

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORENTHAL JAMES SIMPSON,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
KATHLEEN E. DELANEY, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 61136

**FILED**

SEP 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying a motion to disqualify the Clark County District Attorney's Office from litigating petitioner Orenthal James Simpson's post-conviction petition for a writ of habeas corpus. Having considered the petition, we are not convinced that our intervention is warranted.<sup>1</sup>

Mandamus is an extraordinary remedy, and the decision to entertain a petition for a writ of mandamus rests within our discretion.

---

<sup>1</sup>Petitioner alternatively seeks a writ of prohibition. Because he has not demonstrated that the district court lacked jurisdiction or acted in excess of its jurisdiction, see NRS 34.320, prohibition is not available.

See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). We have indicated that mandamus is the appropriate vehicle for challenging attorney disqualification rulings. See Collier v. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982). But “[t]he disqualification of a prosecutor’s office rests with the sound discretion of the district court,” id. at 309, 646 P.2d at 1220, and “while mandamus lies to enforce ministerial acts or duties and to require the exercise of discretion, it will not serve to control the proper exercise of that discretion or to substitute the judgment of this court for that of the lower tribunal,” id. at 310, 646 P.2d at 1221. Accordingly, where the district court has exercised its discretion, a writ of mandamus is available only 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).

Petitioner argues that the district court acted arbitrarily, capriciously, and manifestly abused its discretion in denying his motion to disqualify the Clark County District Attorney from representing the State in his post-conviction proceedings. He asserts that District Attorney Steve Wolfson has a conflict of interest under RPC 1.7 based on the fact that his wife, former district judge Jackie Glass, presided over petitioner’s trial and subsequently hosted a television show, which petitioner contends capitalized on his trial. We are not convinced that the district court failed to exercise its discretion or acted arbitrarily.

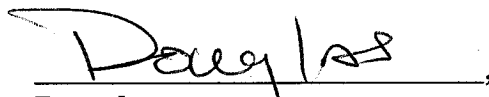
The district court conducted a hearing and considered all the relevant facts and circumstances before concluding that the situation “is


not so extreme that there could be this lack of trust in confidence in the [district attorney]’s office to proceed.” As we held in Collier, vicarious disqualification of an entire prosecutor’s office based on an individual lawyer’s conflict is required only “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.” 98 Nev. at 310, 646 P.2d at 1221. Petitioner has not demonstrated that this is an extreme case that would warrant vicarious disqualification. See id. As noted by the district court, Judge Glass’s program is no longer in production and it is not clear to what extent she may be able to capitalize on her role in petitioner’s trial. Petitioner contends that the district court overlooked the fact that reruns of Judge Glass’s program still air and the show was marketed based on her participation in petitioner’s trial. While the district court acknowledged how the program was marketed, it did not seem to realize that the program still aired despite being no longer in production. However, even considering this evidence, we are not convinced that petitioner has demonstrated that the relationship between the district attorney and Judge Glass gives rise to such an appearance of impropriety as to necessitate disqualification.

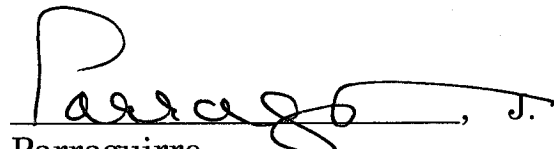
Because the district court considered the arguments of counsel at the hearing and all papers and exhibits submitted in support of and in opposition to the motion and exercised its discretion, and because petitioner has not demonstrated that the district court acted arbitrarily or

capriciously in exercising its discretion, mandamus does not lie. Cf. Collier, 98 Nev. at 310-11, 646 P.2d at 1221. Accordingly, we

ORDER the petition DENIED.<sup>2</sup>

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

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Kathleen E. Delaney, District Judge  
Palm Law Firm, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>2</sup>The motion for transmission of exhibit, filed on June 25, 2012, is denied. See NRAP 30(d) (“The Supreme Court will not permit the transmittal of original exhibits except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the Supreme Court’s review of the original exhibits is necessary to the determination of the issues.”).