

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA



In the Matter of)
)
THE HONORABLE RENA G. HUGHES,)
Eighth Judicial District Court, Family Division,)
Department J, County of Clark,)
State of Nevada,)
)
Respondent.)

CASE NO. 2016-113-P

**ORDER DENYING MOTION FOR EXPANSION OF TIME
TO PRESENT RESPONDENT'S DEFENSE**

TO: THE HONORABLE RENA G. HUGHES, Respondent
WILLIAM B. TERRY, ESQ., Counsel for Respondent
THOMAS C. BRADLEY, ESQ., Prosecuting Officer

Currently before the Commission on Judicial Discipline ("Commission") is a Motion For Expansion of Time To Present Respondent's Defense ("Motion"), which was filed by counsel to the Honorable Rena G. Hughes, District Court Judge, Eighth Judicial District Court, Family Division, Department J for Clark County, Nevada ("Respondent") on February 20, 2018. Opposition To Respondent's Motion For Expansion of Time To Present Respondent's Defense was filed by the Prosecuting Officer to the Commission ("Prosecuting Officer") on March 6, 2018. The Reply to the Prosecuting Officer's Opposition was filed by the counsel for Respondent on March 23, 2018.

STATEMENT OF FACTS

The Formal Statement of Charges alleges that Respondent, a District Court Judge in Clark County, Nevada, held a Ms. Silva ("mother") in contempt without due process and an opportunity to be heard; imposed a penalty for contempt that changed custody of the minor child by awarding sole physical and legal custody to the father; and changed physical and legal custody of the minor child without a hearing as required by Nevada law.

1 On February 18, 2018, Respondent filed her Motion to enlarge the amount of time Respondent
2 has regarding the hearing that is scheduled for one (1) day. The Prehearing Order sets forth four (4)
3 hours for each side to present evidence. Respondent is seeking eight (8) hours for her defense, and does
4 not object to allowing the Prosecuting Officer additional time, if requested.

5 The Respondent incorporated by reference herein the points and authorities filed in her motion
6 to transfer hearing to Las Vegas, Nevada or, in the alternative, to conduct said hearing by way of video
7 in Las Vegas, Nevada, along with the affidavit in support of the motion to transfer. Respondent argues
8 that she needs more time to present her defense as she plans to call five (5) witnesses, not including
9 herself.

10 Respondent acknowledged that under the Procedural Rules of the Nevada Commission on
11 Judicial Discipline Rule 26 that "The Commission may limit time each party is allowed to present
12 evidence" Respondent states that she does not question the ability of the Commission to limit the
13 amount of time; however, she objects to the amount of time which has been allocated. She notes that
14 any limitations on time must be based on reasonableness and not on an abuse of discretion. She alleges
15 that the Commission has failed to take into consideration the Respondent's ability to prepare and
16 present her own defense and therefore four (4) hours is insufficient. Respondent is seeking eight (8)
17 hours to present her defense.

18 The Prosecuting Officer notes that this is not a complex case, as the relevant procedural history
19 is not complicated and the allegations of misconduct are centered upon one brief hearing that was
20 videotaped with the exception of nine (9) minutes where the Respondent held an "off the record"
21 discussion. Therefore, four (4) hours for each side to present the case is more than sufficient time to
22 address all the issues.

23 The Prosecuting Officer summarized the case as follows. In the underlying case, the mother
24 and father had one child together. The parties divorced in 2013 and the mother was granted primary
25 custody and the father had weekend visitation with the minor child. There were visitation problems and
26 the father alleged that the mother failed to comply with the recently ordered visitation, thus on May 17,
27 2016, the father's counsel filed a Motion to place the matter back on calendar regarding the visitation.
28

1 On June 8, 2016, Respondent issued a Minute Order detailing the visitation issues. The
2 Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the Court's
3 order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE SHALL
4 ISSUE." The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room
5 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom on
6 June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to twenty- five (25)
7 days incarceration. If the Mother fails to appear, a bench warrant shall issue." The Minute Order also
8 addressed other Order to Show Cause issues that were not related to visitation, and stated in closing,
9 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 20 16 at 1:30 p.m."

10 The mother arrived with her minor child at the scheduled hearing on June 15, 2016. Respondent
11 ordered all parties and counsel, except the minor child, to leave the courtroom, and addressed the child
12 for nine (9) minutes off the record. The mother was not allowed to return to the courtroom and was
13 escorted off the Courthouse property. In the mother's absence, Respondent awarded the father
14 temporary sole legal and physical custody, terminated the father's child support obligation, ordered the
15 mother to pay the statutory minimum child support to the father, and the mother was ordered to have no
16 contact with the minor child. The minor child was clearly distressed and cried during the entire
17 process. Respondent addressed the crying minor child by stating that the change in custody occurred
18 because the mother and minor child were not cooperative with the Court ordered visitations.
19 Respondent further stated that if the minor child refused to go with the father she would end up in Child
20 Haven, which Respondent referred to as a jail for kids.

21 The Prosecuting Officer summed up the case as having three issues: Did Respondent violate
22 Nevada law and the Judicial Code:

- 23 1) By holding the mother in contempt without due process and an opportunity to be
24 heard;
- 25 2) By imposing a penalty for contempt that changed custody of the minor child by
26 awarding sole physical and legal custody to the father; and
- 27 3) By changing physical and legal custody of the minor child without a hearing as
28 required by Nevada law.

1 The Prosecuting Officer noted that the Commission has previously analyzed the issue of time
2 limits in judicial discipline hearings. *See In the Matter of the Honorable Melanie Andress-Tobiasson*,
3 Case No. 2014-094-P. *Tobiasson* cited to *Matter of Halverson*, 123 Nev. 493, 517-518, 169 P.3d 1161,
4 1178 (2007), wherein former Judge Halverson maintained that the Commission denied her due process
5 by allocating an additional hour of the hearing to the special prosecutor to present her case during her
6 one-day suspension hearing; however, the Nevada Supreme held that the Commission did not violate
7 Halverson's due process rights. The Prosecuting Officer noted that in *Tobiasson* and in *Halverson*,
8 fiscal economy regarding the Commission was upheld. Moreover, he noted that the Prehearing Order
9 permits the Commission to reallocate time if necessary. He argued that accordingly, the Commission
10 should adopt its prior reasoning and established case law rejecting Respondent's argument regarding
11 time.

12 The Prosecuting Officer stated that the Commission follows the Nevada Rules of Evidence. *See*
13 Commission Rule 24. NRS 48.025 provides that evidence which is not relevant is not admissible. NRS
14 48.035 provides that even relevant evidence may be excluded if its probative value is substantially
15 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative
16 evidence. Accordingly, Counsel contends that a great deal of the testimony from Respondent's
17 witnesses is likely to be either not relevant or excluded because its probative value is substantially
18 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative
19 evidence. Thus, the Prosecuting Officer argues there will be no need for additional time since he is only
20 calling one witness, Judge Hughes.

21 The Prosecuting Officer noted that the Respondent identified Judges Hoskin, Steel, and
22 O'Malley as witnesses but failed to identify the substance of their testimony or the necessity for their
23 appearance. He argues that any character testimony can be done by letter, and if Respondent relied
24 upon the advice of any of these Judges, such evidence provides no defense to a violation of the Judicial
25 Code.

26 Moreover, he opines that in any event, there is no allegation that their testimony would be
27 lengthy and may not even be admissible. *See Matter of Halverson*, 123 Nev. 493, 169 P.3d 1161
28 (2007), NRS 48.025 and 48.035. The Prosecuting Officer acknowledges that the Respondent also

1 identifies Ms. Skaggs, her Court Reporter, but fails to identify the substance of her testimony or how
2 her testimony is relevant. He states, presumably, Ms. Skaggs intends to testify regarding the nine (9)
3 minutes of the hearing that the Respondent failed to have recorded by videotape, but such testimony
4 would not be lengthy. The Prosecuting Officer argues that this is not a complicated case that requires a
5 lengthy hearing, and thus four (4) hours is more than sufficient to present.

6 In her Reply, Respondent notes that the underlying case was long and ongoing, and thus
7 requires background information so the Commission can understand what led up to the ultimate
8 hearing. Moreover, Respondent argues that the substance of the witnesses' testimony is not important
9 at this point in time but is concerned by the fact that they will have to fly to Reno, Nevada to testify.

10 ISSUES

11 Whether the Commission's Scheduling Order, setting evidentiary time limits, denies
12 Respondent's procedural due process rights.

13 STANDARD OF LAW

14 Commission Procedural Rule 26

15 The Commission and the respondent are each entitled to present evidence and produce
16 and cross-examine witnesses, subject to the rules of evidence applicable to civil
17 proceedings. The Commission may limit the time each party is allowed to present
18 evidence.

19 Due Process

20 *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In
21 *Mathews*, the United States Supreme Court noted whether procedural due process has
22 been satisfied depends on a balance of three factors: (1) the private interest affected by
23 the official action; (2) the risk of an improper deprivation of that private interest given
24 the procedures used and any probable value of additional or different procedural
25 safeguards; and (3) the government's interest, including the function involved and the
26 fiscal and administrative burdens that the additional or different procedural requirements
27 would necessitate. *See id.*
28

1 any relevant testimony or non-duplicative testimony to offer that would necessitate more time. NRS
2 48.025 and NRS 48.035. The list of judicial witnesses is similar to *Halverson* wherein a parade of
3 witnesses all testifying in the same vein was denied, and that denial did not violate Halverson's due
4 process rights. The key issue is what occurred or did not occur at the hearing, and related court
5 documents, and therefore, the scope of the proceeding is narrow, on video and contained within the
6 court records. Thus, the time limits in the Prehearing Order reflect an informed analysis of the time
7 necessary to afford each party a full and fair opportunity to present their case.

8 Time limits are necessary to avoid the Commission being unreasonably delayed by the undue
9 prolongation of the presentation of evidence. This is similar to other disciplinary boards. *See e.g.* NAC
10 628.440(6) (The Board or the hearing officer may set reasonable time limits for oral presentation in
11 disciplinary actions for accountants). While Respondent argues that the Commission must understand
12 the background regarding the underlying case, the background to the hearing can be handled through
13 Respondent's testimony and the court record. Moreover, Respondent has failed to demonstrate why she
14 needs more time to have numerous judicial witnesses testify to an event in which they were not
15 percipient witnesses. Additionally, fiscal economy favors a one day trial as some Commissioners must
16 travel, as well as any witnesses for the Respondent. Similar fiscal economy was upheld in *Halverson* as
17 well. Moreover, the Court in *Halverson* noted, the opportunity to be heard in a meaningful time and
18 manner was satisfied in *Halverson* even when the special prosecutor was given an extra hour to present
19 in a one day trial, and in this instance, the time is allotted equally among the parties. Respondent has
20 not presented any evidence that she will need more than her four (4) hours of allotted time.

21 Moreover, the allotted times are not inflexible. The Commission's Scheduling Order permits the
22 scheduling of the hours to be modified at its discretion. (Prehearing Order p. 4, 1.2). Furthermore, the
23 time limitation of four (4) hours each is reasonable in relation to the complexity of the case. The case
24 centers upon one brief hearing in which the majority was recorded on the JAVS system. Therefore, the
25 time limit is not arbitrary or inflexible as to limit justice in the name of efficiency and cost.
26 Accordingly, the Commission may reallocate time among the parties as necessary for good cause
27 shown at the hearing. This allows the Commission to conduct a fair and impartial proceeding in which
28 the parties are given a reasonable opportunity to present evidence. Based upon the limited issues in the

1 case, the parties have adequate time to present the evidence and any mitigating factors before the
2 Commission.

3 In order to address Respondent's due process concerns, the Commission may allow post-trial
4 briefs, if necessary and requested, to be filed in this matter within five (5) days of the conclusion of the
5 hearing.

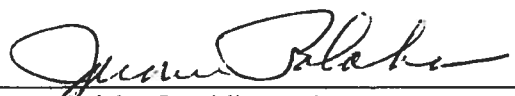
6 Therefore, Respondent's Motion For Expansion of Time To Present Respondent's Defense is
7 denied as Respondent's due process rights are protected through the Prehearing Order as the
8 Commission has the discretion to modify the allotted hours in order to meet any due process
9 requirements at the hearing.

10 Respondent's Motion For Expansion of Time To Present Respondent's Defense is denied. The
11 Honorable Jerome Polaha is authorized to sign this order on behalf of the full Commission.

12 IT IS SO ORDERED.

13 DATED this 3rd day of April, 2018.

14 STATE OF NEVADA
15 COMMISSION ON JUDICIAL DISCIPLINE

16 
17 _____
18 Jerome Polaha, Presiding Judge

19
20
21
22
23
24
25
26
27
28

