

IN THE SUPREME COURT OF THE STATE OF NEVADA

HUMBOLDT COUNTY PUBLIC
DEFENDER,
Petitioner,
vs.
THE SIXTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
HUMBOLDT, AND THE HONORABLE
RICHARD A. WAGNER, DISTRICT
JUDGE,
Respondents,
and
STEVE COCHRAN AND PERSHING
COUNTY,
Real Parties in Interest.

No. 53460

FILED

MAY 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING IN PART AND GRANTING IN
PART PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition or alternatively for a writ of mandamus challenging a district court order of recusal and multiple orders regarding the removal of Humboldt County Public Defender Matt Stermitz as counsel of record for parties appearing before Sixth Judicial District Court Judge Richard Wagner.

This petition concerns an apparent dispute between Stermitz and Judge Wagner. The matter before us involves several orders entered by Judge Wagner. First, on March 9, 2009, Judge Wagner entered a blanket order of recusal in all cases involving Stermitz. Then, on March 12, 2009, Judge Wagner entered a second order regarding case assignments in which he reclaimed future cases he had previously recused himself from and ordered that Stermitz be removed from any cases assigned to Judge Wagner. On March 13, 17, and 19, Judge Wagner

entered three additional orders; each reassigned a case belonging to Stermitz to Steve Cochran, a Pershing County-based SCR 49.9 attorney¹. For our purposes today, we will refer to all of the orders subsequent to the order of recusal as the “reassignment orders.” Following the entry of all of the aforementioned orders, Stermitz filed this petition.

We conclude that a sufficient showing of bias has been made to warrant Judge Wagner’s initial order of recusal. Therefore, the petition is denied to the extent that it seeks to void Judge Wagner’s initial order of recusal. We grant the petition for a writ of prohibition, however, as to the reassignment orders issued by Judge Wagner. It is well settled that once a judge recuses himself, he no longer has authority to act in matters involving the subject of the bias. Here, once Judge Wagner recused himself, he no longer had authority to act in any matter involving Stermitz. Accordingly, Judge Wagner’s case reassignment orders are void.

Standard for writ relief

A writ of mandamus is available to compel the performance of an act that the law requires “as a duty resulting from an office, trust or station,” NRS 34.160, or to control a manifest abuse of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Its counterpart is a writ of prohibition; it is available when a

¹SCR 49.9 provides, in part, that an attorney admitted to practice in another jurisdiction who becomes employed by the Office of the State Public Defender “shall only practice under the supervision of an attorney” in the public defender’s office “who is an active, resident member of the State Bar of Nevada.” SCR 49.9(4). In other words, the rule allows for limited practice of law for attorneys not admitted to the State Bar of Nevada and only in the public defender’s office in smaller population counties. See id.

district court acts “without or in excess of [its] jurisdiction.” NRS 34.320; see State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002).

Both mandamus and prohibition are extraordinary remedies, and whether a petition for extraordinary relief will be considered is solely within this court’s discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The burden is on the petitioner to demonstrate that extraordinary relief is warranted. Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). While this court has stated that a writ will issue only when petitioners have no plain, speedy, and adequate legal remedy, it has also recognized that a mandamus petition is appropriate to “challenge district court orders that disqualify attorneys.” Millen v. Dist. Ct., 122 Nev. 1245, 1250-51, 148 P.3d 694, 698 (2006).

Stermitz seeks writ relief for this court to declare void Judge Wagner’s initial order of recusal, as well as all the subsequent orders involving case reassignment. In the alternative, Stermitz states that if this court determines that the order of recusal was proper, then he asks this court to void the remaining orders because they are not valid, as Judge Wagner exceeded his authority when he entered those orders. For the reasons set forth below, we agree that the district court exceeded its jurisdiction.

Judge Wagner’s recusal order

Stermitz asserts that Judge Wagner did not have adequate cause to recuse himself. Judge Wagner argues that he had a fundamental ethical duty, pursuant to Nevada’s Code of Judicial Conduct (NCJC), to issue the order of recusal because he could no longer be impartial towards Stermitz.

In general, Canons 2 and 3 of the applicable NCJC require impartiality.² For our purposes today, we look specifically upon Canon 3(E)(1)(a), which explains what could constitute a compelling reason for disqualification by stating that

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

This court has stated that in situations involving recusal, Canon 3E provides the underpinnings for the analysis of whether the judge acted appropriately. See Las Vegas Downtown Redev. v. Dist. Ct., 116 Nev. 640, 644, 5 P.3d 1059, 1062 (2000). Specifically, we have stated that "NCJC Canon 3E(1)(a) provides a subjective basis for disqualification in that only the judge can determine whether he or she has a personal bias or prejudice toward litigants or their counsel or possesses personal knowledge about the case." Millen, 122 Nev. at 1254, 148 P.3d at 700 (emphasis added).

²We note that in December 2009, this court entered an order revising the NCJC. Pursuant to the revised code, judicial disqualification falls under Canon 2, Rule 2.11. E.g., In the Matter of the Amendment of the Nevada Code of Judicial Conduct, ADKT 427 (Order, December 17, 2009) (revising the Nevada Code of Judicial Conduct). While the present case is not affected by the revision, as it was filed before the new rules went into effect, we observe that Judge Wagner makes a sufficient showing of bias under both former Canon 3(E)(1) and current Canon 2, Rule 2.11.

While the inquiry into judicial bias begins with the judge himself, it does not end there. Because a judge has a duty to sit, there must be a compelling reason—in other words, a showing of sufficient factual and legal grounds—warranting judicial disqualification or recusal. See Las Vegas Downtown Redev., 116 Nev. at 643-44, 5 P.3d at 1061-62. We have held that jurist disqualification requires an “extreme showing of bias.” Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 632, 636, 940 P.2d 127, 129 (1997); see also In re Petition to Recall Dunleavy, 104 Nev. 784, 790, 769 P.2d 1271, 1275 (1988) (observing that an “allegation of bias in favor or against an attorney . . . generally states an insufficient ground for disqualification” (emphasis added)). While the extreme bias standard set forth in Hecht and Dunleavy provides the framework for our analysis today, we note that neither case involved voluntary recusal. Hecht, 113 Nev. at 634, 940 P.2d at 128; Dunleavy, 104 Nev. at 786, 769 P.2d at 1272. Rather, Hecht and Dunleavy involved allegations of bias by parties against sitting judges. Id. With those principles in mind, we turn now to Judge Wagner’s order of recusal.

We conclude that the facts presented in this case demonstrate extreme bias, warranting and supporting Judge Wagner’s voluntary recusal. The case before us does not involve a mere allegation of bias, but rather, an unequivocal admission of bias. Judge Wagner’s personal bias toward Stermitz prompted him to enter the order of recusal. The animosity between Judge Wagner and Stermitz is undisputed and the friction between the two stems from ongoing controversies concerning the operation of the Humboldt County Public Defender’s Office. As a result of the dispute, both raised questions about the other’s honesty and ethical standards. Pursuant to the Nevada Code of Judicial Conduct, Judge

Wagner had a duty to recuse himself, as he could no longer be impartial towards Stermitz. Accordingly, we determine that Judge Wagner has made a sufficient showing of extreme bias and therefore his order of recusal is valid.

Judge Wagner's reassignment orders

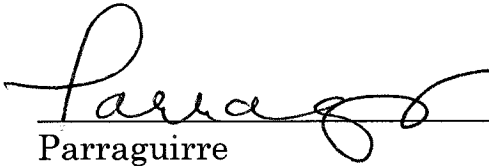
Stermitz asks this court to declare Judge Wagner's reassignment orders void. He argues that Judge Wagner exceeded his jurisdiction when he entered those orders. For the following reasons, we conclude that Judge Wagner exceeded his authority when he entered the reassignment orders because he had no authority to take further action in petitioner's cases.

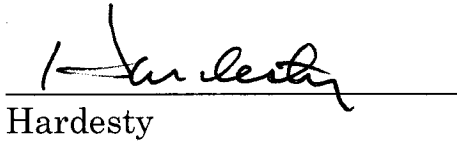
In Nevada, once a district court judge is disqualified pursuant to a statute, his or her subsequent actions, within the context of the disqualification, are void. See Hoff v. District Court, 79 Nev. 108, 110, 378 P.2d 977, 978 (1963) (“[T]he actions of a district judge, disqualified by statute, are not voidable merely, but void, has long been the rule in this state.”). This principle has roots in both federal and state courts. See, e.g., McCuin v. Texas Power & Light Co., 714 F.2d 1255, 1261 (5th Cir. 1983); Dotson v. Burchett, 190 S.W.2d 697, 698 (Ky. 1945); Tatum v. Orleans Parish School Bd., 894 So. 2d 1180, 1181 (La. Ct. App. 2005).

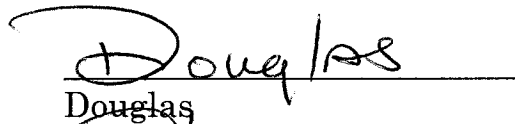
While the reassignment orders were entered to effectuate case management, they were caused by the trial court's recusal decision. Pursuant to this commonsense notion that relinquishing control results in an abdication of authority, we conclude that Judge Wagner had no authority to enter any further orders concerning Stermitz once he recused himself of all matters concerning the public defender. Because Judge Wagner lacked authority to enter additional orders, he exceeded his

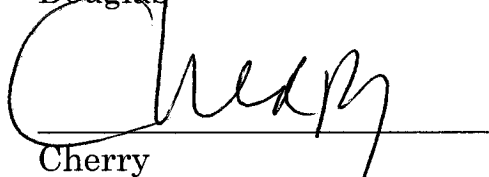
jurisdiction when he entered the subsequent reassignment orders, and we conclude that extraordinary relief is warranted. Accordingly, we

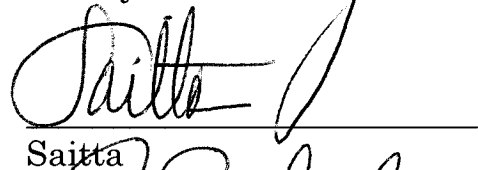
ORDER the petition DENIED IN PART AND GRANTED IN PART and DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION directing the district court to vacate the order in which Judge Wagner reclaimed cases he had recused himself from and all subsequent case reassignment orders concerning Stermitz.

 C.J.
Parraguirre

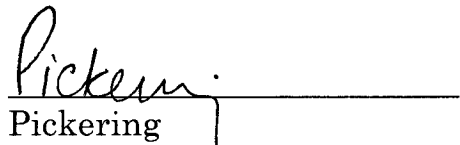
 J.
Hardesty

 J.
Douglas

 J.
Cherry

 J.
Saitta

 J.
Gibbons

 J.
Pickering

cc: Hon. Richard Wagner, District Judge
Humboldt County Public Defender
Peter Chase Neumann
Pershing County District Attorney
Pershing County Public Defender
Humboldt County Clerk