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

12 **STATE OF NEVADA**

13 IN THE MATTER OF THE HONORABLE,
14 MICHELE FIORE, Justice of the Peace,
15 Pahrump Township Justice Court, Nye
16 County, State of Nevada,

Case No.: 2025-108-P

17 Respondent.

18 **OPPOSITION TO RESPONDENT'S MOTION FOR EXPERT**
19 **KEITH FISHER TO TESTIFY REMOTELY**

20 COMES NOW Thomas J. Donaldson, Special Counsel for the Nevada Commission on
21 Judicial Discipline ("Commission" or "NCJD"), and hereby opposes The Honorable Judge Michele
22 Fiore's Motion for Expert Keith Fisher to Testify Remotely ("Motion") filed herein on
23 September 16, 2026. The instant opposition is made pursuant to PRJDC 21 and 38.2(A) and based
24 upon the following memorandum of points and authorities and the pleadings and papers on file
25 herein.

26 **Memorandum of Points and Authorities**

27 In essence, in Respondent's Motion she wants Keith Fisher to be able to testify remotely
28 because she selected an "expert" who lives and works in Florida and "[r]equiring him to travel across
the country to Nevada for a couple hours of testimony would compel the cancellation of classes and
the abandonment of obligations to his students and university that cannot *readily* be delegated."
Motion, p. 3 at lines 17-19 (emphasis supplied).¹ Respondent relies upon NRCP 43(a), SCR Part IX-

¹ Respondent repeats the claim, "cancelling classes and abandoning obligations that cannot readily be delegated" on page 4, lines 15-16 of her Motion.

1 B(B), Rule 2 and *LaBarbera* as the legal foundation of her Motion. Motion, pp. 2-3. However, no
2 good cause exists for the Commission to grant her Motion.

3 Initially, as explained in Special Counsel's Motion In Limine to Exclude Testimony of
4 Keith R. Fisher and Expert Statement of Keith R. Fisher ("Motion In Limine") filed herein on
5 September 23, 2026, Mr. Fisher's status as an "expert" and the relevance and admissibility of his
6 testimony and report are all dubious and have not yet been determined by the Commission. Thus,
7 if the Commission grants the Motion in Limine, Respondent's Motion becomes moot.

8 Further, the factual allegations of Respondent's Motion are suspect. Respondent repeatedly
9 claims in her Motion that good cause exists because Mr. Fisher should not be required to "cancel[]
10 classes and abandon[] obligations that cannot readily be delegated." Motion, p. 3 at lines 18-19 and
11 p. 4 at lines 15-15. Of course, Respondent knew that Mr. Fisher teaches at St. Thomas University
12 in Florida when she retained him as an "expert." Thus, they both knew that he would have to travel
13 to Nevada to testify at the hearing in this matter. Further, the Commission issued its Order Setting
14 Public Hearing herein on June 16, 2026, setting the hearing on October 19-22, 2026. So, Mr. Fisher
15 has had over three (3) months (and has another three (3) weeks) to rearrange his class schedule (or
16 prepare his teaching assistant, since he likely has at least one, to cover his classes), and, hence, *not*
17 have to "cancel[] classes and abandon[] obligations." *Id.* Indeed, Respondent is *not* asserting that
18 Mr. Fisher is incapable of delegating and reassigning his teaching responsibilities, just that they
19 "cannot *readily* be delegated." *Id.* (emphasis added).

20 Next, Respondent relies upon NRCP 43(a), SCR Part IX-B(B), Rule 2 and *LaBarbera* and
21 the following excerpt in her Motion:

22 "‘Good cause’ may consist of one or more of the following factors as determined by
23 the court: . . . [w]hether any undue surprise or prejudice would result; . . .
convenience of the parties, counsel, and the court; . . . cost and time savings." *Id.*

24 Motion, p. 3 at lines 2-4.²

25 ² SCR Part IX-B(B), Rule 1(6) provides in full:

26
27 "Good cause" may consist of one or more of the following factors as determined by
the court:

28 (a) Whether a timely objection has been made to parties or witnesses appearing
through the use of simultaneous audiovisual transmission equipment;

1 Regarding the factors in Respondent's Motion, while there may not be any "any surprise or
2 prejudice," Respondent, of course, knew (or should have) the cost and time necessary for Mr. Fisher
3 to travel to Nevada to testify at the hearing in this matter if allowed by the Commission. So, that is
4 *not* a factor to consider. Further, allowing Mr. Fisher to testify remotely is *not* more convenient to
5 the parties, counsel or Commission, it is *only* more convenient to Mr. Fisher. However,
6 "*convenience of the witness*" is *not* one (1) of the factors for the Commission to consider under
7 *LaBarbera*. Thus, there is *no* legitimate or applicable legal basis upon which to grant Respondent's
8 Motion.

9 Finally, if the Commission qualifies Mr. Fisher as an "expert," denies Special Counsel's
10 Motion in Limine and denies Respondent's instant Motion, Special Counsel is not opposed to having
11 Mr. Fisher testify on the final day of hearing in this matter as requested by Respondent. Motion,
12 pp. 4-5.

13 Conclusion

14 There is no factual or legal basis upon which to grant Respondent's latest Motion.
15 Respondent retained Mr. Fisher "with her eyes wide open" and certainly was aware of the cost and
16

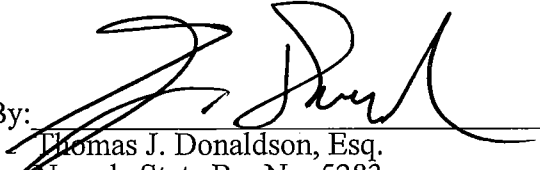
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- 17 (b) Whether any undue surprise or prejudice would result;
18 (c) The convenience of the parties, counsel, and the court;
19 (d) The cost and time savings;
20 (e) The importance and complexity of the proceeding;
21 (f) Whether the proponent has been unable, after due diligence, to procure the
22 physical presence of a witness;
23 (g) The convenience to the parties and the proposed witness, and the cost of
24 producing the witness in relation to the importance of the offered testimony;
25 (h) Whether the procedure would allow effective cross-examination, especially
26 where documents and exhibits available to the witness may not be available to counsel;
27 (i) The importance of presenting the testimony of witnesses in open court, whether
28 the finder of fact may observe the demeanor of the witness, and where the solemnity of the
surroundings will impress upon the witness the duty to testify truthfully;
(j) Whether the quality of the communication is sufficient to understand the offered
testimony; and
(k) Such other factors as the court may, in each individual case, determine to be
relevant.

Respondent's Motion only relies upon three (3) of the eleven (11) factors ((b), (c) and (d)). Motion, p. 3 at
lines 2-4. Clearly, most of the other eight (8) factors weigh *against* the Commission granting Respondent's
Motion.

1 logistics of having him travel from Florida to Nevada to testify at the hearing in this matter.
2 Respondent and Mr. Fisher have had ample time and opportunity to make that happen. Thus, in the
3 unlikely event that the Commission denies Special Counsel's Motion In Limine, the Commission
4 should also deny Respondent's Motion so that Mr. Fisher can testify in person on October 22, 2026,
5 if he qualifies as an "expert."

6 DATED this 28th day of September, 2026.

7 MESSING ADAM JASMINE & SHORE, LLP

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9 By: 

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