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Attorneys for Respondent, Michele Fiore

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

In the Matter of the,

HONORABLE MICHELE FIORE

Justice of the Peace, Pahrump Township, County
of Nye, State of Nevada

Respondent.

COMMISSION CASE NO. 2025-108-P

**THE HONORABLE JUDGE FIORE'S LIMITED OPPOSITION TO MOTION FOR
LEAVE TO SERVE REQUEST FOR PRODUCTION OF DOCUMENTS ON
RESPONDENT**

Judge Fiore's opposition is limited and directed only to the mechanism the Motion proposes: shifting the burden of production onto Respondent when the exhibits are, by the Commission's own description, the "United States trial exhibits" from *United States v. Fiore*, U.S. Dist. Ct. Case No. 2:24-CR-155. On the record Special Counsel himself has presented, two points defeat the necessity for discovery directed at Respondent:

1. The Commission has not yet made a proper *Touhy* request¹ to the United States, which is the established and lawful mechanism for obtaining these federal records; and
2. Several of the exhibits are third-party donor records that are, or should be, in the possession of the Commission's own identified witnesses — not the Respondent.

¹ See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

1 For these reasons, leave to serve the proposed Request for Production on Respondent is
2 premature and, as to the third-party donor records, unnecessary.

3 I. RELEVANT BACKGROUND

4 Discovery in this matter is governed by PRJDC 19. The parties have made the initial
5 disclosures required by PRJDC 19.1(A), and additional discovery requests are permitted only with
6 leave of the Commission under PRJDC 19.1(B). Except as otherwise provided by statute or the
7 Commission's own procedural rules, the Nevada Rules of Civil Procedure apply after a formal
8 statement of charges is filed. *See* NRS 1.462.

9 The Motion invokes PRJDC 19 to serve on Respondent a Request for Production seeking
10 eight exhibits from the federal criminal trial: a solicitation letter/flier (Ex. 45A), a solicitation email
11 (Ex. 64), and six donor checks — the Jay Brown check (Ex. 46), the Community Ambulance check
12 (Ex. 56), the Robert Richardson check (Ex. 57), the Joseph Lombardo check (Ex. 62), the LECET
13 check (Ex. 63), and the Laborers Local check (Ex. 68). The proposed Request expressly identifies
14 these as "United States' trial exhibits."

15 Special Counsel's own showing establishes the following. First, the Commission's
16 Executive Director requested the trial exhibits directly from the U.S. District Court, and the Clerk
17 denied that request by letter dated May 9, 2025. *See* Exhibit 1 to Motion for Leave. The Clerk
18 denied it because the request failed to satisfy the specificity-and-relevance requirements of the
19 federal judiciary's disclosure regulations — regulations the Clerk described as "the federal
20 judiciary's functional equivalent to the executive branch Touhy regulations." *Id.* The Clerk also
21 observed that "copies of the exhibits should be available from the parties to the case." *Id.*

22 Second, Special Counsel's later outreach to the U.S. Attorney's Office consisted of
23 informal emails and voicemail messages to an individual Assistant U.S. Attorney, not a formal
24 written demand submitted under the Department of Justice's Touhy regulations. *See* Exhibit 2 to
25 Motion for Leave. When that AUSA left federal service, the informal thread went unanswered. *Id.*

26 Third, this is the first request ever made to Respondent for trial exhibits. Respondent's
27 counsel was not Judge Fiore's trial counsel in the criminal matter. More importantly, the criminal
28 case has been completed for 18 months. It is not a current matter. The Government closed access

1 to their exhibits. Lastly, the trial exhibits are not relevant to the proceedings, thus, Judge Fiore did
2 not produce the exhibits in her disclosures.

3 The merits hearing is set for October 19-22, 2026.

4 **II. LEGAL ARGUMENT**

5 **A. Special Counsel – Not Judge Fiore – Bears the Burden of Proof and May Not Use** 6 **Discovery to Shift It.**

7 Once formal charges are filed, “[t]he burden of proof rests on the special counsel,” and
8 “[t]he standard of proof...is clear and convincing evidence.” *See* NRS 1.4673. The Commission
9 must dismiss any charges not proven by that standard. *Id.* It is Special Counsel who files the formal
10 statement of charges and must marshal the evidence to prove them. *See Mosley v. Nevada Comm’n*
11 *on Jud. Discipline*, 117 Nev. 371, 22 P.3d 655 (2001).

12 The exhibits Special Counsel now seeks – the donors’ checks and solicitation materials –
13 are the core of the prosecution’s own case-in-chief on its dishonesty and “unjust enrichment”
14 theories. Requiring the accused judge to produce prosecution’s proof inverts the statutory
15 allocation of the burden. Discovery exists to obtain relevant, proportional information (*see* NRC
16 26), not to conscript the Respondent into building the case against her.

17 **B. The Commission Has An Available and Proper Avenue to Obtain the Exhibits**

18 The documents Special Counsel seeks are federal records: the United States’ exhibits from
19 a federal criminal prosecution. Federal law prescribes a specific procedure for a litigant in a state
20 or non-federal proceeding to obtain such records, and that procedure — not discovery against the
21 Respondent — is the proper first resort.

22 The controlling framework is well settled. In *United States ex rel. Touhy v. Ragen*, the
23 Supreme Court held that the head of a federal department may validly prescribe regulations
24 centralizing the determination of whether the department’s records will be produced in response
25 to a subpoena, and that such regulations are consistent with law. *See United States ex rel. Touhy*
26 *v. Ragen*, 340 U.S. 462, 71 S. Ct. 416, 95 L. Ed. 417 (1951). The Department of Justice has
27 promulgated exactly such regulations. They govern “the production or disclosure of any material
28 contained in the files of the Department” in “all federal and state proceedings in which the United

1 States is not a party . . . when a subpoena, order, or other demand . . . of a court or other authority
2 is issued for such material or information.” *See* 1028 C.F.R. § 16.21(a)(1). No Department
3 employee may produce Department material in response to a demand “without prior approval of
4 the proper Department official.” *See* 1128 C.F.R. § 16.22(a). Where records rather than testimony
5 are sought, the responsible U.S. Attorney “shall request a summary of the information sought and
6 its relevance to the proceeding.” *See* 1128 C.F.R. § 16.22(d).

7 Special Counsel has not invoked this process. His communications to the U.S. Attorney’s
8 Office were informal emails and telephone messages directed to an individual prosecutor, not a
9 formal *Touhy* demand accompanied by the specificity-and-relevance showing the regulations
10 require. *See* Exhibit 2 to Motion for Leave. That informal approach is the **same** defect that doomed
11 the Commission’s earlier request to the District Court: the Clerk denied that request precisely
12 because it did not satisfy the specificity-and-relevance requirements of the judiciary’s parallel
13 disclosure regulations. *See* Exhibit 1 to Motion for Leave. Nothing in the record suggests a
14 properly framed *Touhy* request has ever been submitted and refused. A demand that has never been
15 made cannot be said to have failed.

16 Further, the Motion is also unnecessary because the Commission can obtain all the
17 requested documents from its own witnesses. NRCP 26(b)(1) expressly requires the Court to
18 consider, among other factors, “the parties’ relative access to relevant information” in determining
19 whether requested discovery is proportional to the needs of the case. Nevada’s Supreme Court has
20 confirmed that proportionality is not ancillary to the discovery analysis. Rather, the court must
21 consider and weigh each of the factors enumerated in NRCP 26(b)(1), including the parties’
22 comparative access to the information sought. *Venetian Casino Resort, LLC v. Eighth Jud. Dist.*
23 *Ct. in & for Cnty. Of Clark*, 136 Nev. 221, 228, 467 P.3d 1, 7 (Nev. App. 2020). Thus, where the
24 requesting party has an available means of obtaining the requested materials directly from their
25 source, while the responding party does not possess or control those materials, the relative-access
26 factor weighs against compelling the responding party to undertake the burden of obtaining and
27 producing them. *See* NRCP 26(b)(1).

28 Here, six (6) of eight (8) of the items are donor checks – the Jay Brown check (Ex. 46), the

1 Community Ambulance check (Ex. 56), the Robert Richardson check (Ex. 57), the Joseph
2 Lombardo check (Ex. 62), the LECET check (Ex. 63), and the Laborers Local check (Ex. 68).
3 These are financial records of the donors who issued them. The natural custodians of those checks
4 are the donors and their financial institutions – not the Respondent. The other two (2) exhibits are
5 a solicitation letter/flier (Ex. 45A) and a solicitation email (Ex. 64). The very nature of a
6 solicitation email presupposes distribution to multiple recipients. The communications are
7 designed to solicit responses from a broader audience, making it inherently likely that other
8 witnesses or potential witnesses received the same or substantially similar solicitation, as they
9 testified to in the criminal proceeding.² Simply, there is no basis to route the production of third-
10 party donor records through the Respondent when the Commission has direct access to the persons
11 who hold them.

12 Because PRJDC 19.1(B) permits additional discovery only with leave of the Commission,
13 the burden falls on Special Counsel to show that discovery against Respondent is necessary. He
14 cannot make that showing while the ordinary, prescribed channel for obtaining these federal
15 records remains untried. The Commission should not authorize discovery against the Respondent
16 to compensate for a *Touhy* request the Commission has not yet made in proper form.

17 III. CONCLUSION

18 Judge Fiore does not oppose the Commission obtaining the eight (8) exhibits from sources
19 that possess them. She opposes only the Motion’s proposal to compel their production from her.
20 For the reasons stated, Respondent respectfully requests that the Commission: (1) Deny the Motion

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27 ² Since before the FSOC or FAFSOC were filed, the Commission has heavily relied upon the trial
28 transcripts from the federal criminal trial. Within these transcripts, the Commission’s own
witnesses testify to having received or not received the “solicitation” email and/or letter.

1 as premature, without prejudice and subject to renewal after Special Counsel submits a proper
2 *Touhy* request to the United States for the exhibits; and (2) Deny the Motion as unnecessary insofar
3 as it seeks the donor checks and solicitation communications which the Commission can obtain
4 from the donors and other witnesses it has already identified.

5 Dated this 24th day of September, 2026.

6 CLARK HILL PLLC

7 /s/ Paola M. Armeni

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CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 24th day of September, 2026, I served a true and correct copy of the foregoing **THE HONORABLE JUDGE FIORE’S LIMITED OPPOSITION TO MOTION FOR LEAVE TO SERVE REQUEST FOR PRODUCTION OF DOCUMENTS ON RESPONDENT** via electronic means and U.S.

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