

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of )
THE HONORABLE JENNIFER HENRY )
Hearing Master for the Eighth Judicial District )
Court, Family Division, County of Clark, State )
of Nevada, )
Respondent. )

CASE NO. 2016-142-P

ORDER GRANTING MOTION IN LIMINE NO. 3

Currently before the Commission on Judicial Discipline ("Commission") is a Motion in Limine No. 3 ("Motion"), filed by the Prosecuting Officer to the Commission ("Prosecuting Officer") on May 14, 2018. The Opposition to the Motion in Limine No. 3 ("Opposition") was filed by counsel to the Honorable Jennifer Henry, Hearing Master, Eighth Judicial District Court, Clark County, Nevada ("Respondent") on May 17, 2018. No Reply was filed by the Prosecuting Officer.

I. Motion

a. Statement of Facts

The underlying complaint alleges that on October 10, 2016, Respondent, a Juvenile Hearing Master in Clark County, Nevada, served as the assigned hearing master in a contested hearing in which a juvenile was accused of running away from police officers after the police officers had approached a group of teenagers smoking marijuana at 3:00 a.m. in the morning. As part of a plea agreement, the juvenile, through her counsel, agreed to plead guilty to obstructing an officer, a misdemeanor offense, with all other charges dismissed in exchange for the prosecutor's sentencing recommendation that the juvenile be given six-months of probation. The juvenile was represented by Aaron Grigsby, a court-appointed attorney.

After the plea was entered, Respondent began to ask the juvenile questions regarding her use of a cell phone. Counsel Grigsby advised the Respondent that he did not wish to have his client admit to

1 something that could get her into more trouble. Respondent ignored counsel's objection, which was  
2 based on the juvenile's Fifth Amendment right against self-incrimination, and repeatedly asked the  
3 juvenile to answer her questions about the juvenile's use of a cell phone.

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

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

16 **b. Motion**

17 On May 14, 2018, the Prosecuting Officer filed a Motion in Limine seeking to preclude any  
18 reference to the state bar complaints and newspaper article about Counsel Grigsby's misconduct. The  
19 Prosecuting Officer notes that Respondent was required to treat Mr. Grigsby in a patient, dignified and  
20 courteous manner regardless of any prior State Bar reprimands or other publicized misconduct. The  
21 Prosecuting Officer argues that Mr. Grigsby's past actions are irrelevant and even if tangentially  
22 admissible, the probative value is substantially outweighed by the danger of unfair prejudice or  
23 confusion. NRS 48.015, 48.025 and 48.035.

24 **II. Opposition**

25 On May 17, 2018, Respondent filed her Opposition to the Motion. Respondent argues that the  
26 disciplinary actions taken against Mr. Grigsby by the State Bar of Nevada are relevant because they  
27 were known by the Respondent, as was the fact that Mr. Grigsby represented a Chief Deputy District  
28 Attorney of the Juvenile Division in her divorce action.

1 Respondent notes that in the June 2009 Letter of Reprimand issued against Mr. Grigsby, he was  
2 found to have violated the following rules of professional conduct: (1) scope of representation, (2)  
3 diligence, (3) communication, and (4) fees. The lack of communication with his own client is relevant,  
4 Respondent contends, because it is doubtful that Mr. Grigsby had any idea what the juvenile would  
5 have said when Mr. Grigsby was directing the juvenile not to answer Respondent's questions.

6 Respondent notes that in 2009, the Nevada Supreme Court dismissed an appeal which Mr.  
7 Grigsby had failed to perfect and referred the matter to the State Bar wherein Mr. Grigsby was  
8 sanctioned. Respondent also highlights a 2010 Letter of Reprimand for a violation of RPC 3.4(c)  
9 Fairness to the Opposing Party and Counsel as particularly relevant to the case pending against  
10 Respondent.

11 Respondent further declares that she learned that Mr. Grigsby was representing a Chief Deputy  
12 District Attorney from the Juvenile Court system when they appeared before her in contested matters.  
13 Respondent states that she reported this to Judge Voy, who failed to acknowledge the conflict.  
14 Respondent avers that Mr. Grigsby lodged a complaint against the Respondent with Judge Voy after  
15 Respondent reported the conflict. Respondent further stated that Mr. Grigsby was interviewed by the  
16 Commission's investigator and Respondent's interrogatories addressed information gathered from Mr.  
17 Grigsby.

18 Respondent emphasizes that she has a right to present witnesses and evidence. *See Goldberg v.*  
19 *Kelly*, 379 U.S. 254 (1970). She further contends that the evidence which the Respondent seeks to  
20 present deals with Mr. Grigsby talking back to the bench after a recess was called, consistently  
21 interrupting Respondent and demanding to see another judge in the middle of the proceedings, as well  
22 as failing to specifically state any form of a Fifth Amendment argument. Respondent seeks clarification  
23 that the Prosecuting Officer is not seeking to exclude several of the exhibits which will be utilized by  
24 the Respondent pertaining to Mr. Grigsby's representation of the Chief Deputy District Attorney from  
25 Juvenile Court in her divorce action and in a TPO proceeding.

## 26 ISSUES

27 Whether evidence may be offered or received relative to Mr. Grigsby's past Nevada State Bar  
28 complaints and other publicized misconduct.

1 **STANDARDS FOR ADMISSIBILITY**

2 **NRS 48.025. Relevant evidence generally admissible; irrelevant evidence**  
3 **inadmissible**

- 4 1. All relevant evidence is admissible, except:  
5 ...  
6 2. Evidence which is not relevant is not admissible.

7 NRS § 48.025

8 **NRS 48.035. Exclusion of relevant evidence on grounds of prejudice, confusion or**  
9 **waste of time**

- 10 1. Although relevant, evidence is not admissible if its probative value is substantially  
11 outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading  
12 the jury.  
13 ...

14 NRS § 48.035

15 **DISCUSSION**

16 Under Commission Procedural Rule 24, “[t]he rules of evidence applicable to civil proceedings  
17 apply at the hearing.” NRS 48.025(2) provides, “[e]vidence which is not relevant is not admissible.”  
18 NRS 48.035(1) provides, “[a]lthough relevant, evidence is not admissible if its probative value is  
19 substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading  
20 the jury.” The determination of whether to admit expert testimony is within the Commission’s  
21 discretion. *In re Assad*, 124 Nev. 391 (2008).

22 Counsel Grigsby’s misconduct in other cases is irrelevant to the actions that occurred at the  
23 hearing in question, wherein he advised his juvenile client not to answer Respondent’s questions.  
24 Moreover, Mr. Grigsby’s attitude, mannerisms, demeanor, decorum, tone and words are all on the  
25 JAVS video and thus may be observed by the Commission.<sup>1</sup> Furthermore, a conflict of interest between  
26 counsels representing the state and the juvenile defendant does not create an exemption to the Judicial  
27 Code. Respondent’s reaction to Mr. Grigsby’s legal advice to his client at the hearing in question is  
28 what is on trial, not Mr. Grigsby. While Respondent may testify for limited background purposes

<sup>1</sup> Mr. Grigsby is not a witness in this matter.

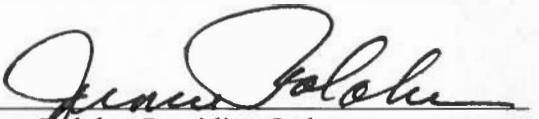
1 regarding Mr. Grigsby, his conflict and sanctioned behavior in other cases does not excuse  
2 Respondent's conduct. Therefore, the Prosecuting Officer's Motion in Limine pertaining to the  
3 preclusion of testimony and evidence as to Mr. Grigsby's prior State Bar discipline and public  
4 misconduct is granted. This Order does not preclude Respondent from testifying on a limited basis as  
5 to background information regarding Mr. Grigsby's representation of the Juvenile District Attorney, and  
6 Respondent's knowledge of the same.

7 The Honorable Jerome Polaha is authorized to sign this Order on behalf of the full Commission.

8 IT IS SO ORDERED.

9 DATED this 28th day of February, 2019.

10  
11 STATE OF NEVADA  
12 COMMISSION ON JUDICIAL DISCIPLINE

13   
14 Jerome Polaha, Presiding Judge

**CERTIFICATE OF SERVICE**

I hereby certify on this 28<sup>th</sup> day of February, 2019, I transmitted a copy of the foregoing ORDER GRANTING MOTION IN LIMINE NO. 3, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

William B. Terry  
William B. Terry, Chartered Attorney at Law  
530 South Seventh Street  
Las Vegas, NV 89101-6011  
Info@WilliamTerryLaw.com  
Counsel for Respondent

Thomas C. Bradley  
Sinai, Schroder, Mooney, Boetsch, Bradley & Pace  
448 Hill Street  
Reno, NV 89501  
Tom@TomBradleyLaw.com  
Prosecuting Officer

  
Nancy L. Schreihans, Commission Clerk

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