

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. "BUTCH" PERI,
Petitioner,
vs.
THE THIRD JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF LYON,
THE HONORABLE J. CHARLES
THOMPSON, SENIOR JUDGE, AND
THE HONORABLE ROBERT E. ROSE,
SENIOR JUSTICE,
Respondents,
AND
DAVID J. PERI; PAMELA PERI; AND
JESSICA PERI,
Real Parties in Interest.

No. 50586

FILED

DEC 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
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 striking a peremptory challenge and denying a 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 or manifest abuse of discretion.¹ A writ of prohibition may be issued to compel a district court to cease performing acts beyond its legal authority.²

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

²NRS 34.320; Smith v. District Court, (1991).

Neither mandamus nor prohibition will issue when the petitioner has a plain, speedy, and adequate remedy at law.³ Because writs of mandamus and prohibition are extraordinary remedies, whether a petition will be considered is entirely within this court's discretion.⁴ Moreover, petitioner bears the burden of demonstrating that extraordinary relief is warranted.⁵

A petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge,⁶ and disqualification is appropriate when a judge's impartiality might reasonably be questioned.⁷ But the party seeking disqualification bears the burden to demonstrate that disqualification is warranted, and speculation is not sufficient.⁸ 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.⁹ Here, petitioner has not articulated any grounds for disqualification, except that his prior counsel made inappropriate comments about petitioner's current counsel in an affidavit,

³NRS 34.170; NRS 34.330.

⁴Smith, 107 Nev. at 677, 818 P.2d at 851.

⁵See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁶City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).

⁷PETA v. Bobby Berosini, Ltd., 111 Nev. 431, 436, 894 P.2d 337, 340 (1995), overruled in part on other grounds by Towbin Dodge, LLC v. Dist. Ct., 121 Nev. 251, 112 P.3d 1063 (2005).

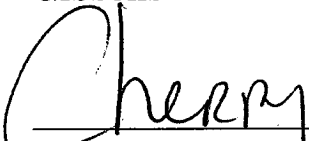
⁸Id. at 437, 894 P.2d at 341.


⁹Id.

filed during the course of related attorney lien adjudication proceedings, and the district judge ruled against petitioner in the attorney lien matter. This is insufficient to warrant disqualification.¹⁰ Accordingly, we deny the petition.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Third Judicial District Judges
Hon. Robert E. Rose, Senior Justice
Hon J. Charles Thompson, Senior Judge
Morris Pickering & Peterson/Reno
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Brooke Shaw Zumpft
Hale Lane Peek Dennison & Howard/Reno
Lyon County Clerk

¹⁰Id.