

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORPHALESE HOLDINGS, INC., A  
NEVADA CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MARK R. DENTON, DISTRICT JUDGE,

Respondents,

and

DONALD V. ALLEN, INDIVIDUALLY,  
Real Party in Interest.

No. 51669

**FILED**

JUN 13 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges district court orders denying motions to disqualify real party in interest's counsel.

Real party in interest Donald V. Allen, the former president, chief executive officer, and majority shareholder of petitioner Orphalese Holdings, Inc., initially instituted the underlying action on behalf of himself and Orphalese. Thereafter, the defendants, including members of Orphalese's board of directors, moved to dismiss Orphalese's claims against them, arguing that Orphalese did not have authority to institute a lawsuit without their approval and that Allen was not authorized to institute the lawsuit on Orphalese's behalf. The district court granted the motion.

Allen eventually amended his complaint to include Orphalese as a defendant. Orphalese then moved the district court to disqualify

Allen's counsel based on the firm's purported representation of Orphalese when Allen initially instituted the action and the likelihood that Allen's counsel would have to testify during trial. The district court denied the motion. Orphalese subsequently renewed its motion to disqualify, which the district court also denied. This petition followed.

The writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.<sup>1</sup> A writ of mandamus's counterpart, the writ of prohibition, is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.<sup>2</sup> Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.<sup>3</sup> As petitioner, Orphalese bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>4</sup>

A petition for a writ of mandamus is the appropriate vehicle for challenging a district court order denying a motion to disqualify counsel.<sup>5</sup> The district court has broad discretion in attorney disqualification matters, however, and we will not overturn its decision

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<sup>1</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


<sup>2</sup>NRS 34.320.

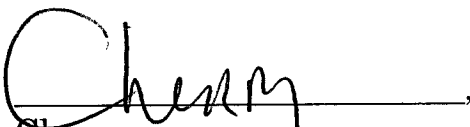
<sup>3</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).


<sup>4</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>5</sup>Waid v. Dist. Ct., 121 Nev. 605, 609, 119 P.3d 1219, 1222 (2005).

absent an abuse of that discretion.<sup>6</sup> Having considered this petition and its supporting documents, we are not persuaded that the district court abused its discretion or acted in excess of its jurisdiction when it denied Orphalese's motions to disqualify Allen's counsel such that our intervention by way of extraordinary relief is warranted. Accordingly, we ORDER the petition DENIED.<sup>7</sup>

 J.  
Maupin

 J.  
Cherry

 J.  
Saitta

cc: Hon. Mark R. Denton, District Judge  
Hunterton & Associates  
Irsfeld & Associates, LLC  
Eighth District Court Clerk

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<sup>6</sup>Brown v. Dist. Ct., 116 Nev. 1200, 14 P.3d 1266 (2000); Robbins v. Gillock, 109 Nev. 1015, 862 P.2d 1195 (1993).

<sup>7</sup>In light of this order, we deny as moot Orphalese's motion for a stay.