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

9 **STATE OF NEVADA**

10 In the Matter of the,

COMMISSION CASE NO. 2025-108

11 HONORABLE MICHELE FIORE

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

14 Respondent.

15 **THE HONORABLE JUDGE MICHELE FIORE'S REPLY IN SUPPORT OF MOTION**

16 **FOR EXPERT KEITH FISHER TO TESTIFY REMOTELY**

17 Respondent, the Honorable Michele Fiore, by and through her attorneys of record Paola M.
18 Armeni, Esq. and Gia N. Marina, Esq., of the law firm of Clark Hill PLLC, hereby submits her
19 Reply in Support of Motion for Expert Keith Fisher to Testify Remotely at the time of hearing on
20 this matter, which is presently scheduled for October 19-22, 2026.

21 The Opposition does not contest the governing standard, and it concedes the two points that
22 matter most. First, Special Counsel does not oppose Professor Fisher testifying at the hearing at all;
23 he agrees Professor Fisher may testify in person on the final hearing day if qualified as an expert.
24 The only genuine dispute is therefore whether Professor Fisher testifies live from a remote location
25 or live from the hearing room. Second, Special Counsel concedes that remote testimony would
26 work so no "surprise or prejudice." What remains of the Opposition rests on a misreading of the
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1 very rule Special Counsel quotes and on a standard for good cause that Nevada law does not impose.
2 Good cause exists, and the Motion should be granted.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

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5 **I. THE MOTION IS RIPE AND SHOULD BE DECIDED ON ITS OWN TERMS;
6 THE PENDING MOTION IN LIMINE DOES NOT DEFER IT.**

7 Special Counsel first suggests that if the Commission grants his separate Motion in Limine
8 to exclude Professor Fisher's testimony, the present Motion becomes moot. *See* Opposition, at 2:3-
9 7. That is a reason to decide the Motion in Limine, not a reason to withhold a ruling here. The two
10 motions present distinct questions: the Motion in Limine asks whether Professor Fisher may testify
11 at all, while this Motion asks only how he will appear if he testifies. Special Counsel himself
12 acknowledges the distinction, representing that if Professor Fisher is qualified and the Motion in
13 Limine is denied, Special Counsel does not oppose his testimony on the final hearing day. *See*
14 Opposition, at 9-12.

15 Because the hearing is imminent, Judge Fiore has asked the Commission to rule on an
16 expedited basis precisely so that, if remote testimony is denied, she can make the arrangements
17 necessary to secure Professor Fisher's in-person appearance. Deferring the Motion until the Motion
18 in Limine is resolved would defeat that purpose and prejudice Judge Fiore's ability to present her
19 defense. The Commission should decide the Motion on its own terms.

20 **II. CONVENIENCE OF THE WITNESS IS AN EXPRESS GOOD-CAUSE
21 FACTOR UNDER THE RULE SPECIAL COUNSEL QUOTES.**

22 The centerpiece of the Opposition is the assertion that allowing Professor Fisher to testify
23 remotely "is only more convenient to Mr. Fisher," and that "convenience of the witness" is not one
24 of the factors for the Commission to consider under *LaBarbera*. *See* Opposition, at 3:1-8. That is
25 incorrect, and it is contradicted by the rule Special Counsel reproduces in his own footnote. *See*
26 Opposition, at fn. 2. SCR Part IX-B(B), Rule 1(6) enumerates as a good-cause factor "[t]he
27 convenience to the parties *and the proposed witness*, and the cost of producing the witness in
28 relation to the importance of the offered testimony." *See* SCR Part IX-B(B), Rule 1(6)(g) (emphasis
added). Special Counsel cited that *very* language and then wrongly concludes that, "[h]owever,

1 'convenience of the witness' is *not* one (1) of the factors for the Commission to consider under
2 *LaBarbera*. Thus, there is *no* legitimate or applicable legal basis upon which to grant Respondent's
3 Motion." *See* Opposition, at 3:5-6. This statement is nonsensical. The convenience of the witness
4 is not merely relevant; it is a factor the rule expressly directs the tribunal to weigh.

5 The rule's stated policy reinforces the point. SCR Part IX-B(B), Rule 2, provides that "[t]o
6 improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent
7 feasible, to appear by simultaneous audiovisual transmission equipment at appropriate proceedings
8 pursuant to these rules." *See* SCR Part IX-B(B), Rule 2. Consistent with that policy, the Nevada
9 Supreme Court has held that a court abuses its discretion by summarily denying a request to testify
10 by video where good cause is shown. *LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 422 P.3d
11 138 (2018)("Trial court abused its discretion in denying casino patron's motion to testify from his
12 country of residence, via video conference...where patron showed convenience and cost and time
13 savings, and patron would otherwise have been unable to testify at all."). Special Counsel's
14 premise, that a witness's burden of cross-country travel is legally irrelevant, cannot be reconciled
15 with either the rule or *LaBarbera*.

16 **III. THE GOOD CAUSE FACTORS, PROPERLY APPLIED, WEIGH IN FAVOR**
17 **OF REMOTE TESTIMONY**

18 Special Counsel asserts, without analysis, that "most of the other eight (8) factors weigh
19 *against*" the Motion. *See* Opposition, at fn. 2. The factors themselves show the opposite. As to
20 undue surprise or prejudice, Special Counsel concedes there is none; Professor Fisher was disclosed
21 as an expert in May 2026 and his written report has been in Special Counsel's possession. Cost and
22 time savings plainly favor remote testimony, which spares a Florida-based witness a multi-day,
23 cross-country trip for a limited appearance. Convenience to the parties, counsel, the Commission,
24 and the witness likewise favors remote testimony, because it allows the testimony to be received
25 within the scheduled hearing dates without disrupting Professor Fisher's teaching obligations.

26 The factors concerned with reliability are fully satisfied. Two-way audiovisual transmission
27 permits effective cross-examination and preserves the Commission's ability to assess credibility:
28 as the Nevada Supreme Court has recognized, contemporaneous two-way transmission "allows the

1 witness to swear under oath, the [opposing party] can cross-examine the witness, and the court...
2 [has] the ability to observe the witness's demeanor and judge her credibility." *Lipsitz v. State*, 135
3 Nev. 131, 442 P.3d 138 (2019).

4 Mr. Fisher will testify live, under oath, subject to unrestricted cross-examination, and in full
5 view of the Commission. *See* NRCP 43. Nor does this case present the concern, embedded in factor
6 (h), that documents or exhibits available to the witness may be unavailable to counsel. Professor
7 Fisher's testimony is expert opinion grounded in his report and the record, not in physical evidence,
8 and is therefore particularly well suited to remote presentation. On balance, the enumerated factors
9 support good cause; Special Counsel's contrary conclusion is asserted, not demonstrated.

10 **IV. GOOD CAUSE DOES NOT REQUIRE THAT TRAVEL BE IMPOSSIBLE, AND**
11 **SPECIAL COUNSEL IDENTIFIES NO COUNTERVAILING HARM.**

12 Special Counsel's remaining argument is that Judge Fiore retained a Florida witness "with
13 her eyes wide open" and has had ample time to rearrange his schedule. *See* Opposition, at 3:15.
14 That misstates the standard. Neither NRCP 43(a) nor *LaBarbera* requires a movant to show that a
15 witness's travel is impossible; the standard is good cause in compelling circumstances with
16 appropriate safeguards. If mere foreseeability of a witness's out-of-state residence defeated good
17 cause, no out-of-state witness could ever testify remotely, a result flatly at odds with the policy
18 favoring audiovisual appearances. *See* SCR Part IX-B(B), Rule 2.

19 Professor Fisher's circumstances are compelling. He is a full-time law professor at St.
20 Thomas University College of Law in Miami Gardens, Florida, whose fixed teaching schedule and
21 office hours make him unavailable to travel to Las Vegas during the early hearing days. *See* Motion,
22 at 2. Requiring him to cancel classes and cross the country for a limited appearance would impose
23 a disproportionate burden while achieving the same fact-finding function that contemporaneous
24 transmission serves. *LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 422 P.3d 138 (2018).
25 Against that burden, Special Counsel identifies no prejudice to the Commission, to Special Counsel,
26 or to the integrity of the proceeding, because there is none. That imbalance is the essence of good
27 cause.
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V. CONCLUSION

For the foregoing reasons, Judge Fiore respectfully requests that the Commission grant the Motion and permit Professor Fisher to testify remotely by contemporaneous two-way audiovisual transmission at the hearing scheduled for October 19-22, 2026. In the alternative, and consistent with Special Counsel's stated position, Judge Fiore requests leave for Professor Fisher to testify in person on Thursday, October 22, 2026, with the record held open for the limited purpose of receiving his testimony if the evidentiary portion of the hearing concludes earlier.

Dated this 29th day of September, 2026.

CLARK HILL PLLC

/s/ Paola M. Armeni

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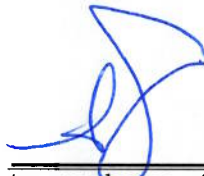
CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 29th day of September, 2026, I served a true and correct copy of the foregoing **THE HONORABLE JUDGE MICHELE FIORE’S REPLY IN SUPPORT OF MOTION FOR EXPERT KEITH FISHER TO TESTIFY REMOTELY** via electronic means and U.S. Mail:

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