

1 witness.

2 MR. BRADLEY: No questions.

3 JUDGE STOCKARD: Thank you, Judge.

4 THE WITNESS: My pleasure.

5 MR. TERRY: We would rest, Mr. Chairman.

6 JUDGE STOCKARD: Thank you.

7 Mr. Bradley, closing.

8 MR. BRADLEY: Yes.

9 May it please the Commission, I'm not going  
10 to repeat all of the evidence you've just heard.  
11 It's been a very short hearing. But I would like to  
12 highlight just a few things that I think are  
13 important.

14 First, as we went through the exhibits, at  
15 Tab 7, which was the June 8th court minutes, the  
16 court minutes reflect that Judge Hughes "finds that  
17 the mother has failed to facilitate Father's  
18 visitation with Minor Child. Because Mother has  
19 failed to facilitate visitation with the father, she  
20 violated his parental rights and the orders of this  
21 court.

22 "She was advised at the last hearing that  
23 if she did not compel the minor child to visit with  
24 the father on the weekends, the child would spend  
25 the entire summer with the father.

1           "Based on the reasons stated above, it is  
2 hereby ordered that the Court finds the plaintiff is  
3 in contempt of court to facilitate visitation on  
4 weekends with the Father. An order to show cause  
5 shall issue.

6           The court followed -- Judge Hughes followed  
7 that up on June 14th, Tab 8, Bates 95, "The Court  
8 further finds that Plaintiff is in contempt of the  
9 Court's order to facilitate visitation on weekends  
10 with Father."

11           She follows that up with an order the  
12 following day, June 15th, and it is a journal entry  
13 and it says "Due to Mom's failure to facilitate  
14 visitation and compel the child to visit with Dad,  
15 the Court is ordering that Dad shall have temporary  
16 sole legal and sole physical custody."

17           Clearly, Judge Hughes was using as a sword  
18 a change of custody to punish Ms. Silva for  
19 violating the visitation order. The causal  
20 connection is undeniable and for the judge to  
21 testify that one had nothing to do with the other is  
22 suspect.

23           And for the judge to say that, clearly she  
24 didn't hold Ms. Silva in contempt because there was  
25 no sanction, I submit to you that taking away a

1 alienation is because that is considered  
2 psychological abuse -- not my words -- in the DSM 5.

3           So when you look at the pathology that's  
4 present in the child through the materials of  
5 Dr. Craig Childress that I was referred to by Judge  
6 Elliott and Judge Duckworth. And in our judicial  
7 educational requirements I get these things.

8           You look at the responses by the child and  
9 you look at the materials and there's a checklist.  
10 Is the child exhibiting this, is the child  
11 exhibiting that. There's five or six impressions.

12           Q   All right.

13           MR. BRADLEY: Your Honor, I think we're  
14 going pretty far afield even from last time. She's  
15 talking about Dr. Childress and what he did. That  
16 was excluded in motions in limine. I would ask for  
17 some guidance from --

18           JUDGE STOCKARD: Mr. Terry.

19           MR. TERRY: We're not going to get into Dr.  
20 Childress not much, if at all. We recognize the  
21 Chair's ruling and accept the Chair's ruling that  
22 the documents provided by Dr. Childress on which  
23 Judge Hughes relied in part are not admissible. We  
24 accept that. It's part of her learning. It's like  
25 law school. You learn torts and property.

1 JUDGE STOCKARD: I'm going to sustain the  
2 objection but I think it's probative as to the  
3 history of the hearings. But I think going too much  
4 afield of -- getting into what was addressed in  
5 Motion in Limine 1, I'm going to sustain it as to  
6 that.

7 MR. TERRY: We will not refer to Dr.  
8 Childress anymore but there will be further  
9 testimony as to the terminology, the actions in  
10 reference to the parental alienation.

11 JUDGE STOCKARD: And we'll take them as  
12 they come.

13 MR. TERRY: Very well.

14 BY MR. TERRY:

15 Q All right. Now, you had -- as the  
16 chronology showed, you had set a hearing for  
17 7/9/2015. You received Ms. Weiford's letter  
18 6/29/2015. But before the 7/9/2015 you received a  
19 supplemental letter, and that's at RO 157.

20 A Okay.

21 Q Take a moment and look at that.

22 A Okay.

23 (Witness reviewing document.)

24 BY MR. TERRY:

25 Q This is Ms. Weiford's letter of what in



1 effect would have been the day before the hearing.

2 A Okay.

3 Q All right? Are you familiar with this?

4 A Yes.

5 Q Okay. By way of summary, does it indicate  
6 no sessions have occurred between Annie and the  
7 natural father?

8 A That is correct.

9 Q Okay. Does it indicate that Dad has  
10 followed all directions?

11 A Yes.

12 Q Does it indicate that Subject Minor is  
13 complaining about, again, about being tested by the  
14 natural father?

15 A I don't know. I don't recall. Oh, she  
16 does say something.

17 Q Okay.

18 A Yes. She's upset about the testing.

19 Q And does it also indicate that there is no  
20 consequence to the subject minor for not cooperating  
21 with the reunification attempt?

22 A Oh, absolutely. Mother is not supporting  
23 reunification.

24 Q All right. Upon what are you basing that?

25 A The comments by the therapist that Mother

1 called days in advance of the first meeting and  
2 said, What do I do if she doesn't want to come? The  
3 therapist told her that she still needed to  
4 encourage her. She told -- the mother told the  
5 therapist, I don't know why you just can't take her  
6 word for it.

7 Q Did you ever find one piece of evidence  
8 that indicated that mother was encouraging  
9 reunification?

10 A No.

11 Q Was there any experts' reports that were  
12 ever provided to you that indicated Mother is  
13 encouraging reunification?

14 A Just the opposite.

15 Q Okay. Did Mother ever say in any of her  
16 documents filed with you, I am encouraging  
17 reunification?

18 A No.

19 Q So back to the July 8th, 2015, letter,  
20 Ms. Weiford reports to you that there has been no as  
21 she calls it, conjoint appointment ever.

22 Is that correct?

23 A Up until this time, no.

24 Q So this would have been the second attempt  
25 and she makes reference in paragraph one, "I'm

1 writing this letter as an update to the  
2 above-mentioned case that was forwarded to my office  
3 May 26th," and then she makes reference to the  
4 June 29th letter --

5 A Yes.

6 Q -- correct?

7 A Yes.

8 Q So does that refresh your memory that  
9 June 29th would have been the first session, the  
10 first attempt at reunification?

11 A Well, I entered my order the end of May.

12 Q Correct.

13 A And I know that she made several attempts  
14 and I think she goes into this historically what she  
15 tried to do to get the sessions established. It  
16 wasn't happening.

17 Q So advise the Commission what Ms. Weiford  
18 indicated to you in this letter.

19 A Okay. That several days before the first  
20 appointment, Mom called and was resistant to even  
21 scheduling the appointment and she mentioned to the  
22 therapist that Annie was -- sorry -- Subject Minor  
23 was too stressed, that she wouldn't get in the car,  
24 that she was having, like, a panic attack, that she  
25 was crying.

1           And the therapist at one point talked to  
2 the child on the phone and the child was upset and  
3 crying and that the therapist calmed her down, and  
4 she stopped crying when she said, Okay. I don't  
5 know what "okay" meant, Okay, you don't have to  
6 come. Okay, you know, we're going to end the  
7 conversation.

8           But Mother was very resistant to bringing  
9 her. They came -- at one point Father was already  
10 upstairs in the conference room and they wouldn't  
11 get out of the car and it's August. I know I'm  
12 jumping ahead but ...

13           MR. BRADLEY: It's fine.

14           THE WITNESS: Is that okay with you?

15           MR. BRADLEY: Excuse me, counsel.

16 BY MR. TERRY:

17           Q   Continue with this letter.

18           A   I'm sorry. Mother wanted to know what she  
19 should do if the child did not want to come to the  
20 appointment or was unwilling to get her in the car,  
21 if she couldn't get her to leave to go to the  
22 appointment or if Dad started to lie. Mother wanted  
23 to give the child words to use if she was feeling  
24 certain ways.

25           Q   How did you construe that? A signal?

1           A    Yes. Like safe words that you use. That's  
2 how I construed that. And the therapist tried to  
3 impress upon Mother you need to let it be organic,  
4 let them have their time together, let them be  
5 reunified, let them meet. It's a safe environment,  
6 it's in my office, it's okay, and --

7           Q    Did the mother indicate to Ms. Weiford  
8 that, You, Ms. Weiford, are not making my daughter  
9 feel comfortable?

10          A    Yeah, she did.

11          Q    Okay.

12          A    She said she doesn't have this problem with  
13 anyone else in her life, meaning the targeted  
14 parent, the father. So validating my child does not  
15 like him, does not want to be reunified with him,  
16 she doesn't have this problem with anyone else in  
17 her life and so you should accept my child's  
18 position on this and not force this reunification.

19          Q    And that's based upon Ms. Weiford's second  
20 letter.

21          A    Yes.

22          Q    Now, she continues in the reference to the  
23 father, obviously, he's greatly disappointed.

24          A    He loves his daughter very much and wants  
25 to have a relationship with his daughter and he's

1 heartbroken.

2 Q Did that change?

3 A No.

4 Q He never gave up.

5 A No, he didn't give up. It was a year and  
6 he didn't give up.

7 Q Now, in the interview with the father he  
8 basically portrayed a whole different situation with  
9 the subject minor, showing photographs of he and the  
10 subject minor.

11 A Right.

12 Q At any point in time, well in advance of  
13 this, et cetera, were they depicted as everything  
14 was fine?

15 A Having a good relationship, yes.

16 Q Having a good relationship.

17 Now, Ms. Weiford also gives you  
18 observations at page 159. Part of that is, "Subject  
19 Minor is not very clear when she talks about her  
20 relationship with her father. It seems very much  
21 intertwined with Mom's relationship with dad. I am  
22 concerned with the possible enmeshment that Subject  
23 Minor and Mom might have."

24 A Yes.

25 Q And this goes back to the we are one --

1           A    Yes.

2           Q    The parental alienation.

3           A    It's called a cross-generational parental  
4 alienation.

5           Q    What is that?

6           A    So if you think about parent/child  
7 relationships, a pyramid -- upside-down pyramid  
8 where the base is at the top and it points down to  
9 the bottom.

10                   In a normal-range family, a normal  
11 functioning family, at the top of the pyramid in  
12 each corner are the parents and the child is at the  
13 bottom. They are the executory function. They make  
14 the decisions and they hand those decisions down to  
15 their child.

16                   In a pathogenic situation or a  
17 cross-generational parental alienation, the  
18 materials that I reviewed said that it's a perverse  
19 triangle, meaning that child and parent are giving  
20 decisions to this parent. This is the outed parent,  
21 the targeted parent. This is an allied parent and  
22 this is the child. They make the decisions and they  
23 tell the targeted parent, This is how it's going to  
24 be.

25                   And the enmeshment is because of the

1 cross-generational coalition. The coalition in this  
2 case was so strong and so solidified it was, We are  
3 a team, Dad's the enemy. That's what this was  
4 portraying to me.

5 Q All right. Now, at page 160 Ms. Weiford  
6 gives opinions in reference to the subject minor as  
7 being very strong-willed, articulate, and quite  
8 adult in many ways.

9 A Uh-huh.

10 Q And then she opines, "So it was curious  
11 when she was not able to specifically articulate  
12 what her concerns were with Dad."

13 A Right.

14 Q Did I read that correctly?

15 A She is a very articulate young lady. I  
16 call it "adultification," which isn't a good thing.  
17 People make --

18 Q Older than your years.

19 A Well, your vocabulary, that's fine, if you  
20 have a sophisticated vocabulary.

21 But when you're taking on adult problems  
22 and adult situations and making them your own,  
23 that's a very strong enmeshment. So when she says  
24 she couldn't articulate the problems she had with  
25 her father, that they were really the problems that



1 Mother had with Father.

2           And she was taking on a protective role of  
3 the mother and all the adult problems. And that's  
4 adultification. That's not a good thing for a child  
5 to be put in the middle. They become a  
6 psychological battle ground.

7           Q   Now, the recommendation portion --

8           MR. BRADLEY: Your Honor, I hate to do this  
9 but we're getting far afield of what happened in  
10 this case and we're hearing all these ideas about  
11 adultification and things that I don't think are  
12 central to what this Commission's already said are  
13 the central issues.

14           I get that we have to go through a  
15 chronology but we're going way far afield and we'll  
16 be here all day into tomorrow if we think about  
17 every single issue about this child and whether  
18 she's an adult and whether she's articulate and all  
19 these other things. We need to look at the bigger  
20 picture, which is moving this case through the  
21 history of what happened. I understand the  
22 Commission's ruling but this part is way too  
23 detailed.

24           JUDGE STOCKARD: Mr. Terry.

25           MR. TERRY: Mr. Chairman, I'm mindful of

1 the time periods that you've given us, okay? Four  
2 hours for the prosecutor and four hours for Judge  
3 Hughes' case. If necessary, I won't call some of  
4 the other witnesses that we were prepared to call.  
5 We will get through it at the time that your Honor  
6 has ordered.

7           However, addressing myself now to the --  
8 what I'll construe as the relevancy issue, this is  
9 the buildup. This is part of the big picture. And  
10 counsel's right. It's going to continue to grow  
11 just like this. There is another Weiford letter in  
12 here and another expert is appointed and you'll run  
13 into the same thing.

14           We can either do that by way of summary,  
15 which I don't recommend because I think it's very  
16 important for the panel to understand that the video  
17 that you saw was the last straw. It was all that  
18 Judge Hughes could do based upon the totality of  
19 what had occurred in this case.

20           JUDGE STOCKARD: Well, I'm going to sustain  
21 the objection. But what I want to do is stay with  
22 the chronology and not get into -- something between  
23 a summary and kind of where we're at now.

24           Does that make sense.

25           MR. TERRY: I believe it does, Mr.

1 Chairman. And I think what you're saying to me is  
2 save it for closing. But if my colleague objects on  
3 relevancy, I'll move on to something else.

4 Is that a fair analysis?

5 JUDGE STOCKARD: Sure. I think so. But, I  
6 mean, if you believe it's getting too far field,  
7 then just renew your objection.

8 MR. BRADLEY: Thank you.

9 MR. TERRY: May I continue?

10 JUDGE STOCKARD: Of course.

11 BY MR. TERRY:

12 Q We are done with that letter from Ms.  
13 Weiford.

14 A Okay.

15 Q Now, the next document the panel has deals  
16 with the telephonic conference.

17 And what is this in reference to? This is  
18 dated July 15th.

19 A The court and counsel had a question as to  
20 whether father's request to go back to his custodial  
21 schedule, whether that request should be granted,  
22 whether that was in the best interest of the child.

23 So we asked Ms. Weiford if she would have a  
24 telephone confirmation with us, because she wasn't  
25 quite clear in her recommendations whether he could

1 go back to his weekend visitation or if she was  
2 recommending visitation only through reunification.

3 And that is what she recommended, that  
4 visitation only happen through the reunification  
5 therapy.

6 Q Okay. And, in fact, in the July 9th  
7 order, which is referenced in the chronology,  
8 indicates the hearing on Dad's motion for an order  
9 to show time and modified custody and you're finding  
10 that Mom -- that Weiford's recommendations are  
11 adopted, reunification will continue.

12 A Yes.

13 Q Okay. And Mom ordered to support the  
14 reunification process --

15 A Yes.

16 Q -- the order to show cause of compensatory  
17 time for Dad is deferred.

18 A Right. So his motion for order to show  
19 cause, his motion to modify custody, it's all  
20 deferred, because I'm opting to triage this family  
21 through therapy. I think that's the best approach.

22 Q Now, on July 15th there's, in fact, a  
23 status hearing -- and I'm trying to be mindful of  
24 the Chair's directive here, Judge Hughes.

25 A Right.

1 Q Okay?

2 A Okay.

3 Q On July 15th there's a status here for  
4 counsel and the court to call Ms. Weiford regarding  
5 those two prior letters that you've already  
6 testified to.

7 A Right.

8 Q And as a result of that, Dad's visitation  
9 is temporarily suspended and ordered to occur  
10 through reunifications with Weiford.

11 A Right.

12 Q So you suspend Dad's visitation rights.

13 A Temporarily as in the best interest of the  
14 child, because it needs to happen through therapy.  
15 There is still a valid court order that says he has  
16 weekends, and he made that point. He said, I still  
17 have weekends. It hasn't been overruled. It hasn't  
18 been modified. Judge, why are you making me, you  
19 know, go through reunification? I have weekend  
20 visitation.

21 And I thought, Well, you've had the police  
22 over there seven or eight times. She's not going.  
23 I ordered reunification therapy. It's supposed to  
24 happen here and Weiford recommended that it happen  
25 here in the therapist's office. So in the best

1 interest of the child I temporarily suspended his  
2 visits in order for it to happen in therapy. I  
3 thought that was the best approach.

4 Q And that certainly doesn't show any type of  
5 bias against the natural mother. It was a detriment  
6 to the father, correct?

7 A Unfortunately, for a very long time.

8 Q Okay. Now, on August 5th, 2015, you  
9 received an additional letter from Ms. Weiford.  
10 That is at 162.

11 A Okay.

12 Q Generally, this makes you aware that Mom  
13 had called the office. She was in the parking lot.  
14 Subject Minor would not get out of the car.  
15 Ultimately there is no reunification therapy on that  
16 day?

17 A That's correct.

18 Q Third time in a row, right?

19 A Yes.

20 Q Okay. Ms. Weiford said, If I could be of  
21 further assistance, basically, let me know. She's  
22 done.

23 A I took it as that and I was not happy with  
24 that.

25 Q Okay. On 8/25 that was the status of the

1 reunification therapy and you made a note that  
2 Subject Minor was again still continuing to refuse  
3 to participate, correct?

4       A     8/25, yes.

5       Q     Okay.

6       A     And I ordered Mom to support it or an order  
7 to show cause would issue and I set a status  
8 hearing.

9       Q     And you set a status for 9/29 but on 9/16  
10 Dad files a new motion for an order to show cause  
11 and the motion to modify custody based on not seeing  
12 the subject minor since April of 2015 and Mom not  
13 being concerned with the judge, as you put it, and  
14 clueless family court system.

15      A     Not my words. Those were her words to him.

16      Q     Okay. And you set a hearing for April --  
17 I'm sorry -- November 4th, 2015.

18      A     Well, right. It was initially set right  
19 before Thanksgiving and it was changed. Moved up.

20      Q     Now, there is a supplemental letter by Ms.  
21 Weiford at 165 dated September 2nd indicating an  
22 inability to pay for her services on behalf of Mom.

23           Does that fairly summarize it?

24      A     It was a letter addressed to the mother,  
25 yes.

1 Q Okay. Then at 169 an additional letter of  
2 October 8th, 2015, from Ms. Weiford indicating to  
3 you that your Honor had requested that you do three  
4 reunification sessions but that, basically, it did  
5 not work.

6 A I'm sorry. Which letter are you looking  
7 at?

8 Q 169.

9 A Okay. So the October 8th.

10 Q Correct.

11 A She conducted the three unification  
12 sessions with Child and Father, thanked them for  
13 their participation, and said she would like to  
14 continue the therapy.

15 Q Right. Did that give you some hope?

16 A A little.

17 Q All right. Now, by 9/22, that's when Dad  
18 had filed the motion for an order to show cause.  
19 This letter comes in October 4th, not that long  
20 after that, correct?

21 A Correct.

22 Q Okay. If we move on to November 20th,  
23 Dad's motion to clarify orders and reconsider  
24 Weiford's recommendations, do you see that in the  
25 chronology?



1 A Yes, I see that.

2 Q That's set for a hearing -- reset for the  
3 hearing on 12/8/2015. Is that correct?

4 A Correct.

5 Q Okay. On 12/8 this is the hearing on the  
6 motion to clarify, et cetera, and your directive at  
7 that point in time is -- again, both parties are  
8 present.

9 A Right.

10 Q Okay. You give both parties an opportunity  
11 to be heard, correct?

12 A Yes.

13 Q And ultimately you direct that Weiford is  
14 to continue the reunification therapy, facilitate  
15 visitation for Dad, make recommendations, and Dad is  
16 permitted to take Subject Minor out for an activity.

17 A That's what Weiford recommended.

18 Q And the exchange would occur at Ms.  
19 Weiford's office.

20 A She offered her office because Donna's  
21 House is not always available. They don't have  
22 constant hours and a lot of times parents exchange  
23 at the security gate if they can't exchange at  
24 Donna's House.

25 She also offered her office if it was like

1 a 7:00 p.m. on a Monday, or whenever they weren't  
2 available at Donna's House she would facilitate, in  
3 other words.

4 Q And page 171 an additional report by Ms.  
5 Weiford.

6 A Yes.

7 Q Okay. Briefly summarize what this report  
8 indicates.

9 A I can't. There is no brief about it.

10 Q Pursuant to the directive of the Chair.

11 A I'm sorry. I know. It's so many pages.

12 MR. BRADLEY: I'll stipulate to allow Mr.  
13 Terry to summarize it.

14 MR. TERRY: Okay. I appreciate that.

15 THE WITNESS: Thank you.

16 BY MR. TERRY:

17 Q At page 171 she gives a summary of what she  
18 refers to as "the conjoint sessions." First  
19 session, "Subject Minor did not respond to Dad  
20 directly. At a later time Annie opened up most of  
21 the time that they were together." This is page  
22 172.

23 And at the third session, second paragraph,  
24 "Right before the third session, as I'm walking" --  
25 this is Ms. Weiford -- "the Subject Minor into the

1 room, she was determined to let me know that she did  
2 not want to be reunified." Is that accurate?

3 A Yes. After a second successful session she  
4 did a 180.

5 Q Right. So finally there had been a meeting  
6 between Dad and the subject minor.

7 A Correct.

8 Q But that was the second attempt.

9 A Right.

10 Q Third attempt, I don't want to be  
11 reunified.

12 A Right.

13 Q Okay. Part of the observation was that the  
14 subject minor reporting that she had been acting  
15 when she was spending time with her father all these  
16 years. Acting.

17 A That very much hurt her father.

18 Q Okay. Now, Ms. Weiford makes reference to  
19 Annie's -- Subject Minor's therapist.

20 Who was the subject minor's therapist?

21 A I believe it was a Ms. Harper.

22 Q Okay.

23 A But she only went twice.

24 Q Correct. But what's important is that  
25 Annie's not reporting any type of abuse, neglect or

1 other issues with her father, correct?

2 A That is correct.

3 Q Okay. And then the last paragraph, "It  
4 appears that Mom's thoughts are that the problems  
5 lie solely with Dad. Therefore, if we get rid of  
6 Dad, the problem is solved." Is that what she --

7 A Yes, that's what she said.

8 Q Okay. And counsel's right. This is a  
9 relatively long letter. At page 173 -- you already  
10 testified to this -- Mom's attitude is much more  
11 permissive. Dad's attitude is structured.

12 A The parenting styles are different.

13 Q That doesn't mean they're wrong in their  
14 parenting styles. It just means they have a  
15 different approach.

16 A Again, a normal-range parent, there's a  
17 wide variety of parenting styles. It's when you get  
18 outside of the normal-range, which Mother was, that  
19 you have issues.

20 Q What are you relying on in indicating that  
21 to the panel?

22 A That she was out of range?

23 Q Yes.

24 A The enmeshment, the cross-generational  
25 coalition. It's us against him. He can just go

1 back to Brazil where he came from. We don't need  
2 him. The child not being able to articulate what  
3 her problems were. She was protecting her mom.

4           The problems were the adult conflict and a  
5 child turned into a psychological battle ground.  
6 And I know you don't want me to use those terms, but  
7 that is my thought process.

8           Q   All right. Did you determine that Mom and  
9 Subject Minor were talking about the reunification?

10          A   Absolutely.

11          Q   Okay.

12          A   She gave the child an email from the  
13 therapist.

14          Q   Okay.

15          A   That was directed to Mom.

16          Q   All right. In the middle of 173 she  
17 opines, "I believe that Subject Minor is a child of  
18 divorce that is in the middle of the conflicts with  
19 her parents. If Subject Minor was spending all of  
20 her days being schooled by Mom, going to the dance  
21 studio with Mom, and is really close to Mom, of  
22 course she is going to see Dad as the enemy."

23               A really strong term.

24          A   Very strong term but, unfortunately, a  
25 reality.

1 Q Okay. Then in that same paragraph "This  
2 stance is being supported in championed by her  
3 mother," correct?

4 A I thought that was a strong word too,  
5 championed. That means wholeheartedly supported  
6 contrary to everything that's in the child's best  
7 interest.

8 Q Yet Ms. Weiford is still recommending that  
9 the counseling continue because she indicates it  
10 makes sense to align with the parent that she's  
11 closest to and who she observes as being victimized.

12 A Right.

13 Q Now Mom is the victim.

14 A Yes.

15 Q Okay. However, continuing with the quote,  
16 "However, discarding her previous relationship with  
17 Dad is not the answer."

18 In other words, she still is recommending  
19 steps to be taken towards the reunification.

20 A What is the alternative?

21 Q Well, the alternative is what?

22 A Dads walks away and says goodbye?

23 Q Correct.

24 A And they win? That he's out of her life  
25 and he loves her very much and he cares for her very

1 much and all he wants to do is have a normal  
2 relationship? So what's he supposed to do?

3           It's not happening -- Mom's not  
4 facilitating, the child is refusing, and therapy is  
5 the only answer. That's what has to happen or he  
6 walks away. What are the options?

7           Q   At page 174 Ms. Weiford indicates, "It  
8 seems that Mom believes that she has Subject Minor's  
9 best interest by protecting her daughter from her  
10 father. However, Mom supporting that relationship  
11 with Dad is the best thing she could do for her."

12           In other words, encourage the relationship  
13 with Dad.

14           A   Child needs to have two parents. And she  
15 had a parent that loves her and that relationship  
16 wasn't being fostered. It's not in a child's best  
17 interest to cut a parent out that wants to show  
18 love, affection, and attention.

19           Q   Now, you had set a status hearing for  
20 January 28th, 2016, and you just made reference to  
21 Ms. Weiford's letter of January 21st, 2016.

22           On the notation in reference to  
23 January 28th, the first time you indicate that  
24 exchanges are to occur at Donna's House, what is  
25 Donna's House so that the panel understands?

1           A    Donna's House is -- as a point of history,  
2 Judge Steel created it when a court staff was  
3 murdered by her significant other or ex-husband in a  
4 domestic violence situation over a child custody  
5 exchange.

6                So she created this entity that's on the  
7 family court campus -- it's not a house. It's an  
8 office. It's at the mediation center -- that  
9 protects people when they're in high conflict. And  
10 you go to Donna's House and it's monitored  
11 exchanges. They report to the court but they have  
12 to go through an orientation process and they have  
13 to know the rules. They have to go through the  
14 security gate like the airport where there are metal  
15 detectors. That's what Donna's House is.

16           Q    All right. Now, at page 176 you received  
17 an additional report from Ms. Weiford.

18                Are you familiar with that?

19           A    I'm there.

20           Q    Okay. Part of her recommendations -- and  
21 she does articulate the fact that Mom was not  
22 showing up for appointments with Subject Minor.

23           A    She scheduled various appointments and they  
24 weren't participating.

25           Q    And you had ordered family reunification



1 therapy, correct?

2 A Many times.

3 Q Okay. "I have not had a reunification  
4 appointment with Dad and his daughter since  
5 September 24th, 2015. My office on several  
6 occasions has tried to schedule appointments with  
7 Mom and Subject Minor. Our last scheduled  
8 appointment was December 10th. Mom was aware of  
9 the appointment. She made contact with us the day  
10 before the appointment. Mom made it clear that she  
11 would not be bringing Subject Minor because she  
12 could not afford the sessions and because it  
13 stressed Subject Minor and gave her headaches,"  
14 correct?

15 A Yes.

16 Q So between the dates articulated in Ms.  
17 Weiford's letter and this January 21st letter,  
18 there hadn't been any further visitations between  
19 Dad and the subject minor, correct?

20 A Correct. The only contact he had was in  
21 the three sessions with Weiford.

22 Q Yet her recommendations are "Dad should be  
23 able to start having access to his daughter weekly.  
24 There can be a four-week plan in place," and she  
25 talks about what the weeks are.

1 A She did.

2 Q And she made several other recommendations  
3 in there.

4 A Yes, she does.

5 Q Did you adopt those recommendations?

6 (Witness reviewing document.)

7 BY MR. TERRY:

8 Q The reason I ask is it says "All exchanges  
9 take place at Donna's House."

10 A I'm reading all of them. "Dad participate  
11 monthly." Most of these I did. At some point I  
12 ordered them to parenting classes also through UNLV  
13 but, yes, exchanges to be done at Donna's House.

14 Q Now, by February 16th Donna's House advises  
15 you they are closing their case because Subject  
16 Minor refuses to go with Natural Father, correct?

17 A Yes.

18 Q Now, by way of summary, what efforts had  
19 been made to get the Subject Minor to Donna's House  
20 and then ultimately to meet with Dad for the  
21 exchange that had been recommended by you?

22 A What do you mean "what efforts had been  
23 made"?

24 Q Well, did Mom take her?

25 A She took her.

1 Q Did Subject minor get out of the car?

2 A I don't recall.

3 Q Okay. Were there reunifications meetings  
4 with Dad?

5 A At Donna's House?

6 Q Yes.

7 A No.

8 Q Do you recall why?

9 A The child refused to go.

10 Q Okay. How many different times?

11 A Two or three.

12 Q Okay. So by this point in time -- and,  
13 actually, continuing through this point in time --  
14 Subject Minor is making the decisions as to what she  
15 is and isn't going to do.

16 A I think the coalition was making the  
17 decisions.

18 Q Okay.

19 A Subject Minor with the support of the  
20 mother wholeheartedly.

21 Q But Dad is getting no visitations?

22 A None.

23 Q Now, you set an evidentiary hearing for  
24 March 29th and then it was reset to 5/12 to allow  
25 time for a custody evaluation.

1 A Yes. A full-custody evaluation by Claudia  
2 Schwartz, Marriage and Family Therapist.

3 Q Who is that?

4 A She is a marriage and family therapist in  
5 the community that performs these services. There  
6 are several that do but I thought her fees would be  
7 more reasonable and affordable for the parties  
8 rather than a Ph.D.

9 And the outsource custody evaluation as  
10 part of it consists of a full psychological  
11 evaluation, which in this case I thought was needed  
12 due to what appeared to me to be parental  
13 alienation.

14 Q All right. And 178 is Ms. Schwartz's  
15 letter to you indicating that Natural Mother's  
16 indicating she cannot afford it.

17 A Yes. She said she was unable to afford it.

18 Q Now, there's an additional letter at 179  
19 from Ms. Steincamp. Are you familiar with her?

20 A Yes.

21 Q Who is Ms. Steincamp?

22 A She's also a marriage and family therapist  
23 that I appointed to be a parenting coordinator.  
24 That's a liaison between two parents who are  
25 high-conflict and they can't communicate effectively

1 or respectively so they communicate through the  
2 parenting coordinator, and that was going to be her  
3 role.

4 Q So this was the next move you made in an  
5 effort to ensure reunification.

6 A Yes.

7 Q And pursuant to the April 10th letter, it  
8 indicates, "Ms. Silva disagrees with everything."

9 A Are you at 179?

10 Q I am.

11 A Okay.

12 (Witness reviewing document.)

13 THE WITNESS: Yes, that's what it says.  
14 "Ms. Silva disagrees with everything" and that she  
15 smelled like pot.

16 BY MR. TERRY:

17 Q Correct. Now, did Ms. Steincamp continue  
18 in her services?

19 A Not really.

20 Q There was, however, another letter dated  
21 June 12th, 2017, at 182 from Ms. Steincamp.

22 A Yes, there is.

23 Q Would you look at that.

24 A Yes.

25 Q Okay. And can you summarize that letter?

1           A    Well, at first impression she seems to be  
2 including reports from other therapists because she  
3 talks about history and the minor child's  
4 statements. And she, to my knowledge, did not  
5 interview the child. She had no authority to do  
6 that. She was simply the liaison between the  
7 parents. "PC" for short, parenting coordinator is  
8 to just help them communicate.

9           Q    She indicates at 182 she interviewed  
10 Subject Minor and she's adamant she does not want to  
11 see Father at all.

12          A    I'm not sure she interviewed her or if  
13 she's taking -- I don't know. I didn't provide her  
14 any reports but I don't know if she's taking these  
15 comments from someone else. Because she also  
16 indicates the wrong age for the child, so I don't  
17 know what she's relying on there. I did not talk to  
18 her about it.

19          Q    Who appointed her to have any involvement  
20 in this case?

21          A    I did.

22          Q    Okay. For what purpose?

23          A    Just to be the liaison, the communications  
24 person between Mom and Dad.

25          Q    What does typically a liaison person do?

1           A    Because they can't communicate effectively  
2 with each other, they communicate with the parenting  
3 coordinator and the parenting coordinator contacts  
4 the other parent.

5                   And the parenting coordinator may have  
6 communications with both of them, like have them on  
7 a conference call or circulate emails. But they  
8 filter out the vindictive, disparaging comments, the  
9 conflict. They reduce the conflict.

10          Q    She, interestingly enough, at 183 either  
11 comes up with her own opinion or, again, is relying  
12 on somebody else, that it is apparent that Subject  
13 Minor and Mother are enmeshed.

14          A    I saw that word many times.

15          Q    You find that interesting? It's the same  
16 terminology that Ms. Weiford is using.

17          A    Yes.

18          Q    Okay. She also goes on to say "She is  
19 almost 12 and she likely knows her way around the  
20 Internet."

21          A    Oh, yeah.

22          Q    What did you construe that as?

23          A    Well, this was after I changed custody on a  
24 temporary basis.

25          Q    Correct.

1           A    And I believe what she was referring to was  
2 the posting of this video of the child crying by  
3 Mother on You-Tube.

4           Q    By that time what had been posted on  
5 You-Tube?

6           A    The video we saw today.

7           Q    The video we just saw?

8           A    Yeah.

9           MR. BRADLEY: I have to object. She's  
10 being charged with violating Nevada law and Nevada  
11 Judicial Code up to June 15th, 2016, and anything  
12 that happens after that is not really relevant to  
13 our proceedings here today.

14           I ask that the references to whether or not  
15 this was played on the Internet is -- should be  
16 stricken.

17           MR. TERRY: And I'll leave that one to the  
18 Chair --

19           JUDGE STOCKARD: I'm going to --

20           MR. TERRY: -- however, the comment about  
21 this case ended on the day of the video that we saw  
22 is incorrect. There was an order to show cause  
23 hearing that was set at a later point in time that  
24 we intend to have testimony, Mr. Chairman.

25           JUDGE STOCKARD: As to the testimony



1 regarding the video on You-Tube, I'll sustain that  
2 objection. I'll allow you -- as other issues come  
3 up, you can renew your objection, so it's sustained.

4 MR. TERRY: Thank you, Mr. Chairman. Can I  
5 have your indulgence for one second?

6 JUDGE STOCKARD: Of course.

7 BY MR. TERRY:

8 Q I want you to turn to Respondent's Exhibit  
9 book page 125. This is the same journal entry that  
10 my colleague made reference to of June 8th, 2016.

11 Do you have that?

12 A Yes, I do.

13 Q Now, within this journal entry, which is  
14 five pages long, you recount certain facts, correct?

15 A Yes.

16 Q My colleague didn't necessarily go into  
17 those, but, for example, "This case has a lengthy  
18 troubled history. Since the parties' divorce of  
19 April 26th, 2013, they've been before the court no  
20 less than nine times primarily on father's motions  
21 to enforce his custody rights, et cetera."

22 A Right.

23 Q Okay. And you go on to articulate facts  
24 that have been ascertained on this case since you  
25 have been the judge on this case, correct?

1           A    I do.

2           Q    You make reference to the Wealthy reports.

3 You make reference to Donna's House, et cetera, and  
4 the failures to effectuate reunification.

5           A    Yes.

6           Q    By this point in time had you determined  
7 that the parental alienation was obviously present?

8           A    Absolutely.

9           Q    Did you determine that Mother was  
10 interfering with the reunification process?

11          A    Yes.

12          Q    Okay. Is it for that reason that you  
13 directed that the subject minor be brought to court?

14          A    Yes.

15          Q    By the June -- date of this order, had you  
16 already -- journal entry. I beg your pardon --

17          A    Right.

18          Q    -- had you already determined that a  
19 temporary change of custody was appropriate?

20          A    Yes.

21          Q    And was it based upon that which is set  
22 forth within this journal?

23          A    These are the highlights, obviously. I  
24 couldn't draft a 10-page journal entry but I felt it  
25 important to describe the efforts that I had made to

1 try to reunify the child and the father, and those  
2 were part of my findings to temporarily transfer  
3 custody.

4 Q Now, prior to the journal entry, Dad had  
5 filed requests for order to show cause why Mom  
6 should not be held in contempt, correct?

7 A Correct. And I hadn't ruled on those. He  
8 had two motions to have her held in contempt and he  
9 had two motions to change custody.

10 Q And those hadn't been ruled on?

11 A Rather than granting or denying, I chose to  
12 deal with it therapeutically, but they were still  
13 pending.

14 Q Okay. Now, at page 128 you indicate "This  
15 Court finds that Plaintiff, Natural Mother" --

16 A Right.

17 Q -- "is in contempt of the Court's order to  
18 facilitate visitation on weekends with the father.  
19 An order to show cause shall issue."

20 A Yes.

21 Q Once again, the change of custody wasn't as  
22 a result of your, quote, finding, closed quote, of  
23 contempt. Is that correct?

24 A Not at all.

25 Q What was the change of custody based upon?

1           A    What we had been enduring for the last year  
2 was Mother withholding the child, Mother committing  
3 parental alienation, the child not going, and  
4 therapy failing because Mom wouldn't encourage and  
5 facilitate. She wouldn't participate in therapy.

6           Q    Did you feel it was in the best interest of  
7 the minor child to have a relationship with her  
8 father?

9           A    Of course.

10          Q    Okay. Had Ms. Silva ever filed anything  
11 that said, I don't want my daughter to have any  
12 relationship with her father?

13          A    Had she filed anything? I don't recall.

14          Q    Basically, a motion to terminate parental  
15 rights.

16          A    Oh, no, no, no.

17          Q    Okay. That type of document had never been  
18 filed.

19          A    No.

20          Q    And then you continue "An order to show  
21 cause is also issued against Plaintiff for not  
22 complying with the Court's orders to refinance the  
23 house or have it sold," correct?

24          A    Home equity line of credit.

25          Q    "And a further order to show cause is

1 further issued against Plaintiff for not having the  
2 subject minor tested for math proficiency."

3 Now, this is from the order that you  
4 entered in February of 2015. Is that correct?

5 A I believe. It was over a year prior.

6 Q Okay. Well, as of June 8th it would have  
7 been over a year.

8 A Yeah. It was in 2015.

9 Q Okay.

10 A There were a couple of orders.

11 Q Okay. Then you indicate at 129, "The order  
12 to show cause hearing shall be scheduled for  
13 July 28th. Status check set for July 28th at  
14 ten is hereby vacated," at page 19, correct?

15 A Correct. There wasn't a need for a status  
16 check because the order to show cause hearing had  
17 been set.

18 Q All right. On June 15th, which is the date  
19 that the panel had seen the hearing, did you --

20 A It's not a hearing.

21 Q Well --

22 A It was a child custody exchange.

23 Q Yes. Did you feel you had any other choice  
24 at that point in time other than to change the  
25 custody?

1 A No.

2 Q And why is that?

3 A I had tried everything. I'd used every  
4 resource that was available to me. There was  
5 nothing else I could do.

6 Q This was based upon your training and  
7 experience?

8 A The experts that I had, the reunification  
9 therapist, the parenting coordinator, Donna's House.  
10 I didn't have anything else I could do. I didn't  
11 have another way to address this.

12 Q Well, you could have continued it.

13 A Over --

14 Q -- on and on and on and on for another two  
15 or three years, Judge. Why didn't you do that?

16 A That's not appropriate. Because all this  
17 while the child is not having a relationship with  
18 her father and there's nothing wrong with her  
19 father.

20 Q And the longer she's away from her father,  
21 the harder reunification is going to be.

22 A There's no other way to do it. And my job  
23 is very tough and I took no pleasure in doing that.

24 Q Now, what isn't shown here is that there's  
25 a point in time -- when I say "here," the video that

1 we saw -- there was a point in time when you address  
2 the subject minor, just you and she.

3 A Yes.

4 Q And is this permissible?

5 A Yes.

6 Q Under what authority?

7 A Under the best interest of the child, the  
8 Court has great latitude. There's case law on that,  
9 that I can make any order as I deem best interest of  
10 the child.

11 Q During that nine minutes, what if anything  
12 was your exchange with the subject minor? Was it an  
13 interrogation?

14 A It was not. I did not ask her questions.

15 Q How would you summarize it?

16 A It was an opportunity for me to explain to  
17 her what was happening and why.

18 Q Did you do that?

19 A I did that, yes.

20 Q Okay. Was she upset?

21 A No.

22 Q Now, you see her crying on this video and  
23 you ultimately go back on and order that she go with  
24 Dad.

25 A Right.

1 Q Okay. Is your testimony she wasn't crying  
2 when you and she were together?

3 A Absolutely not.

4 Q Okay. Your court clerk was likewise  
5 present, correct?

6 A And my marshal.

7 Q Why did you do that out of the presence of  
8 all other parties and just you and the subject minor  
9 and not on video?

10 A Okay, that's a lot. So why did I not do it  
11 on video? Am I allowed to answer that? We don't  
12 videotape children because the parents can misuse  
13 those videos and put them on You-Tube. And I know  
14 you made an objection to that but --

15 Q Okay. That's probably good enough.

16 A -- I'm trying to protect the child. It's  
17 not in the best interest of the child to videotape  
18 her because it can be misused.

19 Second of all, as if in a child interview,  
20 which this was not a child interview, it wasn't  
21 under Chapter 50, we seal those so they can't be  
22 misused. So that's why it wasn't videotaped.

23 The reason the parents were asked to leave  
24 was that they could not influence the message that I  
25 was trying to deliver to this child. They couldn't



1 construe it for the child or comment, and I wanted  
2 the child to understand that this is my decision. I  
3 have made this decision for your best interest.

4           And I didn't want her to blame her father  
5 because I'm now temporarily placing her with her  
6 father to stop the coalition that happened. And  
7 this is a recommended treatment method of parental  
8 alienation where you temporarily issue an order of  
9 no contact by the allied parent and you put the  
10 child with the targeted parent and allow them to  
11 form a relationship without any interference.

12           They once had a great relationship, they  
13 were on their way to getting a good relationship,  
14 and they needed time to be together without her  
15 interference.

16           And so I explained to her, I'm doing this  
17 for your best interest. I said, Your father loves  
18 you very much. He just wants to spend time with  
19 you. Please give him a chance. Please decide that  
20 you -- open your heart to him and you will go with  
21 him. He misses you and he cares for you.

22           Q   Did it appear to you that he was willing to  
23 do that?

24           A   She said "I will not" three times. Crossed  
25 her arms.

1 Q Were her arms folded?

2 A Yes. And I said -- child's name -- "This  
3 is very important. You need a father in your life."  
4 And she started asking me questions and posing  
5 scenarios to me, what-if scenarios. What if this  
6 and what if this, and I answered her questions and  
7 that was it.

8 Q Ultimately she went with her father that  
9 day, correct?

10 A She did.

11 Q She never went to Child Haven?

12 A No.

13 Q Okay. And pursuant to your temporary  
14 order, she was ordered to spend the summer with her  
15 father.

16 A Yes.

17 Q Okay. And ultimately on 7/28, according to  
18 the chronology, that's when Mrs. Silva files the  
19 objections to the further hearing that was going to  
20 occur and you granted the objections, correct?

21 A Well, as to the May 12th order, because  
22 counsel, unbeknownst to me, did not have that  
23 finalized.

24 Q Never made the --

25 A The May 12th order was the Donna's House

1 exchange.

2           Q    So there was no order to show cause to  
3 proceed upon, correct?

4           A    I issued the order to show cause because I  
5 didn't know that the May 12th -- there was a  
6 handwritten order for Donna's House. That was an  
7 order.

8                   But I didn't know counsel was not  
9 successful in getting her order turned in because I  
10 had a temporary clerk and she rejected the order.  
11 But the temporary clerk didn't advise me of that.  
12 My clerk would have told me.

13          Q    Okay. If you look at 133 of the exhibits  
14 in front of you -- this is dated July 28th, 2016--

15          A    Yes.

16          Q    -- it makes reference to that.

17          A    Oh, okay.

18          Q    Look at that and see if it refreshes your  
19 memory.

20          A    Right. The order had not been signed or  
21 filed regarding Donna's House. The handwritten  
22 order had been done but counsel had not submitted  
23 the order with the findings.

24          Q    Now, the natural mother also filed a motion  
25 for reconsideration. Is that correct? That was on

1 10/4/2016.

2 A After I made my decision on the math  
3 testing.

4 Q Correct. And just so we're clear, after a  
5 hearing did you hold her in contempt on any items?

6 A At the order to show cause hearing I  
7 believe the only thing we proceeded on was the  
8 HELOC, maybe -- no, not the HELOC -- the math  
9 testing that was ordered over a year ago.

10 Q The one from February --

11 A Yes.

12 Q -- of 2015?

13 A That was the only thing she was held in  
14 contempt on and sanctioned.

15 Q And what was the sanction?

16 A \$500.

17 Q Now, by October 14th she files a motion  
18 for reconsideration, the motion is denied. Dad's  
19 countermotion for fees is granted and the court  
20 reiterates that Mom was not held in contempt for  
21 violating any visitation orders.

22 A That's correct.

23 Q Is that correct?

24 A That is correct.

25 Q Now, up to this point in time you hadn't

1 been recused from the case, correct?

2 A I was never recused.

3 Q Okay. On 10/11 of '16 is the evidentiary  
4 hearing on the modification of custody.

5 A That was when it was scheduled. It didn't  
6 take place.

7 Q Correct. And, once again, why didn't it  
8 take place?

9 A The parties stipulated that Father would  
10 continue to have temporary sole legal custody,  
11 primary physical custody and Mom would have  
12 visitation one week on a Saturday and the next week  
13 on a Sunday alternating.

14 Q And that was pursuant to stipulation?

15 A Stipulation through counsel, but the  
16 parties were present.

17 Q And both were represented by counsel?

18 A Yes. And I ordered them to parenting  
19 classes. I continued the evidentiary hearing at  
20 their request.

21 MR. TERRY: Mr. Chairman, recognizing that  
22 you've given us a period of time to present Judge  
23 Hughes' case too, I believe that would be the end of  
24 my cross-examination.

25 JUDGE STOCKARD: Okay. Mr. Bradley?

1 MR. BRADLEY: No questions.

2 JUDGE STOCKARD: Why don't we take a  
3 10-minute break.

4 (Recess taken.)

5 JUDGE STOCKARD: Back on the record on Case  
6 No. 2016-113-P in the matter of the Honorable Rena  
7 Hughes. The parties are present and the Commission  
8 is present. Mr. Bradley.

9 MR. BRADLEY: Your Honor, I just wanted to  
10 confirm that, because there were no objections filed  
11 by Respondent, that all of my exhibits are admitted?

12 MR. TERRY: That is an accurate statement,  
13 Mr. Chairman.

14 JUDGE STOCKARD: They're admitted.

15 MR. BRADLEY: Accordingly, prosecuting  
16 officer rests.

17 JUDGE STOCKARD: And just so we know from a  
18 time perspective, I show Prosecution has two hours  
19 and 56 hours remaining and Respondent has two hours  
20 19 minutes remaining.

21 MR. TERRY: I think we can do that, Mr.  
22 Chairman.

23 JUDGE STOCKARD: And, Mr. Terry, it's  
24 11:30. I'd like to break as close to noon as we  
25 can, so how do you --

1 MR. TERRY: How about if I address the  
2 Chair after we finish with our first witness?

3 Would that be permissible?

4 JUDGE STOCKARD: Yes.

5 MR. TERRY: The only other thing I would  
6 ask is I assume that now that the Chair's made  
7 rulings on all of the other exhibits, do we have a  
8 stipulation that all other exhibits are admitted  
9 other than the ones that the Chair has excluded?

10 MR. BRADLEY: Yes. I'll stipulate all the  
11 ones are admitted other than the ones you've ruled  
12 are inadmissible.

13 MR. TERRY: We, likewise, provided to the  
14 reporter three or four additional character letters,  
15 which I would like to present copies to you at the  
16 appropriate time.

17 MR. BRADLEY: And I have no objection to  
18 those.

19 JUDGE STOCKARD: And are those different  
20 than the ones that were uploaded on Friday?

21 MS. DAVIS: I think --

22 MR. TERRY: At the end of your book those  
23 are not different because we did forward those to  
24 you on Friday. So I have nothing further but I  
25 would, for purposes of the record, indicate that I

1 did provide those to the court reporter before I got  
2 the ruling from the Chair.

3 JUDGE STOCKARD: Very well. So those will  
4 all be admitted.

5 Mr. Terry.

6 MR. TERRY: We're prepared to proceed, Mr.  
7 Chairman, now that Mr. Bradley has rested.

8 JUDGE STOCKARD: Okay.

9 MR. TERRY: Our first witness would be Ms.  
10 Scaggs, your Honor, Tiffany Scaggs. She's in the  
11 witness room.

12 (Witness sworn.)

13 JUDGE STOCKARD: Mr. Terry.

14 DIRECT EXAMINATION

15 BY MR. TERRY:

16 Q Thank you, Mr. Chairman.

17 Ms. Scaggs, for the record, would you spell  
18 your first and second name, please.

19 A Tiffany, T-i-f-f-a-n-y, Skaggs,  
20 S-k-a-g-g-s.

21 Q I should have said your last name.

22 A Oh, sorry.

23 Q By whom are you employed?

24 A Clark County.

25 Q And what is your position?



1           A     District Court Courtroom Clerk II.

2           Q     And you work with Judge Hughes?

3           A     Yes.

4           Q     Would we commonly refer to you as her court  
5 clerk?

6           A     Yes.

7           Q     How long have you had that position?

8           A     With Judge Hughes?

9           Q     Yes.

10          A     Three years.

11          Q     And that would be since she became a judge?

12          A     Correct.

13          Q     And prior to that time you were a court  
14 clerk for other judges, correct?

15          A     Yes.

16          Q     I want to direct your attention to a  
17 specific case that was entitled the Silva case, and  
18 consistent with the agreement of all the parties,  
19 we're not mentioning the subject minor's name. We  
20 are referring to her as "Subject Minor."

21          A     Okay.

22          Q     Do you recall a hearing or a proceeding  
23 conducted by Judge Hughes that was not videoed and  
24 was outside of the presence of counsel and parents  
25 and just with the subject minor?

1 A Yes.

2 Q Okay. Who else was present in the  
3 courtroom?

4 A The judge, the marshal, myself, and a  
5 trainee clerk.

6 Q If you could speak up a little bit, I would  
7 greatly appreciate it.

8 A It was --

9 Q I heard you. I just wanted to make sure  
10 that the panel's hearing you too.

11 A Okay.

12 Q Did that hearing last about nine minutes?

13 A Yes.

14 Q Would you refer to it as a hearing or how  
15 would you refer to it?

16 A It was just letting the minor know what was  
17 happening and why.

18 Q Okay. What did Judge Hughes indicate  
19 during that hearing to the subject minor?

20 A That for children it's best that they have  
21 both parents in their lives.

22 Q What else?

23 A That her father had been trying to have a  
24 relationship with her and that it was mainly for  
25 children who need both parents.

1 Q How did the subject -- strike that.

2 Did Judge Hughes specifically tell the  
3 subject minor that she was going to be going with  
4 her dad?

5 A Yes.

6 Q And this was during that nine-minute period  
7 also.

8 A Yes.

9 Q What was the demeanor of the subject minor?

10 A She was upset. She was somewhat  
11 argumentative.

12 Q In what way? Tell the panel.

13 A She -- she was -- seemed like a girl who  
14 was used to getting her way, so she was, I'm not  
15 gonna do this, You can't make me do this, I don't  
16 want to go with him.

17 Q What was Judge Hughes' response to those  
18 types of comments?

19 A Just that she was the adult and she knew  
20 what was best for children and that children need  
21 both parents.

22 Q Were you also present -- Court's  
23 indulgence. I keep saying "Court." I apologize.

24 Were you also present when the natural  
25 father was allowed back into the room and attorneys,

1 et cetera?

2 A Yes.

3 Q And I will tell you that the panel has seen  
4 the video of the proceedings, not the nine-minute  
5 pause, obviously, as that was not taped.

6 Did the demeanor of the subject minor  
7 change at the point in time that Judge Hughes  
8 directed that she go with her father?

9 A At the beginning she seemed worse but then  
10 she mellowed and said, Okay, let's go.

11 MR. TERRY: Pass the witness, Mr. Chairman.

12 MR. BRADLEY: No questions.

13 JUDGE STOCKARD: Thank you.

14 MR. TERRY: We will call Judge Hoskin to  
15 the stand.

16 (Witness sworn.)

17 DIRECT EXAMINATION

18 BY MR. TERRY:

19 Q Would you please state your first and last  
20 name for the record.

21 A Charles Hoskin.

22 Q And would you spell it.

23 A C-h-a-r-l-e-s, H-o-s-k-i-n.

24 Q Getting right to the point, you are in,  
25 fact a, judge?

1 A I am.

2 Q And a judge of what?

3 A I'm a district court judge in the Eighth  
4 Judicial District in the Family Division.

5 Q How long have you held that position?

6 A Almost ten years.

7 Q Okay. Have you ever been the presiding  
8 judge?

9 A I have been.

10 Q For how many years?

11 A Four years.

12 Q Are you the current presiding judge?

13 A I am not.

14 Q Okay. Did there come a point in time when  
15 you became familiar with the newly elected Judge  
16 Hughes?

17 A Yes.

18 Q Would that have been right after election  
19 in January of 2015?

20 A No.

21 Q Do you remember when?

22 A It would have been in the summer of 1990.

23 Q Okay. Because she was a practitioner.

24 A Correct. We -- I was clerking in that firm  
25 and I believe she was an associate in the firm at

1 the time.

2 Q There came a time, however, when you were  
3 already on the bench as a judge and Judge Hughes was  
4 elected. Would that be accurate?

5 A That is correct.

6 Q And would that have been in approximately  
7 January of 2015?

8 A I believe that is correct.

9 Q Now, how many other family court district  
10 court judges were there in January of 2015?

11 A There were 19 others.

12 Q 19 others?

13 A So 20 total.

14 Q And did you have a system or an agreement  
15 of -- with new judges appointing or offering  
16 services to new judges as far as mentoring was  
17 concerned?

18 A I did.

19 Q If you need to talk to me, come see me, if  
20 you have specific issues, thing like that?

21 A That's correct.

22 Q Before I get into that, it appears to  
23 the -- may appear to the Commission that the rules  
24 on contempt that deal with family court are somewhat  
25 unique. Generally on a contempt -- are contempt

1 issues heard before a different judge?

2       A    I don't know generally. Upon objection of  
3 the party that's being accused, I believe, it should  
4 go to another judge.

5       Q    How does that work in family court?

6       A    Family court is exempt from that rule. The  
7 judge who is making a contempt finding is also the  
8 judge who hears the contempt charge.

9       Q    Just so we're clear, the judge that makes  
10 the finding of contempt or before that issues the  
11 order to show cause, is the one that sits on the  
12 issue dealing with whether or not that person is in  
13 contempt?

14      A    Yes. NRS 22.030, I think.

15      Q    Is that pursuant to a local rule?

16      A    Actually, pursuant to statute.

17      Q    Okay. That applies to family court?

18      A    Correct.

19      Q    Okay. But other than that, the general  
20 rules dealing with contempt are the same.

21      A    Yes.

22      Q    Okay. Is it oftentimes proper for a judge  
23 to order a minor to be brought to court?

24      A    Is it oftentimes proper?

25      Q    Proper. How about this: Is there

1 authority for that?

2 A Is the question, Can I have a child appear?

3 Q Yes.

4 A Yes, I can.

5 Q Okay. And I want to direct your attention  
6 now to Judge Hughes. Were there points in time  
7 where Judge Hughes came to you and did not discuss  
8 the case by way of case name but discussed it in a  
9 hypothetical?

10 A Yes.

11 Q Okay. And ultimately did you determine  
12 that one of the cases that she spoke to you about  
13 was a case called Silva --

14 A Yes.

15 Q -- the Silva case? But you did not learn  
16 that until a later point in time.

17 Would that be accurate?

18 A That would be correct.

19 Q So your discussions with Judge Hughes would  
20 have been in reference to issues that were occurring  
21 within her court that she was seeking your advice  
22 on--

23 A Yes.

24 Q -- as a senior judge?

25 A As a colleague, I would say, but I was also



1 serving as the presiding judge at the time.

2 Q And a friend?

3 A Yes.

4 Q And that was not unusual for all the judges  
5 to do?

6 A It is very common --

7 Q Okay.

8 A -- for that to occur, yes.

9 Q Speak to other judges about issues that are  
10 arising.

11 A Yes.

12 Q Do you remember a specific conversation  
13 with her under a hypothetical which you later  
14 learned to be the Silva matter where it was an issue  
15 of potential parental alienation?

16 A Yes.

17 Q Do you remember what facts she related to  
18 you?

19 A Do I remember? Do I have a specific  
20 recollection? I don't know that I could honestly  
21 say I have a specific recollection of the  
22 conversation. Although, based upon the events that  
23 occurred afterwards, would remind me of the fact  
24 that we did have a conversation and we did have a  
25 discussion.

1           Q    Do you recall what it was she was asking  
2 you about?

3           A    She was asking in a circumstance where, as  
4 I recall, one parent was not permitting contact with  
5 another parent contrary to court order, was there a  
6 way to elicit enforcement of that order.

7           Q    And did you give her suggestions?

8           A    I believe I did.

9           Q    Would you call that advice or would you  
10 call it suggestions?

11          A    I would call it a discussion --

12          Q    Okay.

13          A    -- because I don't believe that I gave her  
14 only one way of doing it. I think we talked about  
15 more than one way of accomplishing it.

16          Q    What were the ways that you discussed with  
17 her enforcing the child custody/parental alienation  
18 issue?

19          A    You could simply leave your order in  
20 enforcement. You could have an order to show cause  
21 hearing, if that was placed before you, to make the  
22 transfer take place. Threat of contempt is a way to  
23 enforce compliance with that.

24                If you've gone beyond those remedies and  
25 you have other ways of dealing with it, you can have

1 it occur at a therapeutic practitioner's office.

2 You could, perhaps, have the Family Mediation Center  
3 assist with that, and we also discussed doing it in  
4 the courtroom.

5 Q I'm sorry?

6 A We also discussed having that occur in the  
7 courtroom.

8 Q Did you also discuss the potentiality of  
9 Child Haven if the minor refused to go?

10 A Not as part of the transfer taking place  
11 but as an ultimate destination for the child if one  
12 parent would not allow the child to go and the child  
13 refused to go to another parent, Child Haven would  
14 be a place where the child could go pending further  
15 determinations, yes.

16 Q And that would be equally applicable if the  
17 child simply said, I'm not going?

18 A Yes.

19 Q And just so the panel is clear, what is  
20 Child Haven?

21 A Child Haven is -- it's adjacent to our  
22 juvenile detention facility on the same property as  
23 the family division courthouse. And it's used for  
24 individuals when the authorities don't have any  
25 place else to take them. It's not a lock-down

1 facility. They prefer that the children stay there  
2 but they could leave if they needed to.

3 I don't know that I have a great answer to  
4 that question other than it's a place where children  
5 are taken. I've heard of other circumstances where  
6 either a parent's being arrested or something's  
7 occurring and the Metro will take them to Child  
8 Haven.

9 MR. TERRY: Can I have the panel's  
10 indulgence for a moment?

11 JUDGE STOCKARD: Of course.

12 BY MR. TERRY:

13 Q Did you ever refer to Child Haven as a  
14 jail?

15 A Um, I probably would have made that  
16 reference. I don't know that that's an accurate  
17 reference but I believe that I did make that  
18 reference. It's not a place that a child would want  
19 to go. It would -- going with a parent would be  
20 preferable to going to that facility, yes.

21 Q And you made that suggestion to Judge  
22 Hughes?

23 A I believe I did. I don't have a specific  
24 recollection but I believe I did.

25 Q Back on the parental alienation issue,

1 you've indicated that there are steps that can be  
2 taken.

3           Is one of those ultimate steps a temporary  
4 change of custody if you determine that followed by  
5 an order to show cause, a more formal hearing, if  
6 you determine that one parent is purposely keeping  
7 the minor away from the other parent?

8           A    Okay. Your question went long for me, so I  
9 wanted to make sure I'm answering your question.

10           Is the question, Is it one of the steps?  
11 Is that the question?

12           Q    Is it one of the options?

13           A    It is one of the options, yes. We are  
14 tasked as family division judges with making  
15 determinations as to what's in the best interest of  
16 children.

17           Q    How do you define best interest of the  
18 minor child?

19           A    Well, the legislature has defined factors  
20 for us to make that determination.

21           Q    What are those?

22           A    Nine or ten factors found in -- well, they  
23 just changed, 125.

24           Q    If you could speak up a little bit.

25           A    Sure. I'm trying to remember the statute

1 name. 125.0035 is the factors that we consider in  
2 making that determination. Wishes of the child,  
3 nomination of parents, which is more likely to  
4 foster a relationship, mental physical health of the  
5 parents, special needs of the children.

6           The list goes on and on and it's not  
7 exclusive. There's also other factors the court can  
8 find in order to make that determination.

9           Q    Okay. And is that unusual for a temporary  
10 change of custody order to be issued?

11           Is that a fair statement?

12           A    Is what unusual?

13           Q    A temporary change of custody order.

14           A    We make temporary orders all the time.  
15 Family court is unique in the civil arena in that we  
16 are tasked with handling a case at the very  
17 beginning before we have all the evidence. We take  
18 argument and try and put a Band-Aid on family's  
19 lives in order to get them from the beginning of  
20 litigation to the end of litigation.

21           We don't always have all the information  
22 that we need to make the determination, but we're  
23 tasked with handling that procedure through that  
24 process.

25           Q    Do you rely on child therapists? Do you

1 rely on other individuals in reunification attempts?

2 A Do I rely on them?

3 Q Yes.

4 A On occasion.

5 Q Okay.

6 A Well, I guess I would -- I don't like the  
7 word "rely." Have I utilized them to assist me in  
8 getting to the facts? Yes. I don't know that I  
9 rely on that.

10 Q Listen their input?

11 A I review their input.

12 Q Are you also familiar with Donna's House?

13 A I am.

14 Q And so the panel is clear, what's Donna's  
15 House?

16 A Donna's House -- we're actually lucky in  
17 the Eighth Judicial District that we have a facility  
18 that allows us to either have exchanges or have --  
19 supervised exchanges or supervised visitation occur  
20 in a supervised setting that's still sort of  
21 connected to the court, so Donna's House is that  
22 facility that we have.

23 Q Why do you need a facility like Donna's  
24 House?

25 A Well, occasions occur quite a bit where I

1 believe that visitation should be maintained but it  
2 should be supervised many times out of an abundance  
3 of caution. Either a parent has been out of a  
4 child's life for an extended period of time or the  
5 parent is on drugs or doing something that I think  
6 would be potentially harmful for a child, I would  
7 order supervised visitation..

8           If the parents have a difficult time  
9 co-parenting or even exchanging the child, I may  
10 order that they go to Donna's House for a supervised  
11 exchange.

12           Getting back to your question why do we  
13 need that, because many times I will ask parents --  
14 I'm not a big fan of Donna's House. I think it's  
15 not the best way for parents to interact with their  
16 children. It's very sterile and foreign, it's not  
17 very family-centric.

18           But in circumstances where parents cannot  
19 agree on a supervisor or they don't have anyone in  
20 their family that can assist with the supervision  
21 that they feel is safe, then that's my point of last  
22 resort, Donna's House.

23           MR. TERRY: If I can have the panel's  
24 indulgence for a moment.

25           JUDGE STOCKARD: Of course.



1 BY MR. TERRY:

2 Q Would the wishes of a child ever be the  
3 lead determining factor in determining child  
4 custody?

5 A Are you saying are the wishes of the child  
6 the determining factor?

7 Q Yes.

8 A No.

9 Q Have you seen situations where one child  
10 doesn't necessarily want to go with one parent but  
11 there are directives that that reunification or that  
12 visitation occur?

13 A It is very often the case that children  
14 think that they know what is best. I don't know if  
15 you want me to elaborate on that.

16 Q One more time. Panel's indulgence.

17 JUDGE STOCKARD: Judge Hoskin, speak up  
18 just so we make sure.

19 THE WITNESS: I'm sorry. Usually that's  
20 not a problem for me.

21 MR. TERRY: Thank you very much. I pass  
22 the witness. Thank you, Judge.

23 JUDGE STOCKARD: Mr. Bradley?

24

25 //

## CROSS-EXAMINATION

1

2 BY MR. BRADLEY:

3 Q Judge, we can agree that contempt power  
4 must be used with the utmost restraint?

5 A I don't know that I understand the  
6 question, "utmost restraint."

7 Q Let's see. The unjustified use of contempt  
8 is prejudicial to the administration of justice.

9 We can agree?

10 A Unjustified, yes, I totally agree with  
11 that.

12 Q And judges have a responsibility to apply  
13 contempt power judiciously?

14 A I would agree with that.

15 Q And only when contempt is clearly  
16 unequivocally shown?

17 A You have to demonstrate the contempt, yes,  
18 that it's willful as well as there's a clear order,  
19 yes.

20 Q And we can agree that if there's an abuse  
21 of the contempt power constituting this conduct,  
22 then discipline is warranted?

23 A If there's an abuse of the contempt  
24 power...that discipline is warranted.

25 I guess if abuse is demonstrated, then it

1 would be a violation of probably 1.1, yes.

2           Q     Even if we assume that Ms. Silva was a  
3 pathogenic parent, does that give Judge Hughes the  
4 right to use a temporary change of custody as a  
5 sword to punish that parent's violation of  
6 visitation orders?

7           MR. TERRY: Object to the form of the  
8 question. It's not supported by the facts.  
9 Utilization of the word "punished."

10           If the question was phrased, Is it unusual  
11 to grant temporary custody, we have no objection but  
12 the way the question is phrased that it's a  
13 punishment, we object to the form of the question.

14           JUDGE STOCKARD: Mr. Bradley.

15           MR. TERRY: Your Honor, the law is very  
16 clear in Nevada that judges are not permitted to use  
17 changes in custody as a punishment for violation of  
18 things like visitation orders.

19           Judge Hughes is trying to distinguish the  
20 fact that she didn't make any permanent change in  
21 custody and just a temporary change. But I just  
22 want to confirm that Judge Hoskin agrees that it's  
23 not appropriate to use a temporary change in custody  
24 as a sword to punish parental misconduct. And I'm  
25 using the language in Nevada Supreme Court in Dogger

1 so I disagree with counsel's interpretation.

2 JUDGE STOCKARD: I'll allow the question.

3 THE WITNESS: And now I'm not clear.

4 MR. BRADLEY: Now I have to ask it all over  
5 again.

6 BY MR. BRADLEY:

7 Q Even assuming that Ms. Silva was a  
8 pathogenic parent, does that give Judge Hughes the  
9 right to use a temporary change of custody as a  
10 sword to punish Ms. Silva because she violated  
11 visitation orders?

12 A Is your -- so that I understand the  
13 question, are you asking, Is it appropriate to use a  
14 change of custody as a sanction for contempt?

15 Q No, I did not include the word "contempt."

16 A So as a sanction for...

17 Q The judge's belief that there was a  
18 violation of visitation orders. I'm not jumping to  
19 the -- whether or not there was contempt or not.

20 A Okay. So as a sanction for violating a  
21 court order that you would temporarily change  
22 custody.

23 Q Do you want me to say that again?

24 A Because I guess the way that the question  
25 is being asked I'm not clear on --

1 Q Right. I want to make sure you're clear.

2 A Right. I know you're not trying to trick  
3 me because --

4 Q Okay.

5 A -- I spend a lot of time ...

6 Q Okay. Is it appropriate for Judge Hughes  
7 to use a temporary change of custody as a sword to  
8 punish the parent's violation of visitation orders?

9 A I can think of circumstances where that --  
10 I believe that would be an appropriate temporary  
11 action, yes.

12 Q Sir, isn't the sole consideration in either  
13 a temporary or permanent change in custody to be the  
14 best interest of the child?

15 A That is what I'm thinking about when I'm  
16 answering that question.

17 Q But you're assuming that it's in the best  
18 interest of the child to punish the parent.

19 A No, I'm not. That's not why I'm answering  
20 the question that way.

21 Q Explain to me how, without my question even  
22 mentioning any determination about what's in a  
23 child's best interest, that a judge can use a  
24 temporary change of custody as a sword to punish a  
25 parent's violation of visitation orders.

1           A    The way that you've asked the question, it  
2 would not be appropriate if the sole reason for the  
3 change would be to punish a parent. I would agree  
4 with that.

5           Q    What about the primary purpose as opposed  
6 to the sole purpose?

7           A    Even primary purpose. Best interest has to  
8 be the controlling factor.

9           Q    So there has to be a determination by the  
10 judge before even making a temporary change in  
11 custody that the change is solely for the best  
12 interest of the child and not to be used as a sword  
13 to punish.

14          A    It should not be used as a sword to punish.  
15 I'm hesitating on the first part of your question  
16 because it is a temporary order and not all the  
17 evidence has been taken by the court in order to get  
18 to that position.

19                But what I am -- what I'm indicating is  
20 that we attempt with the information we have before  
21 us to make the best decision for the benefit of the  
22 child. I'm not sure -- I'm not sure if I danced  
23 around your question or I answered your question at  
24 that point.

25          Q    I think you answered it.

1 MR. BRADLEY: I don't have any other  
2 questions. Thank you.

3 JUDGE STOCKARD: Mr. Terry.

4 REDIRECT EXAMINATION

5 BY MR. TERRY:

6 Q Is it in the best interest of a minor child  
7 to have contact with both parents --

8 A It is.

9 Q -- assuming no abuse or neglect?

10 A If you can establish that they are fit  
11 parents, it is in a child's best interest, according  
12 to the supreme court and Nevada legislature, to have  
13 contact with both parents.

14 Q Is it a duty of a presiding family court  
15 judge to make sure that that is effectuated, that  
16 there is contact between both parents and the  
17 subject minor?

18 A Going from your last question to this one  
19 and considering the best interest of the minor  
20 child, my answer is yes.

21 Q And would that include sometimes forcing  
22 the child to have contact with a parent they do not  
23 wish to have contact with?

24 A Yes.

25 MR. TERRY: Nothing further.

1 JUDGE STOCKARD: Mr. Bradley?

2 MR. BRADLEY: Nothing.

3 JUDGE STOCKARD: Judge Hoskin, thank you.

4 We'll now break for lunch.

5 Is 1:00 o'clock agreeable for everyone?

6 We'll break for an hour.

7 (Recess taken at 11:55 a.m.)

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1 AFTERNOON SESSION.

2 JUDGE STOCKARD: We're back on the record  
3 in Case No. 2016-113-P. It's in the matter of the  
4 Honorable Rena Hughes. Parties are present as is  
5 the entire Commission.

6 Mr. Terry, are you ready to proceed?

7 MR. TERRY: We are, Judge.

8 JUDGE STOCKARD: You may proceed.

9 MR. TERRY: May I call our next witness?

10 JUDGE STOCKARD: Of course.

11 MR. TERRY: Judge Steel.

12 JUDGE STOCKARD: Just as a matter of  
13 housekeeping, we got these additional exhibits. Is  
14 there any objection to the admission of those?

15 MR. BRADLEY: No, sir.

16 JUDGE STOCKARD: It's Bates-stamped 0185  
17 through 0190.

18 MR. TERRY: Those are the ones I referred  
19 to this morning, Mr. Chairman, and we would ask they  
20 be admitted. They are additional character letters.

21 JUDGE STOCKARD: Hearing no objection, they  
22 are likewise admitted.

23 MR. TERRY: Thank you. We have provided a  
24 copy to the court reporter.

25 JUDGE STOCKARD: Judge Steel, if you'll

1 come up here to the chair right here next to the  
2 court reporter.

3 (Witness sworn.)

4 DIRECT EXAMINATION

5 BY MR. TERRY:

6 Q Good afternoon. Would you mind spelling  
7 your first and last name for the record please?

8 A For the record Cynthia, C-y-n-t-h-i-a -- my  
9 middle name is Diana. I go by that usually -- Steel  
10 Steel, S-t-e-e-l.

11 Q Okay. And are you, in fact, a judge of the  
12 Eighth Judicial District Court Family Division?

13 A For 21-plus years.

14 Q For 21 years strictly handling family  
15 court?

16 A Yes.

17 Q Okay. Are you familiar with Judge Hughes?

18 A I am.

19 Q Did there come a point in time in roughly  
20 January of 2015 when she was elected as judge?

21 A Yes.

22 Q And whether or not there was any formality  
23 to it or not, was there also a policy between the  
24 judges of the family court to assist new judges?

25 A Yes.

1 Q Were you, in fact, Judge Hughes' mentor?

2 A I believe so.

3 Q And how would you classify that? How would  
4 you define that?

5 A As a neophyte judge we didn't do that. We  
6 didn't have mentors. It became clear after a while  
7 of the progress of the bench that some of the newer  
8 judges coming in didn't know prior judges' meetings.  
9 They may not know prior policies. They may not have  
10 learned that we used to do it this way but now we do  
11 it that way.

12 It's different from the bench than it is  
13 being an attorney and so we decided that we should,  
14 each of us, have a judge -- a mentor when they come  
15 in to sort of guide them through and somebody they  
16 can be comfortable with and be able to discuss  
17 hypotheticals or process or how to set up a  
18 calendar, lots of different things.

19 Q You just indicated that "we would discuss  
20 hypotheticals."

21 Did that often occur between you and Judge  
22 Hughes?

23 A Yes.

24 Q Okay. And whether you are or not aware of  
25 it, we're here in reference to a matter involving a

1 Ms. Silva. And recognizing what you just said about  
2 "we talk in terms of hypothetical," did there come a  
3 point in time when Judge Hughes came to you to seek  
4 your advice or to get your input on certain matters  
5 of what she classified as parental alienation in a  
6 case that she had before?

7 A Yes.

8 Q And do you recall what it was that she  
9 discussed with you?

10 A One of the things that she discussed was  
11 asking what I would do in a certain circumstance  
12 where one parent was not permitting the other parent  
13 to have access to the child.

14 And there's so many varieties of things it  
15 could be that would cause that. It could be that  
16 there was truth to a statement of some sort of harm  
17 that might be coming to the child. It could be that  
18 there was just a fear in that parent's mind that  
19 something might happen to the child. It could be a  
20 control issue of one parent over the other parent.  
21 It could be a lot of different things.

22 So when I talked to her about it, I tell  
23 her I need to know more about what the circumstances  
24 are that are going on between the parties, because  
25 every time you work with a party, it's never the

1 same thing. If I said I always do this in that  
2 case, I would be telling a lie because I don't  
3 always do the same thing.

4 And I'm sort of a different kind of judge.  
5 I do things differently than some of the other  
6 judges do and so I always preface what I say with,  
7 Be sure and ask a couple other judges to get a real  
8 true feeling around a feeling about what you're  
9 doing.

10 But, yes, she talked to me about what do  
11 you do as a judge when parties are not cooperating  
12 with each other, not co-parenting, and I gave her  
13 some ideas of how I've handled it in different  
14 circumstances.

15 Q You just mentioned two factors. Are there  
16 more factors? What do you do in the case of X?

17 A Yeah. I look at is the parent that isn't  
18 getting the visitation safe? Are they just being  
19 annoying and trying to use the court to bludgeon the  
20 other person by bringing motion after motion after  
21 motion.

22 I look at whether or not the child -- if  
23 I've had an opportunity to talk to the child and  
24 sometimes I have and sometimes I haven't -- has said  
25 in an FMC report or something, I wish my parents got

1 along better, that tells me that that child is not  
2 afraid the other parent. If they didn't want to see  
3 the other parent they wouldn't want them to get  
4 along.

5 Q Judge --

6 A So there's lots of things that would happen  
7 in the hearing and I didn't read the file. You come  
8 to a hypothetical, here is the broad picture of  
9 what's going on and what do you do, and that's  
10 basically it.

11 Q Did judge Hughes give you a broad picture?

12 A Yes, she did.

13 Q Did she indicate that the matter had been  
14 in front of her for close to a year?

15 A I don't know if she mentioned that to me or  
16 not but I knew it had several hearings.

17 Q Did she indicate that she had made attempts  
18 at reunification with different entities and  
19 different specialists?

20 A Well, because during our conversation I  
21 said, Well, have you sent them to Donna's House?  
22 Have you looked at family therapy? I don't do  
23 family therapy but a lot of the other judges do.  
24 They will send them to somebody to get them back  
25 together again and try to get either -- whatever --

1 one of the parents needs something from the other  
2 parent to feel comfortable in the custody situation,  
3 and so a therapist can sometimes ferret that out.  
4 It doesn't necessarily have to be about the child  
5 even. It could be about some other circumstance.  
6 And so sometimes a therapist can bring it back home  
7 to just focusing on that child.

8           But ultimately, whenever we're making the  
9 decisions and we've not ever met the child, all we  
10 have is the pleadings in front of us, the parents  
11 and their attorneys who are telling us stuff. We  
12 have a third-party beneficiary out there who, by our  
13 statutes, gets to have the observation of best  
14 interest of that child.

15           And so we're sometimes in a predicament we  
16 don't know, really, which parent is telling the  
17 truth or not, and we get a feel after a while by  
18 knowing the parents and after many hearings you can  
19 sort of discern what you're up against.

20           Frequently, it becomes a situation where  
21 I've taken over a lot of cases midstream,  
22 high-conflict cases. And the court may have made a  
23 blunder, the prior court, in my mind, but they  
24 didn't appeal it so that's the law of the case.  
25 I've got to work with that law of the case.

1           And you can see how sometimes they're just  
2 trying to get the record right and they keep filing  
3 and filing to make sure the judge understands and  
4 then suddenly it becomes me against the litigant  
5 instead of the litigants working to get something  
6 done for their child. It can devolve into that so  
7 you have to try not to let that happen. That would  
8 be something I would have told her.

9           Q   Do you remember any other specific advice  
10 that you gave to Judge Hughes based on this  
11 hypothetical?

12          A   Well, I told her that I frequently will  
13 change custody pending an evidentiary hearing. If I  
14 feel the other parent is safe and that the child has  
15 no fear of that person and is going to be okay, I  
16 will change custody of a child.

17          Q   You just said "pending an evidentiary  
18 hearing."

19          A   Right. We're not allowed to do it without  
20 -- we used to do it when I was a neophyte and we  
21 would change custody. And unless somebody did an  
22 appeal on the motion it would go up. There was a  
23 decision and they could appeal it.

24          Q   So you were referring to a temporary change  
25 of custody.



1 A Yes.

2 Q And does that occur often?

3 A Yes.

4 Q But then eventually you set a hearing on  
5 permanent change of custody.

6 A I do. I usually do it at that hearing.

7 Q You set it at that hearing.

8 A Yeah.

9 Q I heard you indicate earlier that there was  
10 occasions when you talk to a minor child.

11 A Yes.

12 Q Under what circumstances?

13 A It's a learning process. I remember I was  
14 a new judge and I had some very wealthy people  
15 coming into court and they had all these reports  
16 from all these therapists and counselors and  
17 everything. And both parties said, Judge, if you  
18 just talk to her, you'll understand what's going on.

19 So I said, Okay, and took her up to my  
20 chambers, because that was the standard of the day  
21 back in the late '90s, and talked to her. And I  
22 said, Wouldn't it be okay if you and your Dad --  
23 because they were very estranged -- just had dinner  
24 once a month to start off, just to see, you know.

25 And we had our conversation and I went back

1 downstairs. And I said, I believe she's okay with  
2 doing this, and they set it up. And then I got a  
3 motion that I needed to maybe not be involved in  
4 that case anymore because I had coerced the child  
5 into something. And I had no witness. Nobody was  
6 in the room but me and her.

7           So I learned early on that I would prefer  
8 to have someone in the room with me and, generally,  
9 I won't talk to a child unless there's two  
10 attorneys, one for each parent. Otherwise, they can  
11 go to mediation and the family mediator can give me  
12 the information.

13       Q   Did you advise Judge Hughes that she could  
14 talk to the minor child?

15       A   I don't recall telling her to talk to the  
16 minor child without somebody in the room. I said it  
17 may be a good idea to talk to the minor child but I  
18 don't think I told her about how to set that up.

19       Q   Do you recall specifically telling her that  
20 you can talk to the minor child?

21       A   You can talk to the minor child. A lot of  
22 judges still do take the kids up into chambers. I  
23 just got burned and so I don't do it that way  
24 anymore.

25       MR. TERRY: Thank you. We would pass the

1 intends to present a very narrow pace. That is not  
2 our intent. And we recognize that there will be  
3 potential rulings that the Commission has to enter  
4 into. But what we're asking the Commission to do  
5 initially is wait until you hear all of the  
6 evidence, because it's not just what occurred at one  
7 hearing. It's what occurred leading up to that  
8 hearing and including that hearing and after that  
9 hearing.

10           This is a case involving what is typically  
11 referred to as -- and it has different names --  
12 parental alienation. Judge Hughes had multiple  
13 hearings on this. I believe it was nine. Part of  
14 our exhibits we will go through at the time that  
15 Judge Hughes testifies. She will detail all the  
16 procedures that she went through before we get to  
17 the subject matter, which is the complaint in this  
18 case.

19           As we do that, I'm going to ask you to look  
20 at the mother's actions, look at the minor child's  
21 actions, and look at the dad's actions. Because  
22 this was a situation where the special prosecutor is  
23 going to attempt to prove that a temporary change of  
24 custody was done as a result of Judge Hughes'  
25 holding Ms. Silva in contempt for failure to file --

1 follow her orders, and that is not the situation.

2           To the contrary, Judge Hughes may have used  
3 the language of contempt and you have before you the  
4 interrogatories and the interview with Judge Hughes.  
5 And I want you to note that there are numerous  
6 exhibits that we did not object to in this case.

7           The Silva interview, it's my understanding  
8 that special prosecutor, while giving us notice of  
9 who the witnesses were, has limited strictly to  
10 Judge Hughes, but what we wanted to present to you  
11 was the total story in this case.

12           Judge Hughes indicated that she found Ms.  
13 Silva in contempt for not bringing -- for not  
14 complying with her court orders in reference to  
15 multiple things. But the finding of contempt, while  
16 technically incorrect, had no sanction to it. Judge  
17 Hughes is authorized under the statutes to change  
18 custody if it is in the best interest of the minor  
19 child, and that's why the proceedings leading up to  
20 this are important.

21           I could go into a lot of detail in  
22 reference to the multiple hearings, but I think it's  
23 better to let the evidence show that. So with that,  
24 it's our position that Judge Hughes did not violate  
25 any of the rules in question. We are cognizant of

1 the fact that, in order for this Commission to find  
2 that she violated the rules, you have to find that  
3 she did so in a willful way, almost in a malicious  
4 way, and that we do not believe that the special  
5 prosecutor will be able to demonstrate to you.

6           The specific rule that we obviously have to  
7 look at is in order to discipline Judge Hughes, the  
8 Commission has to find that she committed willful  
9 misconduct, willfully or persistently failed to  
10 perform the duties of her office or is habitually  
11 intemperate, and I rather doubt that habitually  
12 intemperate is going to be provided to you.

13           So you have to find that this was a willful  
14 misconduct or a persistent failure to perform  
15 duties. What the special prosecutor would have you  
16 do is look at one day's worth of a journal entry and  
17 one day's worth of a meeting with a minor and a  
18 change of custody. And it is upon that that he's  
19 going to attempt to prove the rule violations.

20           So with that, we would submit it to you and  
21 we're prepared to proceed.

22           JUDGE STOCKARD: Mr. Bradley.

23           MR. BRADLEY: Your Honor, the prosecuting  
24 officer would call Judge Hughes.

25           JUDGE STOCKARD: Judge Hughes, I think

1 we'll have you sit right there by the court  
2 reporter.

3 MR. TERRY: We would move to exclude any  
4 witnesses. I do that out of an abundance of  
5 caution, Mr. Chairman. I realize my colleague has  
6 said that Judge Hughes is the only witness but ...

7 JUDGE STOCKARD: Do you have any other  
8 witnesses here?

9 MR. BRADLEY: I don't.

10 MR. TERRY: Let me make sure and make sure  
11 our witnesses are outside.

12 Yes, thank you.

13 JUDGE STOCKARD: Would you stand and raise  
14 your right hand, please.

15 (Witness sworn.)

16 DIRECT EXAMINATION

17 BY MR. BRADLEY:

18 Q Judge, can we agree that contempt power  
19 must be used with the utmost restraint?

20 A Not necessarily.

21 Q Can we agree that unjustified use of  
22 contempt is prejudicial to the administration of  
23 justice?

24 A Can you say that one more time.

25 "Unjustified," is that what you said?

1 MR. TERRY: If Judge Hughes could speak up  
2 a little bit.

3 JUDGE STOCKARD: Yes.

4 THE WITNESS: I'm sorry.

5 Unjustified.

6 BY MR. BRADLEY:

7 Q Can we agree that the unjustified use of  
8 contempt is prejudicial to the administration of  
9 justice?

10 A It can be.

11 Q And, Judge, can we agree that judges have  
12 the responsibility to apply the power of contempt  
13 judiciously and only when contempt is clearly and  
14 unequivocally shown?

15 A Judges have a duty to apply it responsibly.

16 MR. TERRY: Judge, I apologize but, again,  
17 Judge Hughes, if you could speak up a little bit.

18 THE WITNESS: I'm sorry. Okay.

19 BY MR. BRADLEY:

20 Q Judge, can we agree that the abuse of the  
21 contempt power constitutes misconduct warranting  
22 discipline?

23 A Not necessarily.

24 Q Judge, can we agree that when wielding  
25 contempt powers, judges must be very careful to

1 follow the law governing contempt?

2 A To the best of their ability.

3 Q Judge, let's look at the law of contempt in  
4 Nevada. It's fair to say the law of contempt in  
5 Nevada is not that complicated, correct?

6 A I would disagree with that.

7 Q You find it very complicated?

8 A As the new judge I found it very  
9 complicated.

10 Q Let's take a look at the law of contempt.  
11 If the contemptuous behavior occurs in a judge's  
12 presence, then that same judge can find the litigant  
13 or lawyer in contempt, correct?

14 A I believe what you're defining as direct  
15 contempt, that happens in the purview of the court.

16 Q Is my statement correct?

17 A I don't know. I'm sorry.

18 Q If the contemptuous behavior occurs in a  
19 judge's presence, then that same judge can find the  
20 litigant or lawyer in contempt, correct?

21 A Yes.

22 Q And that same judge can then impose a  
23 sentence, correct?

24 A Consistent with the law.

25 Q Now, if the contemptuous behavior does not



1 occur in the immediate view and presence of a judge,  
2 then different rules apply, correct?

3 A Yes.

4 Q In those circumstances normally an  
5 affidavit detailing the facts constituting the  
6 contempt must be presented to the judge, correct?

7 A If a movement is bringing a motion for an  
8 order to show cause seeking to hold someone in  
9 contempt, they are required to submit an affidavit.

10 Q And then additionally if the contempt is  
11 not committed in the immediate presence of a judge,  
12 then upon objection of a litigant a different judge  
13 has to preside over the contempt trial, correct?

14 A Not in family court.

15 Q Family court doesn't have to abide by  
16 Nevada Rules of Civil Procedure in the Nevada  
17 statutes?

18 A Of course they do.

19 MR. TERRY: Objection to the form of the  
20 question.

21 JUDGE STOCKARD: Sustained.

22 BY MR. BRADLEY:

23 Q You are aware there's two types of  
24 contempt, correct, civil and criminal?

25 A Yes.

1 Q And generally criminal contempt sanctions  
2 are punitive in nature, right?

3 A Generally.

4 Q And criminal contempt sanctions act to  
5 punish a party for disobeying a court directive,  
6 correct?

7 A Yes.

8 Q On the other hand, civil contempt is  
9 considered remedial in nature.

10 A Generally.

11 Q And the purpose of that is to coerce a  
12 party into future compliance with court orders.

13 A Yes.

14 Q And any civil sanctions imposed will  
15 terminate upon the offending party's compliance with  
16 the court order at issue.

17 A Not necessarily.

18 Q Civil contempt allegations need only be  
19 proven by clear and convincing evidence?

20 A Indirect contempt for civil contempt is  
21 clear and convincing evidence.

22 Q Whereas, criminal contempt sanctions are  
23 intended to punish for past disobedience, correct?

24 A Yes.

25 Q And not to compel future compliance,

1 correct?

2       A     Yes.

3       Q     And in criminal contempt proceedings the  
4 litigant is entitled to the assistance of counsel?

5       A     Yes.

6       Q     And the allegations have to be proven  
7 beyond a reasonable doubt, correct?

8       A     Yes.

9       Q     And under NRS 22.100, contempt is only  
10 punishable by fine, jail or both, correct?

11      A     Civil contempt or indirect contempt is  
12 punishable by sanctions, attorney's fees, and fines  
13 or any combination of the above.

14      Q     I'm talking about NRS 22.100.

15      A     You can sanction by all three. There are  
16 monetary sanctions, \$500, attorney's fees, or  
17 incarceration or any combination thereof.

18      Q     And we can also agree that a judge can't  
19 use a change of custody as a sword to punish  
20 parental misconduct, correct?

21      A     There is case law on that.

22      Q     There is.

23      A     Yes.

24      Q     So you can agree with that statement, can't  
25 you?

1 A Yes, yes.

2 Q And --

3 A And I would never do that.

4 Q And this is not a law school exam but do  
5 you remember the names of those cases?

6 A Not off the top of my head.

7 Q Fair enough. We can agree that you have a  
8 sworn duty to uphold the law?

9 A Of course.

10 Q All right. And the rules on contempt are  
11 pretty straightforward as we've just gone through  
12 them. Wouldn't you agree?

13 A No, I wouldn't.

14 Q Okay. Let's turn to the Silva case. Ms.  
15 Silva and Mr. Silva were divorced in 2013, correct?

16 A That's what I recall.

17 Q And they had one minor child?

18 A Yes.

19 Q And I think we should, just for the purpose  
20 of this hearing, refer to her as "the daughter" or  
21 "the child" and not use her name.

22 Would that be agreeable?

23 A I will agree with that, yes.

24 Q Okay. Thank you. And in the original  
25 decree of divorce the court granted the mother

1 primary physical custody?

2 A That's my recollection.

3 Q And the father received weekend visitation?

4 A Yes.

5 Q All right. And then in approximately 2015  
6 you basically, I think as your counsel phrased it,  
7 inherited the Silva case from another judge.

8 A Correct.

9 Q Okay. And the parties began litigating a  
10 number of issues?

11 A Yes.

12 Q One was the well being of the child,  
13 correct?

14 A I don't know what you mean by "the well  
15 being of the child." There were specific  
16 allegations.

17 Q Okay. One of the other issues was whether  
18 or not the mother was interfering with the father's  
19 visitation rights, correct?

20 A Initially it was not, that I recall.

21 Q Would you open the binder, the prosecuting  
22 officer's exhibits. I'd ask you to turn to Exhibit  
23 5. It's the Tab 5.

24 A Okay.

25 Q So Exhibit 5 is your court minutes from

1 May 12th, 2016. Do you see that?

2 A Yes.

3 Q Okay. And if you would, turn to the second  
4 page. The Bates stamp number at the bottom is  
5 Hughes 83.

6 A Yes.

7 Q All right. And then under the section it  
8 says, "Court ordered the following, temporarily  
9 Defendant shall receive visitation with the child  
10 from Saturday at 11:00 a.m. until Sunday at 5:00  
11 p.m. beginning Saturday, May 14th, 2016."

12 That's what it says, correct?

13 A That's what it says.

14 Q All right. And then the order goes on to  
15 say at No. 2, "The parties shall exchange the child  
16 under supervision through Donna's House. Plaintiff  
17 shall drop the child off at Donna's House, then  
18 leave. If the child does not go on the visitations,  
19 Plaintiff will be held in contempt of court and the  
20 child will be with the defendant for the entire  
21 summer break from school," correct?

22 A That's what this says. But you also have  
23 to be mindful, counsel, that this is a court clerk  
24 writing this. This is not the official record.

25 Q Are you saying that this is incorrect?

1       A    I'm saying that it's not complete, because  
2 these notes are meant to remind the judge of what  
3 occurred at the hearing. This is never the official  
4 record.

5       Q    So --

6       A    And this is written by a court clerk who is  
7 summarizing what is happening. But oftentimes there  
8 are mistakes -- I'm not saying she made a mistake  
9 but I'm just reminding the Commission -- and the  
10 judges on the Commission know this -- this is not  
11 the official record.

12       Q    Judge, for our purposes today you knew that  
13 you were going to come in and testify regarding this  
14 case, correct?

15       A    Of course.

16       Q    And you reviewed the records before you  
17 came in here today, didn't you?

18       A    Mostly, yes.

19       Q    Okay. Tell me what is incorrect on page  
20 83, if anything.

21       A    On page 83, okay. I have to read the whole  
22 page.

23       Q    Under the court order.

24       A    Oh, under the court orders.

25       Q    Tell me --

1 A It's not complete. That's my testimony.

2 Q What material facts are omitted from your  
3 court order on page 83?

4 A The history of this case and how we got to  
5 this point.

6 Q What is incorrect about your order  
7 excluding the history?

8 A I did order them to exchange the child  
9 under the supervision of Donna's House. I did order  
10 Plaintiff to drop off and leave. I did tell the  
11 plaintiff that she must facilitate the visitations.  
12 I did tell her that the child would go for the  
13 entire summer if she did not facilitate visitations.  
14 And I may have said that, You are at risk of being  
15 held in contempt, but I didn't hold her in contempt  
16 on that date.

17 Q Turn to Tab 7.

18 A I'm there.

19 Q All right. Now, Tab 7 are your court  
20 minutes from June 8th, 2016. Is that correct?

21 A That is correct.

22 Q And it's a fairly lengthy set of court  
23 minutes but I'd ask you to turn to Bates No. at the  
24 bottom right-hand corner 89. Are you there?

25 A I am there.



1           Q    I'd like to read to you the fourth, fifth  
2 and sixth paragraphs and tell me if I'm reading it  
3 accurately. "This Court finds that the mother has  
4 failed to facilitate father's visitation with the  
5 minor child. Because mother has failed to  
6 facilitate visitation with father, she has violated  
7 his parental rights and the order of this court.

8                "Mother was advised at the last court  
9 hearing that, if she did not compel the minor child  
10 to visit with father on the weekends, the child  
11 would spend the entire summer with the father.

12               "Based upon the reasons stated above, it is  
13 hereby ordered that this Court finds Plaintiff is in  
14 contempt of the court's orders to facilitate  
15 visitations on weekends with the father. An order  
16 to show cause shall issue."

17               Did I read that correctly?

18           A    Yes, you did.

19           Q    Okay. And that is an accurate statement of  
20 what occurred on June 8th, 2016, correct?

21           A    Well, this is my writing. There was no  
22 hearing.

23           Q    It's a correct statement of the order that  
24 you issued.

25           A    It's a journal entry so it's not

1 technically on order.

2       Q    It is a correct statement of what your  
3 intentions were.

4       A    Yes.

5       Q    And then if you turn to the next page,  
6 Bates 90, that first paragraph, it says "Mother  
7 shall bring the minor child to Department J  
8 Courtroom 4 on June 15th, 2016, at 1:30. If Mother  
9 fails to deliver the minor child to the courtroom on  
10 June 15th, 2016, she shall be deemed in further  
11 contempt of the court and sentenced to 25 days in  
12 incarceration."

13               When you used the word "further," that  
14 means that you already had determined to hold the  
15 mother in contempt, correct?

16       A    That's incorrect.

17       Q    What does the word "further" mean in that  
18 sentence, then?

19       A    It means that I found there was a prima  
20 facia showing that she was in contempt, that she had  
21 violated my court orders by not facilitating visits,  
22 by not complying with the court's orders for HELOC,  
23 but not having the minor child map tested and order  
24 to show cause issued.

25               So this is yet another example of I find

1 there is a prima facia showing of contempt but she  
2 was never held in contempt.

3 Q Okay. We can all agree the words "prima  
4 facia" aren't anywhere in Exhibit 7, right?

5 A I don't think it's helpful to litigants to  
6 use legalese when I write journal entries. I don't  
7 think they would know what "prima facia" meant.

8 Q Could you have thought of non-legalese  
9 words that would have conveyed to Ms. Silva the fact  
10 that you hadn't already determined that she was in  
11 contempt?

12 A Again, I determined there was a prima facia  
13 showing of contempt, which is a court order, a valid  
14 court order, that she had notice of the valid court  
15 order, and that she had not complied with the valid  
16 court order.

17 I have to make a finding that she has  
18 violated my court orders in order to issue an order  
19 to show cause. I can't issue an order to show cause  
20 based on nothing. I have to make findings. This  
21 was a finding that I made.

22 Q Okay. So we can agree you found that Ms.  
23 Silva was in contempt of court?

24 A That's what it says.

25 Q Okay. And then if you'd turn to Tab 8,

1 now, this is an order, correct? It's not the --

2 it's an actual order?

3 A Correct.

4 Q And it's an order that you signed at page  
5 96, correct?

6 A I did.

7 Q Okay. And it looks like it was written by  
8 the lawyer for the father. Would that be correct?

9 A Yes.

10 Q Before you sign an order written by one of  
11 the litigant's attorneys, do you read it carefully?

12 A I try to.

13 Q And in preparation for the hearing today,  
14 did you see anything that was incorrect in your  
15 order that you signed on June 14th, 2016?

16 A I didn't review this but I'm assuming that  
17 it's correct.

18 Q Do you have any reason to believe it's not  
19 correct?

20 (Witness reviewing document.)

21 THE WITNESS: Right, because it says that I  
22 admonished her and I say "She may be held in  
23 contempt," that's correct. She's failed to  
24 facilitate visitations.

25 BY MR. BRADLEY:

1 Q We'll be going through that.

2 A Oh, okay. I'm sorry.

3 Q If you'd turn to page five of the order,  
4 which is page 95 of the Bates on the bottom  
5 right-hand side --

6 A Yes.

7 Q -- is it correct that the order you signed  
8 states, "The Court finds that Mother has failed to  
9 facilitate Father's visitation with the minor child.  
10 Because Mother has failed to facilitate visitation  
11 with father, she has violated his parental rights  
12 and the orders of this court.

13 "Mother was advised at the last hearing  
14 that if she did not compel the minor child to visit  
15 with Father on weekends, the child would spend the  
16 entire summer with Father. The Court further finds  
17 that Plaintiff is in contempt of the Court's order  
18 to facilitate visitation on weekends with Father,"  
19 and then, "good cause appearing," it says, "It is  
20 hereby ordered that based upon the reasons stated  
21 above, an order to show cause shall issue."

22 A Yes.

23 Q I'll skip the part about the HELOC and the  
24 math proficiency. And then at the bottom it says,  
25 "It is further ordered that Mother shall bring the

1 child to Department J, Courtroom 4, on June 15th,  
2 2016, at 1:30. If Mother fails to deliver the child  
3 to the courtroom on June 15th, 2016, she shall be  
4 deemed in further contempt of court and sentenced to  
5 25 days' incarceration. If Mother fails to appear,  
6 a bench warrant shall issue."

7           Now, this is a correct statement of the  
8 order that you issued, correct?

9           A     Yes.

10          Q     And it does state that you found --  
11 finds -- my verb tense it wrong -- it does state,  
12 "The court Further finds that Plaintiff is in  
13 contempt," correct?

14          A     I made the findings above in order to base  
15 the order to show cause from and this would be a  
16 direct contempt, as we discussed earlier. The last  
17 paragraph, if she fails to deliver the child to my  
18 courtroom, that would be direct contempt.

19          Q     All right.

20          A     So it's two different things.

21          Q     And "deemed in further contempt," that  
22 indicates that to be in further contempt you already  
23 have to be in contempt, right?

24          A     I think I testified that I found she was in  
25 contempt sufficient to issue an order to show cause.

1 That was my intent, to make that finding.

2 Q And, again, you earlier said it was a prima  
3 facia case but nowhere in this document did you use  
4 the word "prima facia," correct?

5 A I didn't draft this document.

6 Q And you didn't -- there were no other words  
7 indicating it was an initial finding or a prima  
8 facia finding, right?

9 A It looks like she just copied -- I'm sorry.  
10 I didn't mean to interrupt you. It looks like she  
11 just copied my court journal entry --

12 Q And --

13 A -- because there mistakes in here.

14 Q If a judge reviews a proposed order written  
15 by a lawyer that's incorrect, the judge certainly  
16 can correct it or tell the lawyer how to correct it.

17 A I can certainly do that.

18 Q Right. Okay.

19 A Can I have some water, please?

20 Q Sure.

21 So if you would turn to Tab 9, please,  
22 these are more of your court minutes, correct?

23 A Yes.

24 Q And this one's dated June 15th, 2016,  
25 correct?

1 A Yes.

2 Q If you'd turn to page two, does it state,  
3 "Due to mom's failure to facilitate visitation and  
4 compel the child to visit with Dad, the Court is  
5 ordering Dad shall have temporary sole legal and  
6 sole physical custody," correct?

7 A That's what it says.

8 Q And then moving down to No. 4, does it also  
9 say, "Mom shall have no contact with Minor"?

10 A Yes.

11 Q We can agree that's a pretty significant  
12 penalty, not to have any contact with your child,  
13 can't we?

14 A It's not a penalty.

15 Q Should we call that a sanction?

16 A No.

17 Q Okay. And it's fair to say that the reason  
18 that you changed custody is that the mom failed to  
19 follow the visitation orders that you'd issued,  
20 correct?

21 A That's part of it, yes.

22 Q If you'd turn to Tab 10, this is an order  
23 as opposed to minutes, correct?

24 A Yes.

25 Q And you did sign this one, correct?



1 A I assume so.

2 Q If you'd turn to page 105 --

3 A Yes, I signed it.

4 Q All right. And this one's dated June 15th,  
5 2016, correct?

6 A Yes.

7 Q And if you'd turn to the second page of the  
8 order Bates 101 --

9 A Okay.

10 Q -- in the second paragraph, does it state,  
11 "The Court further finds that Wealthy was advised at  
12 the last hearing, if she did not facilitate weekend  
13 visitation between Rogerio and the minor child as  
14 previously ordered, she would be held in contempt of  
15 court and Annie would spend the summer in Rogerio's  
16 custody.

17 "Good cause appearing, it is hereby ordered  
18 that based upon Wealthy's failure to facilitate  
19 Rogerio's relationship with Annie and Wealthy's" --  
20 I'm sorry -- "the minor child and Wealthy's decision  
21 not to allow the minor child to have any visitation  
22 with her father, Rogerio is hereby awarded temporary  
23 sole legal and sole physical custody of the minor  
24 child effective immediately."

25 It says that, correct?

1           A    Yes.

2           Q    So it's clear that because Ms. Silva failed  
3 to comply with your visitation order that you  
4 changed custody to the father, correct?

5           A    And it's also correct that I found it was  
6 not in the child's best interest what Mother was  
7 doing. That's the paragraph at the top of the page.

8           Q    Okay.

9           A    On the first page I find that she committed  
10 extreme parental alienation and she's precluded  
11 Rogerio from having a relationship with his  
12 daughter.

13          Q    And you did sign that order, correct?

14          A    Yes, I did.

15          Q    And, again, it doesn't say anything about  
16 prima facia, does it?

17          A    I believe in all of the orders there is no  
18 mention of prima facia.

19          Q    Okay. So because you didn't include the  
20 words "prima facia," how would a litigant like Ms.  
21 Silva know that she wasn't already found in contempt  
22 of court when you kept repeatedly -- I think we've  
23 looked at five different documents -- that say you  
24 find her in contempt? How would she know that she's  
25 only being prima facia held in contempt?

1           A     Well, she probably wouldn't know what  
2 "prima facia" meant, first of all. That's why I  
3 don't use the term with litigants. Again, legalese,  
4 they teach us in judicial college not to use that,  
5 to speak plainly.

6           Q     What does "prima facia" mean in lay terms?

7           A     I already said that. Valid court order,  
8 the party has notice of the order, and there's clear  
9 and convincing evidence that the party has violated  
10 the court's order.

11          Q     But if a judge goes ahead and finds  
12 somebody in contempt and skips those steps --

13          A     I didn't skip those steps.

14          Q     If, judge.

15          A     Oh, theoretically.

16          Q     And skips those steps and imposes a  
17 sanction, then the reality is the person is still  
18 found in contempt.

19          A     I didn't skip those steps and I didn't  
20 sanction her for contempt.

21          Q     That's something that I find interesting,  
22 is that you don't feel --

23               MR. TERRY: Object to the form of the  
24 question --

25               JUDGE STOCKARD: Sustained.

1 MR. TERRY: -- respectfully.

2 BY MR. BRADLEY:

3 Q It's your testimony that you did not  
4 sanction Ms. Silva, correct?

5 A Not until we got to the math testing.

6 Q You did not sanction -- it's your testimony  
7 you didn't sanction Ms. Silva for violating the  
8 visitation orders, correct?

9 A That is correct.

10 Q So prior to your use of the words "I find  
11 her in contempt," Ms. Silva enjoyed being the  
12 primary physical custodian of her daughter, correct?

13 A She misused her custodial position.

14 Q Can you answer my question?

15 Prior to you stating on the record --

16 A Okay. I don't mean to interrupt you.

17 Q Prior to you stating on the record that you  
18 find her in contempt, Ms. Silva enjoyed the right to  
19 be the primary physical custodian of her daughter,  
20 correct?

21 A I wouldn't agree with "enjoyed. I would  
22 agree that there was a court order that said she was  
23 the primary physical custodian.

24 Q And in that exercise of her right, she had  
25 the child, presumably, at least Monday through

1 Friday, correct?

2       A    She had the child solely.

3       Q    And then once you used the words, "I find  
4 her in contempt," then suddenly she was no longer  
5 the primary physical custodian. In fact, you gave  
6 custody of the minor child to the father completely,  
7 100 percent, correct?

8       A    I had been finding her in contempt for a  
9 year.

10       Q    Just answer.

11       A    No, that's not correct.

12       Q    Okay. So prior to the time that you issued  
13 these orders in early June, the mother had the right  
14 to be with her child at least Monday through Friday.

15               We can agree on that, correct?

16       A    The court order gave her that custodial  
17 time.

18       Q    Right. And then once you found Ms. Silva  
19 in contempt -- I'm sorry. You didn't really find  
20 her in contempt. You just stated in the orders that  
21 you found her in contempt, but once you wrote down  
22 those words, then you changed custody so the father  
23 got sole physical custody, right?

24       A    Your analysis is incorrect, counsel,  
25 respectfully.

1 I found her in contempt in October of 2015  
2 for not facilitating visitation, so this was not a  
3 new finding. You have to go back all the way to  
4 early in the case. This is not, Oh, at the last  
5 minute I changed custody. I had been finding her in  
6 contempt for a year.

7 Q I believe that you answered in your  
8 interrogatories that it was June 8th when you  
9 decided you were going to make the change.

10 Is that correct?

11 A That is correct.

12 Q All right. So on June 8th Ms. Silva went  
13 from having primary physical custody to having no  
14 physical custody, correct?

15 A I believe it was June 15th.

16 Q Okay. But the order was June 15th, but on  
17 June 15th we can agree that Ms. Silva's custody went  
18 from being the primary physical custodian to having  
19 no physical custody, correct?

20 A Temporarily, correct.

21 Q And as of June 15th the father had sole  
22 legal custody too, right?

23 A Temporarily, correct.

24 Q And that the mother was ordered not to have  
25 any contact with her daughter, correct?

1           A     Temporarily, correct.

2           Q     The word "temporary," I realize you put  
3 that in the title of the order but the order had no  
4 end date, did it?

5           A     What order?

6           Q     I'm sorry. The order that we're looking at  
7 on Exhibit 10, page 101.

8                   MR. TERRY: I'll object to the form of the  
9 question, the show cause hearing was also set for a  
10 later point in time where that would have been an  
11 issue.

12                   MR. BRADLEY: Your Honor, I appreciate  
13 counsel's helping the witness with the answer, but I  
14 just asked whether there was end date as to the  
15 change of custody.

16                   JUDGE STOCKARD: I'm going to allow the  
17 question.

18                   THE WITNESS: There was an evidentiary  
19 hearing regarding custody set for October 11th at  
20 1:30. So at that time I would make further orders  
21 on custody.

22 BY MR. BRADLEY:

23           Q     Okay. There is no date that changes  
24 custody in this order other than the fact that  
25 you're going to set another evidentiary hearing,

1 correct?

2 A I don't understand.

3 Q It doesn't say that the father's awarded  
4 temporary sole legal and physical custody for the  
5 next four weeks, correct? There's no end date. All  
6 you did --

7 A This is an evidentiary hearing.

8 Q All you did was set an evidentiary hearing,  
9 right?

10 A That's why I set it, to make further  
11 orders.

12 Q Right. There's no end date in the order.  
13 All you did is set a hearing date, correct?

14 A The end date is the date I have the  
15 evidentiary hearing --

16 Q Okay.

17 A -- because right now it's a temporary order  
18 and --

19 Q Because you have a --

20 JUDGE STOCKARD: And, Judge, if you'll just  
21 let him finish his questions.

22 THE WITNESS: Okay. I'm sorry.

23 BY MR. BRADLEY:

24 Q Just because you set a hearing date doesn't  
25 mean you're going to change the order, does it?



1       A    I have to keep an open mind and take  
2 evidence at the evidentiary hearing before I make a  
3 permanent custodial order.

4       Q    So the answer is, Just because you're  
5 scheduling a hearing doesn't mean you're going to  
6 change custody, correct?

7       A    I don't understand. I'm sorry.

8       Q    Unless and until you change custody, this  
9 order remains in effect, correct?

10      A    Yes. It's a temporary order, though.

11      Q    Think about this, though.

12      A    I know how you're trying to spin it.

13      Q    Until you issue another order, this order  
14 remains in effect, correct?

15      A    Yes, temporarily. My intent -- I'm sorry.

16      Q    If you had scheduled the evidentiary  
17 hearing two years out, it would be --

18           MR. TERRY: Objection, speculative, not  
19 consistent with the facts.

20           JUDGE STOCKARD: Sustained.

21 BY MR. BRADLEY:

22      Q    Just because you set an evidentiary hearing  
23 out doesn't mean that this order isn't valid and  
24 effective unless and until you issue another order,  
25 correct?

1           A    A temporary order is a valid order but it  
2 means it's temporary in nature and it will be  
3 reviewed more fully based upon the evidence.

4           Q    Just because there's a hearing didn't mean  
5 it's going to be revised, correct?

6           A    Incorrect.

7           MR. TERRY:  Objection, speculative.

8           THE WITNESS:  It's incorrect.

9           JUDGE STOCKARD:  Judge, when there's an  
10 objection, please don't answer until I rule.

11          THE WITNESS:  I'm sorry.

12          JUDGE STOCKARD:  And I understand, but I  
13 want to make sure that we keep this orderly.

14          THE WITNESS:  Okay.

15          JUDGE STOCKARD:  I'm going to allow that  
16 question.

17          THE WITNESS:  I'm sorry.  Say it again.

18 BY MR. BRADLEY:

19          Q    My point is that just by setting a hearing  
20 doesn't change the order.  The order remains in  
21 effect unless and until you change the visitation  
22 and custody order, correct?

23          A    Can you say that one more time please?

24          Q    Let me try a different way.  You set a  
25 hearing for October in this case, correct --

1 A (Witness nods.)

2 Q -- so at a minimum this temporary order was  
3 going to last about four months, right?

4 A Yes.

5 Q Okay. Now --

6 A Unless someone brought a motion and then I  
7 would consider it.

8 Q And frequently hearings get postponed,  
9 correct?

10 A I would say if the parties stipulate, but  
11 typically I don't postpone them.

12 Q If the hearing was postponed, this order  
13 would remain in effect. Say it got postponed into  
14 November. That order would still remain in effect  
15 is my point.

16 A Well, in fact, the parties stipulated to  
17 postpone this order --

18 Q That wasn't the question.

19 A I know what your question was, but my  
20 answer is what my answer is.

21 Q It would be helpful if you'd answer my  
22 question and not a different one.

23 A I'm answering your question. No. I'm  
24 sorry. I am answering your question.

25 If parties stipulate, as they did in this

1 case, the date got moved. They did stipulate to  
2 move this hearing and I accept their stipulation.

3 Q If you would turn to Exhibit 4, which are  
4 your answers to interrogatories, and I'd ask you to  
5 turn to the Bates stamp number on the bottom 55.

6 And in Interrogatory 3 does the question  
7 state, "Please explain how your findings of the  
8 complaint and the in contempt complies with Nevada  
9 Revised Statutes regarding finding a party in  
10 contempt for violating a court order."

11 Answer -- and I'll just read the first  
12 paragraph -- "NRS 22.0103 deems contempt to be  
13 'disobedience or resistance to any lawful writ,  
14 order, rule or process issued by the judge in  
15 chambers.'."

16 "Ms. Silva willfully violated my orders to  
17 facilitate Mr. Silva's custodial time against the  
18 best interest of the child and in violation of Mr.  
19 Silva's constitutional parental rights," correct?

20 A That's what that says.

21 Q So in your answers to interrogatories, that  
22 does indicate that you did find her in contempt, not  
23 a prima facie finding of contempt, right?

24 A I don't see the difference.

25 Q You don't?

1 A No.

2 Q Turn to Exhibit 14, the interview you gave  
3 to the Commission investigator. Do you see that?

4 A I'm there.

5 Q And if you turn within that document to  
6 page 167, tell me when you're there.

7 A I'm there.

8 Q About halfway down the line numbers starts  
9 out "25:27, AW," who is the investigator. And the  
10 question was asked, "Did you find the mother in  
11 contempt for failing to facilitate the visitation?  
12 "RH" -- that's you, you answer. "I did."

13 A Uh-huh.

14 Q So in that answer did you explain, No, I  
15 really didn't. It was just a prima facia order, or  
16 was that pretty clear indication you admitted you  
17 found the mother in contempt?

18 A Again, I don't see the difference. You  
19 have to make a finding of contempt in order to issue  
20 an order to show cause.

21 Q Then I think you went on to say that -- if  
22 you turn to the next page -- middle part of the page  
23 at 2657, the question "Now, your finding -- just a  
24 finding of contempt for failing to facilitate the  
25 visitations, okay, does that violate the mother's

1 due process?"

2           Your answer, "She had no consequences for  
3 that. She never suffered any consequences for that.  
4 I probably found that she violated my orders but I  
5 didn't sanction her. I didn't, obviously,  
6 incarcerate her here."

7           That's what the question and answer said?

8       A    Yes.

9       Q    And you don't find that by changing custody  
10 from the mother, who used to have primary physical  
11 custody, to awarding sole physical custody, sole  
12 legal custody and no contact for the mother, you  
13 don't find that to be a sanction at all?

14       A    No, that was not the reason for it.

15       Q    When you use the words you find her in  
16 contempt, what legal standard were you applying?

17       A    Clear and convincing evidence.

18       Q    And that's the appropriate standard of  
19 proof for a civil contempt, correct?

20       A    That's correct.

21       Q    And do you think that by making a temporary  
22 change of custody that's not using the temporary  
23 change in custody as a sword to punish parental  
24 misconduct?

25       A    I did not do that.

1           Q    We can agree that the Nevada Supreme Court  
2 has made it extremely clear in cases Sims and Lewis  
3 and Hager that it is absolutely forbidden to use a  
4 permanent change in custody as a sword to punish  
5 parental misconduct, correct?

6           A    I haven't read those cases in a while so I  
7 can't agree with your analysis. I am aware that  
8 there is case law that you do not change custody as  
9 punishment for parental misconduct.

10          Q    I believe in your answers to  
11 interrogatories you indicated that you made the  
12 temporary change in custody pursuant to NRS  
13 125(c).0045, right?

14          A    I would have to look.

15          Q    I'll represent to you that's what your  
16 answer said.

17          A    Okay.

18          Q    And I guess my question is -- and I know  
19 you do this work day in, day out -- but that section  
20 .0045 still requires a finding that it's in the best  
21 interest of the child to make a change in custody,  
22 correct?

23          A    On a temporary basis?

24          Q    Correct.

25          A    Yes.

1 Q You have to find that it is in the child's  
2 best interest to make even a temporary change in  
3 custody, correct?

4 A Yes. And I did.

5 Q Okay. And another section, the section  
6 that comes right before 0045 is 0035 that delineates  
7 all the factors that a change is supposed to take  
8 into account in determining whether or not it's in  
9 the child's best interest, correct?

10 A That is a non-exclusive list but that is a  
11 partial list.

12 Q Okay. And there are half a dozen factors  
13 of this list of things that a judge should consider  
14 in determining best interest, correct?

15 A I think the statute lists that many, but  
16 that's not all of the factors.

17 Q Correct. But one of the things is, for  
18 example, the wishes of the child if the child is of  
19 sufficient age and capacity to form an intelligent  
20 preference as to his or her custody. Is that one of  
21 the factors you put in your order about why you find  
22 it in the minor child's best interest to have  
23 custody changed?

24 A That was not in my order.

25 Q Okay. Did you put in any factors other



1 than the fact that there was a lack of the mother  
2 complying with the father's visitation?

3       A    I believe lack of contact with the father,  
4 failure to facilitate visitation, lack of  
5 participation and reunification therapy, yes, I  
6 believe there were many things.

7           That June 8th court minute or journal  
8 entry details all of the steps I took  
9 therapeutically that were not supported by the  
10 mother, so those were part of my findings.

11       Q    All of the things the mother did wrong  
12 appear more to be a sword against the mother's  
13 parental misconduct than a finding that it's  
14 actually in the child's best interest.

15           Wouldn't you agree?

16       A    That's incorrect completely.

17       Q    Do you have any regrets about the manner in  
18 which you treated Ms. Silva on June 15th, 2016?

19       A    I regret she put me in that position.

20       Q    Okay. We're looking at -- do you have any  
21 regrets about your conduct?

22       A    No. I did what I had to do.

23       Q    And --

24       A    It wasn't fun but I had to do it.

25       Q    So on May 12th you had ordered Ms. Silva

1 to facilitate visitation with the father on

2 May 14th, right? We've gone through that.

3 A "May 12th," did you say?

4 Q Yes. May 12th you had the hearing and the

5 weekend coming up was May 14 and 15th and you

6 ordered a visitation to be facilitated through

7 Donna's House, correct?

8 A That is correct.

9 Q All right. And then you didn't have

10 another hearing until June 15th, correct?

11 A Yes.

12 Q All right. And so after you entered the

13 order on May 12th, you received a report from

14 Donna's House indicating that the mother did not

15 facilitate the visitation that you had ordered for

16 the 14th and 15th of May, correct?

17 A I don't know the date that they went,

18 because I can't recollect. I'd have to look at the

19 letter.

20 Q You know, I want you to be sure on the

21 dates. Why don't we go back to Exhibit 6, the

22 second page, and maybe that'll refresh your

23 recollection as to dates.

24 A Can you give me a Bates number.

25 Q 83.

1           A    I go from six to seven.

2           Q    It's Tab 5, I apologize.

3           A    This isn't Donna's House.

4           Q    This is a May 12th -- are you at tab -- is  
5 this your minutes on the second page about your  
6 order about visitation?

7           A    Right. But it's not the Donna's House  
8 letter. Oh, are you talking about the referrals?

9           Q    I'm trying to refresh your recollection,  
10 Judge, on the dates. You indicated you weren't  
11 sure.

12          A    Okay.

13          Q    So this minute order is dated May 12th and  
14 you're ordering visitation starting on Saturday,  
15 May 14th going into Sunday May 15th, right?

16          A    Well, Donna's House requires orientation.  
17 I don't know if they had to do orientation again, so  
18 it may not have been a couple days later. It may  
19 have been the next week. I don't know the dates.  
20 That's what I'm saying. I don't know that it's  
21 important that those were the dates but Donna's  
22 House --

23          Q    After you issue -- let's try it a different  
24 way.

25                   After you held this hearing on May 12th and

1 you ordered another visitation at Donna's House, you  
2 subsequently received a report from Donna's House  
3 indicating that the visitation that was supposed to  
4 occur after May 12th didn't occur, correct?

5 A Yes.

6 Q And that's why on May 8th you decided you  
7 were going to change custody, correct?

8 A June 8th.

9 Q June 8th. Right?

10 A Yes.

11 Q Okay. Now, when did you give Ms. Silva an  
12 opportunity to be heard about whether or not Donna's  
13 report was incorrect or why it may have been not a  
14 willful violation of your order to have this  
15 post-May 12th visitation occur?

16 A I don't understand your question. I'm  
17 sorry.

18 Q Let me try it again.

19 So there was supposed to be a visitation  
20 that came about after May 12th that never occurred  
21 in your opinion, correct?

22 A Yes.

23 Q And it was this post-May 12th report from  
24 Donna's House that caused you on June 8th to find  
25 her in contempt, correct?

1           A    Yes.

2           Q    If there was no hearing between May 12th  
3 and June 15th, when did you give Ms. Silva an  
4 opportunity to be heard on the issue of why that  
5 visitation either did occur or why it did not occur?

6           A    Well, Ms. Silva --

7           Q    Just answer that question if you can.

8               MR. TERRY:  She was attempting to do that,  
9 Mr. Chairman.  All we got was "Ms. Silva."

10           JUDGE STOCKARD:  So I can't rule until I  
11 know what the answer is, so sustained.

12           THE WITNESS:  Ms. Silva was ordered to  
13 leave the premises.  She was ordered right here to  
14 drop off and leave the premises and not stay.  
15 Donna's House sent me a letter saying that she did  
16 not do that.

17 BY MR. BRADLEY:

18           Q    When did Ms. Silva get an opportunity to  
19 contest the accuracy of that letter that you  
20 received from Donna's House?

21           A    She never contested the accuracy of that.

22           Q    When did she have the opportunity to do  
23 that before you changed custody on June 15th?

24           A    Between this and June 15th.  I didn't have  
25 a hearing between those two dates.

1           Q    That's my point. She did not have an  
2 opportunity to contest that letter and that letter  
3 was not an affidavit, correct?

4           A    It's a report from a court facilitator.

5           Q    Right. And the statute doesn't have an  
6 exception for requiring affidavits before you find  
7 somebody in contempt for reports from a court  
8 facilitator, correct?

9           A    It requires clear and convincing evidence.

10          Q    Okay. And an opportunity to be heard,  
11 right?

12          A    Well, before you issue a contempt penalty,  
13 of course. That's why I issued an order to show  
14 cause saying, Ms. Silva, why should you not be held  
15 in contempt for having violated this order, for not  
16 leaving Donna's House, as was reported to me by  
17 Donna's House, and I set an order to show cause  
18 hearing.

19                   The change in custody was not as a result  
20 of this. It was as a result of the seven or eight  
21 hearings I had before and still Dad had no contact,  
22 no visitation.

23                   MR. BRADLEY: Your Honor, now would be a  
24 good time to play the video. Could I have a few  
25 minutes to set that up?

1 JUDGE STOCKARD: Sure. We'll take a  
2 five-minute recess. We'll convene back at 9:15 a.m.

3 (Recess taken.)

4 JUDGE STOCKARD: So we're back on the  
5 record on Case No. 2016-113-P. It's in the matter  
6 of Honorable Rena Hughes. Parties are present.

7 Mr. Bradley, you may continue.

8 MR. BRADLEY: With the Commission's  
9 permission, I'd like to play the videotape that's  
10 actually three segments, but I don't think it makes  
11 sense to break it apart because they are all pretty  
12 brief. Can we go through all three of them?

13 JUDGE STOCKARD: Any objection, Mr. Terry?

14 MR. TERRY: No objection.

15 JUDGE STOCKARD: Very well.

16 (Video played.)

17 JUDGE STOCKARD: Can we pause the video.

18 This video shows the minor child. It's  
19 okay to capture but I don't want to unfairly  
20 capture. Go ahead.

21 (Video played.)

22 BY MR. BRADLEY:

23 Q Judge, can we agree on this hearing we just  
24 witnessed on June 15th Ms. Silva did not have an  
25 opportunity to be heard about whether or not the

1 Donna's House letter stating that she failed to  
2 facilitate the post-May visitation was in error?

3 A That wasn't a hearing.

4 Q I would agree.

5 JUDGE STOCKARD: Judge, can you speak up.

6 THE WITNESS: Oh, I'm sorry. I said, "That  
7 wasn't a hearing."

8 BY MR. BRADLEY:

9 Q So because it wasn't a hearing, Ms. Silva  
10 did not get an opportunity to explain whether or not  
11 that letter from Donna's House was correct or  
12 incorrect.

13 A She would have done that at the order to  
14 show cause hearing.

15 Q At the June 15th hearing she wasn't given  
16 an opportunity to be heard on whether or not the  
17 father should be given sole physical custody,  
18 correct?

19 A It wasn't a hearing. It was a child  
20 custody exchange.

21 Q We can agree that Ms. Silva was not given  
22 an opportunity to be heard on the issue whether or  
23 not the father should be given sole legal custody.

24 A Counsel, it wasn't a hearing. It was an  
25 exchange--



1 Q And --

2 A -- a very painful one.

3 Q And we can agree that she was not given an  
4 opportunity to be heard on the issue whether or not  
5 she should be deprived of any contact for a period  
6 of four months at a minimum, correct?

7 A It wasn't a hearing.

8 Q Would you agree generally that, if a judge  
9 violates the judicial code, that judge should admit  
10 her mistakes?

11 A I don't know what you're talking about.

12 Q Given everything we've discussed today, do  
13 you still deny that you violated any Nevada laws or  
14 any section of the Nevada Judicial Code?

15 A Absolutely.

16 MR. BRADLEY: Those are all the questions I  
17 have at this time. Thank you.

18 JUDGE STOCKARD: Mr. Terry.

19 CROSS-EXAMINATION

20 BY MR. TERRY:

21 Q Your Honor, we're going to take it from the  
22 point in time that my colleague began to ask you  
23 questions in reference to the chronology of this  
24 matter.

25 You've testified that the change of custody

1 was not a sanction or a penalty against Ms. Silva.

2 Is that correct?

3 A That is correct.

4 Q All right. What was it?

5 A Can I have some Kleenex, please.

6 JUDGE STOCKARD: We'll get some.

7 THE WITNESS: Thank you.

8 JUDGE STOCKARD: Go ahead, Mr. Terry.

9 BY MR. TERRY:

10 Q Thank you. Did you understand my question?

11 A I'm sorry. Can you say it again?

12 Q Let's back up a little. Your June 8th,

13 2016, directive directed Ms. Silva to bring the

14 minor child into the court.

15 A That is correct.

16 Q Okay. Under what authority were you

17 relying to enter that directive?

18 A Sorry. It was akin to a pickup order.

19 Q What is a pickup order?

20 A Under NRS 125(c).

21 Q Speak up, Judge.

22 A Sorry. Can we take a break?

23 MR. TERRY: Can we?

24 MR. BRADLEY: If the judge would like to

25 take a break, no objection.

1 MR. TERRY: A 10-minute break?

2 COMMISSIONER STOCKARD: We'll be in recess.

3 (Recess taken.)

4 JUDGE STOCKARD: We're back on the record  
5 on Case No. 2016-113-P in the matter of the  
6 Honorable Rena Hughes. The record should reflect  
7 the presence of the Commission.

8 Mr. Terry, you may proceed.

9 BY MR. TERRY:

10 Q I believe that before the break I had asked  
11 you in reference to the change of custody you  
12 consistently used the term "temporary."

13 Under what authority did you believe you  
14 had at that time to make a temporary change of  
15 custody?

16 A The authority is found in the statutes and  
17 in case law that the District Court Family Division  
18 may act as in the best interest of the child  
19 whenever the judge believes that custody needs to be  
20 changed at least on a temporary basis, and that can  
21 be done without a hearing.

22 Q Is that done in other situations other than  
23 what occurred in this case, which is a chronology of  
24 hearings that led up to that? For example, there's  
25 an allegation of drug usage.

1           A    Well, yes. Judges will change based  
2 upon -- examples would be positive drug tests,  
3 truancy of the child, neglect of the child. There's  
4 a plethora of reasons to temporarily change custody  
5 without a hearing.

6           Q    All right. And you had issued an order to  
7 show cause. What is the purpose of an order to show  
8 cause?

9           A    The purpose of the order to show cause is  
10 to have the person who is the subject of the order  
11 explain why they should or should not be held in  
12 contempt and for the court to determine or hear  
13 their affirmative defenses, if they have any, and  
14 then make a decision on whether or not sanctions  
15 should issue.

16          Q    Now, my colleague had consistently asked  
17 you whether or not Ms. Silva had an opportunity to  
18 explain the Donna's House situation. At the order  
19 of show cause would you have given her the  
20 opportunity to explain?

21          A    That's what the order to show cause hearing  
22 is for.

23          Q    And are briefs and motions appropriate  
24 before you get to the order to show cause hearing?

25          A    Yes. They can be submitted.

1 Q Memorandum of points and authorities as to  
2 why you should not hold --

3 A Yes.

4 Q -- me, if I represent Ms. Silva, my client,  
5 in contempt? Would that have been appropriate?

6 A In fact, she submitted one.

7 Q Okay. What did she submit?

8 A Objections to the order to show cause.

9 Q All right. Did she complain about the  
10 Donna's House exchanges in the plural?

11 A At that time she had a lawyer who was  
12 unbundled, I believe, and he made an objection that  
13 the order to show cause was not appropriate because  
14 the May 12th hearing had not been reduced to a  
15 written order by Leslie Cohen, Rogerio's attorney.

16 We had the Donna's House order. That is an  
17 order that I handwrote but I thought his objection  
18 had merit and I granted her objection to the order  
19 to show cause and we never proceeded on it.

20 Q So, in fact, she was given an opportunity  
21 to be heard -- is that correct -- at the show cause  
22 hearing?

23 A Yes.

24 Q Which would have been the appropriate time  
25 for it. Would that be correct?

1           A    That's the only appropriate time. After an  
2 order to show cause hearing I have to make a  
3 decision on whether or not she should be held in  
4 contempt.

5           Q    And by that point in time she was  
6 represented by counsel.

7           A    Right.

8           Q    And a memorandum of points and authorities  
9 was, in fact, viable for you, correct?

10          A    That is correct.

11          Q    Okay. Now, you've indicated that that was  
12 not a penalty against the mother. In your mind what  
13 was it, the temporary change of custody?

14          A    I had to do this because this child was  
15 suffering psychological abuse through parental  
16 alienation.

17          Q    Generally what is parental alienation?

18          A    Parental alienation is when we have an  
19 out-of-normal-range parent inflicting psychological  
20 abuse and in this particular case it was  
21 attachment-based parental alienation.

22          Q    Attachment with who?

23          A    The mother.

24          Q    Okay. We're going to go through the  
25 minutes and the orders, et cetera. But throughout

1 the course of the proceedings you had even brought  
2 experts in to talk to the subject minor.

3 Is that correct?

4 A I ordered therapists, yes.

5 Q All right. We'll get to that.

6 A Okay.

7 Q I had asked you if it was appropriate for  
8 you to issue a directive to bring the minor child to  
9 court before we took the break.

10 A Right.

11 Q Under what authority were you relying when  
12 you directed the mother to bring the minor child to  
13 court?

14 A NRS 125(c).0055 is akin to a pickup order.  
15 I direct the mother to bring the child for the  
16 purposes of the exchange -- it was not a hearing --  
17 because she had been withholding from the father and  
18 under that --

19 Q There was a more radical approach that you  
20 could have used which is --

21 A Well, I was about to talk about that.

22 Q Go ahead.

23 A The statute actually says that I can send  
24 legal authorities over there, so an armed police  
25 officer would have gone to the child's home and

1 removed the child out of her home. And I could not  
2 see that happening. I did not want to traumatize  
3 the child in that way.

4           So I thought as a better approach to have  
5 the child brought to court and do the exchange in  
6 the privacy of my courtroom.

7           Q   In your directive you advised the mother  
8 that, if she didn't produce the child, potential  
9 sanctions could apply.

10          A   That's because it would be direct contempt.  
11 I had no idea if she was going to come or not  
12 because she had refused therapy, she had refused to  
13 go to the therapist, so I didn't know that she was  
14 going to come.

15          Q   When you say "she," who is that?

16          A   I'm sorry. The mother.

17          Q   And we're going to use the term "Subject  
18 Minor" and "Mother."

19          A   Okay.

20          Q   So you had the authority to direct the  
21 mother to bring the minor child to court?

22          A   Yes.

23          Q   And that was for purposes of effectuating  
24 the temporary change in custody.

25          A   That's correct.



1           Q    Now, the decision to have the temporary  
2 change of custody, that was based upon the totality  
3 of the case that had been in front of you.

4                    Would that be accurate?

5           A    Absolutely. All the hearings that we'd had  
6 and the enormous time that we had spent and all the  
7 therapeutic approaches that had failed, everything  
8 had failed, that I tried to institute.

9           Q    Okay. You had the opportunity to view the  
10 video before we took a break, correct?

11          A    Yeah.

12          Q    All right.

13                   JUDGE STOCKARD: Make sure you answer out  
14 loud.

15                   THE WITNESS: I'm sorry.

16                   Yes, I did.

17 BY MR. TERRY:

18          Q    Very emotional to watch the subject minor  
19 on that.

20          A    It's very painful.

21          Q    Was that an easy decision for you?

22          A    It was the toughest thing I've ever done.

23          Q    And as a judge you cannot express your  
24 feelings, your emotions --

25          A    Oh.

1 Q -- as you did during these proceedings in  
2 front of the minor child or the parties.

3 A Absolutely. I couldn't cry. I felt like  
4 crying.

5 Q Okay.

6 MR. TERRY: Now, I would invite the --  
7 Madam Reporter, would you place the Respondent's  
8 exhibit books in front of her, please.

9 BY MR. TERRY:

10 Q I would like the panel's attention to  
11 R0096. 96 and the subsequent pages are a chronology  
12 of the different hearings, orders, journal entries,  
13 minutes that occurred in this case.

14 Is that correct?

15 A It's a partial chronology. The entire  
16 chronology is so massive.

17 Q All right. We're going to start with --  
18 you were not the original judge on this case.

19 A That's correct.

20 Q All right. And how long had you, in fact,  
21 been a judge as of February 18th, 2015?

22 A Six weeks.

23 Q And would it be accurate that this was the  
24 first case of this nature with this type of, as you  
25 classified it, parental abuse that you had handled?

1 A Yes.

2 Q But independent of that, you were  
3 knowledgeable of such things as parental alienation,  
4 correct?

5 A I had studied it, yes.

6 Q All right. And you understand that the  
7 Chair has ruled that documents that you would have  
8 relied on are not admissible. You understand that?

9 A Unfortunately.

10 Q Okay. However, you had training and  
11 experience in this area, correct?

12 A Yes.

13 Q And because you were a new judge, you also  
14 discussed this case with other judges, correct?

15 A Many.

16 Q Okay. But when you discussed this case  
17 with other judges, you did it in a hypothetical.

18 Would that be correct?

19 A That is correct.

20 Q Okay. Why did you discuss this case with  
21 other judges?

22 A It was such a high-conflict case and there  
23 were so many problems. I'd never encountered  
24 something this severe and I sought the advice of  
25 more senior judges than me, people who had been on

1 the bench for a long time who possibly had this  
2 situation occur.

3 Q Would you indicate to the panel the names  
4 of the judges that you discussed it with.

5 A Yes. Judge Duckworth, who is now my  
6 presiding. Judge Elliott, Judge Hoskin, Judge  
7 Steel, and possibly, Judge Teuton --

8 Q All right.

9 A -- who is a juvenile court judge.

10 Q And the panel has allowed Judge Steel and  
11 Judge Teuton to testify today.

12 A I believe so.

13 Q Okay. Let's start with page 96, the entry  
14 of 2/18/15: And so the panel is aware of this --  
15 and I believe Mr. Bradley is already aware of it --  
16 this document is a chronology.

17 However, there are documents which I'm  
18 going to be referring to that are these documents,  
19 so would you look at E103.

20 Now, this is consistent with the first  
21 entry of the chronology that has been prepared -- is  
22 that correct -- the February 18th, 2015 --

23 A Yes. Again, it's court minutes so it's a  
24 summary, it's not the official record.

25 Q Okay. I want you to summarize for the

1 Commission and for the record what the February 18th  
2 proceedings were in reference to.

3       A    All right. So the father had filed a  
4 motion to modify custody and to have the subject  
5 minor academically tested because she was  
6 home-schooled. And, of course, there was an  
7 opposition and a countermotion for Rule 11  
8 sanctions.

9           I found that -- and, again, this is not the  
10 official record. It says I found an order. The  
11 parties already had joint legal custody.

12       Q    Correct.

13       A    The reason that that's included in here was  
14 because the father was objecting to the  
15 homeschooling and joint legal custody is defined in  
16 their decree of divorce that they make these  
17 decisions together. It's a mutual decision and  
18 Mother unilaterally decided to homeschool. So it's  
19 reiterated the parties have joint legal custody.

20       Q    And throughout your proceedings you learned  
21 that the father had been paying to have the minor  
22 child go to the Montessori school.

23       A    Yes, \$1,000 a month prior.

24       Q    And he was paying \$1,000 a month?

25       A    Yes.

1           Q   And you also learned that he was not  
2 consulted in reference to the unilateral decision to  
3 withdraw the child from school and to, quote,  
4 homeschool.

5           A   I believe the sequence of events was that  
6 the child was in school and Mother withdrew before  
7 they separated but he acquiesced in that.

8                   And then when they divorced, he said, I  
9 want the child tested to make sure that she's at her  
10 academic level. And when there was significant  
11 resistance to that, he said, I'm withdrawing my  
12 consent to have her home-schooled, but he acquiesced  
13 in that by doing nothing.

14          Q   But then he brought a motion?

15          A   Yes, he brought a motion to have her tested  
16 to make sure she was at her level.

17          Q   And his concern was that she was not  
18 progressing sufficiently and the homeschooling  
19 wasn't working.

20          A   He was. Because there's all types of  
21 criteria that you have to meet if you're  
22 homeschooling.

23          Q   Did you later learn that the mother had not  
24 abided by those criteria?

25          A   Yes, I did.

1 Q Okay. Can you give the Commission an  
2 example of that.

3 A When you homeschool a child, you have to  
4 file your notice of intent with the Clark County  
5 School District. You have to --

6 Q Stop. Was that done?

7 A It was done much later, not when she -- it  
8 has to be done before you homeschool. It was not  
9 done.

10 Q Right. Continue.

11 A The intent has to show that you have the  
12 custodial rights to do it. Father did not consent,  
13 so it was not -- it was a joint legal custodial  
14 decision. She didn't file it until well after we  
15 had many hearings on the subject. It also has to  
16 attach the curriculum and it has to be a Clark  
17 County School District-approved curriculum. The  
18 document that was given to me didn't have any  
19 curriculum attached to it.

20 Q So did you question the homeschooling?

21 A Well, the father was questioning it and he  
22 basically wanted her math-tested and tested for  
23 reading.

24 Q Now, the disposition notes that it was  
25 granted as to the academic testing, correct?

1 A Yes.

2 Q Denied as to a request for a change of  
3 custody.

4 A Right.

5 Q So the father had filed a motion to change  
6 custody.

7 A He had.

8 Q And that was denied.

9 A Yes.

10 Q Okay. You entered a behavioral order.  
11 What is a behavioral order?

12 A It's pretty much what it says it is. It  
13 gives a list of 10 or 12 things you shall not, you  
14 shall not, don't disparage. Don't bring the child  
15 into litigation. Don't discuss the litigation with  
16 the child. Basically behave yourself. It's not  
17 like a restraining order like against domestic  
18 violence but it's a mutual behavioral order that  
19 tells the parents these are the things that you  
20 should not do.

21 Q At the first proceeding you likewise  
22 ordered the child to be interviewed.

23 A Yes.

24 Q By whom?

25 A Family Mediation Center. They have child



1 interviewers.

2       Q   And at page 103, that's Notation No. 4,  
3 "Referred to Family Mediation Center."

4       A   Right.

5       Q   What is that for?

6       A   Family Mediation Center is a tool that  
7 family court uses to offer mediation services to see  
8 if they can help parents come up with a resolution  
9 on their own because the court would rather have  
10 them decide. I'm the default position.

11           Families, parents, they need to have the  
12 input. They're the ones who know their child better  
13 than I do and I give them the opportunity to come to  
14 an agreement. So it was also on his custodial  
15 timeshare. While I denied his change of custody, I  
16 didn't find adequate cause under Rooney to even have  
17 an evidentiary hearing on a change in custody. I  
18 did say go to mediation and see if you can work on a  
19 schedule that works best for you.

20       Q   Did Mother go to mediation?

21       A   I don't recall if she went to mediation.

22       Q   Second question, was mediation successful?

23       A   No.

24       Q   Okay. Now, at page 104, item 10, you  
25 indicated, "Minor shall be tested through Clark

1 County School District or another facility of  
2 defendant's" -- just so we're clear, who is the  
3 defendant in this case?

4 A The father.

5 Q Okay.

6 "of Defendant's choice shall be granted to  
7 determine if Minor is performing at Minor's grade  
8 level as to math, reading and, if not, why. Results  
9 shall be provided to both parties," and you ordered  
10 the father to pay for that.

11 A I did.

12 Q Okay. So that portion was granted in part,  
13 correct?

14 A That was his motion, yes.

15 Q All right. And you also directed the  
16 mother to comply with all the guidelines for  
17 homeschooling.

18 A Yes.

19 Q And did she ever provide you any proof that  
20 she was complying with the guidelines for  
21 homeschooling--

22 A No.

23 Q -- throughout the course of this whole  
24 proceeding.

25 A No.

1 Q Okay. Was the minor child ever tested?

2 A Yes.

3 Q At what point in time? This is February of  
4 2015.

5 MR. BRADLEY: Excuse me, your Honor. I  
6 feel like we're going way astray. I've been trying  
7 to grant some latitude. I understand they want to  
8 talk about background, but she's not being charged  
9 with any misconduct having to do with finding her in  
10 contempt with regard to homeschooling, taking a math  
11 test or anything else, so I'd object that all of  
12 this testimony is irrelevant.

13 JUDGE STOCKARD: Mr. Terry?

14 MR. TERRY: And we suggest that the  
15 totality of this case is relevant because it leads  
16 up to those actions which occurred by Judge Hughes  
17 at the hearing that you saw on the video. This is  
18 not a case you can look at with just one simple  
19 procedure.

20 The totality of the case has to be viewed,  
21 including what input the, quote, experts had, the  
22 failures by the natural mother to comply with the  
23 prior court orders in an attempt to reunify the  
24 subject minor with the natural father, and those are  
25 what is demonstrated within all the documents we're

1 going to be referring to.

2           The February 1 from 2015 is just the  
3 beginning. But we need to demonstrate to you that  
4 Mother was not in compliance with what would  
5 ultimately be the court orders which started to be  
6 entered into February.

7           JUDGE STOCKARD: I'm going to allow it. I  
8 want just -- my ruling is based, one, on res gestae,  
9 which I think is the totality of the circumstances;  
10 and, two, if the Commission determines that  
11 discipline is appropriate it may be relevant and  
12 consistent with Motion in Limine No. 1 as to  
13 mitigation.

14           MR. TERRY: And I acknowledge that the  
15 panel can give it what weight they wanted, but I  
16 appreciate the admissibility portion.

17 BY MR. TERRY:

18           Q All right. Is there anything else in  
19 reference to the 2/8/2015 hearing that's relevant  
20 for the Commission?

21           (Witness reviewing document.)

22           THE WITNESS: Just that I admonished them  
23 to stop making derogatory remarks about each other  
24 and having disagreements in front of the child. In  
25 my estimation this child was caught in the middle of

1 adult conflict.

2 BY MR. TERRY:

3 Q And that was the very first hearing --

4 A Yes.

5 Q -- of February 15th?

6 A Yes. That's why I issued the behavioral  
7 order basically telling the parents behave  
8 yourselves, stop involving your child. She doesn't  
9 need to know about the things that you're in  
10 disagreement about.

11 Q Now, you set a return hearing for  
12 April 23rd, 2015. Is that correct?

13 A Yes.

14 Q However, your chronology indicates that on  
15 3/16/2015, the parties stipulated to move the 4/23  
16 hearing.

17 A They did.

18 Q Okay. And you accommodated them and set  
19 the hearing for 5/26/2015. Is that correct?

20 A Yes.

21 Q All right. Then on 5/26/2015 -- and if you  
22 will now turn to page 105, this was the return  
23 hearing. Would you explain to the Commission what  
24 this hearing was in reference to and what you  
25 ultimately ordered.

1           A     So the parents were given the child  
2 interview report from Family Mediation Center to  
3 review and problems had already occurred from the  
4 time they were in court the last time.

5           Q     Articulate for the Commission what those  
6 problems were.

7           A     So Father paid for the child to be  
8 reading-tested and that went smoothly, from what I  
9 understand. But Father did his own informal test of  
10 the child at home and it made the child very angry.  
11 And this is according to the therapist and according  
12 to the reports of the father in court, that the  
13 child was very upset with him for testing her.

14                     And he apologized to her and said it  
15 wouldn't happen again and then kind of things got a  
16 little unwound. Mother was very upset about that  
17 and that's when the child started saying, I'm not  
18 going to Dad's house.

19 BY MR. TERRY:

20           Q     There were other issues that were raised in  
21 the 5/26 hearing. Is that correct?

22           A     Yes.

23           Q     I mean, one of them was the sale of  
24 property which had been ordered, but that was not  
25 the primary concern at this point in time.

1           Would that be accurate?

2           A    It was one of the issues but it was a  
3 provision of their decree that had not been complied  
4 with. The main thing the court addressed was that  
5 the child was now having difficulties in her  
6 relationship with her father because he tested her  
7 and defendant's -- or Father's attorney suggested a  
8 reunification therapist, which Plaintiff agreed to  
9 through her counsel.

10          Q    And that is the last paragraph on page 105  
11 of your journal entry?

12          A    Yes. That Keisha Weiford would provide  
13 services for reunification. I ordered Dad to be  
14 responsible 100 percent for the cost because,  
15 admittedly, he tested the child, the child was upset  
16 with him, and I was not convinced at this point that  
17 there was parental alienation going on and so I did  
18 initially order him to pay all the fees for that.

19          Q    Now, who is Keisha Weiford?

20          A    She's a licensed marriage and family  
21 therapist.

22          Q    Does she work through the family court?

23          A    No. No. She's an independent therapist.

24          Q    Do you know how she was chosen in this  
25 case?

1           A     Defendant's attorney suggested her and  
2 Plaintiff's attorney agreed. They stipulated.

3           Q     So at this time both parties were  
4 represented by counsel?

5           A     Yes.

6           Q     Okay. So there was a stipulation to have  
7 Ms. Weiford, who was recognized as the therapist,  
8 meet with the minor child and the parents?

9           A     And perform reunification therapy, so that  
10 entails sessions where the child and the father are  
11 present in the therapist's office and they address  
12 their conflict.

13          Q     Okay.

14          A     What -- get to the bottom of the problem so  
15 we can get back on with our relationship.

16          Q     So you start with mediation, which doesn't  
17 work.

18          A     Right.

19          Q     And now you're going to therapy?

20          A     Therapy.

21          Q     One step higher. Correct?

22          A     Yes.

23          Q     In an effort to --

24          A     In an effort to?

25          Q     Cause what? Reunification?



1       A    Well, to repair their relationship, because  
2 it wasn't happening.  Something was going on that  
3 needed to be therapeutically addressed.

4       Q    Now, is there anything more to the 5/26  
5 journal entry that you feel is relevant for the  
6 Commission?

7       A    Well, again, I ordered the math testing to  
8 be done within 30 days, because it hadn't been done,  
9 and that Dad be ordered compensatory time over the  
10 summer break.  Even though the child was  
11 homeschooled, I understood she had a summer break,  
12 but he had been denied visitation already.

13      Q    Okay.  First of all, what is compensatory  
14 time?

15      A    To make up, to make up for what you lost.

16      Q    And when you indicate to the Commission he  
17 had been denied visitation --

18      A    Yes.

19      Q    -- upon what are you basing that?

20      A    It was an uncontroverted fact.  The weekend  
21 visitation wasn't happening.  He has every weekend.  
22 And because he tested the child, the child says, I'm  
23 not going anymore, and Mother was not encouraging  
24 the child to go and so he missed four weekends.

25      Q    Father was still attempting to get those

1 visitations, however?

2 A Of course.

3 Q And that's why he asked for the  
4 compensatory time?

5 A Yes.

6 Q And you awarded that to him?

7 A Absolutely.

8 Q Okay. But your order didn't indicate --  
9 your journal entry didn't indicate when it would  
10 occur.

11 A It says "over the summer break." Even  
12 though she was homeschooled, it would happen over  
13 the summer break.

14 Q So summer was coming up. This was  
15 May 26th.

16 A Yes, 2015.

17 Q Now, you set a status-check hearing at the  
18 bottom of page 106 for August 6th, 2015.

19 Is that correct?

20 A Yes.

21 Q But moving down the chronology, by  
22 August 4th, 2015, Dad files a motion for an order to  
23 show cause and to modify custody due to the  
24 withholding of the subject minor --

25 A Yes.

1 Q -- correct?

2 A Yes.

3 Q And that matter was set for hearing on  
4 7/9/2015.

5 A Correct.

6 Q Fairly quick hearing date.

7 A Well, it's quick and it's just after we had  
8 a status hearing. It was within a week of our  
9 hearing. He files another motion to have her held  
10 in contempt and to modify custody because the mother  
11 wasn't participating in the reunification therapy.

12 Q And what was the basis of his request?

13 A That that was it, mother wasn't  
14 participating in reunification. He still hadn't had  
15 any time with his child, his visitation was still  
16 being withheld.

17 Q Now, as of June 29th, 2015, you received  
18 the first report from Ms. Weiford. Is that correct?

19 A I don't know.

20 MR. TERRY: That was at RO 1052, ladies and  
21 gentlemen, in your exhibit book.

22 Judge, I would direct your attention to  
23 that.

24 THE WITNESS: I don't know if this was the  
25 first one or not.

1 BY MR. TERRY:

2 Q Chronologically it is dated June 29th,  
3 2015? Do you need to refresh your memory and look  
4 at that?

5 A I'm looking at it. I don't know if this  
6 was the first one, but I'm there at the report.

7 Q Now, recalling that you had set a hearing  
8 already for 7/9, this is dated June 29th, 2015. And  
9 what does Ms. Weiford advise you in this letter?

10 A You want me to go to the recommendations?

11 Q Yes. And then I'll have you back up and go  
12 through the reasons for the recommendations.

13 A All right. So the recommendations are 156,  
14 that Dad needs to go through the process of  
15 reunification with his daughter, so she was  
16 identifying that their relationship needed  
17 therapeutic help, that it was somewhat broken, that  
18 he may need to learn parenting skills that are  
19 better fit for his relationship with his daughter,  
20 and I did order parenting classes for him.

21 That Dad and daughter learn and practice  
22 new communication skills. Apparently, she  
23 identified that may be the source of their  
24 relationship deterioration, and it's all  
25 therapeutic. Mom to support the reunification

1 process and participate in it, because at that point  
2 she had not been supporting it at all. And the  
3 parents learn how to coparent and commit on working  
4 on their own issues and any issues identified during  
5 the reunification process.

6 Q Up to this point in time there had been no  
7 sanctions issued against the natural mother in this  
8 case. Is that correct?

9 A Correct.

10 Q Okay. Dad is paying the costs, correct?

11 A Yes.

12 Q Dad is attempting to have the  
13 reunification--

14 A Yes.

15 Q -- correct? Dad is having to request that  
16 the minor child be tested.

17 A Yes.

18 Q And you're granting that.

19 A Yes.

20 Q But there's nothing that you've shown that  
21 would show any type of bias against the mother in  
22 this case at this point.

23 A No.

24 Q All right. Now, the reason for the  
25 recommendations are likewise set down in Ms.

1 Weiford's letter, correct?

2 A Yes. She gives her findings.

3 Q All right. What was her finding in  
4 reference to the subject minor?

5 A That she's bright and articulate, that she  
6 wants to be an actress or a performer.

7 Q Did you take note of that, that she wanted  
8 to be an actress or performer?

9 A Not initially.

10 Q Didn't have any significance?

11 A No. I assumed that was natural because her  
12 mother owns a dance studio and she's been in plays.

13 Q Okay.

14 A That she immediately reported to Keisha  
15 Weiford upon entering her office that she did not  
16 want to see her father.

17 Q And you construed that as that was the  
18 first thing that was said, I don't want to see Dad?

19 A Right.

20 Q There was another note right before that,  
21 though, that she speaks way beyond her years.

22 A Yes. She's very articulate. Speaks like  
23 an adult, I took it.

24 Q Okay. Continue. What else did --

25 A When the therapist asked her if she knew

1 why she was there, and she knew why she was there,  
2 to be reunified and she immediately informed her she  
3 didn't want to be reunified.

4 Q At this point in time the subject minor  
5 hadn't been in the court.

6 A No.

7 Q Okay. So you hadn't had any discussions  
8 with her, correct?

9 A No. This is a year before.

10 Q He hadn't had any visitations.

11 A Correct.

12 Q So this could have only been coming from  
13 Mom, correct?

14 A I gathered that. I mean, this was a year  
15 before she was in my courtroom.

16 Q Correct.

17 A Right. And that the therapist tried to  
18 reassure her that this was a process. She reported  
19 she was homeschooling an un-schooling curriculum,  
20 which I don't know what that means -- or I didn't  
21 know at that time -- but I understood later it was  
22 not a Clark County school-approved homeschooling.

23 Q And this is what the subject minor told  
24 you.

25 A Yes.

1 Q Go ahead.

2 A That she likes being homeschooled. School  
3 wasn't working out for her. She reported she made  
4 the decision to be homeschooled.

5 Q So Subject Minor Makes the decision that  
6 she wants to be homeschooled.

7 A Uh-huh.

8 Q Mother acquiesces.

9 A Yes.

10 Q Father has a concern.

11 A Yes.

12 Q All right.

13 A So everyone is not onboard with this.

14 Mother and Daughter are making the decisions.

15 Q Did Ms. Weiford report what the subject  
16 minor's tone was?

17 A Irritated or angry at some point, I  
18 believe. And at this juncture that she was critical  
19 of her father. She said that he ran over a garbage  
20 can, that he was recklessly driving and took her  
21 phone away from her and made some comments about the  
22 mother, which, again, I admonished them not to do  
23 that. And that Annie was very protective over her  
24 mother -- I'm sorry. The subject minor. I'm  
25 reading it.



1 Q Go ahead.

2 A She reported that it was her decision for  
3 them to get a divorce.

4 Q Did you find that odd?

5 A Very odd. Very odd.

6 Q And shortly thereafter they got a divorce.

7 A Yes. And she believed that once they got a  
8 divorce she wouldn't have to see her father again,  
9 which isn't what occurred, so I found that puzzling  
10 that she would report that.

11 Q Let's be clear. The Weiford letter doesn't  
12 indicate that the subject minor is saying she's the  
13 subject of abuse or neglect by the father.

14 A At no point, no.

15 Q Okay. What she talks about as an example  
16 is Dad will not let her have sleepovers.

17 A Right, which I ordered him to do.

18 Q Which you, once again in support of the  
19 mother and minor child, ordered him to do.

20 A I did.

21 Q And did he comply?

22 A He never got a chance.

23 Q Correct. So from this point in time until  
24 ultimately when you see that video, did Dad ever  
25 have an opportunity to have the subject minor at his

1 residence for a sleepover?

2 A No.

3 Q Okay. Did this letter raise any concerns  
4 in your mind that Mom was interfering with the  
5 relationship between Dad and Subject Minor?

6 A Absolutely.

7 Q And what were your concerns after you  
8 digested this? And there's more at page 154.

9 A Uh-huh.

10 (Witness reviewing document.)

11 BY MR. TERRY:

12 Q But for brevity purposes, what were your  
13 concerns?

14 A That Mom reported the child was extremely  
15 attached to her after age two and that Mother  
16 reported she felt caught in the middle between  
17 Daughter and Father. I thought that was very  
18 strange.

19 She reported that she assessed Father as  
20 having a narcissistic personality disorder due to  
21 her research and she --

22 Q Who is the "she" you're referring to?

23 A Mother.

24 Q Okay.

25 A And that Mother was in support of her

1 daughter asserting that she does not want to go with  
2 her Dad. That was very troubling to me.

3 Q Why?

4 A Because that's parental alienation.

5 Q All right.

6 A There is a decree of divorce, he has  
7 rights. She as the primary custodial parent under  
8 the decree, she has the affirmative obligation to  
9 promote and foster and maintain a relationship  
10 between the child and the father.

11 Q Does that include telling a child, If you  
12 don't want to go, you don't have to?

13 A That would absolutely be contrary to her  
14 legal obligations.

15 Q Okay. Now, in the interview that the  
16 counselor did with Dad, he indicated that he had not  
17 even seen his daughter for a four-month period of  
18 time.

19 A Correct.

20 Q What was your impression of that?

21 A That was not acceptable.

22 Q Okay.

23 A That was not acceptable. How do you  
24 maintain a relationship with your child?

25 Q Why was that not acceptable?

1           A    You can't maintain a relationship with your  
2 child. And he's a normal-range parent. That's  
3 someone who takes into consideration their parenting  
4 styles. He was more structured. The mother was  
5 more laissez faire and permissive.

6                   But you have to be in that normal range.  
7 Borderline personalities will manipulate and lie and  
8 put the child in the middle, triangulation, put them  
9 in the middle of the conflict.

10               And I had a normal-range parent, the  
11 Father, who didn't do anything wrong. Every parent  
12 makes mistakes, so if he tested her informally and  
13 she got mad, he apologized.

14               At this point he hadn't done anything  
15 wrong, he hadn't abused her, and he was being denied  
16 a relationship with his daughter. So I found that  
17 to be very contrary to the best interest of the  
18 child and to his legal rights.

19           Q    The statutes, in fact, encourage both  
20 parties, Mom and Dad, to have contact with the minor  
21 child.

22           A    It's a state policy.

23           Q    State policy.

24           A    Under the statutes.

25           Q    And it wasn't being done in this case.

1           A    Absolutely not.

2           Q    Now, there are other references to the fact  
3 that Dad went to pick up the minor child on Father's  
4 Day and the police had gotten involved.

5                   It was Father's Day, correct?

6           A    Yeah. He called the police several times  
7 in May of 2015 and had event cards. He called the  
8 police on Father's Day. He was denied access at  
9 every juncture.

10          Q    And that was for purposes of effectuating  
11 his court-ordered visitation, correct?

12          A    Yes.

13          Q    And those are situations where you ask the  
14 police for assistance?

15          A    Right.

16          Q    They go with you. But if the subject minor  
17 doesn't want to go, the police don't make them go.

18          A    Well, it was reported to me and there was a  
19 police report that was provided -- at the top it  
20 says, "To the Family Court" -- that the police  
21 officers even tried to talk to the minor child and  
22 say, Hey, your Dad wants to spend time with you, why  
23 don't you want to go with your Dad? And Mother was  
24 not encouraging it. That was in their statement to  
25 me.

1 Q All right. Now, at the bottom of 155 Ms.  
2 Weiford gives her impression and indicates, "I'm  
3 also under the impression that part of the Subject  
4 Minor's decision to not have a relationship with her  
5 Dad is to protect her mother, which also needs  
6 exploration. It seems like Mom and Subject Minor's  
7 relationship is enmeshed."

8 What does the term "enmeshed" mean?

9 A It's a psychological term. It means that  
10 you can't tell where one starts and the other ends.  
11 They're so enmeshed that the parent's ideas and  
12 conflict with the ex-spouse become the child's ideas  
13 and conflict with the parent that's outed, the  
14 targeted parent.

15 So if Mom complains to the child, the child  
16 develops that thought process and takes it out on  
17 the targeted parent. So we become one. We are a  
18 team. It's a cross-generational parental  
19 alienation, and that is the mental health disorder  
20 that manifests itself in the child.

21 Q There's terms for parental alienation too,  
22 is it not? What else is it referred to?

23 A Well, parental alienation is not in the DSM  
24 V, the Diagnostic Statistical Manual for Mental  
25 Health Disorders. Attachment-based parental

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Electronically Filed  
Jan 29 2019 12:09 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

IN THE MATTER OF THE HONORABLE  
RENA G. HUGHES, EIGHTH JUDICIAL  
DISTRICT COURT, FAMILY DIVISION,  
DEPARTMENT J. COUNTY OF CLARK,  
STATE OF NEVADA.

Case No. 76117

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Appeal from the Nevada Commission on Judicial Discipline

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**APPELLANT'S APPENDIX**  
**Volume II of IV**

<b><u>DOCUMENT</u></b>	<b><u>VOL. NO.</u></b>	<b><u>PAGE NO.</u></b>
Certified Copy of Findings of Fact, Conclusions of Law and Imposition of Discipline, filed June 18, 2018	IV	APP943-957
Certified Copy of Notice of Appeal, filed June 22, 2018	IV	APP958-960
Commission Exhibit 2- Verified Statement of Complaint by Welthy Silva, dated June 19, 2016	III	APP515-524
Commission Exhibit 3- Verified Statement of Complaint by Steve Sanson, dated December 19, 2016	III	APP525-566
Commission Exhibit 4- Judge Hughes' Responses to Interrogatories, dated May 23, 2017	III	APP567-595
Commission Exhibit 5- Court Minutes from hearing held May 12, 2016 and Order for Supervised Exchange	III	APP596-599
Commission Exhibit 7- Minute Order, dated June 8, 2016	III	APP600-604
Commission Exhibit 8- Order, filed June 14, 2016	III	APP605-610
Commission Exhibit 9- Court Minutes from June 15, 2016, Child Exchange	III	APP611-613
Commission Exhibit 10- Order, filed June 15, 2016	III	APP614-619
Commission Exhibit 11- Court Minutes from July 27, 2016	III	APP620-621
Commission Exhibit 13- Affidavit Seeking Disqualification of Judge Due to Bias or Prejudice, filed January 11, 2017	III	APP622-665
Commission Exhibit 14- Recorded Interview of Judge Hughes, dated January 27, 2017	III	APP666-692
Commission Exhibit 16- Recorded Interview of Welthy Silva, dated February 8, 2017	III	APP693-749
Commission Exhibit 18- Formal Statement of Charges, filed October 10, 2017	IV	APP750-756



<u>DOCUMENT</u>	<u>VOL. NO.</u>	<u>PAGE NO.</u>
Commission Exhibit 19-Verified Response and Answer, filed October 30, 2017	IV	APP757-761
First Amended Order Setting Public Hearing and Notice of Panel Members, Order Regarding Media Access, filed on April 6, 2018	II	APP276-278
Formal Statement of Charges, filed October 10, 2017	I	APP233-239
Judge Hughes' Responses to Interrogatories, dated May 23, 2017	I	APP204-232
Letter from Commission on Judicial Discipline to Judge Hughes regarding Judicial Conduct Complaints, dated April 26, 2017, with Complaints and Investigation File attached	I	APP1-203
Motion in Limine No. 1, dated May 7, 2018	II	APP279-285
Objection to Respondent's Exhibits, dated May 18, 2018	II	APP293-297
Opposition to Motion in Limine No. 1, dated May 9, 2018	II	APP286-292
Order Denying Motion for Expansion of Time to Present Respondent's Defense, filed on April 4, 2018	II	APP267-275
Order Denying Motion to Dismiss Complaint, filed May 25, 2018	II	APP312-321
Order Denying Motion to Transfer Hearing to Las Vegas, Nevada or, in the Alternative, to do Said Hearing by Video, filed on April 4, 2018	II	APP253-266
Order Granting in Part and Denying in Part Motion in Limine No. 1, filed on May 23, 2018	II	APP303-311
Order Setting Public Hearing and Notice of Panel Members Order Regarding Media Access, filed on January 25, 2018	II	APP250-252
Prehearing Order, filed January 5, 2018	I	APP245-249

<b><u>DOCUMENT</u></b>	<b><u>VOL. NO.</u></b>	<b><u>PAGE NO.</u></b>
Respondent Exhibit A- JAVS Video of 7/28/16 Hearing (CD not attached)	IV	APP763
Respondent Exhibit C- Character Letters	IV	APP764-784
Respondent Exhibit D- Chronology of Silva Hearings	IV	APP785-791
Respondent Exhibit E- District Court, Family Division Court Minutes	IV	APP792-840
Respondent Exhibit F- Documentation of Keisha Weiford	IV	APP841-873
Respondent Exhibit G- Additional Character Letters	IV	APP874-879
Respondent's List of Exhibits	IV	APP762
Respondent's Proposed Exhibit B- Information Provided to Family Court Judges Regarding Parental Alienation (Not Admitted at Hearing)	IV	APP880-933
Respondent's Proposed Exhibit C- Character Letters (Not Admitted at Hearing)	IV	APP934-942
Response to Objection to Respondent's Exhibits, dated May 23, 2018	II	APP298-302
Transcript of Proceedings, dated May 30, 2018	II	APP322-499
	III	APP500-514
Verified Response and Answer, filed October 30, 2017	I	APP240-244

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1 type of media outlet, including address, telephone and facsimile number(s). Requests must be received  
2 by the Commission no later than 3:00 p.m., May 18, 2018.

3 Chairman Gary Vause is authorized to sign this order on behalf of the full Commission.

4 IT IS SO ORDERED.

5 DATED this 25<sup>th</sup> day of January, 2018.

6  
7 STATE OF NEVADA  
COMMISSION ON JUDICIAL DISCIPLINE

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10 \_\_\_\_\_  
Gary Vause, Chairman

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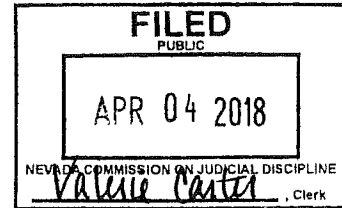
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Prosecuting Officer

Valerie Carter

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

2                                   **STATE OF NEVADA**



3  
4 In the Matter of )  
5 )  
6 THE HONORABLE RENA G. HUGHES, )  
7 Eighth Judicial District Court, Family Division, )  
8 Department J, County of Clark, State of Nevada, )  
9 Respondent. )  
10 )

CASE NO. 2016-113-P

11                   **ORDER DENYING MOTION TO TRANSFER HEARING TO LAS VEGAS, NEVADA OR, IN**  
12                   **THE ALTERNATIVE, TO DO SAID HEARING BY VIDEO**

13 TO:   THE HONORABLE RENA G. HUGHES, Respondent  
14       WILLIAM B. TERRY, ESQ., Counsel for Respondent  
15       THOMAS C. BRADLEY, ESQ., Prosecuting Officer

16               Currently before the Commission on Judicial Discipline ("Commission") is a Motion To  
17 Transfer Hearing To Las Vegas, Nevada Or, In The Alternative, To Do Said Hearing By Video  
18 ("Motion"), which was filed by counsel for the Honorable Rena G. Hughes, District Court Judge,  
19 Eighth Judicial District Court, Family Division, Department J for Clark County, Nevada  
20 ("Respondent") on February 20, 2018. Opposition To Respondent's Motion To Transfer Hearing To  
21 Las Vegas, Nevada Or, In The Alternative, To Do Said Hearing By Video was filed by the Prosecuting  
22 Officer for the Commission ("Prosecuting Officer") on March 6, 2018. Reply to the Prosecuting  
23 Officer's Opposition was filed by the counsel for Respondent on March 23, 2018.

24                                   **STATEMENT OF FACTS**

25               The Formal Statement of Charges alleges that Respondent, a District Court Judge in Clark  
26 County, Nevada, held a Ms. Silva ("mother") in contempt without due process and an opportunity to be  
27 heard; imposed a penalty for contempt that changed custody of the minor child by awarding sole  
28

1 physical and legal custody to the father; and changed physical and legal custody of the minor child  
2 without a hearing as required by Nevada law.

3       On February 20, 2018, Respondent filed her Motion to change the hearing location to Las  
4 Vegas, or in the alternative, permit testimony by video. The Respondent states that if the hearing is  
5 held in Reno it will come at a rather significant cost to the Eighth Judicial District Court because  
6 Judges Charles Hoskin and Diane Steel are anticipated to testify, as well as Senior Judge Gloria  
7 O'Malley. Additionally, Respondent states that one witness, Ms. Tiffany Skaggs, is unable to travel for  
8 the hearing because she has a flight out of the country the next day. Moreover, Respondent estimates it  
9 would cost her over \$4,000 to have the witnesses appear in Reno based upon air fare, food and lodging.  
10 Respondent argued that the Commission has significant funds to cover the cost of the Commissioners'  
11 travel and as such should bear the cost burden of the trial.

12       Respondent opines that the Commission's procedural rules afford too much discretion in setting  
13 a trial location. She notes, the Commission has previously relied on *Jones v. Nev. State Bd. of Med.*  
14 *Exam'rs*, to deny a motion for change in venue based on the rule therein that when a general venue  
15 statute and a specific venue statute conflict, the specific statute takes precedence. *Jones v. Nev. State*  
16 *Bd. Of Med. Exam'rs*, 342 P.3d 50, 52 (Nev. 2015). However, Respondent states that Jones is not  
17 entirely on point. She argues that in *Jones*, despite the fact that NRS 630.355 applies to procedures  
18 regarding an administrative agency, the two conflicting procedural rules were both adopted by the  
19 Nevada legislature, and therefore sit on equal footing. In the present situation, one of the conflicting  
20 rules, NRS 13.040, has been adopted by the legislature and enacted into law, while the other,  
21 Commission Rule 18, is a rule adopted by the Commission on Judicial Discipline and by the Nevada  
22 Supreme Court by court order in 1988.

23       While Nevada courts have the power to make their own procedural rules, Respondent alleges  
24 that Commission Procedural Rule 18 affords the Commission too much discretion. She notes that  
25 comparatively, procedural rules governing attorney disciplinary proceedings state that "venue shall be  
26 the county in which the attorney resides or maintains his or her principal office for the practice of law,  
27 where the alleged offense was committed or where the parties have stipulated." SCR 105(2)(c). She  
28

1 makes the analogy that SCR 105(2)(c) more closely resembles the general venue statute NRS 13.040,  
2 which calls for a determination of venue based on the defendant's residency.

3 Respondent further argues that she meets NRS 13.050(2)(c)'s requirements that "the court may,  
4 on motion, change the place of trial... when the convenience of the witnesses and the ends of justice  
5 would be promoted by the change." *See also Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 75, 616  
6 P.2d 400, 401 (1980), overruled on other grounds by *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222,  
7 228, 88 P.3d 840, 844 (2004). Respondent noted in her affidavit that having four judges, including  
8 herself, in Reno would hamper the ability of the Eighth Judicial District Family Court Division to  
9 function.

10 Moreover, Respondent argues that holding the hearing in Reno, Nevada constitutes an abuse of  
11 discretion. *See Goodman v. Goodman*, 68 Nev. 484, 487-88, 236 P.2d 305, 306 (1951). *Jackson v.*  
12 *State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). She argues that the relative burdens imposed on  
13 either side are markedly unequal because holding the hearing in Reno will burden the Eighth Judicial  
14 District Family Court Division's functioning, inconvenience a number of witnesses, critically interfere  
15 with Respondent's due process rights, and cost the Respondent an excessive and unwarranted amount of  
16 money to defend her case.

17 In the alternative, Respondent requests that she and all witnesses testify from Las Vegas by  
18 videoconference pursuant to NRCP-43(a). NRCP 43(a) states that "in every trial, the testimony of  
19 witnesses shall be taken in open court ... The court may, for good cause shown in compelling  
20 circumstances and upon appropriate safeguards, permit presentation of testimony in open court by  
21 contemporaneous transmission from a different location." NRCP 43(a). Respondent acknowledges that  
22 all pertinent language in this rule mirrors the Federal Rule of Civil Procedure Rule 43, and that in-  
23 person testimony has value; however, the witnesses are judges and court staff and thus understand the  
24 importance of testifying truthfully. Moreover, Respondent emphasizes that the functioning of the  
25 Family Division of the Eighth Judicial District Court will be negatively impacted if several judges are  
26 required to testify in Reno. Furthermore, one key witness is unavailable to testify in Reno based upon a  
27 previously planned out of country trip.  
28



1 Respondent further points out that the 1996 Committee Notes favor video transmission over  
2 telephonic transmission, and that videoconferencing would allow the Commission to view each witness  
3 as though they were sitting in-person at the hearing, noting that direct and cross examination with  
4 documents and exhibits is possible, as is questioning by the panelists. She highlights that the  
5 Commission would be able to observe witnesses' demeanor, facial expressions, reactions to questions,  
6 body language, voice inflections, etc., which are all important elements in the fact-finder's task.

7 In summary, the Respondent argues that the facts and circumstances regarding the inability of a  
8 key witness to attend, and the high cost to transport all witnesses there, may prevent Respondent from  
9 adequately defending herself.

10 The Prosecuting Officer opposes Respondent's Motion to transfer the hearing location from  
11 Reno to Las Vegas because the Respondent has failed to demonstrate extraordinary circumstances to  
12 justify a change of venue, noting that the facts of the case are simple. The Prosecuting Officer  
13 summarized the case as follows. In the underlying case, the mother and father had one child together.  
14 The parties divorced in 2013 and the mother was granted primary custody and the father had weekend  
15 visitation with the minor child. There were visitation problems and the father alleged that the mother  
16 failed to comply with the recently ordered visitation, thus on May 17, 2016, the father's counsel filed a  
17 Motion to place the matter back on calendar regarding the visitation.

18 On June 8, 2016, Respondent issued a Minute Order detailing the visitation issues. The  
19 Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the Court's  
20 order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE SHALL  
21 ISSUE." The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room  
22 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom on  
23 June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to twenty- five (25)  
24 days incarceration. If the Mother fails to appear, a bench warrant shall issue." The Minute Order also  
25 addressed other Order to Show Cause issues that were not related to visitation, and stated in closing,  
26 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 2016 at 1:30 p.m."

27 The mother arrived with her minor child at the scheduled hearing on June 15, 2016. Respondent  
28 ordered all parties and counsel, except the minor child, to leave the courtroom, and addressed the child

1 for nine (9) minutes off the record. The mother was not allowed to return to the courtroom and was  
2 escorted off the Courthouse property. In the mother's absence, Respondent awarded the father  
3 temporary sole legal and physical custody, terminated the father's child support obligation, ordered the  
4 mother to pay the statutory minimum child support to the father, and the mother was ordered to have no  
5 contact with the minor child. The minor child was clearly distressed and cried during the entire  
6 process. Respondent addressed the crying minor child by stating that the change in custody occurred  
7 because the mother and minor child were not cooperative with the Court ordered visitations.  
8 Respondent further stated that if the minor child refused to go with the father she would end up in Child  
9 Haven, which Respondent referred to as a jail for kids.

10 The Prosecuting Officer summed up the case as having three issues: Did Respondent violate  
11 Nevada law and the Judicial Code:

- 12 1) By holding Ms. Silva in contempt without due process and an opportunity to be  
13 heard;
- 14 2) By imposing a penalty for contempt that changed custody of the minor child by  
15 awarding sole physical and legal custody to the father; and
- 16 3) By changing physical and legal custody of the minor child without a hearing as  
17 required by Nevada law.

18 The Prosecuting Officer argued that the Respondent incorrectly claims that the Commission's  
19 Rules afford too much discretion and violate a Respondent's due process rights. The Prosecuting  
20 Officer cited to *In the Matter of the Honorable Melanie Andress-Tobiasson*, Case No. 2014-094-P,  
21 wherein the Commission relied upon *Jones v. Nev. State Bd. Of Med. Examiners*, 131 Nev. Adv. Op. 4  
22 (Feb. 5, 2015) for holding the Judicial Commission hearing for a Las Vegas jurist in Reno, Nevada. He  
23 argues that the doctrine of forum non conveniens is comprised of various factors, including a balancing  
24 test of several factors such as public and private interests, access to sources of proof, availability of  
25 compulsory process for unwilling witnesses, the cost of obtaining testimony from willing witnesses,  
26 and the enforceability of a judgment and if failure to apply the doctrine would subject the defendant to  
27 harassment, oppression, vexatiousness or inconvenience. *See Eaton v. Second Judicial Court*, 96 Nev.  
28

1 773, 774 (1980) (citations omitted). *See also*, NRS 13.050. NRS 13.050(2)(c); *Mountain View*  
2 *Recreation v. Imperial Commercial Cooking Equipment Co.*, 129 Nev. 413 (2013)(citations omitted).

3 The Prosecuting Officer notes that Respondent failed to disclose the substance of the testimony  
4 of potential witnesses. For example, Respondent identifies Judge Diane Steel, Senior Judge Gloria  
5 O'Malley, and Judge Charles Hoskin, but fails to include the substance of their expected testimony or  
6 explain the relevance of their testimony. To counsel's knowledge, those Judges did not observe nor did  
7 they have any involvement in the alleged misconduct. To the extent that Judges Hoskin and Steel will  
8 provide a character reference, such evidence should be submitted by letter as is customarily done in  
9 these cases. Accordingly, it is unclear if some of these witnesses will even be allowed to testify based  
10 upon relevance and duplicity. *See* NRS 48.025 and 48.035.

11 Furthermore, the Prosecuting Officer notes that cost arguments are misguided as the witnesses  
12 all could fly up and back the same day and thus the expenses would not amount to the \$4,000 claimed.  
13 Moreover, the argument that less Commissioners would have to travel than witnesses is incorrect as  
14 five (5) Commissioners would have to travel to a hearing for multiple days in Las Vegas, and as such  
15 the cost is significant, but more importantly the availability of the Commissioners impacts the hearing  
16 location decision as well. Thus, he argues that Commission Procedural Rule 18(1) instructs the  
17 Commission to consult with Respondent and counsel regarding scheduling the date and time of the  
18 hearing "where possible" to accommodate their schedules; and that occurred in this instance.

19 Respondent failed to demonstrate good cause to justify the use of videoconference to conduct  
20 the hearing. The Prosecuting Officer acknowledges that the Commission possesses videoconference  
21 capabilities between Reno and Las Vegas and has utilized it in a few uncontested hearings. The  
22 Commission, however, does not have to grant such a request. *See* NRCP 43(a). Although the  
23 Commission's procedural rules are silent as to whether hearings may be held by videoconference, the  
24 Commission has previously determined that it is instructive to look to the Federal Rules of Civil  
25 Procedure's standards governing videoconferences. *See In Re Andress-Tobiasson*, Case No. 2014-094-  
26 P. Federal Rule of Civil Procedure 43 states that for "good cause in compelling circumstances and with  
27 appropriate safeguards, the court may permit testimony in open court by contemporaneous  
28 transmissions from a different location."

1 The Prosecuting Officer cites to the Federal Rules of Civil Procedure, Rule 43, Advisory  
2 Committee's Notes which frown upon videoconferencing testimony without good cause. Notes to the  
3 1996 Amendment to Rule 43(a); *see also Sille v. Parball Corp.*, 2:07-CV-00901-KJD, 2011 WL  
4 2680560, at 2 (D. Nev. July 8, 2011 ). Moreover, the Prosecuting Officer cited to cases highlighting the  
5 importance of in-person testimony. *See Edwards v. Logan* 38 F. Supp. 2d 463 , 467 W.D. Va. ( 1999);  
6 *Morrow v. U.S Parole Commission*, 2012 WL 2877602 ); *United States v. Williams*, 641 F.3d 758, 764-  
7 65 (6th Cir.20 11) (Being physically present in the same room with another has certain intangible and  
8 difficult to articulate effects that are wholly absent when communicating by videoconference).

9 Further, the Prosecuting Officer argues that the Nevada Federal District Court found that, when  
10 the federal rule states a court may permit contemporaneous transmission "for good cause in compelling  
11 circumstances" the rule really means "for good cause in compelling circumstances." *Niemeyer v. Ford*  
12 *Motor Co.*, 2:09- CV-2091 JCM PAL, 2012 WL 5199145, at 2 (D. Nev. Oct. 18, 2012). Additionally  
13 the Prosecuting Officer states that a blanket request for authorization for video testimony was ruled"  
14 problematic due to the fact it is unclear at this juncture how many of those witnesses will actually be  
15 able to provide testimony relevant to the issues in this case." *Sille v. Parball Corp.*, 2:07-CV-00901-  
16 KJD, 2011 WL 2680560, at 2 (D. Nev. July 8, 2011). He states, furthermore, in federal cases, monetary  
17 expenses fail the good cause test. *See Vaughn v. Stevenson*, 2007 WL 460959, at 2-3 (D. Colo. 2007).  
18 He argues that Respondent's allegations fail to meet the standard of "compelling circumstances." He  
19 notes, however, if the Commission is inclined to grant testimony by videoconference, it should be  
20 limited to certain relevant witnesses, and not the Respondent, based upon good cause. Finally, he notes  
21 that the hearing at issue was videotaped so testimony regarding the events that transpired during the  
22 hearing is unnecessary, and that the procedural history and pleadings are contained in the Court's  
23 docket sheet and file so no oral testimony is needed regarding procedural history.

24 In conclusion, he argued that Respondent's Motion for Change of Venue should be denied  
25 because the Respondent failed to show compelling circumstances to justify moving the hearing from  
26 Reno to Las Vegas; and failed to disclose the substance or relevance of the testimony of her witnesses  
27 so it is not possible to determine whether certain witnesses should be allowed to testify by  
28

1 videoconference. Therefore, Respondent fails to meet her burden to allow videoconferencing and the  
2 Motion should be denied.

3 Respondent's Reply noted that the witnesses, which are expected to be called, are all from Las  
4 Vegas. She notes there may be changes or additions to the witnesses and Respondent is still considering  
5 that at this point in time, however, no matter who specifically ends up testifying, however, it appears  
6 that they will be from Las Vegas, Nevada since that is where the "event" occurred. Respondent states  
7 that she was never consulted as to whether or not it would be convenient to have the hearing in Reno,  
8 Nevada vs. Las Vegas, Nevada. The Respondent distinguishes the *Tobiasson* matter, where in that  
9 instance the judge was the only witness.<sup>1</sup>

### 10 ISSUE

11 Whether the venue for the formal hearing in question should be changed from Reno, Nevada to  
12 Las Vegas, Nevada based upon NRS 13.050(2)(c), and/or if the hearing should be conducted through  
13 videoconference between Reno, Nevada and Las Vegas, Nevada.

### 14 STANDARD FOR CHANGE OF VENUE

#### 15 Commission Procedural Rule 18. Formal Hearing.

- 16 1. When the answer has been filed, a formal hearing shall be scheduled, if practicable,  
17 within 60 days unless waived by both the Commission and the Respondent. The  
18 Respondent and all counsel must be notified of the time and place of the hearing and  
19 must first be consulted concerning the scheduling thereof to accommodate, where  
20 possible, the schedules of the Respondent and counsel and those of their witnesses.  
The proper venue for judicial hearings and proceedings shall be determined by the  
Commission at its sole discretion.

21 ...

#### 22 NRS 1.462. Proceedings before Commission; applicable rules

- 23 1. Proceedings before the Commission are civil matters designed to preserve an  
24 independent and honorable judiciary.  
25 2. Except as otherwise provided in NRS 1.425 to 1.4695, inclusive, or in the procedural  
rules adopted by the Commission, after a formal statement of charges has been filed,  
the Nevada Rules of Civil Procedure apply.

26 NRS § 1.462

27  
28 <sup>1</sup> Only Judge Tobiasson testified at the hearing; however, one other witness was scheduled to testify and was in Reno, Nevada for the hearing.

• • •

• • •

• • •

1 18 states that respondent must be consulted regarding the scheduling of the hearing regarding date and  
2 time only, and to accommodate, where possible. The consultation did occur regarding date and time,  
3 and the location for the hearing was set in Reno, Nevada as per the Commission's authority in  
4 Commission Rule 18.

5 Furthermore, Respondent's Motion to Change Venue is procedurally deficient as it lacks any  
6 discussion regarding specific witness testimony in support of the change in venue. NRS 13.050(2)(c),  
7 which provides a court with discretion to change venue "[w]hen the convenience of the witnesses and  
8 the ends of justice would be promoted by the change." The Nevada Supreme Court has indicated that  
9 venue may only be changed under NRS 13.050(2)(c) "under exceptional circumstances strongly  
10 supporting another forum," and that "[a] motion for change of venue based on forum non conveniens  
11 must be supported by affidavits so that the district court can assess whether there are any factors present  
12 that would establish such exceptional circumstances." *Mountain View Recreation, Inc. v. Imperial*  
13 *Commercial Cooking Equip. Co.*, 129 Nev. 413, 419, 305 P.3d 881, 885 (2013). In the absence of such  
14 evidence as to why a venue change is warranted, the Supreme Court has concluded that a venue change  
15 under NRS 13.050(2)(c) is improper. *Id.* at 420, 305 P.3d at 885.

16 In this instance, Respondent's affidavit addressed the costs to fly the five (5) witnesses to Reno  
17 and the impact upon the court calendar of two sitting judges who are listed as witnesses. While the  
18 Commission takes note of the impact upon trial calendars of the judges, the same impact occurs for two  
19 of the judicial Commissioners in this action as well. The impact on the Eighth Judicial District Family  
20 Court's docket for the day of trial is unavoidable if the witnesses testify, even if the trial were in Las  
21 Vegas. Furthermore, it is not clear from the Motion or affidavit, if the witnesses' testimony is relevant  
22 or duplicative. NRS 48.025 and NRS 48.035. The hearing at the center of the Formal Statement of  
23 Charges was captured primarily on the Court's JAVS system, and thus the video and court documents,  
24 in addition to Respondent's testimony, are relevant to the Commission hearing.

25 Moreover, general allegations regarding inconvenience or hardship are insufficient because "[a]  
26 specific factual showing must be made." *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 774-75,  
27 616 P.2d 400, 401 (1980), *overruled on other grounds by Pan v. Eighth Judicial Dist. Court*, 120 Nev.  
28 222, 228, 88 P.3d 840, 844 (2004). Respondent simply made general allegations that Respondent, her

1 staff and court staff witnesses are all based in Las Vegas, and it would be costly for Respondent to pay  
2 for the travel of all witnesses and would inconvenience the Eighth Judicial District Court. However, the  
3 trial is scheduled for one day and all of the witnesses can fly from Las Vegas to Reno on the day of  
4 trial. This lessens the impact upon Respondent's costs and any inconvenience to the witnesses.  
5 Moreover, Respondent cited to the Commission's budget noting that the Commission returned funds to  
6 the State of Nevada. The budget of the Commission is far more complicated than pled, and making  
7 travel arrangements for seven Commissioners, whose schedules must be accommodated, is extremely  
8 problematic. Furthermore, fiscal concerns are permitted to be considered by the Commission in  
9 scheduling hearings at the expense of taxpayer dollars. *See Matter of Halverson*, 123 Nev. 493, 517–  
10 18, 169 P.3d 1161, 1178 (2007).

11 In order for venue to change based upon forum non convenience, exceptional circumstances  
12 must be plead. *Mountain View Rec. v. Imperial Commercial*, 305 P.3d 881 (2013). In *Mountain View*,  
13 allegations that holding trial in Pahrump, where the underlying incident occurred, would be  
14 inconvenient to witnesses and parties because the majority of the litigation and discovery, including the  
15 majority of depositions, took place in Las Vegas, and that physical evidence, the special master, and  
16 the majority of counsel were located in Las Vegas, and that all experts located outside of Pahrump  
17 would have to travel through Las Vegas to attend court proceedings in Pahrump, failed to establish the  
18 existence of exceptional circumstances, thus the Nevada Supreme Court reversed the trial court's  
19 decision to change venue from Nye County to Clark County. *See id.* The same general allegations  
20 apply in this matter as the trial is a one day trial that will require only minimal travel by the witnesses  
21 as all witnesses can fly to and from Reno in one day. Respondent provided a list of witnesses in her  
22 affidavit, however without notice of what each witness will testify to, there are no factors present that  
23 would establish exceptional circumstances as required in *Mountain View*. Respondent failed to plead  
24 any exceptional circumstances that would merit a change in venue.

25 Therefore, Respondent's Motion for Change of Venue is hereby denied.

26 ///

27 ///

28 ///



## II. Electronic Testimony

In the alternative, Respondent argues for the videoconferencing of the hearing. While the State's teleconference abilities between locations provides the persons present at each location with the ability to hear and communicate with the persons present at each other location, the Commission does not have to grant such a request. NRCP 43

Federal Rules of Civil Procedure Rule 43 permits for "good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." While such testimony may be permitted, the Federal Rules of Civil Procedure, Rule 43, Advisory Committee's Notes frown upon videoconferencing testimony without good cause. The notes to the 1996 amendment to Rule 43(a) make it clear that transmission cannot be justified by demonstrating that it is inconvenient for the witnesses to attend the trial. *See also Sille v. Parball Corp.*, 2:07-CV-00901-KJD, 2011 WL 2680560, at 2 (D. Nev. July 8, 2011) The Notes emphasize the importance of actual, live testimony by a witness who is present in the courtroom. The Notes state that the "ceremony" of the courtroom and the actual "presence of the fact finder may exert a powerful force for truth-telling."

The Nevada Federal Court found that, "when the federal rule states a court may permit contemporaneous transmission "for good cause in compelling circumstances" the rule really means "for good cause in compelling circumstances.'" *Niemeyer v. Ford Motor Co.*, 2:09-CV-2091 JCM PAL, 2012 WL 5199145, at 2 (D. Nev. Oct. 18, 2012). In *Niemeyer*, the court noted that video transmission would "deprive jurors of the ability to make face-to-face determinations about Dr. Singer's testimony, demeanor, mannerisms, and reactions to certain questions proffered by defendants." *Id.* Additionally, a blanket request for authorization for video testimony was ruled "problematic due to the fact it is unclear at this juncture how many of those witnesses will actually be able to provide testimony relevant to the issues in this case." *Sille v. Parball Corp.*, 2:07-CV-00901-KJD, 2011 WL 2680560, at 2 (D. Nev. July 8, 2011) Furthermore, in federal cases, monetary expenses fail the good cause test. *See Vaughn v. Stevenson*, 2007 WL 460959, at 2-3 (D. Colo. 2007) (holding that the fact that producing a witness will be expensive and time consuming does not demonstrate "good cause" much less

1 "compelling circumstances" that would warrant deviation from the preferred practice of presenting live  
2 testimony in the courtroom).


3 Respondent's "good cause" for a videoconference is monetary and/or for convenience of the  
4 Respondent and witnesses. However, it is unclear if all witnesses listed will testify based upon  
5 relevance or duplicity. Respondent's reasons for requesting testimony by video lacks any compelling  
6 circumstances, and appears to be more of a threat that her hearing will impact the Eighth Judicial  
7 District Family Court Division. Such a broad swipe at a change of venue request through a listing of  
8 judges and court staff as witnesses without specificity as to testimony is not a relevant factor for a  
9 change in venue. Moreover, minor monetary issues and inconvenience fail the good cause standard.

10 District courts have "inherent power to control the disposition of the causes on its docket with  
11 economy of time and effort for itself, for counsel, and for litigants." *In re Stratosphere Corp. Sec.*  
12 *Litig.*, 182 F.R.D. 614, 617 (D.Nev.1998). In this instance, the Commission controls the time, place and  
13 forum of the hearing. Commission Rule 18. As the Commission sets its own procedures within the  
14 confines of due process, the Commission likewise controls its own docket, and as such may deny the  
15 motion for video conferencing, and based upon lack of good cause and lessened ability to observe the  
16 demeanor of Respondent and witnesses, the Motion for Electronic Testimony is hereby denied.  
17 However, any character evidence may be presented by letter, and thus there is no need for electronic  
18 testimony.

19 Respondent's Motion for Change of Venue, or in the Alternative, for Electronic Testimony is  
20 hereby denied. The Honorable Jerome Polaha is authorized to sign this order on behalf of the full  
21 Commission.

22 DATED this 3<sup>d</sup> day of April, 2018.

23 STATE OF NEVADA  
24 COMMISSION ON JUDICIAL DISCIPLINE

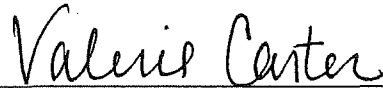
25   
26 Jerome Polaha, Presiding Judge  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify on this 6<sup>th</sup> day of April, 2018, I transmitted a copy of the foregoing ORDER  
3 DENYING MOTION TO TRANSFER HEARING TO LAS VEGAS, NEVADA OR, IN THE  
4 ALTERNATIVE, TO DO SAID HEARING BY VIDEO, via email and by placing said document in the  
5 U.S. Mail, postage prepaid, addressed to:

6 William B. Terry, Esq.  
7 William B. Terry, Chartered Attorney at Law  
8 530 South Seventh Street  
9 Las Vegas, NV 89101-6011  
10 [info@williamterrylaw.com](mailto:info@williamterrylaw.com)

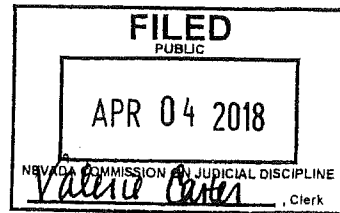
11 Thomas C. Bradley, Esq.  
12 Sinai, Schroder, Mooney, Boetsch, Bradley & Pace  
13 448 Hill Street  
14 Reno, NV 89501  
15 [tom@stockmarketattorney.com](mailto:tom@stockmarketattorney.com)

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Valerie Carter, Commission Clerk

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

2 **STATE OF NEVADA**



In the Matter of )  
THE HONORABLE RENA G. HUGHES, )  
Eighth Judicial District Court, Family Division, )  
Department J, County of Clark, )  
State of Nevada, )  
Respondent. )

CASE NO. 2016-113-P

11 **ORDER DENYING MOTION FOR EXPANSION OF TIME**  
12 **TO PRESENT RESPONDENT'S DEFENSE**

13 TO: THE HONORABLE RENA G. HUGHES, Respondent  
14 WILLIAM B. TERRY, ESQ., Counsel for Respondent  
15 THOMAS C. BRADLEY, ESQ., Prosecuting Officer

16 Currently before the Commission on Judicial Discipline ("Commission") is a Motion For  
17 Expansion of Time To Present Respondent's Defense ("Motion"), which was filed by counsel to the  
18 Honorable Rena G. Hughes, District Court Judge, Eighth Judicial District Court, Family Division,  
19 Department J for Clark County, Nevada ("Respondent") on February 20, 2018. Opposition To  
20 Respondent's Motion For Expansion of Time To Present Respondent's Defense was filed by the  
21 Prosecuting Officer to the Commission ("Prosecuting Officer") on March 6, 2018. The Reply to the  
22 Prosecuting Officer's Opposition was filed by the counsel for Respondent on March 23, 2018.

23 **STATEMENT OF FACTS**

24 The Formal Statement of Charges alleges that Respondent, a District Court Judge in Clark  
25 County, Nevada, held a Ms. Silva ("mother") in contempt without due process and an opportunity to be  
26 heard; imposed a penalty for contempt that changed custody of the minor child by awarding sole  
27 physical and legal custody to the father; and changed physical and legal custody of the minor child  
28 without a hearing as required by Nevada law.

1 On February 18, 2018, Respondent filed her Motion to enlarge the amount of time Respondent  
2 has regarding the hearing that is scheduled for one (1) day. The Prehearing Order sets forth four (4)  
3 hours for each side to present evidence. Respondent is seeking eight (8) hours for her defense, and does  
4 not object to allowing the Prosecuting Officer additional time, if requested.

5 The Respondent incorporated by reference herein the points and authorities filed in her motion  
6 to transfer hearing to Las Vegas, Nevada or, in the alternative, to conduct said hearing by way of video  
7 in Las Vegas, Nevada, along with the affidavit in support of the motion to transfer. Respondent argues  
8 that she needs more time to present her defense as she plans to call five (5) witnesses, not including  
9 herself.

10 Respondent acknowledged that under the Procedural Rules of the Nevada Commission on  
11 Judicial Discipline Rule 26 that "The Commission may limit time each party is allowed to present  
12 evidence ...." Respondent states that she does not question the ability of the Commission to limit the  
13 amount of time; however, she objects to the amount of time which has been allocated. She notes that  
14 any limitations on time must be based on reasonableness and not on an abuse of discretion. She alleges  
15 that the Commission has failed to take into consideration the Respondent's ability to prepare and  
16 present her own defense and therefore four (4) hours is insufficient. Respondent is seeking eight (8)  
17 hours to present her defense.

18 The Prosecuting Officer notes that this is not a complex case, as the relevant procedural history  
19 is not complicated and the allegations of misconduct are centered upon one brief hearing that was  
20 videotaped with the exception of nine (9) minutes where the Respondent held an "off the record"  
21 discussion. Therefore, four (4) hours for each side to present the case is more than sufficient time to  
22 address all the issues.

23 The Prosecuting Officer summarized the case as follows. In the underlying case, the mother  
24 and father had one child together. The parties divorced in 2013 and the mother was granted primary  
25 custody and the father had weekend visitation with the minor child. There were visitation problems and  
26 the father alleged that the mother failed to comply with the recently ordered visitation, thus on May 17,  
27 2016, the father's counsel filed a Motion to place the matter back on calendar regarding the visitation.  
28

1 On June 8, 2016, Respondent issued a Minute Order detailing the visitation issues. The  
2 Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the Court's  
3 order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE SHALL  
4 ISSUE." The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room  
5 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom on  
6 June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to twenty- five (25)  
7 days incarceration. If the Mother fails to appear, a bench warrant shall issue." The Minute Order also  
8 addressed other Order to Show Cause issues that were not related to visitation, and stated in closing,  
9 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 20 16 at 1:30 p.m."

10 The mother arrived with her minor child at the scheduled hearing on June 15, 2016. Respondent  
11 ordered all parties and counsel, except the minor child, to leave the courtroom, and addressed the child  
12 for nine (9) minutes off the record. The mother was not allowed to return to the courtroom and was  
13 escorted off the Courthouse property. In the mother's absence, Respondent awarded the father  
14 temporary sole legal and physical custody, terminated the father's child support obligation, ordered the  
15 mother to pay the statutory minimum child support to the father, and the mother was ordered to have no  
16 contact with the minor child. The minor child was clearly distressed and cried during the entire  
17 process. Respondent addressed the crying minor child by stating that the change in custody occurred  
18 because the mother and minor child were not cooperative with the Court ordered visitations.  
19 Respondent further stated that if the minor child refused to go with the father she would end up in Child  
20 Haven, which Respondent referred to as a jail for kids.

21 The Prosecuting Officer summed up the case as having three issues: Did Respondent violate  
22 Nevada law and the Judicial Code:

- 23 1) By holding the mother in contempt without due process and an opportunity to be  
24 heard;
- 25 2) By imposing a penalty for contempt that changed custody of the minor child by  
26 awarding sole physical and legal custody to the father; and
- 27 3) By changing physical and legal custody of the minor child without a hearing as  
28 required by Nevada law.

1 The Prosecuting Officer noted that the Commission has previously analyzed the issue of time  
2 limits in judicial discipline hearings. *See In the Matter of the Honorable Melanie Andress-Tobiasson*,  
3 Case No. 2014-094-P. *Tobiasson* cited to *Matter of Halverson*, 123 Nev. 493, 517-518, 169 P.3d 1161,  
4 1178 (2007), wherein former Judge Halverson maintained that the Commission denied her due process  
5 by allocating an additional hour of the hearing to the special prosecutor to present her case during her  
6 one-day suspension hearing; however, the Nevada Supreme held that the Commission did not violate  
7 Halverson's due process rights. The Prosecuting Officer noted that in *Tobiasson* and in *Halverson*,  
8 fiscal economy regarding the Commission was upheld. Moreover, he noted that the Prehearing Order  
9 permits the Commission to reallocate time if necessary. He argued that accordingly, the Commission  
10 should adopt its prior reasoning and established case law rejecting Respondent's argument regarding  
11 time.

12 The Prosecuting Officer stated that the Commission follows the Nevada Rules of Evidence. *See*  
13 Commission Rule 24. NRS 48.025 provides that evidence which is not relevant is not admissible. NRS  
14 48.035 provides that even relevant evidence may be excluded if its probative value is substantially  
15 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative  
16 evidence. Accordingly, Counsel contends that a great deal of the testimony from Respondent's  
17 witnesses is likely to be either not relevant or excluded because its probative value is substantially  
18 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative  
19 evidence. Thus, the Prosecuting Officer argues there will be no need for additional time since he is only  
20 calling one witness, Judge Hughes.

21 The Prosecuting Officer noted that the Respondent identified Judges Hoskin, Steel, and  
22 O'Malley as witnesses but failed to identify the substance of their testimony or the necessity for their  
23 appearance. He argues that any character testimony can be done by letter, and if Respondent relied  
24 upon the advice of any of these Judges, such evidence provides no defense to a violation of the Judicial  
25 Code.

26 Moreover, he opines that in any event, there is no allegation that their testimony would be  
27 lengthy and may not even be admissible. *See Matter of Halverson*, 123 Nev. 493, 169 P.3d 1161  
28 (2007), NRS 48.025 and 48.035. The Prosecuting Officer acknowledges that the Respondent also

1 identifies Ms. Skaggs, her Court Reporter, but fails to identify the substance of her testimony or how  
2 her testimony is relevant. He states, presumably, Ms. Skaggs intends to testify regarding the nine (9)  
3 minutes of the hearing that the Respondent failed to have recorded by videotape, but such testimony  
4 would not be lengthy. The Prosecuting Officer argues that this is not a complicated case that requires a  
5 lengthy hearing, and thus four (4) hours is more than sufficient to present.

6 In her Reply, Respondent notes that the underlying case was long and ongoing, and thus  
7 requires background information so the Commission can understand what led up to the ultimate  
8 hearing. Moreover, Respondent argues that the substance of the witnesses' testimony is not important  
9 at this point in time but is concerned by the fact that they will have to fly to Reno, Nevada to testify.

### 10 ISSUES

11 Whether the Commission's Scheduling Order, setting evidentiary time limits, denies  
12 Respondent's procedural due process rights.

### 13 STANDARD OF LAW

#### 14 Commission Procedural Rule 26

15 The Commission and the respondent are each entitled to present evidence and produce  
16 and cross-examine witnesses, subject to the rules of evidence applicable to civil  
17 proceedings. The Commission may limit the time each party is allowed to present  
18 evidence.

#### 19 Due Process

20 *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In  
21 *Mathews*, the United States Supreme Court noted whether procedural due process has  
22 been satisfied depends on a balance of three factors: (1) the private interest affected by  
23 the official action; (2) the risk of an improper deprivation of that private interest given  
24 the procedures used and any probable value of additional or different procedural  
25 safeguards; and (3) the government's interest, including the function involved and the  
26 fiscal and administrative burdens that the additional or different procedural requirements  
27 would necessitate. *See id.*  
28



## DISCUSSION

Redundancy and delay are to be minimized at trial, and thus testimony and evidence are subject to a reasonable limit. Time limits in judicial discipline hearings have been upheld by the Nevada Supreme Court. In *Matter of Halverson*, 123 Nev. 493, 517–18, 169 P.3d 1161, 1178 (2007), former Judge Halverson maintained that the Commission denied her due process by allocating an additional hour of the hearing to the special prosecutor to present her case during her one-day suspension hearing. In *Halverson*, the Nevada Supreme Court analyzed the time allotment pursuant to the United States Supreme Court case, *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In *Mathews*, the United States Supreme Court noted whether procedural due process has been satisfied depends on a balance of the three factors set forth above.

Moreover, courts have wide discretion in conducting a trial, including limitations on the presentation of evidence. *Young v. Nev. Title Co.*, 103 Nev. 436, 441, 744 P.2d 902, 904–05 (1987). That discretion to set reasonable time limits must be balanced against a party's due process rights to a fair and reasonable opportunity to be heard. *Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66 F.3d 1500, 1509 (9th Cir.1995). Therefore, based upon *Halverson*, case law, and Commission Procedural Rule 26, the Commission may prescribe time or times within which the presentation of evidence must be concluded and establish time limits on direct or cross-examination of witnesses.

The Commission issued its Prehearing Order setting forth time limits based upon an informed analysis of the facts of the case, known evidence and potential witnesses. This case is not complex in its evidence or testimony. The Formal Statement of Charges centers upon one hearing, which was recorded on the Court's JAVS system, with the exception of nine (9) minutes with the minor child, and related court filings. Furthermore, the Prosecuting Officer is only going to call one witness, the Respondent. Moreover, the only identified percipient witnesses are Respondent and her court clerk, Ms. Tiffany Skaggs. While Respondent's testimony will be long, it is presumed that Ms. Skaggs will testify regarding the hearing, including the unrecorded nine (9) minutes; however, such testimony should not take a significant amount of time. While Respondent has identified other judges as witnesses, Respondent has failed to identify with any specificity what her listed judicial witnesses would testify to as they were not percipient witnesses to the event. Therefore, it is unclear if the judicial witnesses have

1 any relevant testimony or non-duplicative testimony to offer that would necessitate more time. NRS  
2 48.025 and NRS 48.035. The list of judicial witnesses is similar to *Halverson* wherein a parade of  
3 witnesses all testifying in the same vein was denied, and that denial did not violate Halverson's due  
4 process rights. The key issue is what occurred or did not occur at the hearing, and related court  
5 documents, and therefore, the scope of the proceeding is narrow, on video and contained within the  
6 court records. Thus, the time limits in the Prehearing Order reflect an informed analysis of the time  
7 necessary to afford each party a full and fair opportunity to present their case.

8 Time limits are necessary to avoid the Commission being unreasonably delayed by the undue  
9 prolongation of the presentation of evidence. This is similar to other disciplinary boards. *See e.g.* NAC  
10 628.440(6) (The Board or the hearing officer may set reasonable time limits for oral presentation in  
11 disciplinary actions for accountants). While Respondent argues that the Commission must understand  
12 the background regarding the underlying case, the background to the hearing can be handled through  
13 Respondent's testimony and the court record. Moreover, Respondent has failed to demonstrate why she  
14 needs more time to have numerous judicial witnesses testify to an event in which they were not  
15 percipient witnesses. Additionally, fiscal economy favors a one day trial as some Commissioners must  
16 travel, as well as any witnesses for the Respondent. Similar fiscal economy was upheld in *Halverson* as  
17 well. Moreover, the Court in *Halverson* noted, the opportunity to be heard in a meaningful time and  
18 manner was satisfied in *Halverson* even when the special prosecutor was given an extra hour to present  
19 in a one day trial, and in this instance, the time is allotted equally among the parties. Respondent has  
20 not presented any evidence that she will need more than her four (4) hours of allotted time.

21 Moreover, the allotted times are not inflexible. The Commission's Scheduling Order permits the  
22 scheduling of the hours to be modified at its discretion. (Prehearing Order p. 4, 1.2). Furthermore, the  
23 time limitation of four (4) hours each is reasonable in relation to the complexity of the case. The case  
24 centers upon one brief hearing in which the majority was recorded on the JAVS system. Therefore, the  
25 time limit is not arbitrary or inflexible as to limit justice in the name of efficiency and cost.  
26 Accordingly, the Commission may reallocate time among the parties as necessary for good cause  
27 shown at the hearing. This allows the Commission to conduct a fair and impartial proceeding in which  
28 the parties are given a reasonable opportunity to present evidence. Based upon the limited issues in the

1 case, the parties have adequate time to present the evidence and any mitigating factors before the  
2 Commission.

3 In order to address Respondent's due process concerns, the Commission may allow post-trial  
4 briefs, if necessary and requested, to be filed in this matter within five (5) days of the conclusion of the  
5 hearing.


6 Therefore, Respondent's Motion For Expansion of Time To Present Respondent's Defense is  
7 denied as Respondent's due process rights are protected through the Prehearing Order as the  
8 Commission has the discretion to modify the allotted hours in order to meet any due process  
9 requirements at the hearing.

10 Respondent's Motion For Expansion of Time To Present Respondent's Defense is denied. The  
11 Honorable Jerome Polaha is authorized to sign this order on behalf of the full Commission.

12 IT IS SO ORDERED.

13 DATED this 3<sup>rd</sup> day of April, 2018.

14  
15 STATE OF NEVADA  
16 COMMISSION ON JUDICIAL DISCIPLINE

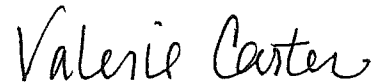
17   
18 Jerome Polaha, Presiding Judge  
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1 CERTIFICATE OF SERVICE

2 I hereby certify on this 6<sup>th</sup> day of April, 2018, I transmitted a copy of the foregoing ORDER  
3 DENYING MOTION FOR EXPANSION OF TIME TO PRESENT RESPONDENT'S DEFENSE, via  
4 email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

5 William B. Terry, Esq.  
6 William B. Terry, Chartered Attorney at Law  
7 530 South Seventh Street  
8 Las Vegas, NV 89101-6011  
9 Info@williamterrylaw.com

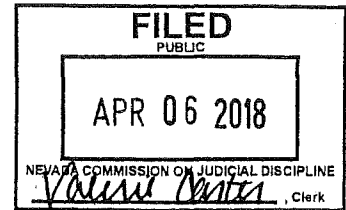
10 Thomas C. Bradley, Esq.  
11 Sinai, Schroder, Mooney, Boetsch, Bradley & Pace  
12 448 Hill Street  
13 Reno, NV 89501  
14 tom@stockmarketattorney.com

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Valerie Carter, Commission Clerk

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

2                                   **STATE OF NEVADA**



3                   In the Matter of                                   )

4                   THE HONORABLE RENA G. HUGHES,                   )  
5                   District Court Judge, Family Division, Eighth                   )  
6                   Judicial District Court, Department J,                   )  
7                   County of Clark, State of Nevada,                   )

CASE NO. 2016-113-P

8                                   Respondent.                                   )  
9                                   )  
10                                  )

11                                   **FIRST AMENDED ORDER SETTING PUBLIC HEARING**  
12                                   **AND NOTICE OF PANEL MEMBERS, ORDER REGARDING MEDIA ACCESS**

13                   TO:   THE HONORABLE RENA G. HUGHES, Respondent  
14                        WILLIAM B. TERRY, ESQ., Counsel for Respondent  
15                        THOMAS C. BRADLEY, ESQ., Prosecuting Officer

16                   Pursuant to order of the Nevada Commission on Judicial Discipline ("Commission"), a public  
17                   hearing in the above-captioned matter has been rescheduled to commence on May 30, 2018, at the hour  
18                   of 8:00 a.m., or as soon thereafter as the matter may be heard and will conclude at or before 5:00 p.m.  
19                   The public hearing will be conducted at the office of the State Bar of Nevada, 9456 Double R  
20                   Boulevard, Suite B, Reno, Nevada 89521. The Respondent, Respondent's counsel and the Prosecuting  
21                   Officer will appear in person.

22                   The following panelists are scheduled to participate as members of the Commission: Gary  
23                   Vause (Chair), Bruce C. Hahn, Esq., Stefanie Humphrey, Laurence Irwin, Esq., John Krmpotic, Hon.  
24                   Jerome Polaha and Hon. Thomas Stockard.

25                   Members of the media intending to record this public hearing must obtain consent to do so from  
26                   the Commission. Media entry requests should be directed to Gary Vause, Chair and may be mailed to  
27                   the Commission at Post Office Box 48, Carson City, NV, 89702, sent via facsimile to (775) 687-3607  
28                   or sent by electronic mail to [ncjdinfo@judicial.nv.gov](mailto:ncjdinfo@judicial.nv.gov). The request should contain the name and

///

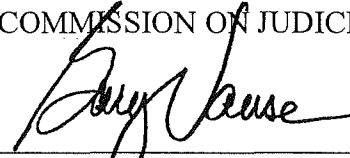
1 type of media outlet, including address, telephone and facsimile number(s). Requests must be received  
2 by the Commission no later than 3:00 p.m., May 18, 2018.

3 Chairman Gary Vause is authorized to sign this order on behalf of the full Commission.

4 IT IS SO ORDERED.

5 DATED this 6<sup>th</sup> day of April, 2018.

6  
7 STATE OF NEVADA  
8 COMMISSION ON JUDICIAL DISCIPLINE

9   
10 \_\_\_\_\_  
11 Gary Vause, Chairman  
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1 CERTIFICATE OF SERVICE

2 I hereby certify on this 6<sup>th</sup> day of April, 2018, I transmitted a copy of the foregoing FIRST  
3 AMENDED ORDER SETTING PUBLIC HEARING AND NOTICE OF PANEL MEMBERS,  
4 ORDER REGARDING MEDIA ACCESS, via email and by placing said document in the U.S. Mail,  
5 postage prepaid, addressed to:

6 William B. Terry, Esq.  
7 William B. Terry, Chartered Attorney at Law  
8 530 South Seventh Street  
9 Las Vegas, NV 89101-6011  
10 Info@WilliamTerryLaw.com  
11 Counsel for Respondent

12 Thomas C. Bradley, Esq.  
13 Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace  
14 448 Hill Street  
15 Reno, NV 89501  
16 Tom@stockmarketattorney.com  
17 Prosecuting Officer

18 

19 Valerie Carter, Commission Clerk  
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28

1 THOMAS C. BRADLEY, ESQ.  
2 Bar No. 1621  
3 *Sinai, Schroeder, Mooney,*  
4 *Boetsch, Bradley and Pace*  
5 448 Hill Street  
6 Reno, Nevada 89501  
7 Telephone (775) 323-5178  
8 Tom@TomBradleyLaw.com  
9 Prosecuting Officer for the Nevada  
10 Commission on Judicial Discipline  
11  
12

13  
14  
15 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**  
16

17  
18 IN THE MATTER OF THE HONORABLE  
19 RENA G. HUGHES, Eighth Judicial District Court,  
20 Department J - Family Court,  
21 County of Clark, State of Nevada,  
22


23 Respondent.  
24  
25

CASE NO. 2016-113-P

26  
27 **MOTION IN LIMINE NO. 1**  
28

Prosecuting Officer, Thomas C. Bradley, hereby moves this Commission for an order *in limine*, before the hearing, excluding expected testimony from Respondent's witnesses. This Motion is brought pursuant to Commission Procedural Rules 24, which states that rules of evidence applicable to civil proceedings shall apply at the hearing, and is based upon applicable court decisions, Commission Procedural Rule 8, NRS §§ 48.015, 48.025, 48.035, 50.275, 50.285, 50.295, all documents on file with the Commission in this matter, and the points and authorities that follow.

DATED this 7 day of May, 2018.

  
\_\_\_\_\_  
Prosecuting Officer Thomas C. Bradley, Esq.



1 POINTS AND AUTHORITIES

2 I) FACTUAL SUMMARY

3 Welthy Silva ("Mother") and Rogerio Silva ("Father") were divorced in 2013 in Clark  
4 County, Nevada. The parties had one minor child. In the original Decree of Divorce, the Court  
5 granted the Mother primary physical custody and the Father weekend visitation of the child.

6 Beginning in May 2015, the parties began litigating a number of issues concerning the well-  
7 being of their child and whether the Mother was interfering with the Father's visitation rights.  
8 During the next twelve months, Respondent held a number of hearings on these issues.

9 On May 12, 2016, an in-person hearing was held. During the hearing, the parties argued  
10 whether the Mother was interfering with the Father's rights of visitation. Respondent then advised  
11 the Mother that she was close to being held in contempt and being incarcerated. At the conclusion  
12 of the hearing, the Respondent ordered that the Father shall have visitation with the child on the  
13 upcoming weekend and that the parties shall exchange the child under the supervision of Donna's  
14 House Central.

15 Subsequently, the Father alleged that the Mother allegedly failed to comply with the  
16 recently ordered visitation. On May 17, 2016, the Father's counsel filed a motion to place the matter  
17 back on calendar regarding the visitation. On June 8, 2016, Respondent issued a Minute Order  
18 detailing the visitation issues. The Respondent concluded that, "[t]his Court finds that Plaintiff  
19 [Mother] is in contempt of the Court's order to facilitate visitation on weekends with the Father,  
20 AN ORDER TO SHOW CAUSE SHALL ISSUE."

21 The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court  
22 room [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the  
23 courtroom on June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to  
24 twenty-five (25) days incarceration. If the Mother fails to appear, a bench warrant shall issue."  
25 The Minute Order also addressed other Order to Show Cause issues that were not related to  
26 visitation, and stated in closing, "[t]he Order to Show Cause Hearing shall be scheduled for July  
27 28, 2016 at 1:30 p.m."

1 Mother arrived with her minor child at the scheduled hearing on June 15, 2016. Respondent  
2 ordered all parties and counsel, except the minor child, to leave the courtroom, and Respondent  
3 addressed the child for nine (9) minutes off the record. The Mother was not allowed to return to  
4 the courtroom and was escorted off the Courthouse property. In the Mother's absence, Respondent  
5 awarded the Father temporary sole legal and physical custody, terminated the Father's child support  
6 obligation, ordered the Mother to pay the statutory minimum child support to the Father, and  
7 ordered the Mother to have no contact with the minor child.

8 The minor child was clearly distressed and cried during the entire process while the Father  
9 remained impassive at his counsel table. Respondent addressed the crying minor child by stating  
10 that the change in custody occurred because the Mother and minor child were not cooperative with  
11 the Court ordered visitations. Respondent further stated that if the minor child refused to go with  
12 the Father she would end up in Child Haven, which Respondent referred to as a jail for kids.

13 At the court proceeding on June 15, 2016, no evidence or testimony was entered into the  
14 record regarding the change of custody, change in child support or the finding of contempt. No  
15 Order to Show Cause issued regarding the failure to facilitate visitation or notice regarding the  
16 change of custody and/or child support, and no hearing was held.

17 **II) RELEVANT ISSUES**

18 Accordingly, the issues in this case are narrow:

19 Did Respondent violate Nevada law and the Nevada Judicial Code:

- 20 1) By holding Ms. Silva in contempt without due process and an opportunity to be heard;  
21 2) By imposing a penalty for contempt that changed custody of the minor child by  
22 awarding sole physical and legal custody to the Father; and  
23 3) By changing physical and legal custody of the minor child without a hearing.

24 **III) ARGUMENT**

25 Motions in limine have long been recognized as a vehicle by which a party may seek to  
26 preclude introduction of inadmissible evidence prior to trial. Under Commission Procedural Rule  
27 24, "[t]he rules of evidence applicable to civil proceedings apply at the hearing."  
28

1 In Respondent's *Request for Subpoenas*, Respondent described the expected testimony of a  
2 number of witnesses which the Prosecuting Officer contends is not admissible. Each category of  
3 inadmissible evidence is discussed below.

4 **A) Expert Opinions Regarding Child Custody Issues**

5 In Respondent's *Request for Subpoenas*, Respondent stated that Dr. Childress is expected  
6 to testify regarding the subject of pathogenic parenting and his checklist to be utilized for judges  
7 when pathogenic parenting is present. *See* Exhibit 1, ¶ 5. The expected testimony from Dr.  
8 Childress is not relevant. *See* NRS §§ 48.015 and 48.025.

9 The Formal Statement of Charges makes clear that the only relevant issues are whether  
10 Respondent violated Nevada law and the Nevada Judicial Code (i) by holding Ms. Silva in contempt  
11 without due process and an opportunity to be heard; (ii) by imposing a penalty for contempt that  
12 changed custody of the minor child by awarding sole physical and legal custody to the Father; and  
13 (iii) by changing physical and legal custody of the minor child without a hearing. The Commission  
14 has no jurisdiction to review the merits of a change of custody or a finding of contempt as long as  
15 the judge adheres to the law governing those issues. *See* Commission Procedural Rule 8. Had the  
16 Respondent followed the law governing contempt and the change of custody, there would have  
17 been no Commission involvement in the Silva matter.

18 NRS § 50.275 provides, "[i]f scientific, technical or other specialized knowledge will assist  
19 the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
20 expert by special knowledge, skill, experience, training or education may testify to matters within  
21 the scope of such knowledge. The determination of whether to admit expert testimony is within the  
22 Commission's discretion. *In re Assad*, 124 Nev. 391, 399 (2008). The expert opinion, however,  
23 must be relevant. *Id.* The expected testimony of Dr. Childress is clearly not relevant regarding  
24 contempt and failure to follow the law. To the extent that such evidence is tangentially relevant,  
25 the evidence is not admissible because its probative value is substantially outweighed by the danger  
26 of unfair prejudice or confusion of the issues. *See* § NRS 48.035(1).

27 ///

28 ///

1     **B)     Character Evidence**

2             In Respondent's *Request for Subpoenas*, Respondent stated that (1) Judge Burton will  
3     testify as a character witness; (2) Judge Hoskin will testify that he was Judge Hughes' mentor and  
4     he specifically instructed Judge Hughes to advise the subject minor that if she did not go to the  
5     visitation with her father she would be placed in Child Haven; and (3) Judge Steel will testify that  
6     she was a mentor of Judge Hughes and she provided advice to Judge Hughes as to how to handle  
7     the Silva matter. *See* Exhibit 1, ¶¶ 2-4.

8             To the extent that Judges Burton, Hoskin, or Steel wish to provide character references,  
9     such evidence can and should be submitted by letter as is the custom and practice before this  
10    Commission. In fact, the Prosecuting Officer will not oppose the introduction of the proposed  
11    character letters.

12    **C)     Advice from Other Judges**

13            To the extent that Judges Hoskin and Steel advised Respondent on child custody and  
14    parenting issues, such advice is not relevant to the issues for the same reasons why the testimony  
15    of Dr. Childress is not relevant. Parenting and child custody advice is not relevant to the issues of  
16    contempt and failure to follow the law. To the extent that such evidence is tangentially relevant,  
17    the evidence is not admissible because its probative value is substantially outweighed by the danger  
18    of unfair prejudice or confusion of the issues. *See* § NRS 48.035(1).

19            To the extent that Judges Hoskin and Steel wish to provide expert testimony on the legal  
20    issue whether the Respondent's actions violated Nevada law, such expert testimony is also not  
21    admissible. The *Assad* Court held although expert testimony is admissible, the Commission must  
22    first determine that the expert testimony would be helpful before admitting such evidence. *In re*  
23    *Assad*, at 403.

24            The Prosecuting Officer contends that expert testimony in this case would not be helpful.  
25    The Commission is comprised of experienced judges and lawyers who are very familiar with  
26    Nevada law governing contempt and change of custody. Thus, the Commission would not benefit  
27    from expert opinion on these legal issues. Instead these legal issues should be discussed by counsel  
28    in their prehearing briefs and determined by the Commission following the completion of the

1 hearing.

2  
3 Expert testimony that impermissibly encroaches on the trier of fact's province should be  
4 properly excluded. *Burrows v. Riley*, (Nev. App., Jan. 19, 2018, No. 71350) 2018 WL 565431, at  
5 \*2. Moreover, although expert testimony concerning a legal issue is not per se improper, an expert  
6 witness cannot give an opinion on an ultimate issue of law. *See Hangarter v. Provident Life & Acc.*  
7 *Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004). The relevant issues are whether Respondent violated  
8 Nevada law and the Nevada Judicial Code (i) by holding Ms. Silva in contempt without due process  
9 and an opportunity to be heard; (ii) by imposing a penalty for contempt that changed custody of the  
10 minor child by awarding sole physical and legal custody to the Father; and (iii) by changing  
11 physical and legal custody of the minor child without a hearing are ultimate issues of law. These  
12 are ultimate issues of law which are the sole province of the Commission to decide. Therefore, this  
13 type of expert testimony is not admissible

14 Moreover, to the extent that such evidence is tangentially relevant, the evidence is not  
15 admissible because its probative value is substantially outweighed by the danger of unfair prejudice  
16 or confusion of the issues. *See* NRS § 48.035(1).

17 **IV) CONCLUSION**

18 Accordingly, the Prosecuting Officer request that no evidence may be offered or received  
19 relative to (1) the expert testimony of Mr. Childress; and (2) the expected testimony of Judges  
20 Burton, Hoskin, and Steel. Moreover, the Prosecuting Officer requests that Respondent be  
21 precluded from using any pleading, testimony, remarks, questions, or arguments that might inform  
22 the Commission about such evidence and that the Commission instruct Respondent, her counsel,  
23 and witnesses called on her behalf not to make any reference to this motion or the fact that it has  
24 been filed and decided.

25 DATED this 7<sup>th</sup> day of May, 2018.

26   
27 Prosecuting Officer Thomas C. Bradley, Esq  
28

CERTIFICATE OF SERVICE

I certify that on the 7<sup>th</sup> day of May, 2018, I emailed a true and correct copy of this **MOTION IN LIMINE NO. 1** to the following:

William B. Terry  
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Paul C. Deyhle  
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By: 

Thomas C. Bradley, Esq.  
Prosecuting Officer for NCJD

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Nevada State Bar No. 001028  
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Attorney for Respondent

ORIGINAL

NEVADA COMMISSION ON JUDICIAL DISCIPLINE  
STATE OF NEVADA

In the Matter of  
THE HONORABLE RENA HUGHES,  
Eighth Judicial District Court, Family Division,  
Department J, County of Clark, State of Nevada,  
Respondent.


CASE NO. 2016-113-P

OPPOSITION TO MOTION IN LIMINE NO. 1

COMES NOW, the Respondent, the Honorable Rena Hughes, Eighth Judicial District Court, Family Division, Department J, County of Clark, State of Nevada, by and through her counsel, WILLIAM B. TERRY, ESQ. and ALEXANDRA ATHMANN-MARCOUX, ESQ., of the law offices of WILLIAM B. TERRY, CHARTERED and files the instant opposition to the Prosecuting Officers Motion in Limine No. 1 filed on or about May 7, 2018 in the instant case.

Said Opposition is made and based upon the attached analysis of facts and points and authorities.

WILLIAM B. TERRY, CHARTERED

  
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1 1. Although relevant, evidence is not admissible if it's probative  
2 value substantially outweighed by the danger of unfair prejudice or  
confusion of the issues or of misleading the jury...

3 2. Although relevant, evidence may be excluded if it's probative  
4 value is substantially outweighed by consideration of undue delay,  
waste of time, or needless presentation of cumulative evidence...

5 It is suggested that the probative value of the proffered testimony is not substantially  
6 outweighed by the danger of unfair prejudice or confusion of issues or of misleading the tribunal.  
7 The word tribunal is utilized because the statute utilizes the word "jury". The Commission in the  
8 instant case, respectfully, are much more sophisticated and understand the law better than a "jury"  
9 where confusion might exist. Even in subsection 2 of NRS 48.035 the word "substantially  
10 outweighed" is utilized. The Commission has given to the Respondent four hours to present the  
11 defense case. The Respondent does not believe that this will unduly delay or cause of waste of time  
12 or a needless presentation of cumulative evidence. To the contrary, each witness is singularly  
13 important in and of themselves.

14 First, in reference to Judge Burton, the prosecutor suggests that character evidence should  
15 come in through character letters which may not be opposed by the Special Prosecutor. Respectfully,  
16 a character letter while critically important to the Respondent is not as critical as hearing the actual  
17 testimony and again even subject to cross examination by the individual judge.

18 As to Judges Hoskin and Steel, the Respondent is not offering these individuals up as experts  
19 but only as other judges who specifically advised Judge Hughes in the instant case. In the original  
20 Request for Subpoenas each of the relevancy of the testimony of each individual was substantially  
21 outlined. Judge Hoskin was specifically Judge Hughes's supervising judge and she specifically  
22 conferred with him regarding the case. Additionally, it was Judge Hoskin that suggested to Judge  
23 Hughes that part of what she might considering doing was putting the subject minor into custody.  
24 Judge Steel was the mentoring judge of Judge Hughes. Judge Hughes had only been on the bench  
25 for approximately a year and it was Judge Steel who would discuss with her issues of law and  
26 specific issues. Even if they pertain to a factual situation. What was relevant in the instant case was  
27 the issue of what will be referred to and has been referred to pathogenic parenting. Sometimes the  
28 terminology, not necessarily correctly, has been utilized of parental alienation. The Commission

1 is reminded that Judge Hughes presided over this issue for a period in excess of almost 12 months  
2 and she had issued prior orders in reference to the visitation situation in the instant case. For  
3 example, on the issue of contempt, there are not any necessarily concrete rules or guides in Nevada  
4 for judges in reference to the procedural requirements for holding an individual in contempt other  
5 than a knowledge between civil and criminal contempt. The Commission might also consider the  
6 testimony of Judge Hoskin and Judge Steel as mitigating evidence due to the fact that Judge Hughes  
7 was a relatively new judge and the issue before her was a rather complex one. She had sought help  
8 from the other judges specifically Hoskin and Steel in reference to this matter although the ultimate  
9 decision was hers.

10 The Special Prosecutor also objects to the testimony of Dr. Childress. Again, in the Request  
11 for Subpoenas the relevancy of Dr. Childress was set forth. He is an expert in the area of pathogenic  
12 parenting. He would not be testifying as an expert on behalf of Judge Hughes as to whether she did  
13 or did not violate certain of the rules applicable to judges. As a result, the instant case can be easily  
14 distinguished from the case of *In Re: Assad*, 124 Nev. 391 (2008). The ultimate majority holding  
15 in the *Assad* case was to affirm the Judicial Discipline Commission's refusal to admit judicial ethics  
16 experts testimony. That is not what is being proffered herein. The Commission is also reminded  
17 that there were two Justices that dissented in the *Assad* case finding that "Judge Assad should have  
18 been permitted to introduce all evidence including expert testimony which supported his defense.  
19 The Commission would then have been free to weigh the evidence as it deemed appropriate..."  
20 Interestingly enough, that is exactly what the Respondent is arguing herein in reference to Dr.  
21 Childress. Dr. Childress is not being offered as an expert in the area of judicial ethics but is being  
22 offered an expert in the area of pathogenic parenting. Here the Special Prosecutor has cited  
23 Procedural Rule 24 of the Commission which is what the Supreme Court addressed themselves to  
24 in the *Assad* case along with relevancy. In *Assad* the Court recognized that "the Rules of Evidence  
25 concerning the admissibility of expert testimony do not diminish between civil and criminal  
26 proceedings and many of our civil cases discussing NRS 50.275 rely on criminal cases..." The Court  
27 in *Assad* was also critical of the Commission's over-reading of the *Mosley* case in *The matter of*  
28 *Mosley*, 120 Nev. 908, 102 P.3d 555 (2004). Again, respectfully, in criticizing the Commission, the

1 Court found that part of the Commission's order was "... not the words of this court as characterized  
2 in the Commission's order but in fact is the language of a scholarly article that was quoted in  
3 Mosley..." The Court went on to find in *Assad* that the words utilized by the court in *Mosley* were  
4 not meant to "...discourage the Commission from admitting such evidence where appropriate..."  
5 Ultimately, the *Assad* court did not concur with the Commission's decision for a public censure and  
6 found "Nevertheless, a public censure is too extreme a form of discipline in this case since the record  
7 does not support a finding that Judge Assad's conduct was willful and reflects considerable  
8 mitigation..." Ultimately, the court ordered Judge Assad to issue a formal apology to an individual  
9 and to take a judicial ethics class at the National Judicial College. The point, however, is that while  
10 the Nevada Supreme Court in *Assad* did find by a majority that expert opinions pertaining to whether  
11 or not a judge violated a specific rule under which he works being a rule of judicial conduct was not  
12 admissible. They did not exclude all experts. Again, Dr. Childress is being offered as an expert in  
13 one specific areas which Judge Hughes will testify that she like other judges followed. It is almost  
14 like a checklist approach.

15 More needs to be said in reference to Dr. Childress but as far as the above-indicated reasons  
16 are concerned Judge Burton is important as a live character witness. The Commission will be  
17 presented with character letters on behalf of Judge Hughes but Judge Burton would be subject to  
18 cross examination which letters, quite frankly, are not. Judge Hoskin was Judge Hughes' mentor,  
19 advisor and past presiding judge and specifically told Judge Hughes to make the comment to the  
20 child of if she did not go to the visitation with her father she would go to Child Haven, it is just like  
21 a jail for kids. Judge Steel is important because of the advise she likewise gave to Judge Hughes  
22 which is not cumulative in nature. Counsel for the Respondent notices that the prosecuting attorney  
23 did not object to the testimony of Tiffany Skaggs, the court clerk, who will testify to the nine minutes  
24 that was not recorded on the video.

25 Further in reference to Dr. Childress, Dr. Childress has written books and done publications  
26 dealing with the complainants pathogenic parenting. Dr. Childress is an author and has written  
27 extensively on the problems plaguing child custody cases. He has also written guidelines for the  
28 judiciary on how to handle pathogenic parenting cases based on his research and expertise in the

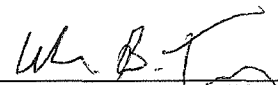
1 field of psychology. It will be shown that Judge Hughes followed the guidelines as well as the  
2 recommendations by the other judges in addressing the pathogenic parenting abuses in the case.

3 **CONCLUSION**

4 For the above-indicated reasons, it is respectfully requested that the Motion in Limine No.  
5 1 filed by the Special Prosecutor in reference to proposed witnesses by Judge Hughes be denied.

6 DATED this 9th day of May, 2018.

7 WILLIAM B. TERRY, CHARTERED


8  
9   
10 WILLIAM B. TERRY, ESQ.  
11 Nevada Bar No. 001028/  
12 ALEXANDRA ATHMANN-MARCOUX, ESQ.  
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18 Attorney for Respondent

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 9th day of May, 2018, I, as an employee of WILLIAM B.  
21 TERRY, CHARTERED, that a true and correct copy of this **OPPOSITION TO MOTION IN**  
22 **LIMINE NO. 1** was emailed to the following:

23 Paul C. Deyhle  
24 Executive Director  
25 Nevada Commission on Judicial Discipline  
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27 Thomas Bradley, Esq.  
28 Special Prosecutor  
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29   
30 As an employee of William B. Terry, Chartered

## Sarah Daniels

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**From:** Sarah Daniels <sarah@WilliamTerryLaw.com>  
**Sent:** Wednesday, May 9, 2018 4:03 PM  
**To:** ncjdinfo@judicial.state.nv.us; Jill C. Davis (jcdavis@judicial.state.nv.us)  
**Cc:** pdeyhle@judicial.state.nv.us; Tom@TomBradleyLaw.com  
**Subject:** NCJD vs. Rena Hughes, Case No. 2016-113-P  
**Attachments:** Opposition to Motion In Limine No. 1 2016-113-P.pdf

*Please find attached the **Opposition to Motion in Limine No. 1** which we are submitting to be filed with the Commission in the Hughes matter. A copy is likewise being forwarded herein to Mr. Deyhle and Mr. Bradley.*

*Thank you for your attention and courtesies in this matter.*

Sarah Daniels, Legal Assistant  
William B. Terry, Chartered  
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### **CONFIDENTIAL INFORMATION**

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5 Prosecuting Officer for the Nevada  
Commission on Judicial Discipline  
6

7  
8 **BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE**

9  
10 IN THE MATTER OF THE HONORABLE  
RENA G. HUGHES, Eighth Judicial District Court,  
Department J - Family Court,  
11 County of Clark, State of Nevada,


CASE NO. 2016-113-P

12 Respondent.  
13  
14

15 **OBJECTION TO RESPONDENT'S EXHIBITS**  
16

17 Prosecuting Officer, Thomas C. Bradley, hereby objects to certain exhibits which  
18 Respondent intends to introduce at the hearing. This Objection is made pursuant to the  
19 Commission's Prehearing Order dated January 5, 2018, and is based upon Commission Procedural  
20 Rules 8 and 24, NRS §§ 48.015, 48.025, 48.035, 50.275, 50.285, 50.295, all documents on file with  
21 the Commission in this matter, and the points and authorities that follow.

22 DATED this 18 day of May, 2018.

23  
24   
Prosecuting Officer Thomas C. Bradley, Esq  
25  
26  
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28

1 POINTS AND AUTHORITIES

2 D) FACTUAL SUMMARY and RELEVANT ISSUES

3 The Prosecuting Officer hereby incorporates the factual summary and relevant issues  
4 contained in his *Motion in Limine No. 1*.

5 OBJECTIONS

6 A) Dr. Childress' Article Concerning Parenting Issues

7 Respondent wishes to introduce a fifty-four (54) page article entitled "Recommended  
8 Treatment-Related Assessment Protocol for Parent-Child Attachment Pathology Surrounding  
9 Divorce" that was written by Dr. Childress. *See* Respondent's Exhibits 0001-0054. The article  
10 written by Dr. Childress is not relevant. *See* NRS §§ 48.015 and 48.025.

11 The Formal Statement of Charges makes clear that the only relevant issues are whether  
12 Respondent violated Nevada law and the Nevada Judicial Code (i) by holding Ms. Silva in contempt  
13 without due process and an opportunity to be heard; (ii) by imposing a penalty for contempt that  
14 changed custody of the minor child by awarding sole physical and legal custody to the Father; and  
15 (iii) by changing physical and legal custody of the minor child without a hearing. The Commission  
16 has no jurisdiction to review the merits of a change of custody or a finding of contempt as long as  
17 the judge adheres to the law governing those issues. *See* Commission Procedural Rule 8. Had the  
18 Respondent followed the law governing contempt and the change of custody, there would have  
19 been no Commission involvement in the Silva matter.

20 NRS § 50.275 provides, "[i]f scientific, technical or other specialized knowledge will assist  
21 the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
22 expert by special knowledge, skill, experience, training or education may testify to matters within  
23 the scope of such knowledge." The determination of whether to admit expert testimony is within  
24 the Commission's discretion. *In re Assad*, 124 Nev. 391, 399 (2008). The expert opinion, however,  
25 must be relevant. *Id.* The article written by Dr. Childress is clearly not relevant regarding contempt  
26 and failure to follow the law. To the extent that such evidence is tangentially relevant, the evidence  
27 is not admissible because its probative value is substantially outweighed by the danger of unfair  
28 prejudice or confusion of the issues. *See* § NRS 48.035(1).

1     **B) Character Letters Containing Expert Opinions on the Merits**

2             The Prosecuting Officer does not oppose the introduction of character letters as long as the  
3 letters do not offer expert opinions on the issue whether Judge Hughes acted appropriately in the  
4 Silva case. Unfortunately, several letters identified as “character letters” which the Respondent  
5 seeks to introduce at the hearing include opinions regarding the propriety of Judge Hughes’s action  
6 the Silva case. These letters are not relevant nor are they admissible as expert opinions. *See* NRS  
7 §§ 48.015, 48.025, 48.035, 50.275, 50.285, 50.295.

8             Ms. Abrams opines that Judge Hughes “handled the [Silva] situation appropriately...” and  
9 she should be portrayed as a “hero.” *See* Respondent’s Exhibits 0068-0069. Ms. Abrams also  
10 attached an Order of Recusal in another child custody case which also has no relevance to this  
11 matter. *See* Respondent’s Exhibits R0070-0080. Mr. DiCiero admits that he does not know Judge  
12 Hughes but offers his opinions on the Silva case, despite the fact he does not appear to be lawyer.  
13 *See* Respondent’s Exhibits R0089-0093. Mr. Willick opines that a “scurrilous organization” is  
14 attempting to influence the Commission in the Hughes disciplinary proceeding. *See* Respondent’s  
15 Exhibits R0094-0095. Accordingly, these letters should be excluded because they are not relevant  
16 nor are they admissible as expert opinions.

17             Expert testimony that impermissibly encroaches on the trier of fact’s province should be  
18 properly excluded. *Burrows v. Riley*, (Nev. App., Jan. 19, 2018, No. 71350) 2018 WL 565431, at  
19 \*2. Moreover, although expert testimony concerning a legal issue is not per se improper, an expert  
20 witness cannot give an opinion on an ultimate issue of law. *See Hangarter v. Provident Life & Acc.*  
21 *Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004). The relevant issues are whether Respondent violated  
22 Nevada law and the Nevada Judicial Code (i) by holding Ms. Silva in contempt without due process  
23 and an opportunity to be heard; (ii) by imposing a penalty for contempt that changed custody of the  
24 minor child by awarding sole physical and legal custody to the Father; and (iii) by changing  
25 physical and legal custody of the minor child without a hearing are ultimate issues of law. These  
26 are ultimate issues of law which are the sole province of the Commission to decide. Therefore, this  
27 type of expert testimony is not admissible.

28             Moreover, to the extent that such evidence is tangentially relevant, the evidence is not

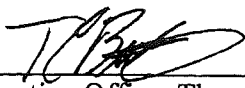


1 admissible because its probative value is substantially outweighed by the danger of unfair prejudice  
2 or confusion of the issues. *See* NRS § 48.035(1).

3 **II) CONCLUSION**

4 Accordingly, the Prosecuting Officer objects to the introduction of Dr. Childress' article  
5 and the letters written by Ms. Abrams, Mr. DiCiero, and Mr. Willick. Moreover, the Prosecuting  
6 Officer requests that Respondent be precluded from using any pleading, testimony, remarks,  
7 questions, or arguments that might inform the Commission about such evidence, and that the  
8 Commission instruct Respondent, her counsel, and witnesses called on her behalf not to make any  
9 reference to this objection or the fact that it has been filed and decided.

10  
11 DATED this 18 day of May, 2018.

12  
13   
14 Prosecuting Officer Thomas C. Bradley, Esq


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**CERTIFICATE OF SERVICE**

I certify that on the 18 day of May, 2018, I emailed a true and correct copy of this OBJECTION to the following:

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By:   
Thomas C. Bradley, Esq.  
Prosecuting Officer for NCJD

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6 Attorney for Respondent

ORIGINAL

7 NEVADA COMMISSION ON JUDICIAL DISCIPLINE

8 STATE OF NEVADA

9 In the Matter of

CASE NO. 2016-113-P

10 THE HONORABLE RENA HUGHES,  
Eighth Judicial District Court, Family Division,  
11 Department J, County of Clark, State of Nevada,


12 Respondent.

13 RESPONSE TO OBJECTION TO RESPONDENT'S EXHIBITS

14 COMES NOW, the Respondent, the Honorable Rena Hughes, by and through her counsel  
15 WILLIAM B. TERRY, ESQ. and ALEXANDRA ATHMANN-MARCOUX, ESQ., of the law  
16 offices of WILLIAM B. TERRY, CHARTERED and files the instant response to the Special  
17 Prosecutor's objections to the Respondent's exhibits. It is the position of the Respondent that the  
18 objections should be denied and that in fact, all documents and letters are exceedingly relevant to  
19 issues before the Commission.

20 Said Response is made and based upon the attached analysis of facts and points and  
21 authorities in support hereof.

22 WILLIAM B. TERRY, CHARTERED

23  
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25 WILLIAM B. TERRY, ESQ.  
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Attorney for Respondent

## ANALYSIS OF FACTS

Respectfully, the Special Prosecutor is attempting to limit the Respondent's case to that which occurred only on one day particularly in reference to the Dr. Childress articles. This makes little sense. The Special Prosecutor is attempting to limit a number of things which have been set forth in the proposed exhibits and the Respondent will go through each of those as did the Special Prosecutor.

### **A. Dr. Childress's article concerning parenting issues.**

The article attached as an exhibit is followed by most if not all of the family court lawyers when dealing with certain parenting issues. It is no different than reviewing Prosser on torts or law review articles in anticipation of making rulings. A judge's knowledge and particularly that of a family court judge is influenced by many factors. Obviously her law school education, her experience as a practitioner and her experience as a judge. Judge Hughes utilizes Dr. Childress's suggested approach in many of her cases. Parental alienation, although it is called other things, occurs in many forms and a judge has to deal with it almost on a sliding scale. First there might be a request that the subject minor become involved in visitation with the alienated parent. Next, that they see a psychologist together until such time as ultimately some form of visitation can be awarded. Judges historically are faced with parental alienation where one spouse basically controls a minor to the point that the minor is doing exactly what that spouse is directing them to do. As an example, in the Silva case, Judge Hughes presided over the full duration of all of the proceedings and not just the proceeding which is the subject of the complaint. She utilized her knowledge and her experience both as a judge and as a practitioner in formulating progressive orders and progressive approaches. She sought counsel from other more experienced judges. As of the time of filing the instant response to the Special Prosecutor's objections, certain motions in limine have not even been ruled upon in attempt by the Special Prosecutor to limit the number witnesses and the specific witnesses in testifying. As an example, currently pending is an objection to Dr. Childress's testifying. At a minimum, his article or articles are relevant because part of Judge Hughes's state of mind was exactly what Dr. Childress had suggested. Judges are given a unlimited but subject to review right to exercise their discretion. The appellate process is utilized in an effort to challenge that judges

1 exercise of discretion. The thought processes, however, that go into a judge's determination are  
2 exceedingly relevant including in this case Dr. Childress's approach to, as the Special Prosecutor  
3 calls it, the "pathology". Contrary to the Special Prosecutor's arguments, she did not "change  
4 custody" as a penalty for any type of contempt. It will demonstrated at the hearing that she has a  
5 right to change custody if it is in the best interest of the minor child. What went into her thinking  
6 is exceedingly relevant including the information she had ascertained from Dr. Childress. There is  
7 also no prejudice to the Special Prosecutor in introducing this evidence. He can cross examine  
8 utilizing the article and he can certain cross examine Judge Hughes. His reliance on *In Re: Assad*,  
9 124 Nev. 391, 399 (2008) is misplaced. In the *Assad* case, what the court ruled in part was that the  
10 respondent could not call an expert in the legal field to testify that the judge did or did not violate  
11 a specific judicial rule. That is a far cry from what went into Judge Hughes's determination. It  
12 appears to counsel for the Respondent that the Special Prosecutor is trying to eliminate and all  
13 evidence which the Respondent seeks to produce. The Special Prosecutor has objected to all  
14 witnesses except for one including Dr. Childress and now has objected to the articles of Dr.  
15 Childress. Again, this was part of the basis of the ruling of Judge Hughes as well as the input from  
16 the other judges.

17 The Special Prosecutor states "the article written by Dr. Childress is clearly not relevant  
18 regarding contempt and failure to follow the law..." Again, the Special Prosecutor reads the  
19 allegations in the case too narrowly and particularly reads the defenses too narrowly. It is the position  
20 of the Respondent that she in fact followed the law. The Special Prosecutor fails to note in his  
21 motion that the change of custody was done temporarily and further that a show cause order was set.  
22 The basis for Judge Hughes's temporary change of custody is entirely relevant including that  
23 information which she ascertained from Dr. Childress. Certainly she does not have to follow what  
24 Dr. Childress recommends but it is information that is inputted for consideration.

25 The Special Prosecutor also objects to certain of the character letters containing what he  
26 represents as being "expert opinions on the merits..." These letters are not offered as "expert  
27 opinions". Ms. Abrams opinion that Judge Hughes handled the "Silva situation appropriately..."  
28 is an opinion by a lay practitioner and is not offered as an expert opinion. The order of recusal in

1 another child custody case is also relevant. As to the Willick letter, quite frankly, he does give a  
2 recitation as to what he describes as the "scurrilous organization". In fact, an organization was  
3 involved in the instant case and respectfully the motives of Mr. Sanson are also relevant.

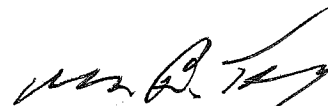
4 What is also disturbing to the Respondent is the conclusion paragraph of Special Prosecutor's  
5 objections. He objects to the introduction of Dr. Childress's article but then broadly asks what  
6 appears to be a request that no information regarding what Judge Hughes learned from Dr. Childress  
7 be discussed. If the Respondent is incorrect on this, the Special Prosecutor needs to be more specific  
8 because his conclusion indicates "...that Respondent be precluded from using any pleading,  
9 testimony, remarks, questions or arguments that might inform the commission about such  
10 evidence..." Certainly, Judge Hughes should be permitted to testify to information she had which  
11 was "inputted" into her decision making process. This would include not just the actions of the  
12 subject minor and the parents involved but also the information she had ascertained from Dr.  
13 Childress.

#### 14 CONCLUSION

15 For the above-indicated reasons, it is respectfully requested that the objections to the Special  
16 Prosecutor to the exhibits be denied.

17 DATED this 23rd day of May, 2018.

18 WILLIAM B. TERRY, CHARTERED

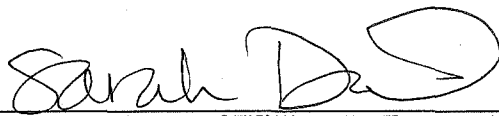
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Attorney for Respondent

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 23<sup>rd</sup> day of May, 2018, I, as an employee of WILLIAM B.  
3 TERRY, CHARTERED, that a true and correct copy of this **RESPONSE TO OBJECTION TO**  
4 **RESPONDENT'S EXHIBITS** was emailed to the following:

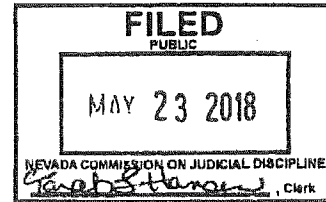
5  
6 Paul C. Deyhle  
Executive Director  
Nevada Commission on Judicial Discipline  
7 pdeyhle@judicial.state.nv.us

8  
9 Thomas Bradley, Esq.  
Special Prosecutor  
10 Tom@TomBradleyLaw.com

11  
12   
13 As an employee of William B. Terry ,Chartered

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

2   **STATE OF NEVADA**



3  
4 In the Matter of )  
5 THE HONORABLE RENA G. HUGHES, )  
6 Eighth Judicial District Court, Family Division, )  
7 Department J, County of Clark, State of Nevada, )  
8 Respondent. )  
9

CASE NO. 2016-113-P

10  
11                       **ORDER GRANTING IN PART AND DENYING IN PART MOTION IN LIMINE NO. 1**

12               Currently before the Commission on Judicial Discipline ("Commission") is Motion in Limine  
13 No. 1 ("Motion"), filed by the Prosecuting Officer to the Commission ("Prosecuting Officer") on May  
14 7, 2018. The Opposition to the Motion in Limine ("Opposition") was filed by counsel to the Honorable  
15 Rena G. Hughes, District Court Judge, Eighth Judicial District Court, Family Division, Department J,  
16 for Clark County, Nevada ("Respondent") on May 9, 2018. No Reply was filed by the Prosecuting  
17 Officer.

18               **I. Motion**

19                       **a. Statement of Facts**

20               The underlying complaint alleges that Respondent acted in violation of the Judicial Canons.  
21 Welthy Silva ("Mother") and Rogerio Silva ("Father") were divorced in 2013 in Clark County, Nevada.  
22 The parties had one minor child. In the original Decree of Divorce, the Court granted the Mother  
23 primary physical custody of the child and the Father weekend visitation.

24               Beginning in May 2015, the parties began litigating a number of issues concerning the well-  
25 being of their child and whether the Mother was interfering with the Father's visitation rights. During  
26 the next twelve months, Respondent held a number of hearings on these issues.

27               On May 12, 2016, an in-person hearing was held. During the hearing, the parties argued whether  
28 the Mother was interfering with the Father's rights of visitation. Respondent then advised the Mother



1 that she was close to being held in contempt and being incarcerated. At the conclusion of the hearing,  
2 the Respondent ordered that the Father shall have visitation with the child on the upcoming weekend  
3 and that the parties shall exchange the child under the supervision of Donna's House Central.

4 Subsequently, the Father alleged that the Mother failed to comply with the recently ordered  
5 visitation. On May 17, 2016, the Father's counsel filed a motion to place the matter back on calendar  
6 regarding the visitation. On June 8, 2016, Respondent issued a Minute Order detailing the visitation  
7 issues. The Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the  
8 Court's order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE  
9 SHALL ISSUE."

10 The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room  
11 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom  
12 on June 15, 2016, she shall be deemed in further contempt of Court, and sentenced to twenty-five (25)  
13 days incarceration. If the Mother fails to appear, a bench warrant shall issue." The Minute Order also  
14 addressed other Order to Show Cause issues that were not related to visitation, and stated in closing,  
15 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 2016 at 1:30 p.m."

16 The Mother arrived with her minor child at the scheduled hearing on June 15, 2016.  
17 Respondent ordered all parties and counsel, except the minor child, to leave the courtroom, and  
18 Respondent addressed the child for nine (9) minutes off the record. The Mother was not allowed to  
19 return to the courtroom and was escorted off the Courthouse property. In the Mother's absence,  
20 Respondent awarded the Father temporary sole legal and physical custody, terminated the Father's child  
21 support obligation, ordered the Mother to pay the statutory minimum child support to the Father, and  
22 ordered the Mother to have no contact with the minor child.

23 The minor child was clearly distressed and cried during the entire process while the Father  
24 remained impassive at his counsel table. Respondent addressed the crying minor child by stating that  
25 the change in custody occurred because the Mother and minor child were not cooperative with the Court  
26 ordered visitations. Respondent further stated that if the minor child refused to go with the Father she  
27 would end up in Child Haven, which Respondent referred to as a jail for kids.

28 At the court proceeding on June 15, 2016, no evidence or testimony was entered into the record  
regarding the change of custody, change in child support or the finding of contempt. No Order to Show

1 Cause issued regarding the failure to facilitate visitation or notice regarding the change of custody  
2 and/or child support, and no hearing was held.

3 **b. Argument**

4 The Prosecuting Officer argues that Dr. Childress' testimony regarding pathogenic parenting is  
5 not relevant to the issues charged in the Formal Statement of Charges. The Prosecuting Officer notes  
6 that the only relevant issues are whether Respondent violated Nevada law and the Nevada Judicial Code  
7 (i) by holding Ms. Silva in contempt without due process and an opportunity to be heard; (ii) by  
8 imposing a penalty for contempt that changed custody of the minor child by awarding sole physical and  
9 legal custody to the Father; and (iii) by changing physical and legal custody of the minor child without a  
10 hearing. The Prosecuting Officer further notes that the Commission has no jurisdiction to review the  
11 merits of a change of custody or a finding of contempt as long as the judge adheres to the law governing  
12 those issues. *See* Commission Procedural Rule 8. Moreover, the Prosecuting Officer argues that Dr.  
13 Childress' expected testimony is not relevant to contempt and failure to follow the law, and thus is not  
14 admissible, and its probative value is substantially outweighed by the danger of unfair prejudice or  
15 confusion of the issues. NRS 48.035(1).

16 The Prosecuting Officer asserts that Respondent stated that (1) Judge Burton will testify as a  
17 character witness; (2) Judge Hoskin will testify that he was Respondent's mentor and he specifically  
18 instructed Respondent to advise the subject minor that if she did not go to the visitation with her father  
19 she would be placed in Child Haven; and (3) Judge Steel will testify that she was a mentor of  
20 Respondent and she provided advice to Judge Hughes as to how to handle the Silva matter. The  
21 Prosecuting Officer notes that all character references may be submitted by letter, as is the customary  
22 practice before the Commission.

23 The Prosecuting Officer further contends that to the extent that Judges Hoskin and Steel advised  
24 Respondent on child custody and parenting issues, such advice is not relevant to the issues of contempt  
25 and failure to follow the law. *See also* § NRS 48.035(1). Further he argues, to the extent that Judges  
26 Hoskin and Steel wish to provide expert testimony on the legal issue whether the Respondent's actions  
27 violated Nevada law, such expert testimony is also not admissible. The *Assad* Court held that although  
28 expert testimony is admissible, the Commission must first determine that the expert testimony would be  
helpful before admitting such evidence. *In re Assad*, 124 Nev. 391, 403 (2008). The Prosecuting Officer

1 contends that expert testimony in this case would not be helpful because the Commission is comprised  
2 of experienced judges and lawyers who are very familiar with Nevada law governing contempt and  
3 change of custody. Thus, he states the Commission would not benefit from expert opinion on these legal  
4 issues, but rather pre and post hearing briefs may address the issue, if requested by the Commission.

5 Moreover, the Prosecuting Officer opines that expert testimony that impermissibly encroaches  
6 on the trier of fact's province should be properly excluded. *Burrows v. Riley*, (Nev. App., Jan. 19, 2018,  
7 No. 71350) 2018 WL 565431, at \*2. The Prosecuting Officer states that although expert testimony  
8 concerning a legal issue is not per se improper, an expert witness cannot give an opinion on an ultimate  
9 issue of law. *See Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004). He  
10 notes that the relevant issues are whether Respondent violated Nevada law and the Nevada Judicial  
11 Code regarding contempt and change of custody which are ultimate issues of law for the Commission to  
12 decide, and thus, expert testimony is not admissible. *See also* NRS § 48.035(1).

## 13 II. Opposition

14 On May 9, 2018, Respondent filed her Opposition. The Opposition states that the Prosecuting  
15 Officer is relying upon the Rules of Evidence, but that he is really relying upon NRS 47.080 which  
16 states:

17 In jury cases, hearings on preliminary questions of admissibility, offers of proof in  
18 narrative or question and answer form, and statements of the judge showing the character  
19 of the evidence, shall to the extent practicable, unless further restricted by ... be  
20 conducted out of the hearing of the jury ...

21 The Respondent notes that the Nevada Supreme Court has long recognized motions in limine.  
22 See, for example, *Moore v. State*, 96 Nev. 220, 607 P.2d 105 (1980) and *Hicks v. State*, 96 Nev.82, 605  
23 P.2d 219 (1980). Respondent further notes that she does not dispute the fact that a motion in limine is  
24 appropriate for questions of an evidentiary nature prior to the court proceeding, and that issues of  
25 relevancy are important. Respondent emphasizes that the word "any" is utilized twice in NRS 48.015  
26 and, as a result, the issues of relevancy should be construed liberally in favor of the proponent, and the  
27 weight that the Commission gives to any specific testimony is a separate issue.

28 Respondent argues that the probative value of the proffered testimony is not substantially  
outweighed by the danger of unfair prejudice or confusion of issues or of misleading the tribunal  
because the Commission is much more sophisticated and understands the law better than a "jury" where

1 confusion might exist. Moreover, Respondent states that character evidence should come in through  
2 testimony and not character letters, therefore Judge Burton should be allowed to testify at the hearing.  
3 Respondent clarifies that Judges Hoskin and Steel are not testifying as experts but only as judges who  
4 advised Respondent in the instant case. Respondent explains that Judge Hoskin was Respondent's  
5 supervising judge and she specifically conferred with him regarding this case and that he suggested that  
6 Respondent might consider putting the subject minor into custody. Moreover, she notes that Judge Steel  
7 was her mentor as Respondent had only been on the bench for approximately one year. Respondent  
8 expounds, as a mitigating factor, that she was a relatively new judge when she heard this rather complex  
9 case, and therefore, she sought assistance from Judges Hoskin and Steel.

10 Respondent contends that pathogenic parenting is important to understanding the underlying  
11 complex case; wherein Respondent was the judge in excess of 12 months and had made prior visitation  
12 rulings. Furthermore, on the issue of contempt, she avers that there are no concrete rules or guides in  
13 Nevada for judges in reference to the procedural requirements for holding an individual in contempt,  
14 other than a knowledge of civil and criminal contempt.

15 Respondent specifies that Dr. Childress would not be testifying as an expert on behalf of  
16 Respondent regarding judicial ethics, but rather as an expert on pathogenic parenting, and thus the  
17 instant case can be easily distinguished from the case of *In Re: Assad*, 124 Nev. 391 (2008). Respondent  
18 singles out the fact that in *Assad*, two justices dissented stating that "Judge Assad should have been  
19 permitted to introduce all evidence including expert testimony which supported his defense. The  
20 Commission would then have been free to weigh the evidence as it deemed appropriate ..." In this vein,  
21 Respondent argues that this is exactly what the Respondent is arguing pertaining to Dr. Childress, as he  
22 is offered as an expert in the area of pathogenic parenting, and that she followed his guidelines. *See also*  
23 *The Matter of Mosley*, 120 Nev. 908, 102 P.3d 555 (2004).

#### 24 ISSUES

25 Whether the testimony by Dr. Childress, Judge Burton, Judge Hoskin or Judge Steel is relevant.

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1. All relevant evidence is admissible, except:  
...
2. Evidence which is not relevant is not admissible.

NRS § 48.025

1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.

NRS § 48.035

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.

NRS § 50.275

NRS 48.025(2) provides, “[e]vidence which is not relevant is not admissible.” NRS 48.035(1) provides, “[a]lthough relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” NRS 50.275 provides, “[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.” Moreover, to be admissible, evidence must be relevant, that is, it must have some “tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” The determination of whether to admit expert testimony is within the Commission’s discretion. *In re Assad*, 124 Nev. 391 (2008).

1 The only relevant issues are whether Respondent violated Nevada law and the Nevada Judicial  
2 Code by (i) holding Ms. Silva in contempt without due process and an opportunity to be heard; (ii)  
3 imposing a penalty for contempt that changed custody of the minor child by awarding sole physical and  
4 legal custody to the Father; and (iii) changing physical and legal custody of the minor child without a  
5 hearing. Therefore, the only relevant testimony pertains to these charges. This case centers upon  
6 changing custody through a contempt finding and not whether the mother was a pathogenic parent.

7 The testimony of Dr. Childress does not impact allegations pertaining to Respondent's actions in  
8 failing to follow the law regarding contempt and using a change in custody as a contempt punishment.  
9 Respondent can testify for background purposes regarding the mother's failure to cooperate regarding  
10 what led up to the hearing in question, but an evaluation of the mother as a pathogenic parent is not  
11 relevant to the counts in the Formal Statement of Charges. Therefore, the testimony of Dr. Childress is  
12 not relevant.

13 Judge Burton is strictly a character witness. Evidence of good character in the form of letters  
14 from individuals is recognized as mitigating evidence. There is no benefit to Respondent of having live  
15 testimony and cross examination of Judge Burton. Moreover, the Prosecuting Officer stipulated to the  
16 admission of such character letters.<sup>1</sup> Therefore, there is no need to have Judge Burton testify at trial.

17 Moreover, expert evidence testimony is not required to find a violation of the Judicial Code.  
18 *See generally Assad.* The Commission is comprised of judges, lawyers, and lay people experienced in  
19 judicial ethics; therefore, the Commission does not require expert evidence to support its findings and  
20 conclusions. *In re Boardman*, 979 A.2d 1010 (Vermont 2009). Similarly, the Connecticut Supreme  
21 Court stated that questions about public confidence in the judiciary "may be answered as competently  
22 by those without formal legal training as by those with such training." *In re Flanagan*, 690 A.2d 865  
23 (Connecticut 1997). *See also In the Matter of Mosley*, 102 P.3d 555 (Nevada 2004) and *In re Assad*,  
24 185 P.3d 1044 (Nevada 2008). Therefore, there is no need for numerous witnesses to testify as to  
25 character or pathogenic parenting as it relates to violations of the Code.

26 However, the testimony by Judges Steel and Hoskin do point towards mitigating factors if  
27 Respondent, as a relatively new judge, followed the advice of more senior judges. While following

28 <sup>1</sup> The Prosecuting Officer stipulated that he would not object to character evidence submitted in the form of letters; however, he reserved the right to object to specific character letters.

200  
1 such advice does not excuse violations of the Judicial Code, such actions impact the discipline imposed  
2 by the Commission. Each judge is personally responsible for acting in accordance with the law and the  
3 standards of the Judicial Code. Thus, if Respondent testifies that she acted upon the advice of those who  
4 were similarly derelict in their duties, that is not a defense to a violation of the Judicial Code. *Accord In*  
5 *re Duckman*, 699 N.E.2d 872 (New York 1998) (re-affirming the holding that evidence showing that  
6 many other judges engaged in similar misconduct is irrelevant in judicial discipline proceedings).  
7 However, inexperience is a mitigating factor pertaining to the type of discipline to be imposed by the  
8 Commission. *Furey v. Commission on Judicial Performance*, 743 P.2d 919 (Cal. 1987). Therefore,  
9 mitigating circumstances can be considered in weighing the discipline to be imposed on a judge. *Adams*  
10 *v. Commission on Judicial Performance*, 897 P.2d 544 (California 1995); *Broadman v. Commission on*  
11 *Judicial Performance*, 959 P.2d 715 (California 1998). Therefore, the testimony of Judges Steel and  
12 Hoskin is relevant as to mitigation regarding the discipline imposed and thus, they may testify in that  
13 limited aspect.


14 Therefore, the Prosecuting Officer's Motion in Limine pertaining to the preclusion of testimony  
15 by Judge Burton and Dr. Childress is granted and denied to the extent that Judges Steel and Hoskin may  
16 offer testimony in mitigation for Respondent.

17 The Honorable Thomas L. Stockard is authorized to sign this order on behalf of the full  
18 Commission.

19 IT IS SO ORDERED.

20 DATED this 23<sup>rd</sup> day of May, 2018.

21  
22 STATE OF NEVADA  
COMMISSION ON JUDICIAL DISCIPLINE

23   
24 Thomas L. Stockard, Presiding Officer  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify on this 23<sup>rd</sup> day of May, 2018, I transmitted a copy of the foregoing  
ORDER GRANTING IN PART AND DENYING IN PART MOTION IN LIMINE NO. 1, via email  
and by placing said document in the U.S. Mail, postage prepaid, addressed to:

William B. Terry  
William B. Terry, Chartered Attorney at Law  
530 South Seventh Street  
Las Vegas, NV 89101-6011  
Info@WilliamTerryLaw.com  
Counsel for Respondent

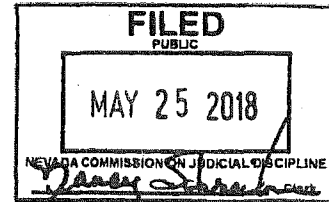
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Prosecuting Officer

Tarah L. Hansen  
Tarah L. Hansen, Commission Clerk



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

2   **STATE OF NEVADA**



3  
4 In the Matter of )  
5 )  
6 THE HONORABLE RENA G. HUGHES, )  
7 Eighth Judicial District Court, Family Division, )  
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Respondent.

CASE NO. 2016-113-P

11                                   **ORDER DENYING MOTION TO DISMISS COMPLAINT**

12                   Currently before the Commission on Judicial Discipline ("Commission") is a Motion to Dismiss  
13 Complaint ("Motion"), which was filed by counsel to the Honorable Rena G. Hughes, District Court  
14 Judge, Eighth Judicial District Court, Family Division, Department J, for Clark County, Nevada  
15 ("Respondent") on May 11, 2018. Opposition to Respondent's Motion to Dismiss Complaint was filed  
16 by the Prosecuting Officer to the Commission ("Prosecuting Officer") on May 21, 2018. No reply to  
17 the Prosecuting Officer's Opposition was filed by the counsel for Respondent.

18 **I.       Statement of Facts**

19                   The underlying complaint alleges that Respondent acted in violation of the Judicial Canons.  
20 Welthy Silva ("Mother") and Rogerio Silva ("Father") were divorced in 2013 in Clark County, Nevada.  
21 The parties had one minor child. In the original Decree of Divorce, the Court granted the Mother  
22 primary physical custody of the child and the Father weekend visitation.

23                   Beginning in May 2015, the parties began litigating a number of issues concerning the well-  
24 being of their child and whether the Mother was interfering with the Father's visitation rights. During  
25 the next twelve months, Respondent held a number of hearings on these issues.

26                   On May 12, 2016, an in-person hearing was held. During the hearing, the parties argued whether  
27 the Mother was interfering with the Father's rights of visitation. Respondent then advised the Mother  
28

1 that she was close to being held in contempt and being incarcerated. At the conclusion of the hearing,  
2 the Respondent ordered that the Father shall have visitation with the child on the upcoming weekend  
3 and that the parties shall exchange the child under the supervision of Donna's House Central.

4 Subsequently, the Father alleged that the Mother failed to comply with the recently ordered  
5 visitation. On May 17, 2016, the Father's counsel filed a motion to place the matter back on calendar  
6 regarding the visitation. On June 8, 2016, Respondent issued a Minute Order detailing the visitation  
7 issues. The Respondent concluded that, "[t]his Court finds that Plaintiff [Mother] is in contempt of the  
8 Court's order to facilitate visitation on weekends with the Father, AN ORDER TO SHOW CAUSE  
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10 The Minute Order further stated, "[m]other shall bring the minor child to Dept. J, Court room  
11 [sic] #4, on June 15, 2016 at 1:30 p.m. If the Mother fails to deliver the minor child to the courtroom  
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15 "[t]he Order to Show Cause Hearing shall be scheduled for July 28, 2016 at 1:30 p.m."

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17 Respondent ordered all parties and counsel, except the minor child, to leave the courtroom, and  
18 Respondent addressed the child for nine (9) minutes off the record. The Mother was not allowed to  
19 return to the courtroom and was escorted off the Courthouse property. In the Mother's absence,  
20 Respondent awarded the Father temporary sole legal and physical custody, terminated the Father's child  
21 support obligation, ordered the Mother to pay the statutory minimum child support to the Father, and  
22 ordered the Mother to have no contact with the minor child.

23 The minor child was clearly distressed and cried during the entire process while the Father  
24 remained impassive at his counsel table. Respondent addressed the crying minor child by stating that  
25 the change in custody occurred because the Mother and minor child were not cooperative with the Court  
26 ordered visitations. Respondent further stated that if the minor child refused to go with the Father she  
27 would end up in Child Haven, which Respondent referred to as a jail for kids.  
28

1 At the court proceeding on June 15, 2016, no evidence or testimony was entered into the record  
2 regarding the change of custody, change in child support or the finding of contempt. No Order to Show  
3 Cause issued regarding the failure to facilitate visitation or notice regarding the change of custody  
4 and/or child support, and no hearing was held.

5 **II. Motion**

6 Respondent filed her Motion to Dismiss the Complaint on May 11, 2018. In her Motion,  
7 Respondent cited to Judge Weller's motion to dismiss<sup>1</sup> arguing that the Commission's procedures  
8 regarding investigating complaints are in contravention of the Rules of the Commission, Nevada Rules  
9 of Civil Procedure, and Respondent's due process rights. Regarding due process violations, Respondent  
10 states that the Commission improperly wears multiple hats as it executes the investigation, prosecution,  
11 hearing, and decision in judicial discipline matters. Furthermore, Respondent questions who is making  
12 the determination as to whether a rule violation has occurred and whether those same judges or  
13 individuals are on the ultimate hearing panel. Respondent argues if they are the same individuals, then  
14 in effect they have already prejudged the case without hearing Respondent's witnesses, mitigating  
15 evidence and defenses. Pertaining to civil procedure violations, Respondent notes that pursuant to the  
16 Nevada Rules of Civil Procedure, interrogatories are sent out only after a formal complaint has been  
17 filed; however, the Commission sends out interrogatories before a case is assigned to a prosecuting  
18 officer.

19 Respondent cites to Judge Weller's points and authorities which argued that the Commission  
20 failed to follow applicable procedural rules, and thus acted in excess of its jurisdiction and denied Judge  
21 Weller his Fourteenth Amendment due process rights. Moreover, Respondent cites to the *Whitehead*  
22 decisions and the ABA Model Rules that Judge Weller used in his motion to highlight the need for  
23 separate investigative and adjudicative functions of the commission members. Respondent  
24 acknowledges that the Nevada Supreme Court has the ultimate authority to review the Commission's  
25 findings de novo. *Assad v. Nevada Commission on Judicial Discipline*, 124 Nev. 391 (2008).

26  
27 <sup>1</sup> Respondent attached and incorporated by reference Exhibit A, a copy of Judge Weller's unfiled points and authorities for  
28 Case No. 2017-025-P. Respondent noted that the cases are the same on a procedural level even though the cases are  
factually distinct.

1 Finally, Respondent agrees with Judge Weller's points and authorities that there is no basis set  
2 forth within the interrogatories to justify the use of interrogatories prior to the filing of a formal  
3 statement of charges.

### 4 **III. Opposition**

5 The Prosecuting Officer argues that Respondent inappropriately integrated an unfiled, twenty-  
6 nine page pleading from an entirely different case in her Motion. The Prosecuting Officer notes that  
7 Respondent incorporated the entire motion as her own by stating that her case and Judge Weller's are  
8 almost identical. However, the Prosecuting Officer attests that even if Judge Weller's arguments were  
9 applicable to Respondent, her Motion exceeds the Commission's Pre-Hearing Order page limits of  
10 fifteen (15) pages for the motion. While the limitation does not apply to exhibits, Respondents use of  
11 the "exhibit" as a pleading causes Respondent's Motion to be thirty-five pages. Furthermore, he notes  
12 that Respondent did not seek permission to file a motion in excess of the page limits.

13 Moreover, the Prosecuting Officer notes that Judge Weller's arguments are not applicable to  
14 Respondent. Judge Weller argues that the allegations against him lack merit and thus the Commission's  
15 decision was arbitrary and capricious in violation of Judge Weller's Fourteenth Amendment rights.  
16 However, the Prosecuting Officer further notes that no such argument has been made by Respondent, as  
17 Respondent's case centers upon a hearing that was recorded on the Court's JAVS system, with the  
18 exception of nine (9) minutes, and related court filings.

19 The Prosecuting Officer noted that in *Mosely v. Nevada Commission on Judicial Discipline*, the  
20 Nevada Supreme Court analyzed the combination of the Commission's investigative, prosecutorial and  
21 adjudicative functions in regards to a judge's due process rights. 177 Nev. 371, 22 P. 3d 655 (2001).  
22 The Prosecuting Officer states that the Court rejected that argument, and noted that the Commission is  
23 authorized to play multiple roles through the legislative intent manifested in the amendment process to  
24 the Constitution. *See Mosley at 379 (citing to Withrow v. Larkin, 421 U.S. 35 (1975) (holding that a*  
25 *medical disciplinary board's process of investigating and then holding a hearing on the same issues did*  
26 *not deny the doctor his procedural due process rights).* The Prosecuting Officer declares that judicial  
27 discipline proceedings wherein there is a combination of adjudicative and prosecutorial functions is not  
28 biased per se, and without more, does not violate a judge's due process rights. *Mosley*, 117 Nev. At

1 380.

2 The Prosecuting Officer further argues that pursuant to *Mosely*, Respondent has the burden of  
3 showing actual bias to prove a violation of her due process rights. The Prosecuting Officer notes that  
4 Respondent claims that the Commission is inherently biased because the Commission had made a  
5 probable cause determination; however, he opines that this argument was rejected by the Nevada  
6 Supreme Court in *Matter of Davis*, 113 Nev. 1204, 1218 (1997) (holding that probable cause  
7 determinations are not determinations of guilt, and that proof by clear and convincing evidence is  
8 required at the formal adjudicatory level, thus Commissioners who found probable cause were not  
9 disqualified from participating in the formal hearing).

10 The Prosecuting Officer emphasizes that the Commission is presumed to be comprised of people  
11 who are capable of judging a controversy fairly on the basis of its own circumstances. *Mosley*, 117  
12 Nev. At 381 (citing to *Withrow*, 421 U.S. at 54). Therefore, the Prosecuting Officer argues that the  
13 burden rests upon Respondent to overcome the presumption that the Commission is unbiased. *Id.*

14 The Prosecuting Officer further argues that Respondent's contention that Nevada should adhere  
15 to the 1994 ABA Model Rules for Judicial Discipline Enforcement ("Model Rules") of a two-panel  
16 system, separating investigative and adjudicative functions, is without merit as those rules were rejected  
17 in Nevada when the Nevada Constitution was amended in 1997 to create the modern Commission.  
18 Moreover, he notes, that decisions of the Commission are reviewed de novo; therefore, any risk of harm  
19 to Respondent is minimal.

## 20 ISSUES

21 Whether the combination of the Commission's investigative, prosecutorial and adjudicative  
22 functions violate the due process rights of Respondent.

## 23 STANDARD OF LAW

24 The Nevada Rules of Civil Procedure provide that the defense of lack of jurisdiction over the  
25 subject matter may, at the option of the defendant, be made by motion. NRCP 12(b)(1).

26 NRCP 12(b)(5) permits a party to file a motion to dismiss for failure to state a claim upon which  
27 relief can be granted. In considering a motion to dismiss, the court construes all factual allegations in  
28 the complaint as true and draws all inferences in favor of the non-moving party. *Buzz Stew, LLC v. City*

1 of *North Las Vegas*, 181 P.3d 670, 672 (Nev. 2008). A complaint will be dismissed if it appears beyond  
2 doubt that the plaintiff can prove no set of fact which, if true, would entitle it to relief. *Id.*

### 3 DISCUSSION

4 Respondent's Motion to Dismiss attacks the composition and procedures of the Commission as  
5 it relates to due process. However, the cited points and authorities are in the form of an exhibit to  
6 Respondent's Motion. Respondent attached an unfiled brief of the Honorable Charles Weller for Case  
7 No. 2017-025-P. Procedurally, the Commission issued a Prehearing Order in this matter, wherein  
8 motions were limited to fifteen pages in length. While the Prehearing Order does not set a page limit for  
9 exhibits, Respondent's incorporation of an exhibit as her own argument is a blatant attempt to  
10 circumvent the reasonable page limits set by the Commission. Therefore, Respondent's Motion is  
11 procedurally in violation of the Commission's Prehearing Order, and as such, only the actual Motion  
12 filed by Respondent and the Prosecuting Officer's Opposition will be addressed in this Order.

13 Respondent makes an overall due process argument that the Commission wears too many hats,  
14 stating that the Commission does the investigation, prosecution, and adjudicatory functions. Moreover,  
15 Respondent notes that it is unclear if the same Commissioners participate in the initial determination of  
16 probable cause and in the formal hearing. Respondent's concern is that if the same Commissioners  
17 participate in both proceedings, the clear and convincing evidence standard falls to the wayside.  
18 However, this due process argument has already been ruled upon in *Mosley v. Nevada Comm'n on*  
19 *Judicial Discipline*, 117 Nev. 371, 22 P.3d 655 (2001); *see also Matter of Davis* 113 Ne. 1204, 1218,  
20 946 P. 2d 1033, 1043 (1997) (holding that because some of the Commissioners previously had found  
21 there was probable cause to believe appellant had committed perjury does not require that they be  
22 disqualified from participating in the formal hearing). In *Mosely*, the Court held that the Commission's  
23 combination of prosecutorial, investigative, and adjudicative functions is not implicitly prejudicial to  
24 judges brought within the disciplinary process, and therefore, the Commission's procedures do not  
25 violate a judge's protected due process rights.

26 The combination of investigative and prosecutorial functions vested in disciplinary commissions  
27 has been consistently upheld by the Nevada Supreme Court and other courts. *See, e.g., Matter of Davis*,  
28 113 Nev. 1204, 1218, 946 P.2d 1033, 1043 (1997); *Mosley v. Nevada Comm'n on Judicial Discipline*,

1 22 P.3d 655, 660 (Nev. 2001) (“Although the Court's ruling concerned an administrative agency and  
2 not, as here, a court of judicial performance [or discipline], ... *Withrow* is otherwise indistinguishable  
3 and therefore dispositive.”); *Mississippi Comm'n on Judicial Performance v. Russell*, 691 So.2d 929,  
4 946 (Miss. 1997) (bifurcated judicial disciplinary process presented “no more evidence of bias or the  
5 risk of bias ... than inheres in the very fact that the Board had investigated and would now adjudicate”)  
6 (quoting *Withrow*, 421 U.S. at 54); *In re Eriksson*, 36 So.3d 580, 591 (Fla. 2010) (finding that “the  
7 analysis of *Withrow* from other jurisdictions [in the context of judicial discipline] is persuasive”).<sup>2</sup>

8 The *Mosely* and *Davis* decisions ruled that the combination of functions did not per se violate  
9 the judges' due process rights; however, the Court noted that in order to make such a finding, a judge  
10 must show actual bias. Respondent, as in the *Mosely* and *Davis* cases, has not demonstrated actual bias.  
11 Moreover, Commission Procedural Rule 3(6) permits challenges for cause for a judge to disqualify a  
12 commissioner for actual or implied bias or prejudice or other cause based upon an affidavit specifying  
13 why the disqualification is sought. Respondent did not file such a challenge for cause, but rather she  
14 filed a peremptory challenge to remove a Commissioner, the Honorable Jerome Polaha, under  
15 Commission Procedural Rule 3(8).

16 Respondent alleges that her due process rights were violated during the investigatory phase of  
17 the proceedings regarding the Commission's use of interrogatories. Respondent's objections to  
18 answering interrogatories after the investigation has occurred, but before a prosecuting officer is  
19 appointed, lacks merit. Although not mandated by procedural due process, Commission Procedural  
20 Rule 12 permits the judge an opportunity to present information during the investigatory process. The  
21 interrogatories provide Respondent with more due process as the interrogatories narrow the issues from  
22 the initial complaint filed with the Commission, to allegations based upon the factual findings

23 <sup>2</sup> See, e.g., *Withrow v. Larkin*, 421 U.S. 35, 52-58 (1975), wherein the Supreme Court rejected a physician's challenge to the  
24 constitutionality of the Wisconsin Medical Examining Board on the basis that the Board's combined investigative and  
25 adjudicative functions implicitly biased the adjudicators and, therefore, violated due process. *Withrow*, 421 U.S. at 57-58.  
26 Noting that constitutional due process does not bar a judge from making a preliminary determination of probable cause and  
27 then presiding over a criminal trial, the Court held that such a combination of investigative and adjudicative functions in an  
28 administrative agency likewise did not violate due process. *Id.*, at 56-57. Further the Court held that “The mere exposure to  
evidence presented in non-adversary investigative procedures is insufficient in itself to impugn the fairness of the board  
members at a later adversary hearing. Without a showing to the contrary, [Commission members including judges, attorneys  
and laypersons] ‘are assumed to be [people] of conscience and intellectual discipline, capable of judging a particular  
controversy fairly on the basis of its own circumstances.’” *Withrow*, 421 U.S. at 55 (quoting *United States v. Morgan*, 313  
U.S. 409, 421 (1941)).

1 supported by the independent investigator's investigation, and subsequent determination by the  
2 Commission based on the same. Commission Procedural Rule 12 effectuates important public policy  
3 concerns regarding the confidentiality required in judicial disciplinary proceedings prior to the filing of  
4 a formal statement of charges. NRS 1.4683. In this instance, Respondent provided the Commission  
5 with a detailed written response and exhibits.

6 Furthermore, confidentiality during the investigatory stage protects a judge's due process rights.  
7 Such confidentiality protects judges from "injury which might result from publication of unexamined  
8 and unwarranted complaints," and further enhances the public confidence in the judicial system by  
9 preventing the "premature announcement of groundless claims of judicial misconduct or disability since  
10 it can be assumed that some frivolous complaints will be made against judicial officers." *Landmark*  
11 *Communications, Inc. v. Virginia*, 435 U.S. 829, 835 (1978); *see also Jones v. Nev. Comm'n on Jud.*  
12 *Discipline*, 318 P.3d 1078 (2014) *citing to In re Flanagan*, 690 A.2d 865, 875 (Conn 1997) (holding  
13 that "Two interests must be accommodated in judicial disciplinary proceedings: (1) the review council  
14 must have broad authority to investigate the conduct of our judges in order to maintain public  
15 confidence in the judiciary; and (2) our judges must be afforded adequate process before discipline is  
16 imposed to ensure that discipline is not imposed on the basis of unfounded charges of misconduct.").  
17 Therefore, the fact that Respondent was provided an opportunity to respond to allegations in the  
18 complaint and investigatory findings while the matter was confidential, protected Respondent's due  
19 process rights.

20 Moreover, procedural due process rights attach at the adjudicatory stage, and not during the  
21 investigatory phase of the judicial discipline process. *Jones v. Nevada Comm'n on Judicial Discipline*,  
22 318 P.3d 1078, 1083 (Nev. 2014). Judicial discipline proceedings consist of two distinct phases, one  
23 investigatory and the other adjudicatory, wherein the investigatory phase is confidential and the  
24 adjudicatory phase is public. "It is during this [adjudicatory] phase that the judge's legal rights are  
25 adjudicated, not before. Accordingly, due process rights will generally not attach before a formal  
26 statement of charges is filed." *Jones* at 1083; *see also Ryan v. Comm'n on Judicial Performance*, 754  
27 P.2d 724, 729 (Cal. 1988) (stating that while "a judge certainly has the right to conduct a proper defense  
28 in disciplinary actions[,] ... the right attaches [only] once formal proceedings are instituted," not during



1 the preliminary investigation); *In re Petition to Inspect Grand Jury Materials*, 576 F. Supp. 1275, 1284  
2 (S.D. Fla. 1983), *aff'd*, 735 F.2d 1261 (11th Cir. 1984) (observing that during the judicial-misconduct  
3 investigatory stage "procedural protections are minimal at most").

4 The Commission has protected Respondent's due process rights. The procedures employed by  
5 the Commission in this case followed the step by step path set out in the Procedural Rules of the  
6 Commission from the initial complaint through the investigation and adjudication phase. Moreover, due  
7 process rights do not attach until the formal statement of charges issues; therefore, Respondent lacks a  
8 procedural due process constitutional challenge to the Commission's investigatory procedures.  
9 Furthermore, the Nevada Supreme Court has de novo authority over the Commission's adjudicatory  
10 decisions, thus there is another layer of due process protection for Respondent. Moreover, Respondent  
11 has not shown the bias required by the Nevada Supreme Court in *Davis*, *Mosley*, and *Jones* to support  
12 her assertion of a denial of due process.

13 Respondent's Motion to Dismiss the Complaint is therefore denied.

14 The Honorable Thomas L. Stockard is authorized to sign this Order on behalf of the full  
15 Commission.

16 IT IS SO ORDERED.

17 DATED this 25<sup>th</sup> day of May, 2018.

18 STATE OF NEVADA  
19 COMMISSION ON JUDICIAL DISCIPLINE

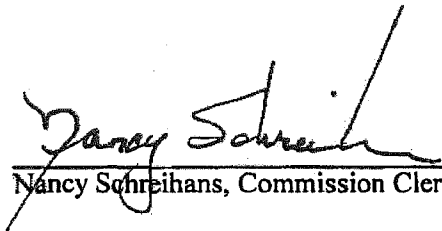
20 Thomas L. Stockard  
21 Thomas L. Stockard, Presiding Officer  
22  
23  
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CERTIFICATE OF SERVICE

I hereby certify on this 25<sup>th</sup> day of May, 2018, I transmitted a copy of the foregoing ORDER DENYING MOTION TO DISMISS COMPLAINT, via email and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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Prosecuting Officer

  
Nancy Schreihans, Commission Clerk

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6 BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

7

STATE OF NEVADA

8

In the Matter of  
9 THE HONORABLE RENA G. HUGHES,  
District Court Judge, Family  
10 Division, Eighth Judicial  
District Court, Department J,  
11 County of Clark, State of  
Nevada,

12

13

Pages 1 to 193, inclusive.

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TRANSCRIPT OF PROCEEDINGS  
Wednesday, May 30, 2018

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22 REPORTED BY:

Christina Amundson, CCR #641  
Sunshine Litigation Services

23

24

25 JOB NO.:

464231

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PANEL MEMBERS

3

4 Gary Hause, Chair

5 Bruce C. Hahn, Esq.

6 Stefanie Humphrey

7 Laurence Irwin, Esq.

8 John Krmpotic

9 Hon. Thomas Stockard

10

11 Thomas C. Bradley, Prosecuting Officer

12 William B. Terry, Counsel for Respondent

13 Hon. Rena G. Hughes, Respondent

14

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16 Examination of the Hon. Rena G. Hughes:

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18 By Mr. Terry 55

19

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21 By Mr. Terry 142

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25 By Mr. Bradley 160

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1 Reno, Nevada -- May 30, 2018 -- 8:02 A.M.

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3 CHAIRMAN VAUSE: We are here this morning  
4 for this hearing before the Nevada Commission of  
5 Judicial Discipline. It's in the matter of the  
6 Honorable Rena Hughes, Eighth Judicial District  
7 Court, Department J, Family Court, County of Clark,  
8 State of Nevada. My name is Gary Vause. I'm the  
9 chairman of the Commission. I'm a lay member from  
10 Las Vegas, Nevada.

11 I'll let the other members of the  
12 Commission introduce themselves, but I'll be turning  
13 this matter over to the Honorable Judge Tom Stockard  
14 who will preside over these proceedings.

15 So, Bruce, we'll start with you. Introduce  
16 yourself.

17 COMMISSIONER KRMPOTIC: Good morning, my  
18 name's John Krmpotic. I'm a lay appointment at the  
19 Northern State -- northern part of Nevada.

20 COMMISSIONER HUMPHREY: Stefanie Humphrey,  
21 lay member, Carson City, Nevada.

22 JUDGE STOCKARD: Tom Stockard, District  
23 Court Judge in the Tenth Judicial District in  
24 Churchill County.

25 COMMISSIONER HAHN: Bruce Hahn, Attorney

1 member, Washoe County.

2 MR. IRWIN: Laurence Irwin, attorney  
3 member, Clark County.

4 MR. DEYHLE: Paul Deyhle, Executive  
5 Counsel.

6 MS. DAVIS: Jill Davis, Associate General  
7 Counsel.

8 JUDGE STOCKARD: Thank you. We have a lot  
9 to cover. There's some pretty strict time frames  
10 and so I will be as quick as I can. There's one  
11 pretrial matter that I think we need to address and  
12 that's the objections to the exhibits filed by  
13 prosecuting counsel.

14 The first is the -- the first objection  
15 objects to Exhibit B. That was dealt with in the  
16 Commission's orders regarding Motion In Limine No. 1  
17 and that will not be admitted.

18 With respect to Exhibit 3, Jennifer  
19 Abrams's letter, pages 68 and 69 was objected to as  
20 an opinion. Mark Decero's letter was objected to  
21 regarding pages 89 to 93 regarding an opinion and  
22 then Marshall Willitts letter, pages 94 and 95 were  
23 objected to as to expressing an opinion on the  
24 motivation for the complaint.

25 Those three exhibits -- not Exhibit 3, but

1 those three letters will not be admitted.

2 Everything else pursuant to the stipulation of the  
3 parties will be admitted.

4 Will the parties please state their  
5 appearances on the record.

6 MR. BRADLEY: Thomas Charles Bradley,  
7 Prosecuting officer in this matter.

8 MR. TERRY: William Terry, with the  
9 Honorable Judge Hughes.

10 JUDGE STOCKARD: Thank you both.

11 Mr. Bradley, you may begin.

12 MR. BRADLEY: Thank you. May it please be  
13 Commission, Counsel, Judge Hughes. I know we're all  
14 very anxious to hear from Judge Hughes so I'll make  
15 my opening statement extremely brief.

16 I believe this is a real straightforward,  
17 simple case. Judge Stockard on behalf of the  
18 Commission entered an order on a motion in limine.  
19 In that order he ruled that the only relevant issues  
20 are whether the respondent violated Nevada law and  
21 the Nevada Judicial Code by, one, holding Ms. Silva  
22 in contempt without due process and an opportunity  
23 to be heard; two, imposing a penalty for contempt  
24 that changed custody of the minor child by awarding  
25 sole physical and legal custody to the father; and,



1 three, changing physical and legal custody of the  
2 minor child without a hearing. Therefore, the only  
3 relevant testimony pertains to these charges.

4 I assure the Commission that I will do my  
5 utmost to follow the Commission's guidance in this  
6 regard. At the conclusion of this hearing, I'm  
7 confident that you will conclude that all of the  
8 charges in the formal statement of charges have been  
9 proven by clear and convincing evidence. Thank you.

10 JUDGE STOCKARD: Thank you. And, Mr.  
11 Terry, do you wish to make your opening statement  
12 now?

13 MR. TERRY: I do, Mr. Chairman.

14 May I raise an initial question. I see  
15 that the media is here and we don't have any  
16 objection to that. But may I inquire if the  
17 Commission's authorized the filming by any other  
18 individuals and what the ruling would be if we  
19 object.

20 JUDGE STOCKARD: And I don't know that  
21 we've addressed that. I see -- sir, you are?

22 CAMERMAN: CBS.

23 MR. TERRY: We don't object to that, the  
24 media.

25 COMMISSIONER STOCKARD: And, sir, you are?

1 VETERANS INVOLVED REP: Veterans In  
2 Politics.

3 JUDGE STOCKARD: And Paul?

4 MR. DEYHLE: Well, we received two media  
5 requests. There's no others. So it will be just  
6 these two gentlemen.

7 MR. TERRY: And, again, we don't object to  
8 the media request. We object to anyone else filming  
9 the proceedings.

10 JUDGE STOCKARD: What other gentleman?

11 MR. TERRY: The other gentleman, I don't  
12 believe he's with the media.

13 JUDGE STOCKARD: Sir, Veterans Involved in  
14 Politics, is that a media --

15 VETERANS INVOLVED REP: Yes. We've been on  
16 the air 12 years.

17 JUDGE STOCKARD: I'm going to allow it.

18 VETERANS INVOLVED REP: Thank you, sir.

19 MR. TERRY: Just so we note our objection,  
20 Mr. Chairman.

21 JUDGE STOCKARD: So noted.

22 MR. TERRY: I believe he has a television  
23 program.

24 JUDGE STOCKARD: Thank you.

25 MR. TERRY: All right. My colleague