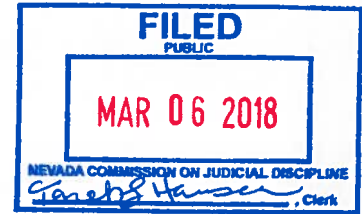


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10 Commission on Judicial Discipline



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

8
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10 IN THE MATTER OF THE HONORABLE
11 RENA G. HUGHES, Eighth Judicial District Court,
12 Department J - Family Court,
13 County of Clark, State of Nevada,

CASE NO. 2016-113-P


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Respondent.

15 **OPPOSITION TO MOTION FOR EXPANSION OF TIME TO**
16 **PRESENT RESPONDENT'S DEFENSE**

17 COMES NOW Thomas C. Bradley, Prosecuting Officer for the Nevada Commission on
18 Judicial Discipline ("Commission" or "NCJD"), hereby opposes Respondent's Motion for
19 Expansion of Time to Present Respondent's Defense, submitted on February 20, 2018, by the
20 Honorable Rena G. Hughes, Eighth Judicial District Court, County of Clark, State of Nevada.

21 Said Opposition is based upon all filings and pleadings in this case as well as the attached
22 Memorandum of Points and Authorities.

23 RESPECTFULLY SUBMITTED this 6 day of March, 2018.

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25 
26 Thomas C. Bradley, Esq. (SBN 1621)
27 448 Hill Street
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POINTS AND AUTHORITES

I) INTRODUCTION

This is not a complex case. The relevant procedural history is not complicated and the allegations of misconduct are centered upon one brief hearing that was videotaped with the exception of nine (9) minutes where the Respondent held an "off the record" discussion. Therefore, the testimony regarding the events that transpired during the hearing is unnecessary. Moreover, the procedural history and pleadings are contained in the Court's docket sheet and file, so no oral testimony is needed regarding procedural history. The Commission granted each side four (4) hours to present their case which is more than sufficient time to address all the issues. Accordingly, the Commission should deny the Respondent's Motion because she has failed to demonstrate good cause.

II) FACTUAL SUMMARY

Welthy Silva ("Mother") and Rogerio Silva ("Father") were divorced in 2013 in Clark County. The parties had one minor child. In the original Decree of Divorce, the Court granted the Mother primary physical custody and the Father weekend visitation of the child.

Beginning in May 2015, the parties began litigating a number of issues concerning the well-being of their child and whether the Mother was interfering with the Father's visitation rights. During the next twelve months, Respondent held a number of hearings on these issues.

On May 12, 2016, an in-person hearing was held. During the hearing, the parties argued whether the Mother was interfering with the Father's rights of visitation. Respondent then advised Mother that she was close to being held in contempt and being incarcerated. At the conclusion of the hearing, the Respondent ordered that Father shall have visitation with the child on the upcoming weekend and that the parties shall exchange the child under the supervision of Donna's House Central.

Subsequently, the Father alleged that the Mother allegedly failed to comply with the recently ordered visitation. On May 17, 2016, the Father's counsel filed a Motion to place the matter back on calendar regarding the visitation. On June 8, 2016, Respondent issued a Minute

1 Order detailing the visitation issues. The Respondent concluded that, "[t]his Court finds that
2 Plaintiff [Mother] is in contempt of the Court's order to facilitate visitation on weekends with the
3 Father, AN ORDER TO SHOW CAUSE SHALL ISSUE."

4 The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court
5 room [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the
6 courtroom on June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to
7 twenty-five (25) days incarceration. If the Mother fails to appear, a bench warrant shall issue."
8 The Minute Order also addressed other Order to Show Cause issues that were not related to
9 visitation, and stated in closing, "[t]he Order to Show Cause Hearing shall be scheduled for July
10 28, 2016 at 1:30 p.m."

11 Mother arrived with her minor child at the scheduled hearing on June 15, 2016.
12 Respondent ordered all parties and counsel, except the minor child, to leave the courtroom, and
13 Respondent addressed the child for nine (9) minutes off the record. The Mother was not allowed
14 to return to the courtroom and was escorted off the Courthouse property. In the Mother's absence,
15 Respondent awarded the Father temporary sole legal and physical custody, terminated the Father's
16 child support obligation, ordered the Mother to pay the statutory minimum child support to the
17 Father, and the Mother was ordered to have no contact with the minor child.

18 The minor child was clearly distressed and cried during the entire process while the Father
19 remained impassive at his counsel table. Respondent addressed the crying minor child by stating
20 that the change in custody occurred because the Mother and minor child were not cooperative with
21 the Court ordered visitations. Respondent further stated that if the minor child refused to go with
22 the Father she would end up in Child Haven, which Respondent referred to as a jail for kids.

23 At the court proceeding on June 15, 2016, no evidence or testimony was entered into the
24 record regarding the change of custody, change in child support or the finding of contempt. No
25 Order to Show Cause issued regarding the failure to facilitate visitation or notice regarding the
26 change of custody and/or child support, and no hearing was held.

27 ///

1 Accordingly, the issues in this case are narrow:

2 Did Respondent violate Nevada law and the Nevada Judicial Code:

- 3 1) By holding Ms. Silva in contempt without due process and an opportunity to be
4 heard;
- 5 2) By imposing a penalty for contempt that changed custody of the minor child by
6 awarding sole physical and legal custody to the Father; and
- 7 3) By changing physical and legal custody of the minor child without a hearing as
8 required by Nevada law.

9 **III) LAW**

10 The Commission has previously analyzed the issue of time limits in judicial
11 discipline hearings. See *In the Matter of the Honorable Melanie Andress-Tobiason*, Case No.
12 2014-094-P.

13 *In re Andress-Tobiason*, the Commission issued an Order stating:

14 *Time limits in judicial discipline hearings have been upheld by the Nevada Supreme*
15 *Court. In Matter of Halverson, 123 Nev. 493, 517-518, 169 P.3d 1161, 1178 (2007),*
16 *former Judge Halverson maintained that the Commission denied her due process*
17 *by allocating an additional hour of the hearing to the special prosecutor to present*
18 *her case during her one-day suspension hearing. In Halverson, the Nevada*
19 *Supreme Court analyzed the time allotment pursuant to the United States Supreme*
20 *Court case, Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d*
21 *18 (1976). In Mathews, the United States Supreme Court noted whether procedural*
22 *due process has been satisfied depends on a balance of the three factors set forth*
23 *above.*

24 *In this matter, there is only one percipient witness, the Respondent, and any*
25 *proposed offer of proof would appear to be in regards to character witnesses. Any*
26 *time limitations on such additional testimony regarding Respondent's character*
27 *does not create a deprivation of her due process rights. This is similar to Halverson*
28 *wherein a parade of witnesses all testifying in the same vein was denied, and that*
denial did not violate Halverson's due process rights. Additionally, the fiscal
economy favors a one day trial as Commissioners must travel, and similar fiscal
economy was upheld in Halverson as well. Moreover, the Court noted, the
opportunity to be heard in a meaningful time and manner was satisfied in
Halverson even when the special prosecutor was given an extra hour to present in
a one day trial, and in this instance, the is time allotted equally among the parties.
Therefore, based upon Halverson, the Commission may prescribe time or times
within which the presentation of evidence must be concluded and establish time
limits on direct or cross-examination of witnesses. This is to avoid the Commission
being unreasonably delayed by the undue prolongation of the presentation of

1 *evidence. (Scheduling Order p. 3, ll. 15-16). Accordingly, the Commission may*
2 *reallocate time among the parties as necessary for good cause shown at the*
3 *hearing. This allows the Commission to conduct a fair and impartial proceeding in*
4 *which the parties are given a reasonable opportunity to present evidence. Based*
5 *upon limited issues in the case, the parties have adequate time to present the*
6 *evidence and any mitigating factors before the Commission.*

7 Accordingly, the Commission should adopt its prior reasoning and established case law
8 rejecting Respondent's argument regarding time.

9 Additionally, the Commission follows the Nevada Rules of Evidence. See Commission
10 Rule 24. NRS 48.025 provides that evidence which is not relevant is not admissible. NRS 48.035
11 provides that even relevant evidence may be excluded if its probative value is substantially
12 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative
13 evidence

14 Accordingly, Counsel contends that a great deal of the testimony from Respondent's
15 witnesses is likely to be either not relevant or excluded because its probative value is substantially
16 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative
17 evidence. Thus, there will be no need for additional time.

18 **IV) PROSECUTING OFFICER'S WITNESSES**

19 The Prosecuting Officer disclosed several persons who have knowledge of the facts and
20 may be potential witnesses pursuant to Procedural Rule 19 of the Nevada Commission on Judicial
21 Discipline. At this time, however, the Prosecuting Officer intends to call only Judge Hughes as a
22 witness to establish the charges. In any event, the Prosecuting Officer will have more than
23 sufficient time to call any additional witnesses in his case to prove the charges by clear and
24 convincing evidence. Thus, there is no need for additional time for the Prosecuting Officer's case.

25 **V) RESPONDENT'S WITNESSES**

26 The Respondent identifies Judges Hoskin, Steel, and O'Malley as witnesses but fails to
27 identify the substance of their testimony or the necessity for their appearance. Because none of
28 these Judges were directly involved the alleged misconduct, it appears that their testimony would
not be relevant, and if deemed relevant, the testimony would not be critical or lengthy.

1 To the extent that these Judges wish to provide character references, such evidence can be
2 submitted by letter. To the extent that the Respondent relied upon the advice of any of these Judges,
3 such evidence provides no defense to a violation of the Judicial Code and is only minimally
4 relevant to a claim of mitigation. In any event, there is no allegation that their testimony would be
5 lengthy and may not even be admissible. See *In re Halverson*, 123 Nev. 493, 169 P.3d 1161 (2007),
6 NRS 48.025 and 48.035.


7 The Respondent also identifies Ms. Skaggs, her Court Reporter, but fails to identify the
8 substance of her testimony or how her testimony is relevant. Presumably, Ms. Skaggs intends to
9 testify regarding the nine (9) minutes of the hearing that the Respondent failed to have recorded
10 by videotape, but such testimony would not be lengthy.

11 **VI) CONCLUSION**

12 The central issues are whether Respondent violated Nevada law and the Nevada Judicial
13 Code (1) by holding Ms. Silva in contempt without due process and an opportunity to be heard;
14 (2) imposing a penalty for contempt that changed custody of the minor child by awarding sole
15 physical and legal custody to the Father; and (3) by changing physical and legal custody of the
16 minor child without a hearing as required by Nevada law.

17 Accordingly, this is not a complicated case that requires a lengthy hearing. Respondent's
18 Motion is without merit and instead appears to be designed as a means to create an appellate claim
19 that she was denied due process. In any event, four (4) hours is more than sufficient to present
20 Respondent's defense in this uncomplicated case and does not violate her due process rights.

21 Dated this 6 day of March, 2018.

22
23 Submitted by: 

24 Thomas C. Bradley, Esq., SBN 1621
25 Prosecuting Officer for the NCJD
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this OPPOSITION TO MOTION FOR EXPANSION OF TIME TO PRESENT RESPONDENT'S DEFENSE was emailed to the Executive Director of the Nevada Commission of Judicial Discipline (pdeyhle@judicial.state.nv.us) and the Law Offices William B. Terry (info@williamterrylaw.com, sarah@williamterrylaw.com), on this 6th day of March, 2018.

By: 

Thomas C. Bradley, Esq., SBN 1621
Prosecuting Officer for NCJD