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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

**THE HONORABLE JUDGE MICHELE FIORE'S UNOPPOSED¹ MOTION FOR LAY
WITNESSES JASON H. GUNNELL AND MARYIAN AUSIELLO TO TESTIFY
REMOTELY**

Respondent, the Honorable Michele Fiore, by and through her attorneys of record Paola M. Armeni, Esq. and Gia N. Marina, Esq., of the law firm of Clark Hill PLLC, hereby submits her Motion for Lay Witnesses Jason H. Gunnell, Esq. and Maryian Ausiello to Testify Remotely at the time of hearing on this matter, which is presently scheduled for October 19-22, 2026.

Good cause exists to allow these two witnesses to testify remotely at the time of the hearing. Indeed, Ms. Ausiello cannot appear in person because of a serious medical condition and an imminent surgical procedure. Mr. Gunnell, a licensed Nevada attorney practicing in Northern Nevada, cannot appear in person because of conflicting court obligations to other clients during the

¹ Undersigned counsel has conferred with Special Counsel regarding the instant Motion and Special Counsel advised that he does not oppose the request for these witnesses to testify remotely, he only opposes the request for Judge Fiore's expert, Keith R. Fisher, to testify remotely.

1 hearing dates. Each circumstance independently satisfies the good-cause standard, and appropriate
2 safeguards will fully preserve the reliability of the testimony and the Commission's ability to assess
3 credibility.

4 As Special Counsel has no opposition to the instant Motion, the Motion should be granted.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. RELEVANT FACTS**

7 Judge Fiore has disclosed Ms. Ausiello and Mr. Gunnell as lay witnesses in this matter.
8 Each is a percipient witness whose testimony bears directly on the some of the issues to be
9 adjudicated at the hearing, including, but not limited to, witnessing Judge Fiore act in her role as
10 Justice of the Peace, knowledge of the criminal charges against Judge Fiore and of this
11 Commission's efforts to remove Judge Fiore from the bench permanently.

12 Ms. Ausiello lives in Pahrump, Nevada and has lived there since 2016. Ms. Ausiello is
13 unable to travel to and appear in person at the hearing due to a serious medical condition. She
14 suffers from severe edema and is scheduled to undergo a surgical procedure to re-route blood from
15 her veins to her heart. Her treating providers have advised that her condition and the associated
16 procedure and recovery prevent her from traveling to the hearing and appearing in person on the
17 scheduled dates. *See* Declaration of Paola M. Armeni, Esq. Nonetheless, Ms. Ausiello remains
18 willing and able to testify by contemporaneous two-way audiovisual transmission from her location
19 in Pahrump.

20 Mr. Gunnell is an attorney licensed to practice law in the State of Nevada, whose practice
21 is based in Northern Nevada. He lives in Minden, Nevada. During the October 19-22, 2026 hearing
22 dates, Mr. Gunnell has previously scheduled court appearances and hearings on behalf of his own
23 clients that he is professionally obligated to attend and that cannot be continued or reassigned
24 without prejudice to those clients. *Id.* Requiring Mr. Gunnell to travel to and remain in Las Vegas
25 for the multi-day hearing would force him to abandon those obligations. Mr. Gunnell remains
26 willing and able to testify by contemporaneous two-way audiovisual transmission from his location
27 in Reno, Nevada.

1 **II. GOOD CAUSE EXISTS TO ALLOW THESE LAY WITNESSES TO**
2 **TESTIFY REMOTELY**

3 Proceedings before the Commission are civil matters, and once a formal statement of
4 charges has been filed, the Nevada Rules of Civil Procedure govern except as otherwise provided
5 by statute or by the procedural rules adopted by the Commission. *See* NRS 1.462(2). The rules of
6 evidence applicable to civil proceedings likewise apply at the formal hearing on the charges. NRS
7 1.4673(2)(c); *see also* Nev. Const. art. VI, § 21(7) (the Commission “shall adopt rules of procedure
8 for the conduct of its hearings”). Under the applicable civil rules, a witness’s testimony must be
9 taken in open court, but “[f]or good cause in compelling circumstances and with appropriate
10 safeguards, the court may permit testimony in open court by contemporaneous transmission from
11 a different location.” *See* NRCP 43(a).

12 The Nevada Supreme Court favors the accommodation of contemporaneous audiovisual
13 testimony upon a showing of good cause. In *LaBarbera v. Wynn Las Vegas, LLC*, the Court held
14 that a district court abused its discretion by summarily denying a party’s request to testify at trial
15 by video conference, explaining that NRCP 43(a) and SCR Part IX-B(B), Rule 2 establish a policy
16 favoring audiovisual testimony where good cause is shown. *LaBarbera v. Wynn Las Vegas, LLC*,
17 134 Nev. 393, 395, 422 P.3d 138, 140 (2018). “‘Good cause’ may consist of one or more of the
18 following factors as determined by the court: ... [w]hether any undue surprise or prejudice would
19 result; ... convenience of the parties, counsel, and the court; ... cost and time savings.” *Id.*

20 Because a witness testifying by contemporaneous video is observed directly with little, if
21 any, delay in transmission, video testimony can sufficiently enable cross-examination and
22 credibility determinations while preserving the overall integrity of the proceedings. The Nevada
23 Supreme Court has recognized that two-way audiovisual transmission “allows the witness to swear
24 under oath, the [opposing party] can cross-examine the witness, and the court ... [has] the ability to
25 observe the witness’s demeanor and judge her credibility.” *See Lipsitz v. State*, 135 Nev. 131, 138,
26 442 P.3d 138, 144 (2019) (adopting the standard of *Maryland v. Craig* and approving two-way
27 audiovisual testimony where its reliability is otherwise assured). Federal courts within the Ninth
28 Circuit applying the parallel Rule 43(a) standard are in accord. *See Palmer v. Valdez*, 560 F.3d 965,

1 969 (9th Cir. 2009) (contemporaneous transmission of testimony is permitted “[f]or good cause in
2 compelling circumstances and with appropriate safeguards”); *see also Clark v. Thomas*, No. 2:09-
3 CV-02272-JAD, 2014 WL 2612275, at *1 (D. Nev. June 11, 2014) (Rule 43(a) “affirmatively
4 allows for testimony by videoconference in certain circumstances”).

5 Ms. Ausiello circumstances present precisely the kind of compelling showing the good-
6 cause standard contemplates. She suffers from severe edema and is scheduled to undergo a surgical
7 procedure to re-route blood from her veins to her heart, and her providers have advised that her
8 medical condition prevents her from traveling to and appearing in person at the hearing. A witness’s
9 inability to attend a proceeding because of illness or a medical procedure is among the most
10 persuasive grounds for permitting remote testimony. Indeed, the Nevada Supreme Court has
11 expressly recognized that medical unavailability is a legitimate basis on which to permit two-way
12 audiovisual testimony in lieu of in-person appearance. *See Lipsitz*, 135 Nev. at 137, 442 P.3d at
13 143.

14 Requiring Ms. Ausiello to appear in person notwithstanding her condition would impose a
15 serious and unwarranted burden on her health and would risk depriving the Commission of relevant
16 testimony altogether. Permitting her to testify remotely, by contrast, serves the convenience of the
17 witness, the parties, and the Commission, and produces substantial cost and time savings—each a
18 recognized good-cause factor—while working no undue surprise or prejudice to Special Counsel.

19 Good cause likewise supports remote testimony for Mr. Gunnell. As a licensed Nevada
20 attorney practicing in Northern Nevada, Mr. Gunnell has pre-existing court appearances and
21 hearings on behalf of his own clients during the October 19-22, 2026 hearing dates. Those
22 obligations cannot be abandoned or continued without prejudice to the clients he represents.
23 Requiring Mr. Gunnell to travel to Las Vegas and remain physically present for the multi-day
24 hearing would compel him to choose between his duties to his clients and his participation as a
25 witness in this matter.

26 The good-cause factors the Nevada Supreme Court and the Supreme Court Rules identify
27 are satisfied here: permitting Mr. Gunnell to testify remotely serves the convenience of the witness,
28 the parties, and the Commission; produces cost and time savings; and reflects the practical difficulty

1 of procuring his physical presence given his conflicting court obligations. SCR Part IX-B(B), Rule
2 1(6); *see LaBarbera*, 134 Nev. at 395, 422 P.3d at 140. As with Ms. Ausiello, no undue surprise or
3 prejudice results for the same reasons mentioned above.

4 Appropriate safeguards are available to ensure the reliability of both witnesses' testimony.
5 Each will testify live, under oath, by contemporaneous two-way audiovisual transmission, subject
6 to full cross-examination, and with the Commission able to observe the witness's demeanor
7 throughout the testimony. Those are precisely the safeguards the Nevada Supreme Court has held
8 sufficient to preserve the integrity of remote testimony: two-way audiovisual transmission "allows
9 the witness to swear under oath, the [opposing party] can cross-examine the witness, and the court
10 ... [has] the ability to observe the witness's demeanor and judge her credibility." *Lipsitz*, 135 Nev.
11 at 138, 442 P.3d at 144. Counsel will further work with the Commission to establish a foundation
12 for each witness's identity and to ensure that no one is present to improperly influence the witness—
13 safeguards fully achievable here.

14 Because remote transmission achieves the same fact-finding function that live, in-person
15 testimony serves, requiring the physical presence of Ms. Ausiello and Mr. Gunnell would impose
16 disproportionate burdens—on Ms. Ausiello's health and on Mr. Gunnell's obligations to his
17 clients—while providing little corresponding benefit to the proceedings. Allowing remote
18 testimony, by contrast, will facilitate the presentation of relevant evidence, preserve the scheduled
19 hearing dates, avoid unnecessary expense and disruption, and ensure a full and fair adjudication of
20 the issues before the Commission.

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Dated this 29th day of September, 2026.

/s/ Paola M. Armeni
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1 **DECLARATION² OF PAOLA M. ARMENI, ESQ. IN SUPPORT OF THE HONORABLE**
2 **JUDGE MICHELE FIORE'S UNOPPOSED MOTION FOR LAY WITNESSES JASON H.**
3 **GUNNELL AND MARYIAN AUSIELLO TO TESTIFY REMOTELY**

4 I, Paola M. Armeni, declare as follows:

5 1. I am an attorney duly licensed to practice law in the State of Nevada and a member
6 of the law firm Clark Hill PLLC, counsel of record for Respondent, the Honorable Michele Fiore,
7 in the above-captioned matter.

8 2. I have personal knowledge of the facts set forth in this Declaration, except as to
9 those matters stated on information and belief, and as to those matters, I believe them to be true. If
10 called upon to do so, I could and would competently testify to the facts stated herein.

11 3. I submit this Declaration in support of Judge Fiore's Motion for Lay Witnesses Jason
12 H. Gunnell and Maryian Ausiello to Testify Remotely.

13 4. I have been in contact with Judge Fiore's proposed witnesses in this matter,
14 including Ms. Ausiello and Mr. Gunnell.

15 5. When I advised Ms. Ausiello of the hearing date and time and requested her
16 attendance, she informed me of ongoing medical concerns due to a car accident with which she was
17 involved in 2020. Ms. Ausiello advised that she is medically disabled and is having an upcoming
18 procedure to re-route blood back to her heart. She advised me that she would like to testify in this
19 matter, but that she cannot appear in-person due to her medical procedure and medical advice that
20 she not travel following the procedure.

21 6. When I advised Mr. Gunnell of the hearing date and time, Mr. Gunnell informed me
22 that he has scheduled appearances and hearings on behalf of his own clients he is obligated to attend
23 and that cannot be continued or reassigned without prejudice to those clients. Mr. Gunnell informed
24 me that he desires to give his testimony in this matter, but that he cannot appear in-person due to
25 these commitments.

26 ² Pursuant to NRS 53.045, any matter whose existence or truth may be established by an affidavit
27 or other sworn declaration may be established with the same effect by an unsworn declaration of
28 its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially
the following form.

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7. The formal hearing in this matter is presently scheduled for October 19 through 22, 2026.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 29th day of September, 2026.

/s/ Paola M. Armeni

PAOLA M. ARMENI, ESQ.

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