



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)	CASE NO. 2016-142-P
Court, Family Division, County of Clark,)	
State of Nevada,)	
)	
Respondent.)	
)	
)	

ORDER REGARDING RELEVANCY OF PORTIONS OF JUVENILE A.B.'S FILE

This Order addresses the relevance of Juvenile A.B.'s file pertaining to the Motion for Order from The Commission to Inspect and Copy Certain Juvenile Records Relevant to the Instant Case ("Motion"), filed by counsel to the Honorable Jennifer Henry, Hearing Master, Eighth Judicial District Court for Clark County, Nevada ("Respondent") on April 24, 2018. The Opposition to the Motion and Counter Motion in Limine No. 1 ("Opposition-Counter") was filed by the Prosecuting Officer to the Commission ("Prosecuting Officer") on May 4, 2018. The Opposition to the Prosecuting Officer's Motion in Limine No. 1 ("Limine Opposition") was filed by the Respondent on May 8, 2018. The Reply to Respondent's Limine Opposition was filed by the Prosecuting Officer on May 14, 2018. The Commission granted in part Respondent's Motion, noting that Juvenile A.B.'s file would be reviewed in camera for relevancy, and that Juvenile N.M.'s file was not relevant.

I. 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 juvenile 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

1 misdemeanor offense, with all other charges dismissed in exchange for the prosecutor's sentencing
2 recommendation that the juvenile be given six-months of probation. The juvenile was represented by
3 Aaron Grigsby, a court-appointed attorney.

4 After the plea was entered, Respondent began to ask the juvenile questions regarding her use of
5 a cell phone. Counsel Grigsby advised the Respondent that he did not wish to have his client admit to
6 something that could get her into more trouble. Respondent ignored counsel's objection, which was
7 based on the juvenile's Fifth Amendment right against self-incrimination, and repeatedly asked the
8 juvenile to answer her questions about the juvenile's use of a cell phone.

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

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

21 **II. Motion (Relevant Sections)**

22 On April 24, 2018, Respondent filed her Motion for Order from The Commission to Inspect and
23 Copy Certain Juvenile Records Relevant to the Instant Case.¹ In the relevant portion of the Motion,
24 Respondent claims that Judge Voy never permitted her to view the video of the hearing in question.
25 Therefore, Respondent requests that the Commission allow access to all records pertaining to A.B.
26 including, but not limited to, all videos of court hearings, the Odyssey records, any documents and
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28 ¹ The case before the Commission pertains to a juvenile who will be referred to herein as "A.B." and was represented by Counsel Grigsby.

1 minutes associated with the juvenile's contact with the juvenile delinquency court, including from
2 the first hearing through the point in time that the juvenile was placed on probation by Judge Voy.
3 Respondent believes that the juvenile file will support that Judge Voy confirmed Respondent's sentence
4 of nine (9) months probation for the juvenile, and the relevancy of Respondent asking the juvenile
5 questions regarding the cell phone.

6 **III. Opposition (Relevant Sections)**

7 The Prosecuting Officer filed his Opposition to Motion to Inspect and Copy Certain Juvenile
8 Records. In the relevant portion of the Opposition, the Prosecuting Officer noted this case is very
9 narrow and limited to whether Respondent violated Nevada law and the Nevada Judicial Code by: (i)
10 sentencing the juvenile to a harsher sentence because the juvenile elected to exercise her Fifth
11 Amendment right against self-incrimination; and (ii) failing to be patient, dignified and courteous to the
12 juvenile and Counsel Grigsby as required by Nevada law.

13 The Prosecuting Officer notes that in Nevada, "the [juvenile] records may be open to inspection
14 only by order of the court to persons having a legitimate interest therein." *See* NRS 62H.030. This
15 statute was derived from NRS 62.360. The Prosecuting Officer cites to *Hickey v. Eighth Judicial*
16 *District Court*, 105 Nev. 729, 782 P. 2d 1336 (1989), wherein the Supreme Court of Nevada examined
17 NRS 62.360. The Prosecuting Officer further notes that *Hickey* held that courts have wide discretion to
18 determine whether to release the records and must balance the need of the party requesting disclosure
19 against the interest of society in maintaining juvenile record confidentiality. *Id.* at 782. Furthermore, he
20 adds the *Hickey* Court permitted disclosure because the records were relevant to the civil action and the
21 order releasing the records was narrowly tailored to safeguard confidentiality. *Id.* Additionally, the
22 Prosecuting Officer argues that NRS 62H.025(1) provides that "Juvenile justice information is
23 confidential and may only be released in accordance with the provisions of this section or as expressly
24 authorized by other federal or state law." The Prosecuting Officer notes that the statute was modified
25 over time to make juvenile records more difficult to obtain.

26 The Prosecuting Officer cites to the federal district court case *Horn v. Hornbeak*, which laid out
27 a test for determining whether to authorize inspection of juvenile case files. *See Horn v. Hornbeak*,
28 2010 WL 1027508, at *4-5 (E.D. Cal. Mar. 18, 2010) (citing *Maldonado v. Sec'y of Calif. Dep't of*

1 *Corr. & Rehab.*, 2007 WL 4249811, at *5-6). He comments that the “*Horn* test” was from a test
2 articulated in *R.S. v. Superior Court*, 172 Cal.App.4th 1049, 1054 (2009), for juvenile courts to
3 consider:

4 [T]he court must balance the interests of the child and other parties to the juvenile court
5 proceedings, the interests of the petitioner, and the interests of the public. If the court
6 grants the petition, the court must find that the need for discovery outweighs the policy
7 considerations favoring confidentiality of juvenile case files. The confidentiality of
8 juvenile case files is intended to protect the privacy rights of the child. The court may
9 permit disclosure of juvenile case files only insofar as is necessary, and only if petitioner
10 shows by a preponderance of the evidence that the records requested are necessary and
11 have substantial relevance to the legitimate need of the petitioner.

12 The Prosecuting Officer argues that the *Horn* test essentially articulates the Nevada Supreme
13 Court’s holding in *Hickey v. Eighth Judicial District Court*. Furthermore, he opines that the juvenile
14 records of the minor who was before Respondent during the hearing in question are not relevant to
15 Respondent’s actions in the courtroom.

16 **IV. Reply (Relevant Sections)**

17 Respondent filed her Reply noting that juvenile cases typically do not occur in a vacuum.
18 Respondent argues that other charges were dismissed in exchange for the prosecutor’s sentencing
19 recommendation in the instant case; however, that did not stop Respondent from having the ability to
20 inquire as to facts of cases that had been dismissed, such as the issue of cell phone use. Therefore,
21 Respondent argues that her request for discovery is a request to assist in the development of a defense
22 or mitigating circumstance. Furthermore, she states that the A.B. records are the crux of the case against
23 her.

24 **ISSUES**

25 Whether Juvenile A.B.’s file records are relevant to Respondent’s case before the Commission.

26 **STANDARDS OF LAW**

27 **NRS 62H.030. Maintenance and inspection of records**

- 28 1. The juvenile court shall make and keep records of all cases brought before the juvenile court.
2. Except as otherwise provided in this section and NRS 217.110, records of any case brought before the juvenile court may be opened to inspection only by court order to persons who have a legitimate interest in the records.

NRS § 62H.030

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NRS 48.025. Relevant evidence generally admissible; irrelevant evidence inadmissible

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

NRS § 48.025

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

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

NRS § 48.035

DISCUSSION

The Commission Procedural Rules embody the fundamental elements of procedural due process as they provide a judge with notice of the charges, an opportunity to respond to the charges in writing, pre-hearing discovery, and a hearing conducted under the rules of evidence. The judge has a right to be represented by counsel, to have subpoenas issued for testimony by witnesses and the production of evidence, to examine the Commission record, and to cross-examine adverse witnesses. The pre-hearing exchange of information between the judge and Prosecuting Officer is governed by the discovery rules applicable to the Nevada Rules of Civil Procedure. NRS 1.462(2). Moreover, the presiding officer of the hearing is authorized to carry out the function of a district court judge in limiting discovery, issuing protective orders, and otherwise resolving discovery disputes.

Specifically, NRS 62H.030(2) provides in pertinent part as follows: "Except as otherwise provided in this section, records of any case brought before the juvenile court may be open to inspection only by court order to persons who have a legitimate interest in the records." The court enjoys wide discretion in determining who has a legitimate interest in juvenile court records referenced in the statute and must balance the need of the requesting party for the records against the interests of society in keeping confidential certain juvenile court records. *Hickey v. Eighth Judicial District Court*, 105 Nev. 729, 731, 72 P.2d 1336, 1339 (1989).

1 In *Hickey*, the person requesting inspection was the administrator of the estate of a boy who had
2 accidentally killed himself with a gun his friend Chris had removed from an unlocked cabinet while
3 being left home alone by vacationing parents. *Id.* at 1337. The administrator had filed suit in district
4 court on behalf of the estate, alleging that Chris's parents had been negligent in leaving him home alone
5 with access to the gun, and she also had filed a petition for inspection of Chris's juvenile records
6 relating to the shooting incident. *Id.* The Supreme Court of Nevada held that the lower court did not
7 abuse its discretion in determining that the estate was a person with a "legitimate interest" in juvenile
8 court records sought in connection with the estate's pending wrongful death action arising out of the
9 same occurrence that was the basis of the juvenile court proceeding. *Id.* at 1339. The Court did not rule
10 if the evidence was admissible during the hearing.

11 This matter resembles *Hicky*, regarding the juvenile file of A.B. While the Formal Statement of
12 Charges addresses one specific hearing for A.B. that was recorded on the JAVS system, the
13 Commission previously ruled that Respondent has a legitimate interest in reviewing the A.B. case file
14 and all JAVS recordings for discovery and mitigation purposes in relation to Respondent's disciplinary
15 hearing. The A.B. case file was provided to Respondent, the Prosecuting Officer and the Commission
16 by the Eighth Judicial District Court. *See* attached Order Dated May 22, 2018. However, the entire A.B.
17 case file is not relevant to this judicial discipline hearing.

18 Upon review of A.B.'s juvenile file and JAVS recordings, the relevant records are:

- 19 • September 19, 2016 JAVS recording (1).
- 20 • October 10, 2016 JAVS recordings (3).
- 21 • November 30, 2016 JAVS recordings (2).
- 22 • Case Summaries for J-16-340578-D1 and D2 (related matters).
- 23 • Petition – Delinquency dated 08/31/2016 for J-16-340578-D1 and D2 (related matters).
- 24 • Formal Probation Order dated 10/10/2016 for J-16-340578-D1.

25 The remaining portions of A.B.'s juvenile file are not relevant to the allegations against
26 Respondent and therefore, are inadmissible at Respondent's disciplinary hearing.

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

IT IS SO ORDERED.

DATED this 28th day of February, 2019.

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE



Jerome Polaha, Presiding Judge

CERTIFICATE OF SERVICE

I hereby certify on this 28th day of February, 2019, I transmitted a copy of the foregoing **ORDER REGARDING RELEVANCY OF PORTIONS OF JUVENILE A.B.'S FILE** via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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