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

14 **STATE OF NEVADA**

15 In the Matter of the,
16
17 HONORABLE MICHELE FIORE
18
19 Justice of the Peace, Pahrump Township, County
20 of Nye, State of Nevada
21
22 Respondent.

COMMISSION CASE NO. 2025-108

23 **THE HONORABLE JUDGE MICHELE FIORE'S REPLY IN SUPPORT OF MOTION**
24 **TO DISQUALIFY COMMISSIONERS STEFANIE HUMPHREY, JOHN KRMPOTIC**
25 **AND JOSEPH SANFORD DUE TO THE APPEARANCE OF IMPROPRIETY AND BIAS**
26 **WHICH CONSTITUTES A VIOLATION OF DUE PROCESS IF THEY REMAIN ON**
27 **THE PANEL**

28 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 Reply in Support of her Motion to Disqualify Chair Stefanie Humphrey, Vice Chair John Krmpotic, and Commissioner Joseph Sanford from the panel assigned to adjudicate this matter (the "Motion"), and in response to the Answers Denying Bias filed by Krmpotic, Humphrey and Sanford on October 7, 2027 (collectively, the "Answers").

The Answers do not dispel the due process problem the Motion identified. They confirm it.

The Motion never turned on whether any Commissioner subjectively believes he or she can be fair. It turned on an objective question: whether a tribunal composed in part of adjudicators

1 appointed by Governor Lombardo – a named victim and testifying witness whose credibility is
2 contested and whose federal trial testimony this Commission intends to weigh – presents a risk of
3 bias “too high to be constitutionally tolerable.” Each Answer responds to that objective question
4 with a subjective assurance. Each Commissioner states, in materially *identical* words, that he or she
5 harbors no bias “either in favor or against” Governor Lombardo and would weigh his testimony as
6 that of “any other witness.” That is precisely the personal self-assessment the Due Process Clause
7 disregards. Hence, Judge Fiore filing a Motion rather than a simple affidavit/declaration required
8 by PRJDC 38.4. The Supreme Court adopted an objective standard for disqualification because a
9 decisionmaker’s own confidence in his or her impartiality cannot protect against the unconscious
10 pull of institutional loyalty and obligation. An assurance of good faith is not an answer to the
11 constitutional question. Rather, it is a restatement of the very premise the Constitution declines to
12 credit.

13 The form of the Answers compounds the problem, and more questions arise than answers
14 are provided. Two of the three Answers, apart from the recited appointment dates, are verbatim
15 identical, and all three share the same operative sentence *word for word*. Three separate
16 adjudicators, asked to account individually for their own ability to sit in judgment of a case touching
17 the person who appointed them, returned a single boilerplate denial. A templated disclaimer is *not*
18 the individualized examination of “circumstances and relationships” that due process requires.

19 Finally, the Answers are substantively deficient. PRJDC 38.4(B) directs a challenged
20 member to set forth “additional facts on the question of disqualification.” The Answers set forth
21 almost none. Not one addresses Governor Lombardo’s role as a named victim and material witness
22 in the federal case, the Commission’s stated reliance on the federal trial transcripts containing his
23 testimony, or the post-trial challenge to the accuracy of that testimony, all of which *this*
24 Commission *independently* gathered and relied upon all while imposing interim suspensions
25 against Judge Fiore. Krmpotic and Sanford each confirm that Governor Lombardo appointed them
26 to their current seats in 2025 – conceding the central fact on which the Motion rests. Commissioner
27 Sanford then asserts he has not spoken with the Governor “in well over a decade,” a statement
28 difficult to square with that 2025 appointment and offered without any supporting detail. The relief

1 the Motion requests should be granted.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. LEGAL ARGUMENT**

4 **A. The Answers Respond to an Objective Constitutional Question With Subjective** 5 **Assurances That the Due Process Clause Does Not Credit**

6 As iterated in the original Motion, the controlling standard is objective and does not ask
7 what any certain Commissioner believes about his own impartiality. As the United Supreme Court
8 has stated, “our system of law has always endeavored to prevent even the probability of unfairness.”
9 *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942 (1955). And, actual bias is
10 not the focus. As the Supreme Court put it, “[t]he inquiry is an objective one,” asking “not whether
11 the judge is actually, subjectively biased, but whether the average judge in his position is ‘likely’
12 to be neutral, or whether there is an unconstitutional ‘potential for bias.’” *Caperton v. A.T. Massey*
13 *Coal Co.*, 556 U.S. 868, 881, 129 S. Ct. 2252, 2262, 173 L. Ed. 2d 1208 (2009). Nevada has adopted
14 the same standard and found that disqualification under the Due Process Clause does not require
15 proof of actual bias and instead focuses on the court’s objective determination whether the
16 probability of bias is too high to ensure the protection of a party’s due process rights. *Ivey v. Dist.*
17 *Ct.*, 129 Nev. 154, 159, 299 P.3d 354, 357 (2013).

18 The Supreme Court has squarely held that the assurances contained in the Answers cannot
19 resolve the inquiry. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 129 S. Ct. 2252, 2262,
20 173 L. Ed. 2d 1208 (2009). A decisionmaker’s own belief in his neutrality is beside the point
21 precisely because the risk due process guards against is the influence the decisionmaker cannot
22 himself perceive. That is why the test looks to “the average judge in his position,” not to the
23 particular adjudicator’s introspection. *Id.* While an administrative adjudicator is entitled to “a
24 presumption of honesty and integrity,” that presumption gives way where, “under a realistic
25 appraisal of psychological tendencies and human weakness,” the circumstances “pose[] such a risk
26 of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is
27 to be adequately implemented.” *Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712
28 (1975).

1 Each Answer is addressed to the wrong question. Commissioner Krmpotic states: “I deny
2 that I have any bias, either in favor or against, Governor Lombardo and would weigh the credibility
3 of his testimony in the same manner as I would weigh the credibility of any other witness.” *See*
4 Krmpotic’s Answer. Commissioner Humphrey’s Answer uses the identical sentence. *See*
5 Humphrey’s Answer. So does Commissioner Sanford’s. *See* Sanford’s Answer. Those are
6 declarations of subjective good faith. They establish *only* that each Commissioner *believes* himself
7 or herself to be impartial – the one thing the constitutional test does not measure. The Answers
8 invoke the presumption but do nothing to meet the objective circumstances that overcome it.
9 Repeating that one is unbiased is not a rebuttal of a structural appearance of bias. Rather, it is an
10 assertion that the objective standard was designed to look past.

11 Even taken at face value, the Commissioners’ assurances in their Answers cannot repair the
12 constitutional problem, because the defect is structural. An unconstitutional failure to recuse
13 “constitutes structural error,” “a defect not amenable to harmless-error review.” *Williams v.*
14 *Pennsylvania*, 579 U.S. 1, 14, 136 S. Ct. 1899, 1909, 195 L. Ed. 2d 132 (2016). The Supreme Court
15 has emphasized that the stakes are institutional, not merely individual: “[a] multimember court must
16 not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation
17 and integrity not just of one jurist, but of the larger institution of which he or she is a part.” *Id.* An
18 assurance of personal good faith, however sincere, does not restore the appearance of neutrality
19 once the objective circumstances have compromised it. That is why the Nevada Supreme Court
20 requires this Commission not merely to entertain a for-cause challenge but to “disqualify any
21 Commissioner who by reason of actual or implied bias would...be prevented from adjudicating the
22 matter in a fair and impartial manner or, by reason of facts creating an appearance of impropriety,
23 be prevented from adjudicating the matter in a manner consistent with maintenance of public
24 confidence in the Commission.” *Matter of Davis*, 113 Nev. 1204, 1217, 946 P.2d 1033, 1042
25 (1997).

26 The Answers do not — and on their face cannot — displace that appearance of impropriety.

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1 **B. The Identical, Boilerplate Denials Are Not the Individualized Showing That Due**
2 **Process Requires**

3 Due process requires that “[c]ircumstances and relationships must be considered.” *In re*
4 *Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625, 99 L. Ed. 942 (1955). That is an individualized
5 examination. The Answers are the opposite of individualized. Setting aside the recited appointment
6 histories, Commissioners Krmpotic and Humphrey submitted answers that track one another
7 sentence for sentence, and all three close with the same operative denial, verbatim: that the
8 Commissioner has no bias “either in favor or against, Governor Lombardo and would weigh the
9 credibility of his testimony in the same manner as [they] would weigh the credibility of any other
10 witness.” *Compare* Answers. The opening paragraphs of all three Answers are likewise identical.
11 *Id.*

12 Three adjudicators, each asked to account separately for his or her own capacity to sit,
13 returned a single shared script. A common template may be unremarkable for a routine certification,
14 but it is telling where the question is whether each individual Commissioner, in his or her own
15 particular circumstances, can neutrally judge a matter implicating the credibility of the official who
16 placed them on the panel. Identical language cannot perform the circumstance-specific analysis due
17 process demands, because the circumstances of the three Commissioners are not identical. Indeed,
18 their appointment histories differ on the face of the Answers themselves. A uniform denial glosses
19 over those differences rather than confronting them.

20 The boilerplate also fails the Commission’s own rule. PRJDC 38.4(B) requires a challenged
21 member to file an answer “admitting or denying the allegations and setting forth any additional
22 facts on the question of disqualification.” *See* Order Regarding Motion to Disqualify, at 3. The
23 phrase “additional facts” contemplates a substantive accounting — the facts bearing on the
24 member’s ability to adjudicate impartially. A one-sentence conclusion that the member is not biased
25 supplies a denial, but no facts. On the dispositive issues, the Answers are silent.

26 **C. The Answers Are Deficient and Raise More Questions Than They Answer**

27 The Motion identified a specific, concrete convergence of circumstances: Governor
28 Lombardo was a named victim in the prior federal proceeding, he testified as a substantive witness

1 against Judge Fiore in the prior federal proceeding, the accuracy of that testimony became the
2 subject of post-trial litigation, the Commission has independently obtained and intends to rely upon
3 the transcripts containing that testimony, and Governor Lombardo is identified as a witness for the
4 disciplinary hearing. *See* Opening Motion *generally*. An adequate answer to a disqualification
5 challenge grounded in those facts would engage them. None of the Answers does.

6 ***1. No Answer Addresses the Operative Facts.***

7 Not one Answer mentions that Governor Lombardo was a named victim or a testifying
8 witness, that his credibility was contested post-trial, or that the Commission intends to rely on his
9 sworn testimony in determining discipline. The Answers treat the Governor as though he were a
10 stranger to the proceeding rather than, on this record, a central figure in it. An assurance that the
11 Governor's testimony will be weighed the same as any other witness's does not answer the
12 objection. Rather, it confirms that each Commissioner will indeed be weighing the testimony of the
13 person who appointed them.

14 ***2. Krmpotic and Sanford's Answers Concede the Central Fact.***

15 Krmpotic states that "[i]n 2025, I was reappointed to the Commission by Governor Joe
16 Lombardo," with a term ending in 2029. *See* Krmpotic's Answer Denying Bias, at 1. Sanford states
17 that "[i]n 2025, I was appointed as a regular member of the Commission by Governor Joe
18 Lombardo," with a term ending in 2029. *See* Sanford's Answer Denying Bias, at 1. These
19 concessions establish the very appointment relationship on which the Motion rests as to these two
20 Commissioners. The Motion does not depend on gubernatorial appointment in the abstract. It
21 depends on the convergence of that appointment with the Governor's role as victim and witness,
22 and the Answers confirm the appointment while ignoring the convergence.

23 ***3. Sanford's Answer Raises a Question It Does Not Answer.***

24 Commissioner Sanford asserts that he "ha[s] not seen or spoken to Governor Lombardo in
25 well over a decade." *See* Sanford's Answer Denying Bias, at 2. That assertion sits uneasily beside
26 his own statement, in the same Answer, that Governor Lombardo appointed him a regular member
27 of the Commission in 2025. *See* Sanford's Answer Denying Bias, at 1. More fundamentally, the
28 absence of recent personal contact is legally beside the point. The constitutional concern is not that

1 these Commissioners have communicated with the Governor about this case. The concern is the
2 objective relationship of appointer and appointee in a matter in which the appointer is a witness. A
3 Commissioner’s representation that he has not spoken with the Governor addresses a charge no one
4 has made and leaves the actual objection untouched.

5 ***4. Humphrey’s Answer Presents a Distinct Factual Dispute.***

6 Unlike Commissioners Krmpotic and Sanford, Commissioner Humphrey denies that
7 Governor Lombardo appointed her at all, stating that she was “never appointed nor reappointed by
8 Governor Lombardo” and that her appointments came from Governors Sandoval (2015, 2018,
9 2019) and Sisolak (2023), with a term ending in 2027. *See* Humphrey’s Answer Denying Bias, at
10 1. Respondent acknowledges that representation. To the extent the Commission credits it,
11 Commissioner Humphrey stands on a different footing from her two colleagues with respect to the
12 appointment relationship, and the Commission is in the best position to confirm the appointment
13 records. Even so, Commissioner Humphrey’s Answer shares the deficiencies common to all three:
14 it offers the identical boilerplate denial, and it says nothing about Governor Lombardo’s role as
15 victim and witness or the Commission’s reliance on his testimony. The appearance concerns
16 attending her continued service as Chair of a tribunal that intends to adjudicate a controversy built
17 on the Governor’s testimony are not answered by a one-sentence disclaimer of bias.

18 **D. The Timeliness Objection Is No Longer Before the Commission.**

19 Special Counsel’s lone argument against the Motion was that it was untimely under PRJDC
20 38.1(A) and 38.4(A). *See* Special Counsel’s Response to Respondent’s Supplemental
21 Memorandum of Points and Authorities to Disqualify Commissioners, at 2-3. The Commission has
22 already resolved that question. In its Order of October 6, 2026, the Commission determined that
23 although it had authority to deny the Motion as untimely, “the Respondent’s concerns regarding an
24 impartial tribunal warrant further consideration and review,” and it elected to proceed under PRJDC
25 38.4 by directing the three Commissioners to answer. *See* Order Regarding Motion to Disqualify,
26 at 5. It did so consistent with Nevada’s public policy in favor of deciding cases on the merits. The
27 Motion is therefore before the Commission on its merits, and the Answers the Commission ordered
28

1 are now filed. For the reasons set forth above, those Answers do not meet the objection. To the
2 extent the timeliness objection survives at all, Respondent relies on and incorporates her
3 Supplemental Memorandum, which explains why a constitutional challenge to the composition of
4 the tribunal is not confined to the thirty-day affidavit window and why, in any event, the Motion
5 gave the Commission ample advance notice of the asserted conflict.

6 **II. CONCLUSION**

7 The question is not whether Chair Humphrey, Vice Chair Krmpotic, or Commissioner
8 Sanford believes himself or herself to be fair. It is whether an objective observer, aware that
9 Governor Lombardo was a named victim and testifying witness, that the accuracy of his testimony
10 was contested, that the Commission intends to rely on that testimony, and that Governor Lombardo
11 appointed members of this very panel, would harbor reasonable doubts about the neutrality of the
12 tribunal. The Answers do not alter that calculus. They answer a subjective question the Constitution
13 does not ask, in language too uniform to reflect any individualized examination, while leaving the
14 operative facts unaddressed. Once public confidence in the neutrality of the decisionmaker is
15 undermined, the legitimacy of the proceeding is irreparably compromised. For these reasons, and
16 those stated in the Motion and Supplemental Memorandum, Respondent respectfully requests that
17 the Commission grant the Motion and disqualify Commissioners Stefanie Humphrey, John
18 Krmpotic, and Joseph Sanford from the panel assigned to adjudicate this matter.

19 Dated this 8th day of October, 2026.

20 **CLARK HILL PLLC**

21 /s/ Gia N. Marina

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Attorneys for Respondent, The Honorable Michele Fiore

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2 **CERTIFICATE OF SERVICE**

3 The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 8th day of
4 October, 2026, I served a true and correct copy of the foregoing **THE HONORABLE JUDGE**
5 **MICHELE FIORE'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY**
6 **COMMISSIONERS STEFANIE HUMPHREY, JOHN KRMPOTIC AND JOSEPH**
7 **SANFORD DUE TO THE APPEARANCE OF IMPROPRIETY AND BIAS WHICH**
8 **CONSTITUTES A VIOLATION OF DUE PROCESS IF THEY REMAIN ON THE PANEL**

9 via electronic means:

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