

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI, III,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE LEE  
A. GATES, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 52994

**FILED**

**JUL 23 2009**

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to disqualify the Clark County District Attorney's Office. Petitioner seeks to have the district attorney's office disqualified from acting as counsel for the State in connection with petitioner's pending post-conviction proceeding in district court because one of petitioner's trial counsel joined the district attorney's office.

Because a petition for an extraordinary writ is addressed to the court's sound discretion, State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983); Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982), the threshold issue is whether we should exercise that discretion and consider the petition. This court will not entertain a writ petition when the petitioner has a plain, speedy, and adequate remedy at law. NRS 34.170 (mandamus); NRS 34.330 (prohibition). In prior cases, this court has indicated that mandamus is

used properly to challenge an order granting or denying a motion to disqualify a prosecutor's office. See Collier v. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982). Accordingly, we will entertain the petition for a writ of mandamus.

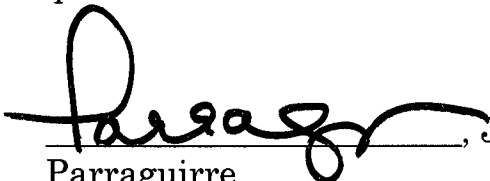
A writ of mandamus is available to compel the performance of an act which the law requires "as a duty resulting from an office, trust or station," NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). But this court will not use mandamus to control the proper exercise of discretion or to substitute its judgment for that of the district court. Collier, 98 Nev. at 310, 646 P.2d at 1221.

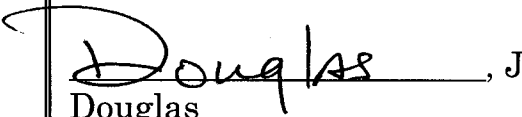
Although the rules of professional conduct generally require vicarious disqualification of a firm when any member of the firm is disqualified, RPC 1.10(a), that requirement "is less strictly applied to government agencies" such as when a criminal defense attorney joins a prosecutor's office. Collier, 98 Nev. at 310, 646 P.2d at 1220-21 (quoting State v. Tippecanoe County Court, 432 N.E.2d 1377, 1379 (Ind. 1982)). In such cases and depending on the facts involved, individual disqualification generally is preferred over vicarious disqualification, but vicarious disqualification may be appropriate "in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal justice system could not be maintained without such action." Id. at 310, 616 P.2d at 1221. An extreme case warranting vicarious disqualification may be presented even when the prosecutor's office has established an effective screen that precludes the individual lawyer from participating in the case. Id. In exercising its discretion as to the vicarious disqualification of a prosecutor's office, the district court "should consider all the facts and circumstances and

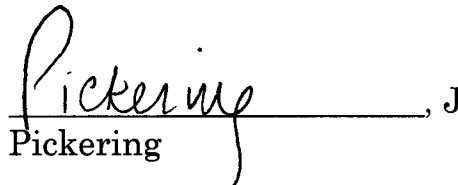
determine whether the prosecutorial function could be carried out impartially and without breach of any privileged communication.” Id. at 310, 646 P.2d at 1220.

Here, the district court considered argument on the motion and exercised its discretion. Although the district court’s order does not contain detailed findings and conclusions, the district court clearly considered the facts and circumstances as presented during the hearing, including whether the prosecutorial function could be carried out impartially and without breaching any privileged communication. In particular, during the hearing, the State explained that petitioner’s former counsel was employed in the civil division of the district attorney’s office and had been screened from participation in any cases in which she had involvement before joining the district attorney’s office. Based on the arguments presented during the hearing, the district court denied the motion. Petitioner has not demonstrated that the district court acted arbitrarily or capriciously in doing so. Accordingly, we

ORDER the petition DENIED.<sup>1</sup>

  
Parraguirre, J.

  
Douglas, J.

  
Pickering, J.

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<sup>1</sup>We deny petitioner’s motion to stay the district court proceedings.

cc: Eighth Judicial District Court Dept. 8, District Judge  
Carmine J. Colucci & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk