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**FILED**

Chief Justice Mark Gibbons  
Justice Nancy M. Saitta  
201 South Carson Street  
Carson City, NV 89701-4702

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TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
CHIEF DEPUTY CLERK

Dear Justices Gibbons and Saitta:

We have reviewed Gary Silverman's letter of January 5, 2015, outlining his concerns about proposed NRCP 16.215. It appears that Mr. Silverman believes that the rule should be amended to address two issues: (1) findings of harm, if any, a child may suffer if called to testify in a custody matter; and (2) judicial training for interviewing children and analyzing child interviews conducted by other providers. First, we greatly appreciate Mr. Silverman's input, and would like to acknowledge that the Child Witness Committee and this rule were only possible as a result of Mr. Silverman's suggestion two (2) years ago in Ely, that there needed to be a greater understanding among the bench and bar as to the effects of child interviews on children, and uniformity throughout the State in addressing child testimony in domestic relations matters. We are all thankful for his suggestion because he was absolutely right about the need to study and address this important issue.

We agree with Mr. Silverman that proposed NRCP 16.215 does not make specific findings as to what harm, if any, a child may suffer if called to testify in a custody matter. We would also point out that the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500, et. seq, does not contain any specific, general findings about what harm, if any, a child may suffer if called to testify in a custody matter. NRCP 16.215 was proposed in order to assist in the application of the Uniform Child Witness Testimony by Alternative Methods Act ("Act") in domestic relations matters, to ensure that the Act was being applied uniformly, to establish procedures to apply the Act, and to ensure that the Act's purpose of protecting children while also guaranteeing the rights of due process to litigants was preserved. What we found in our work, was that the Act was not being applied uniformly, and sometimes not at all. Child testimony is being obtained in different manners in almost every courtroom throughout this State. Under the current system, it is impossible for attorneys, and more importantly, litigants, to know what to expect with regard to the testimony of their child or children prior to appearing in Court.

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Having provided that background, while we agree with Mr. Silverman that proposed NRCP 16.215 and the Act do not make specific findings about the harm to children, if any, from testifying in child custody proceedings, we do not believe it would be prudent or appropriate to make a generalized finding on this subject in either the rule or Act. Findings of harm to a child from testifying in court should be made on a case-by-case basis, and a general finding should not be applied in every case regardless of the specific facts and circumstances involved. The Act presumes that a child should testify in court rather than by an alternative method, and requires a finding "that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact," before allowing testimony by an alternative method. This presumption is consistent with the general consensus that a child is not necessarily harmed simply from the act of testifying in court. Any harm to a child is specific to the facts and circumstances of the parties and child before the court, and a court's ability and discretion to analyze potential harm in each individual case must be preserved.

We also agree whole-heartedly with Mr. Silverman that judges should be trained in conducting and evaluating child interviews. As it stands now, some judges are conducting interviews periodically, and evaluating child interviews almost daily, without such training. We submit, however, that judicial training is not an appropriate subject matter for the Nevada Rules of Civil Procedure, and is best addressed administratively through policies on judicial training and continuing legal education. Such training is available, and the judiciary has received numerous presentations in the last several years on this subject.

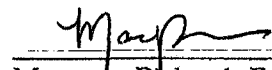
We appreciate your time and attention to this important matter.

Respectfully submitted,

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