

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

2 **STATE OF NEVADA**



3
4 In the Matter of)
5 THE HONORABLE JENNIFER HENRY,)
6 Juvenile Hearing Master, Eighth Judicial)
7 District Court, County of Clark, State of)
8 Nevada,)
9 Respondent.)
10

CASE NO. 2016-142-P

11 **ORDER DENYING MOTION FOR EXPANSION OF TIME**
12 **TO PRESENT RESPONDENT’S DEFENSE**

13 TO: THE HONORABLE JENNIFER HENRY, Respondent
14 WILLIAM B. TERRY, ESQ., Counsel for Respondent
15 THOMAS C. BRADLEY, ESQ., Prosecuting Officer

16 Currently before the Commission on Judicial Discipline (“Commission”) is a Motion For
17 Expansion of Time To Present Respondent’s Defense (“Motion”), which was filed by counsel to the
18 Honorable Jennifer Henry, Juvenile Hearing Master, Eighth Judicial District Court for Clark County,
19 Nevada (“Respondent”) on February 20, 2018. Opposition To Respondent’s Motion For Expansion of
20 Time To Present Respondent’s Defense was filed by the Prosecuting Officer to the Commission
21 (“Prosecuting Officer”) on March 6, 2018. The Reply to the Prosecuting Officer’s Opposition was filed
22 by the counsel for Respondent on March 23, 2018.

23 **STATEMENT OF FACTS**

24 The underlying complaint alleges that Respondent, a Juvenile Hearing Master, Eighth Judicial
25 District Court in Clark County, Nevada violated the law and the Judicial Code by sentencing a juvenile
26 to a harsher sentence because the juvenile elected to exercise her Fifth Amendment right against self-
27 incrimination; and (2) in failing to be patient, dignified and courteous to the juvenile and Counsel
28 Grigsby.

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2 On February 20, 2018, Respondent filed her Motion for Expansion of Time to Present
3 Respondent's Defense. In the Motion, Respondent incorporated by reference the Analysis of Facts set
4 forth within her Motion to Transfer the Hearing to Las Vegas, Nevada Or, In The Alternative, To Do
5 The Said Hearing By Video. Respondent asks for more than her allotted four (4) hours to present her
6 defense. She states that Counsel for the Respondent has been advised pursuant to written document by
7 the Prosecuting Officer that he has up to seven witnesses that he may call, and Respondent may call
8 nine witnesses.

9 Respondent acknowledged that under Rule 26 of the Procedural Rules of the Nevada
10 Commission on Judicial Discipline that "The Commission may limit the time each party is allowed to
11 present evidence" She states that this Rule has an implicit understanding that the time period
12 allowed is reasonable and it is not an abuse of discretion nor that it violates the due process rights of the
13 Respondent to present her defense. Respondent argues that the time limitation impacts her ability to
14 present her defense, and thus requests an extension of her allotted time not to exceed eight (8) hours.

15 In his Opposition, the Prosecuting Officer states that this is not a complex case, as the
16 allegations of misconduct are centered upon one brief hearing that was videotaped. He notes that
17 testimony regarding the events that transpired during the hearing at issue is unnecessary, and the
18 procedural history and pleadings are contained in the Court's records so no oral testimony is needed
19 regarding procedural history.

20 The Prosecuting Officer notes that four (4) hours is sufficient for each side to address all the
21 issues. He states that Respondent contends that she must call numerous Judges, hearing masters, and
22 Court staff; however, she failed to identify the substance of their testimony or the necessity for their
23 appearance. Furthermore, none of the judges or hearing masters observed or had involvement in the
24 misconduct that occurred in the courtroom. He argues that such testimony is not relevant and the
25 witnesses will not be allowed to testify. Accordingly he opines that the Commission should deny the
26 Respondent's Motion because she has failed to demonstrate good cause.

27 The Prosecuting Officer summed up the facts of the case as follows. On October 10, 2016,
28 Respondent served as the assigned hearing master in a contested juvenile hearing in which a juvenile

1 was accused of running away from police officers after the police officers had approached a group of
2 teenagers who were on the street smoking marijuana at 3:00 a.m. in the morning. As part of a plea
3 agreement, the juvenile, through her counsel, agreed to plead guilty to obstructing an officer, a
4 misdemeanor offense, with all other charges dismissed in exchange for the prosecutor's sentencing
5 recommendation that the juvenile be given six-months of probation. The juvenile was represented by
6 Aaron Grigsby, a court appointed attorney. Notably, Respondent and Mr. Grigsby had a strained
7 professional relationship going back several years. After the plea was entered, Respondent began to ask
8 the juvenile questions regarding her use of a cell phone, which was unrelated to the underlying criminal
9 matter. Counsel Grigsby advised the Respondent that he did not wish to have his client admit to
10 something that could get her into more trouble. Respondent ignored counsel's objection, which was
11 based on the juvenile's Fifth Amendment right against self-incrimination and repeatedly asked the
12 juvenile to answer her questions about the juvenile's use of a cell phone.

13 Respondent lost her temper as Counsel Grigsby continually objected to Respondent's repeated
14 attempts to question the juvenile regarding the cell phone, and shouted, "ENOUGH", numerous times
15 to Counsel Grigsby. Respondent then called a recess, and upon resumption of the hearing, again began
16 asking the juvenile to answer her questions regarding the juvenile's cell phone. Counsel Grigsby
17 continued to object noting that he did not want his client to admit to anything that could result in
18 additional charges.

19 The juvenile followed the advice of her counsel and refused to answer Respondent's questions
20 regarding the cell phone. Respondent then stated that she was sentencing the juvenile to nine (9)
21 months of probation instead of six (6) months because the juvenile declined to answer her questions
22 regarding the use of a cell phone. During the hearing, Respondent also advised Counsel Grigsby he was
23 obstructing the hearing, making prejudicial comments, and that his misconduct was not an isolated
24 incident.

25 Accordingly, the Prosecuting Officer noted that the issues in this case are narrow. Did
26 Respondent violate Nevada law and the Nevada Judicial Code:

27 1) by sentencing the juvenile to a harsher sentence because the juvenile elected to
28 exercise her Fifth Amendment right against self-incrimination; and

1 2) in failing to be patient, dignified and courteous to the juvenile and Counsel Grigsby
2 as required by Nevada law.

3 The Prosecuting Officer noted that the Commission has previously analyzed the issue of time
4 limits in judicial discipline hearings. *See In the Matter of the Honorable Melanie Andress-Tobiasson*,
5 Case No. 20 I 4-094-P. *Tobiasson* cited to *Matter of Halverson*, 123 Nev. 493, 517-518, 169 P.3d 11
6 61, 117 (2007), wherein former Judge Halverson maintained that the Commission denied her due
7 process by allocating an additional hour of the hearing to the special prosecutor to present her case
8 during her one-day suspension hearing; however, the Nevada Supreme held that the Commission did
9 not violate Halverson's due process rights. The Prosecuting Officer noted that in *Tobiasson* and in
10 *Halverson*, fiscal economy regarding the Commission was upheld. Moreover, he clarified that the
11 Prehearing Order permits the Commission to reallocate time if necessary. He argued that accordingly,
12 the Commission should adopt its prior reasoning and established case law rejecting Respondent's
13 argument regarding time.

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

23 The Prosecuting Officer acknowledges that the Respondent contends that she anticipates calling
24 nine Judges and hearing masters, but fails to identify the substance of their testimony or the necessity
25 for their appearance regarding the hearing in question. He emphasized that because none of these
26 potential witnesses were directly involved in the alleged misconduct, it appears that their testimony
27 may not be relevant or admissible. He further notes that character references may be submitted by
28 letter.

1 The Prosecuting Officer further expounds that there is no allegation that their testimony would
2 be lengthy and admissible. *See Matter of Halverson*, 123 Nev. 493, 169 P.3d 1161 (2007), NRS 48.025
3 and 48.035. Therefore, he states that Respondent's Motion is without merit and instead appears to be
4 designed to create an appellate claim that she was denied due process. He concludes that four (4) hours
5 is more than sufficient to present Respondent's defense in this uncomplicated case and does not violate
6 her due process rights.

7 In her Reply, Respondent states that the Special Prosecutor avers that the instant case is simple
8 in nature, but Respondent claims it is more complex than the Special Prosecutor believes. Respondent
9 emphasizes that she is not a judge and cannot act without the permission of her supervising judge. A
10 Master can only make recommendations subject to objections yet this is not the practice of the EJDC
11 Juvenile Division under the supervision of the current judge, Judge Voy.

12 Respondent states that the evidence will show that when Respondent learned there was a
13 conflict of interest between the conflict defense attorney, Mr. Grigsby, and a District Attorney against
14 whom Mr. Grigsby was litigating, Respondent immediately notified her supervisor, Judge Voy. Judge
15 Voy, however, did not intercede in the matter and, as a result, the Respondent and Hearing Master
16 Bailey decided to move cases from one courtroom to another in order to solve the immediate day's
17 conflict since Judge Voy did not take any action. *See Brown v. Eighth Judicial District Court*, 116 Nev.
18 1200, 14 P.3d 1266 (2000)(holding that district courts are responsible for controlling the conduct of
19 attorneys practicing before them).

20 Respondent further states that the evidence will further show that sometime after October 2,
21 2016, the Chief Juvenile Division District Attorney had a meeting with Mr. Grigsby at the request of
22 Judge Voy pertaining to the conflict. Respondent alleges that Judge Voy knew that Mr. Grigsby was
23 upset with the Respondent for disclosing the conflict of interest and potentially interfering with Mr.
24 Grigsby's contract. Respondent states that she fulfilled her ethical obligation, however, Judge Voy did
25 not correct the situation.

26 Respondent states that Judge Elliott will testify to Respondent's work ethic and Respondent's
27 issues with Counsel Grigsby. Additionally, the Respondent says she may call Susan Roske, a public
28 defender in Judge Voy's courtroom for years, regarding the court system and the appropriateness of the

1 recommendation of nine (9) months issued by Respondent for the juvenile. Respondent states Ms.
2 Roske would also be expected to testify that Judge Voy asks minors that are both on probation and have
3 not yet been placed on probation potentially incriminating questions. The Respondent stated she may
4 also call Kerri Maxey who is expected to testify that she observed Judge Voy, in effect, brush aside Mr.
5 Grigsby's conflict of interest in reference to a pair of brothers, and that Respondent is fair as a hearing
6 master.

7 Respondent states that an additional potential witness is Probation Officer Aldrich Jordan, who
8 was the subject minor's probation officer, and is expected to testify that the minor admitted that she was
9 prostituting herself and also that ultimately she was sentenced to Caliente. Respondent states that these
10 are just some of the potential witnesses whom the Respondent anticipates calling, and thus requires
11 more than four (4) hours to present her case.

12 ISSUES

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

15 STANDARD OF LAW

16 **Commission Procedural Rule 26**

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

21 **Due Process**

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

3 DISCUSSION

4 Redundancy and delay are to be minimized at trial, and thus testimony and evidence are subject
5 to a reasonable limit. Time limits in judicial discipline hearings have been upheld by the Nevada
6 Supreme Court. In *Matter of Halverson*, 123 Nev. 493, 517–18, 169 P.3d 1161, 1178 (2007), former
7 Judge Halverson maintained that the Commission denied her due process by allocating an additional
8 hour of the hearing to the special prosecutor to present her case during her one-day suspension hearing.
9 In *Halverson*, the Nevada Supreme Court analyzed the time allotment pursuant to the United States
10 Supreme Court case, *Mathews v. Eldridge*, C 424 U.S. 319, 334–35, 96 S.Ct. 893, 47 L.Ed.2d 18
11 (1976). In *Mathews*, the United States Supreme Court noted whether procedural due process has been
12 satisfied depends on a balance of the three factors set forth above.

13 Moreover, courts have wide discretion in conducting a trial, including limitations on the
14 presentation of evidence. *Young v. Nev. Title Co.*, 103 Nev. 436, 441, 744 P.2d 902, 904–05 (1987).
15 That discretion to set reasonable time limits must be balanced against a party's due process rights to a
16 fair and reasonable opportunity to be heard. *Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66 F.3d 1500,
17 1509 (9th Cir.1995). Therefore, based upon *Halverson*, case law and Commission Procedural Rule 26
18 the Commission may prescribe time or times within which the presentation of evidence must be
19 concluded and establish time limits on direct or cross-examination of witnesses.

20 The Commission issued its Prehearing Order setting forth time limits based upon an informed
21 analysis of the facts of the case, evidence and expected testimony. The Formal Statement of Charges
22 centers upon one hearing which was recorded on the Court's JAVS system. Respondent seeks to admit
23 evidence and testimony regarding the background as to the animosity between herself and Counsel
24 Grigsby and Judge Voy's alleged failure to address Counsel Grigsby's conflict of interest pertaining to
25 a juvenile district attorney who was on Respondent's court track. Respondent expounded that Judge
26 Voy knew Counsel Grigsby was upset with Respondent and that Counsel Grigsby was assigned to her
27 court. However, the background regarding any animosity between Respondent and Grigsby can be
28 addressed simply by Respondent's testimony, and thus there is no need for Judge Elliott or Kerri

1 Maxey to testify to the same as that would be duplicative.¹ NRS 48.035. Furthermore, Respondent does
2 not state how any failures by Judge Voy are relevant to Respondent's actions in the courtroom towards
3 the juvenile and Counsel Grigsby regarding the Judicial Canons. There is no need for testimony by Ms.
4 Roske on that matter or the appropriate recommendation in the juvenile's case, or Probation Officer
5 Jordan regarding the juvenile's bad behavior. The only evidence that is related to the Formal Statement
6 of Charges is what occurred at the hearing, which is on the JAVS video. Furthermore, Judge Elliott's
7 testimony regarding Respondent's work ethic can be submitted via letter. Respondent's list of witnesses
8 is similar to *Halverson* wherein a parade of witnesses was denied, and that denial did not violate
9 Halverson's due process rights. The key issue is what occurred or did not occur during the JAVS
10 recorded hearing, and therefore, the scope of the proceeding is narrow. Therefore, the time limits reflect
11 an informed analysis of the time necessary to afford each party a full and fair opportunity to present
12 their case.

13 Furthermore, time limits are necessary to avoid the Commission being unreasonably delayed by
14 the undue prolongation of the presentation of evidence. This is similar to other disciplinary boards. *See*
15 *e.g.* NAC 628.440(6) (The Board or the hearing officer may set reasonable time limits for oral
16 presentation in disciplinary actions for accountants). While Respondent argues that the Commission
17 must understand the background regarding Judge Voy, Counsel Grigsby, procedures in juvenile court
18 and the limitations of a hearing master, Respondent can testify to the same. Furthermore, what
19 occurred outside of the courtroom is not at issue, but rather what occurred in Respondent's courtroom
20 on the day in question is what this hearing is about. Moreover, Respondent has not provided how any of
21 her proposed witnesses' testimony is relevant to her behavior in the courtroom. Respondent has not
22 presented any evidence that she will need more than four (4) hours of allotted time to present relevant
23 and non-duplicative evidence. NRS 48.025 and NRS 48.035.

24 Additionally, fiscal economy favors a one day trial as Commissioners must travel, as well as
25 any witnesses for the Respondent and similar fiscal economy was upheld in *Halverson* as well.
26 Moreover, the Court in *Halverson* noted, the opportunity to be heard in a meaningful time and manner

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28 ¹ The Commission is not issuing a ruling on the relevance of witnesses in this Order, but rather taking note of the fact in regards to the necessity of extending the hours for the hearing in question. Any ruling on relevance would be addressed in a motion in limine.

1 was satisfied in *Halverson* even when the Special Prosecutor was given an extra hour to present in a
2 one day trial, and in this instance, the time is allotted equally among the parties. Therefore, the setting
3 of the trial for one day protects the due process and financial interests of both the Respondent and the
4 Nevada taxpayers.

5 Moreover, the allotted times are not inflexible. The Commission's Scheduling Order permits the
6 scheduling of the hours to be modified at its discretion. (Prehearing Order p. 4, l. 2). The time
7 limitation of four (4) hours each is reasonable in relation to the lack of complexity of the case. The
8 case centers upon one hearing that was recorded on the JAVS system. Therefore, the time limit is not
9 arbitrary or inflexible as to limit justice in the name of efficiency and cost. Accordingly, the
10 Commission may reallocate time among the parties as necessary for good cause shown at the hearing.
11 This allows the Commission to conduct a fair and impartial proceeding in which the parties are given a
12 reasonable opportunity to present evidence. Based upon the limited issues in the case, the parties have
13 adequate time to present the evidence and any mitigating factors before the Commission.

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

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

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

23 IT IS SO ORDERED.

24 DATED this 30 day of April, 2018.

25 STATE OF NEVADA
26 COMMISSION ON JUDICIAL DISCIPLINE

27 
28 Jerome Polaha, Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify on this 6th day of April, 2018, I transmitted a copy of the foregoing ORDER DENYING MOTION FOR EXPANSION OF TIME TO PRESENT RESPONDENT'S DEFENSE, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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