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Elizabeth A. Brown
Clerk of Supreme Court

10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 JENNIFER HENRY,

Case No. 75675

12 Petitioner,

13 vs.

14 NEVADA STATE COMMISSION
15 ON JUDICIAL DISCIPLINE,

16 Respondent.
17 _____/

18 **REPLY IN SUPPORT OF MOTION FOR STAY UNDER NRAP 27(e)**

19 COMES NOW the Petitioner Jennifer Henry, by and through her counsel,
20 Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel
21 Marks, and submits her Reply in Support of Motion for Stay Under NRAP 27(e).

22 DATED this 23 day of May, 2018.

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1 **I. INTRODUCTION**

2 Petitioner Jennifer Henry filed an original Petition for a Writ of Prohibition
3 claiming the Nevada State Commission on Judicial Discipline is without
4 jurisdiction to discipline an appointed hearing master pursuant to Nevada
5 Constitution Article 6 § 21(1). This court entered an order directing an answer to
6 the writ on May 18, 2018. The court gave Respondent Commission 15 days from
7 May 18, 2018 to file an answer and 15 days after the answer from Petitioner to file
8 a reply. Petitioner then filed a motion for a stay pointing out the briefing schedule
9 for the writ petition would not be finalized until after the date of the hearing set for
10 May 29, 2018 before the Nevada State Commission on Judicial Discipline.

11 This Court granted a temporary stay on May 21, 2018 including a stay of the
12 May 29, 2018 commission hearing but granted Respondent until May 24, 2018 to
13 file a response. That response was filed May 22, 2018. Petitioner requests this
14 court grant a stay of the May 29, 2018 hearing and allow briefing on the writ.

15 **II. PETITIONER MEETS THE FACTORS FOR A STAY**

16 a. Whether the object of the appeal or writ petition will be defeated.

17 The writ seeks relief because the Commission on Judicial Discipline has no
18 jurisdiction over hearing masters. Hearing masters are not Article 6
19 constitutionally elected judges. If the stay is not granted, the Commission will be
20 proceeding in excess of its jurisdiction. Petitioner will suffer irreparable harm
21 having to defend against these charges as well as the time and expense involved.
22 She will be subject to public ridicule and/or embarrassment. If the stay is not
23 granted and the commission goes forward, this Court cannot correct the error of a
24 public judicial discipline hearing which should never have taken place.

25 b. Whether Petitioner will suffer irreparable or serious injury if the stay
26 is denied.

27 If the stay is denied not only will the object of the writ petition be defeated,
28 but Petitioner will be forced to defend her actions as a hearing master in a public

1 forum. This will not only be costly but expose Ms. Henry to potential public
2 embarrassment and potential ridicule which can never be corrected even if she
3 prevails before this court on the merits of the writ. Ms. Henry alleges in the writ
4 the Commission is exceeding its constitutional authority. Once the Commission
5 acts, Ms. Henry will be irreparably harmed even if she prevails. A Commission
6 hearing which exceeds Constitutional authority can never be undone.

7 c. Whether Respondent will suffer irreparable or serious injury if the
8 stay is granted.

9 Respondent will not suffer if the stay is granted and briefing is allowed to
10 go forward. Denial of the stay means the commission will go forward potentially
11 without jurisdiction. Judicial members of the commission will be leaving their
12 judicial duties and performing duties for the commission when there may be no
13 jurisdiction for the Commission to act. This will be a waste of judicial resources
14 and taxpayer resources. There is no evidence a delay for full briefing on the writ
15 will harm Respondent. Here this court found that Respondent should be required
16 to answer the writ. Therefore the court believes this issue is serious enough for
17 briefing and review by the court. Therefore the court should grant a stay of the
18 hearing to allow the briefing and potential oral argument to take place on the writ.
19 The public will not be harmed by a continuance of this hearing especially because
20 hearing masters are not elected.

21 4. Petitioner is likely to prevail on the merits.

22 The Nevada State Commission on Judicial Discipline was a constitutionally
23 created entity created pursuant to article 6, section 21 of the Nevada Constitution.
24 Article 6 section 21 of the Nevada Constitution established the Commission on
25 Judicial Discipline identifying what judges are subject to the authority of the
26 Commission. The Commission's authority pursuant to the 1994 amendments
27 included elected judges from the municipal court to supreme court. The inclusion
28 of these individuals is supported by article 6 section 1, which created the courts

1 where these judges serve. Nowhere in article 6 are hearing masters included.
2 Hearing masters are not constitutionally named judges, they are not elected and
3 they do not have judicial power. They make recommendations to the District
4 Court. They serve at the pleasure of the District Court.

5 The case cited by Respondent, *In Re Davis* 113 Nev 1204, 946 P.2d 1033
6 (1997), is not nearly identical as argued by Respondent. *Davis* was a municipal
7 court judge clearly covered by the amendments to the Constitution under article 6,
8 as amended in 1994. The Legislature pursuant to NRS 1.1440, provided that the
9 Commission would have “Exclusive jurisdiction over the censure, removal and
10 involuntary retirement of justices of the peace and judges of municipal courts
11 which is coextensive with its jurisdiction over justices of the Supreme Court and
12 judges of the District Courts NRS 1.440 (1).”

13 The Supreme Court in *Davis* held the Commission had jurisdiction over
14 municipal court. The *Davis* decision does not have anything to do with hearing
15 masters and is not on point. The legislature cannot expand the power of the
16 constitutionally created Judicial Discipline Commission without a constitutional
17 change, which did occur in the case of municipal court. Hearing masters are not
18 article 6 judges, they do not serve at the pleasure of the people. The Commission is
19 not needed for their removal from office.

20 Lastly, Respondent concedes and cites *Hansen* that a party moving for a
21 stay does not always have to show a probability of success on the merits, just
22 present a substantial case on the merits when a serious legal question is involved
23 and show that the balance of the equities weigh heavily in favor of granting the
24 stay (*Hansen*, 116 Nev at 659, 6 P.3d at 987 (2000)) cited by Respondent at page 6
25 of the Opposition.

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1 Based on that standard, and the balance of the equities this court should
2 grant the stay of the Judicial Discipline Commission hearing set for May 29, 2018
3 and allow briefing on the pending Writ of Prohibition.

4 DATED this 23 day of May, 2018.

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1 NRAP 27(e) CERTIFICATE

2 **1. The telephone numbers and office addresses of the attorneys for the**
3 **parties.**

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