

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK O'DELL; CHARLES
GOLDSMITH; BRAD GOLDSMITH;
DOMINIC ORLANDO; SAMUEL
MURRAY; BRANDON YOUNG; JAMES
SEXEY; JOHN DAWSON; JOHN
MERCHANT; ARMANDO PORRAS;
JOSEPH GENNUSO; JOSHUA RAMOS;
AND JEFFREY MURRAY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MICHAEL VILLANI, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 61179

FILED

JUL 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 prosecuting petitioners. Petitioners assert that District Attorney Steve Wolfson has a conflict of interest under RPC 1.9 based on his prior representation of one of the petitioners and that the

conflict should be imputed to the Clark County District Attorney's Office. We disagree and therefore deny the petition.¹

Mandamus is an extraordinary remedy, and the decision to entertain a petition for a writ of mandamus rests within our discretion. 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, 637 P.2d 534 (1981).

Petitioners argue that the district court failed to exercise its discretion or acted arbitrarily when it relied on District Attorney Wolfson’s declaration in lieu of live testimony. They allege that other testimony during the evidentiary hearing on the disqualification motion demonstrates that the declaration was inaccurate and that examination of

¹Petitioners alternatively seek a writ of prohibition. Because they have not demonstrated that the district court lacked jurisdiction or acted in excess of its jurisdiction, see NRS 34.320, prohibition is not available.

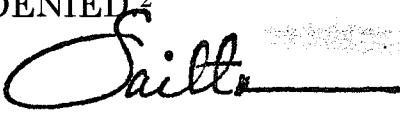
Mr. Wolfson was necessary to determine whether any confidential information had been disclosed to any other members of the District Attorney's Office. We are not convinced that the district court failed to exercise its discretion or acted arbitrarily.

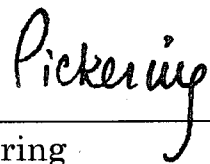
The district court conducted an evidentiary hearing and considered all the relevant facts and circumstances before concluding that “[b]ased upon the size of the District Attorney’s Office, the lack of [Mr. Wolfson’s] personal participation in this case, either being direct or indirect, and the screening procedure instituted, disqualification of the entire District Attorney’s Office is unwarranted.” As we held in Collier, vicarious disqualification of an entire prosecutor’s office based on an individual lawyer’s former-client 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; accord State v. Pennington, 851 P.2d 494, 498 (N.M. 1993) (observing that “great majority of jurisdictions have refused to apply a per se rule disqualifying the entire prosecutor’s staff solely on the basis that one member of the staff had been involved in the representation of the defendant in a related matter” so long as the disqualified staff member “is isolated from any participation in the prosecution”); Model Rules of Prof’l Conduct R. 1.11 cmt. 2 (“Rule 1.10 is not applicable to the conflicts of interest addressed by this rule. . . . Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.”). Petitioners have not challenged

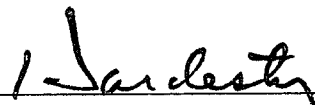
in their petition the sufficiency of the screening measures put in place by the District Attorney's Office to preclude Mr. Wolfson's direct or indirect participation in this case. Nor have they demonstrated that this is an extreme case that would warrant vicarious disqualification despite a sufficient screen. See Collier, 98 Nev. at 310, 646 P.2d at 1221. In addition to the circumstances identified by the district court, the fact that this case already had been pending for almost two years when Mr. Wolfson became the district attorney further supports the district court's determination that this is not an extreme case that warrants vicarious disqualification.

Because the district court considered the evidence presented at the evidentiary hearing and all papers and exhibits submitted in support of and in opposition to the motion and exercised its discretion, and because petitioners have 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.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

²We deny the motion to stay the trial as moot.

cc: Hon. Michael Villani, District Judge
Oronoz & Ericsson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk