 fully prepaid thereon for first class mail addressed to:

7
8 Thomas Bradley, Esq.
448 Hill Street
9 Reno, Nevada 89501
Special Prosecutor

10 

11 As an employee of William B. Terry ,Chartered

AFFIDAVIT OF RENA G. HUGHES

COUNTY OF CLARK)
) SS:
STATE OF NEVADA)

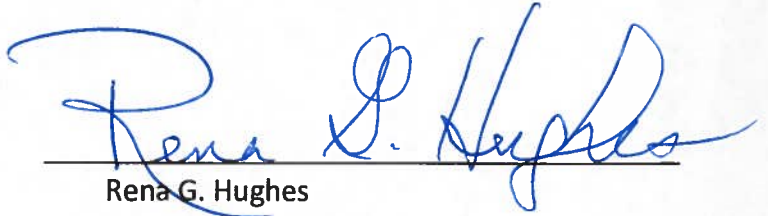
Now on this 1st day of February, 2018, the undersigned, being duly sworn, does hereby state:

1. I, Rena G. Hughes, the respondent in the within matter, have personal knowledge of the facts stated herein, and if called upon, would attest to the same.
2. I am making this affidavit in support of my motion to transfer venue of the proceedings of this case to a forum more convenient.
3. If this matter were to be held in Reno, Nevada, as currently ordered, it would cause me extreme financial hardship and preclude me from calling some witnesses, all of which result in a denial of my due process rights.
4. I have no less than five (5) essential witnesses, one (1) of whom cannot travel to Reno on the date of the currently scheduled hearing. The cost of calling these witnesses is unaffordable.
5. I have researched the airfare to have my witnesses travel to Reno for the hearing, and found that it will cost no less than \$430.00 per person.
6. My counsel and I will also have to travel to Reno at least one day before the hearing, since it begins at 8:00 a.m. I have priced package discounts for airfare and hotel rooms, and find that I can save significant costs by packaging, nevertheless, the cost will still amount

to no less than \$460.00 each for my counsel and me to travel the day before the hearing and stay overnight. Meals and ground transportation will be additional.

7. Ground transportation will cost me at least \$20.00 per witness. I will also need to provide at least one meal for each of my witnesses, at a cost of around \$20.00 per person.
8. At least two (2) of my witnesses are sitting judges, and they will have to either clear their calendar for the day, or obtain a Senior Judge to sit for them the entire day it will take to travel to Reno and testify. This will result in no less than \$1,000.00 per day at the expense of the State of Nevada for each judge.
9. One (1) of my witnesses (Tiffany Skaggs) is scheduled to fly out of the country on the 30th of May, and has expressed me to the extreme stress she will be under if forced to fly to Reno the day before she goes out of the country. According to the prosecutor's witness list, he is also going to call this person as a witness.
10. In summary, I respectfully submit that the unavailability of a key witness as well as the additional expense of a hearing in Reno, Nevada will result in a denial of my due process rights. I thank you for your consideration in this matter.

Dated this 1st day of February, 2018.


Rena G. Hughes

Subscribed and Sworn to before me this
1st day of February, 2018



Notary in said County and State.

