

IN THE SUPREME COURT OF THE STATE OF NEVADA

RITA J. ANDERSON, AN INDIVIDUAL,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
KATHY A. HARDCASTLE, DISTRICT  
JUDGE,

Respondents,

and

DAVID W. ANDERSON, JR., AN  
INDIVIDUAL,  
Real Party in Interest.

No. 49960

**FILED**

NOV 09 2007

JANE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to disqualify a district judge.

This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.<sup>1</sup> A writ of prohibition may be issued to compel a district court

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<sup>1</sup>NRS 34.160; Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 5 P.3d 562 (2000).

to cease performing acts beyond its legal authority.<sup>2</sup> Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.<sup>3</sup> Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.<sup>4</sup>

A petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge,<sup>5</sup> and disqualification is appropriate when a judge's impartiality might reasonably be questioned.<sup>6</sup> But the party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient.<sup>7</sup> Moreover, a judge has a duty to sit in the absence of disqualifying bias, and the judge's determination that he should not voluntarily disqualify himself is entitled to substantial weight and will not be overturned absent an abuse of discretion.<sup>8</sup> Here, the district court considered petitioner's motion, which relied on Judge Elliott's comments at the July 23, 2007 hearing, as well as Judge Elliott's response to petitioner's motion, and properly gave

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<sup>2</sup>NRS 34.320; Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>3</sup>NRS 34.170; NRS 34.330.

<sup>4</sup>Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).

<sup>5</sup>City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).


<sup>6</sup>PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 894 P.2d 337 (1995).

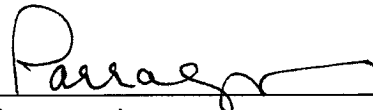
<sup>7</sup>Id.

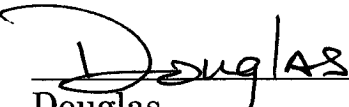
<sup>8</sup>Id.

weight to Judge Elliott's determination that she possessed no disqualifying bias and could render a fair decision based on the evidence. We perceive no basis for extraordinary relief, and accordingly, we deny this petition.<sup>9</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge  
Blake A. Field  
Wells & Rawlings  
Eighth District Court Clerk

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<sup>9</sup>See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851. In light of this order, we vacate the temporary stay, granted on August 8, 2007, and deny petitioner's motion for stay as moot.