

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN H. WIENER AND RONALD
VICKNEY,

No. 37814

Petitioners,

vs.

THE FIFTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF MINERAL, AND THE
HONORABLE JOHN P. DAVIS, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

FILED

MAY 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus, or in the alternative prohibition, challenges the district court's authority to hold a contempt hearing against petitioner Martin Wiener and to compel Wiener to represent petitioner Ronald Vickney in a criminal matter pending before the district court.

Wiener challenges the contempt proceedings on the following grounds: (1) the district court has no jurisdiction over him for purposes of a contempt hearing; (2) the district court never ordered him to appear for the March 7, 2001 hearing that is the subject of the contempt proceedings; (3) the district court did not properly serve him with the order

to show cause; and (4) the district court must comply with the provisions of NRS 22.030(2)-(3) because the alleged contempt was not committed in the court's presence. Having reviewed the petition and supporting documents on file herein, we are not satisfied that this court's intervention by way of extraordinary writ is warranted at this time for three reasons.

First, Wiener argues that the district court will exceed its authority by ordering contempt proceedings because it has disregarded Vickney's discharge of Wiener as his attorney and Wiener's mandatory withdrawal as counsel. Initially, we note that it appears the district court may not proceed with the contempt proceedings. Moreover, although Wiener is correct that SCR 166(1)(c) requires a lawyer to withdraw from representation of a client if the client discharges the lawyer, none of the authority cited in the petition supports the proposition that such a withdrawal can be made unilaterally by the attorney, without filing a motion to withdraw. Rather, SCR 166(3) seems to contemplate such a motion as it allows the court to order a lawyer to continue representation "notwithstanding good cause for terminating the representation." To date, it does not appear that Wiener has filed a motion to withdraw or that the district court has formally ordered Wiener to continue his representation of Vickney. Accordingly, this petition is premature.

Second, the two allegations concerning the district court's failure to order Wiener's attendance at the March 7 hearing, and to properly serve its show cause order on Wiener are more appropriately considered in the district court in the first instance because they involve factual issues.¹ Finally, we reject Wiener's contention that NRS 22.030 (2)-(3) govern in this instance. A failure to appear at a hearing, occurs within the immediate view and presence of the district court, and therefore NRS 22.030(2)-(3) do not apply.²

We are confident that, when presented with a formal motion to withdraw, the district court will make a fair and just decision, considering both Vickney's rights as a defendant in a criminal proceeding and the comprehensive statutory scheme for the appointment of counsel to represent an indigent defendant.³ We are also confident that if the

¹See Round Hill General Improvement District v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²In re Mitchell, 102 Nev. 61, 62, 714 P.2d 1007, 1008 (1986) ("Where an attorney fails to appear for a scheduled hearing, his offensive conduct—to wit, his absence—occurs within the immediate view and presence of the court and thus cannot be characterized as indirect contempt.").

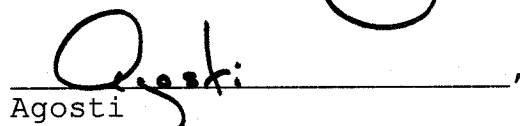
³See NRS 7.115 (providing that district court "shall not appoint an attorney other than a public defender to represent" a person charged by information unless the district court "makes a finding . . . that the public defender is disqualified from furnishing the representation and sets forth the reason or reasons for the disqualification"); NRS 7.125 (providing for compensation of attorney other than public defender appointed to represent indigent defendant); NRS 7.135 (providing for reimbursement of expenses incurred by attorney other than public defender appointed to represent indigent defendant); NRS Chapter 180 (creating office of state public
continued on next page . . .


district court proceeds with contempt proceedings against Wiener and finds him to be in contempt, the court will stay enforcement of any sanctions to permit Wiener to file a new petition for extraordinary relief in this court.

Having considered the petition and supporting documents, and for the reasons stated above, we conclude that our intervention by way of extraordinary writ is not warranted at this time.⁴ Accordingly, we

ORDER the petition DENIED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. John P. Davis, District Judge
Attorney General
Mineral County District Attorney
Martin H. Wiener
Mineral County Clerk

. . . continued
defender); NRS Chapter 260 (providing for creation of office of county public defender).

⁴See State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983) (stating that petitions for extraordinary relief are addressed to the court's sound discretion).