



PAOLA M. ARMENI
Nevada Bar No. 8357
CLARK HILL PLLC
1700 South Pavilion Center Drive, Suite 500
Las Vegas, Nevada 89135
Tel: (702) 862-8300
Fax: (702) 778-9709
Email: parmeni@clarkhill.com
Attorney for Respondent, the Honorable Michele Fiore

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of the,

COMMISSION CASE NO. 2025-108-P

HONORABLE MICHELE FIORE

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

Respondent.

**THE HONORABLE JUDGE MICHELE FIORE'S SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISQUALIFY
COMMISSIONERS STEFANIE HUMPHREY, JOHN KRMPOTIC AND JOSEPH
SANFORD DUE TO THE APPEARANCE OF IMPROPRIETY AND BIAS WHICH
CONSTITUTES A VIOLATION OF DUE PROCESS IF THEY REMAIN ON THE
PANEL**

Respondent Judge Michele Fiore, through her counsel of record, Paola M. Armeni, Esq., of Clark Hill PLLC, hereby submits this Supplemental Memorandum of Points and Authorities pursuant to the Commission's Order, filed on September 14, 2026, directing Judge Fiore to address why the Motion to Disqualify should not be stricken or denied as untimely pursuant PRJDC 38.1 and 38.4.¹

The Commission's position that the Motion to Disqualify should be stricken or denied because it was not filed within the thirty-day period fixed by PRJDC Rule 38 rests on a category error. Rule 38.4 prescribes the procedure and deadline for an affidavit to challenge for cause. Judge Fiore's Motion to Disqualify is not a Rule 38.4 cause affidavit. It is a constitutional challenge — a motion invoking her due process right to an impartial tribunal — directed at the participation of

¹ It should be noted that the Motion to Disqualify was never opposed as such there is no formal opposition arguing that the Motion was untimely.

1 three lay Commissioners who were appointed by the Governor, who is a witness in this proceeding.
2 A rule that governs one subject does not silently govern another.

3 The deadline for pre-hearing motions is October 2, 2026. Therefore, the Motion to Disqualify
4 on constitutional grounds is timely. Further, the Motion should not be stricken or denied for the
5 following reasons:

- 6 1. By its terms, Rule 38.4 governs cause affidavits, not constitutional disqualification motions,
7 and PRJDC provisions are read according to their stated subject matter.
- 8 2. A challenge to a Commissioner's continued service on due process / for-cause grounds is a
9 distinct mechanism that the Commission must hear on its merits — it has never been
10 confined to the thirty-day affidavit window.
- 11 3. Even if Rule 38.4's timing was treated as a benchmark, the Motion to Disqualify satisfied
12 its purpose. The thirty-day window runs from the order setting the hearing, and because
13 hearings are generally set within sixty days, the window reflects an intent that the
14 Commission be alerted to a disqualifying conflict at least thirty days before the hearing.
15 Judge Fiore's Motion gave the Commission approximately seven weeks' notice — well
16 more than thirty days before the hearing.

17 The Commission should accept the Motion to Disqualify and reach the important
18 constitutional question it presents.

19 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

20 The Motion to Disqualify should not be stricken or denied as untimely because PRJDC 38.4
21 does not govern the constitutional for-cause challenge Judge Fiore has presented, and, even if the
22 Commission were to apply Rule 38.4's thirty-day period, her Motion was filed with ample time
23 before the hearing to serve the rule's purpose. Rule 38.4 establishes a procedure and deadline for
24 conflict-of-interest affidavits; it does not purport to create a jurisdictional bar to a separate challenge
25 to a Commissioner's participation on constitutional due process grounds. Nevada Supreme Court
26 precedent expressly recognizes a respondent's right to challenge Commission members for cause
27 and requires the Commission to hear such a challenge. *Matter of Davis*, 113 Nev. 1204, 1217 946
28 P.2d 1033, 1042 (1997). The Commission therefore cannot transform a deadline governing one

1 procedural mechanism into a bar against the exercise of a distinct right recognized by Nevada law.
2 Moreover, Judge Fiore filed the Motion approximately seven weeks before the scheduled hearing—
3 providing substantially more than thirty days’ advance notice and ample opportunity for the
4 Commission to address the issue. Finally, the Motion raises a fundamental constitutional question
5 concerning the impartiality of the tribunal itself: whether the Governor’s appointment of three
6 Commissioners who will adjudicate a proceeding in which the Governor is a witness creates an
7 objectively intolerable risk of bias. A procedural rule should not be construed to foreclose
8 consideration of such a constitutional challenge, particularly where the filing provided ample notice
9 and the Commission has both the authority and obligation to determine whether its members may
10 constitutionally participate. The Motion should therefore be permitted to proceed to a determination
11 on the merits.

12 **A. EVEN MEASURED AGAINST RULE 38.4’S OWN PURPOSE, THE MOTION**
13 **TO DISQUALIFY WAS TIMELY.**

14 Even if the Commission were to treat Rule 38.4’s timing as the relevant benchmark, Judge
15 Fiore’s Motion satisfied the rule’s evident purpose. Rule 38.4 fixes its thirty-day period by
16 reference to the order setting the hearing. Under Nevada law, a hearing on a formal statement of
17 charges must, “[i]f practicable,” be held not later than sixty days after the judge files an answer or
18 the answer period expires. NRS 1.4673. Because the hearing is generally set within that sixty-day
19 frame, an affidavit filed within thirty days of the order setting the hearing is one made, in the
20 ordinary case, at least thirty days before the hearing itself. The thirty-day window thus reflects a
21 purpose: to ensure the Commission is alerted to a disqualifying circumstance far enough in advance
22 of the hearing to address it in an orderly way.

23 Judge Fiore’s Motion to Disqualify fulfilled that purpose and then some. She submitted it
24 approximately seven weeks — roughly forty-nine days — before the scheduled hearing. That is
25 more than thirty days of advance notice. The Commission therefore received the very thing Rule
26 38.4’s timetable is designed to secure: ample notice, well before the hearing, of a circumstance said
27 to disqualify members of the panel. A hyper-literal application of the thirty-day-from-order clock
28 to defeat a motion that in fact gave more than thirty days’ notice before the hearing would elevate

1 form over the rule's manifest object and, in the process, extinguish a constitutional objection
2 without a hearing.

3 **B. RULE 38.4 GOVERNS CHALLENGES FOR CAUSE AFFIDAVITS, NOT**
4 **CONSTITUTIONAL MOTIONS TO DISQUALIFY, AND ITS THIRTY-DAY**
5 **WINDOW DOES NOT APPLY TO JUDGE FIORE'S DUE PROCESS**
6 **CHALLENGE.**

7 Rule 38.4 establishes the process by which an affidavit regarding cause is submitted. The
8 affidavit *only* requires facts upon which the disqualification is sought. The affidavit alone does not
9 allow full briefing or any briefing on a constitutional issue. Therefore, the rule's subject is the
10 mechanics and deadline for an affidavit. It is not a rule about constitutional disqualification, and
11 nothing in its text purports to be the exclusive vehicle for every objection a party might raise to a
12 Commissioner's participation.

13 The Nevada Supreme Court reads each PRJDC rule strictly according to its own stated
14 subject matter and declines to stretch a rule addressed to one topic to reach a different one. In *Matter*
15 *of Henry*, the Court confined Rule 8's fraud-or-bad-faith requirement to the specific category of
16 discipline that rule addresses² and read PRJDC 24 as governing only the rules of evidence to which
17 it is directed. *Id. at* 136 Nev. 828, 477 P.3d 368 (2020). The same interpretive discipline applies
18 here. Rule 38.4 is directed at affidavits for cause; it does not, by its terms, govern a motion asserting
19 that a Commissioner's participation offends the Due Process Clause.

20 The distinction is substantive, not formal. A Rule 38.4 affidavit is a short, standardized
21 disclosure of a conflict. Judge Fiore's Motion to Disqualify is a fully briefed constitutional
22 argument that must marshal the governing due process authorities and apply them to the specific
23 facts of the Governor's role as both appointing authority and witness. Treating that constitutional
24 motion as though it were a boilerplate Affidavit for cause and rejecting it under the rule's timetable
25 — collapses two different things the PRJDC keeps separate.

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27
28 ² 136 Nev. 828, fn 1, 477 P.3d 368, fn 1 (2020).

1 **C. A DUE PROCESS / FOR-CAUSE CHALLENGE TO A COMMISSIONER’S**
2 **PARTICIPATION IS A DISTINCT MECHANISM THE COMMISSION MUST**
3 **HEAR ON THE MERITS.**

4 Nevada practice has recognized a for-cause challenge to a Commissioner as a mechanism
5 separate from any affidavit procedure. In *Matter of Davis*,³ the Nevada Supreme Court described
6 the respondent judge’s right to “challenge any member of the Commission for cause,” and
7 confirmed that “[t]he Commission must hear the challenge” and must disqualify any Commissioner
8 who, “by reason of actual or implied bias,” would be prevented from adjudicating the matter fairly
9 and impartially or would create an appearance of impropriety. *Id.* at 1217. The respondent in *Davis*
10 raised that challenge by filing a motion to disqualify Commission members, and the Commission
11 heard and ruled on it. *Id.*

12 That is precisely the mechanism Judge Fiore invokes here. A motion to disqualify
13 Commissioners for bias — or, as here, for a due-process-disqualifying relationship between the
14 adjudicators and a witness — is a challenge the Commission is obligated to hear, not a filing that
15 may be turned away for failure to satisfy the deadline governing for cause affidavits. Refusing to
16 hear the Motion to Disqualify forecloses the merits determination that Nevada law requires the
17 Commission to make.

18 **D. THE MOTION TO DISQUALIFY SHOULD BE CONSIDERED BECAUSE THE**
19 **UNDERLYING DUE PROCESS CHALLENGE PRESENTS A SUBSTANTIAL**
20 **CONSTITUTIONAL QUESTION THE COMMISSION MUST REACH.**

21 The timeliness ruling matters because it forecloses a serious constitutional claim. A fair trial
22 in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955).
23 The Due Process Clause requires disqualification, “as an objective matter,” in circumstances “in
24 which experience teaches that the probability of actual bias on the part of the judge or
25 decisionmaker is too high to be constitutionally tolerable.” *Caperton v. A.T. Massey Coal Co.*, 556
26 U.S. 868, 877 (2009). The inquiry is objective — “whether the average judge in his position is
27 ‘likely’ to be neutral, or whether there is an unconstitutional “potential for bias.” *Id.* at 881. Nevada
28 has expressly adopted this standard, holding that a decisionmaker’s disqualification under the Due

³ 113 Nev. 1204, 946 P.2d 1033 (1997).

1 Process Clause “does not require proof of actual bias; instead, a court must objectively determine
2 whether the probability of actual bias is too high to ensure the protection of a party’s due process
3 rights.” *Ivey v. Dist. Ct.*, 129 Nev. 154, 159, 299 P.3d 354, 357 (2013).

4 This guarantee applies with full force to administrative and disciplinary tribunals. In
5 *Brunson v. Dep’t of Bus. & Indus.*,⁴ the Nevada Supreme Court held that “[a] fair trial by a fair
6 tribunal is a basic requirement of due process, and this rule applies to administrative agencies,” and
7 that a disciplinary body has a responsibility to provide a licensee not only with a neutral and
8 impartial proceeding but also a proceeding which appears neutral and impartial. The Court reversed
9 where the tribunal relied on interested witnesses who stood to benefit from the outcome, treating
10 the tribunal’s relationship to interested witnesses as fatal to the fairness of the proceeding. *Id.*

11 The circumstance here fits squarely within these principles. The Governor is a witness in
12 this proceeding, and the Governor appointed the three lay Commissioners whose disqualification
13 Judge Fiore seeks. The controlling due process concern is not that these Commissioners are
14 subjectively biased, but that the objective circumstances create a constitutionally intolerable risk of
15 bias. As the United States Supreme Court has put it, just as no man is allowed to be a judge in his
16 own cause, similar fears of bias can arise when — without the consent of the other parties — a man
17 chooses the judge in his own cause. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). Where
18 an interested witness selected the very adjudicators who will weigh his credibility and the case in
19 which he testifies, the risk that experience teaches is “too high to be constitutionally tolerable” is
20 directly implicated. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 877 (2009). And because
21 “the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger
22 institution of which he or she is a part,” the objection cannot be brushed aside as immaterial to a
23 multimember body. *Williams v. Pennsylvania*, 579 U.S. 1, 15, (2016).

24 Judge Fiore does not ask the Commission to resolve that constitutional question in this
25 supplemental briefing. Rather, Judge Fiore asks only that the Commission not extinguish it on a
26 mistaken timeliness ground. The gravity of the question — the constitutional composition of the
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28 ⁴ 536 P.3d 929 (Table)(Nev. 2023) (unpublished).

1 tribunal itself — is precisely why the Motion to Disqualify must be decided on its merits.

2 **CONCLUSION**

3 The Commission should not strike or deny Judge Fiore’s Motion to Disqualify as untimely.
4 Rule 38.4 governs the timing of affidavits asserting cause; it does not impose a thirty-day
5 jurisdictional bar on a separate constitutional motion challenging a Commissioner’s impartiality.
6 Nevada Supreme Court precedent expressly recognizes a respondent’s right to challenge a
7 Commissioner for cause and requires that “[t]he Commission must hear the challenge.” *Matter of*
8 *Davis*, 113 Nev. 1204, 1217, 946 P.2d 1033 (1997).

9 Even if Rule 38.4 applies, Judge Fiore’s Motion was filed approximately forty-nine days
10 before the hearing—providing ample notice and satisfying the purpose of the Rule. Striking the
11 Motion under these circumstances would elevate form over substance and foreclose consideration
12 of a substantial due process challenge to the composition of the tribunal.

13 The Motion should therefore be heard on its merits. Whether the Governor’s appointment
14 of three Commissioners who will adjudicate a proceeding in which the Governor is a witness
15 creates an objectively impermissible risk of bias is a constitutional question that should not be
16 extinguished by an inapplicable or technical filing deadline.

17 Dated this 18th day of September, 2026.

18 **CLARK HILL PLLC**

19 /s/ Paola M. Armeni

20 PAOLA M. ARMENI

21 Nevada Bar No. 8357

22 1700 South Pavilion Center Drive, Suite 500

23 Las Vegas, Nevada 89135

24 Tel: (702) 862-8300

25 Attorney for Respondent, *The Honorable Michele Fiore*

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Nevada Commission on Judicial Discipline
Email: ncjdinfo@judicial.nv.gov

An employee

An employee of CLARK HILL PLLC