

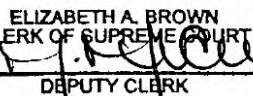
IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER ISSO, AN INDIVIDUAL,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MARIA A. GALL, DISTRICT JUDGE,  
DEPT 9,  
Respondents,  
and  
BRODEY DAFFER, AN INDIVIDUAL;  
AND JIMMY ISSO, AN INDIVIDUAL,  
Real Parties in Interest.

No. 89502

**FILED**

OCT 28 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus or, alternatively, prohibition challenges district court orders denying petitioner's motions for (1) spoliation sanctions, (2) disqualification of opposing counsel, and (3) a stay of trial in a personal injury action.<sup>1</sup> Real party in interest Jimmy Isso has filed a joinder to the petition.

This court has original jurisdiction to issue writs of mandamus and prohibition, and the issuance of such extraordinary relief is solely within this court's discretion. *See Nev. Const. art. 6, § 4; D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden to show that extraordinary relief is warranted,

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<sup>1</sup>Petitioner has filed a Motion for Leave to Exceed Word Limit for Petition for Writ of Mandamus or, Alternatively, Prohibition. The motion is granted. The petition was filed on October 21, 2024.

and such relief is proper only when there is no plain, speedy, and adequate remedy at law. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004). An appeal is generally an adequate remedy precluding writ relief. *Id.* at 224, 88 P.3d at 841. Even when an appeal is not immediately available because the challenged order is interlocutory in nature, the fact that the order may ultimately be challenged on appeal from a final judgment generally precludes writ relief. *Id.* at 225, 88 P.3d at 841.

Having considered the petition and supporting documents, we are not persuaded that mandamus relief is warranted.<sup>2</sup> Regarding the district court's denial of petitioner's motion for spoliation sanctions, he has not demonstrated that an appeal from a final judgment would not be a plain, speedy, and adequate remedy. *See Pan*, 120 Nev. at 224, 228, 88 P.3d at 841, 844; *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 681, 476 P.3d 1194, 1197 (2020) (noting that where appellate relief is available, it is typically preferable to an extraordinary writ proceeding, as it affords "the advantage of having the whole case before us"); *see also Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) (reviewing spoliation issues in the context of an appeal). The late stage of the district court proceeding, which is on the eve of trial, also counsels strongly against petitioner's requested relief. *See*

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<sup>2</sup>Because the district court had jurisdiction to decide the motions leading to the issues challenged by petitioner, we deny his alternative request for a writ of prohibition. *See Goicoechea v. Fourth Jud. Dist. Ct.*, 96 Nev. 287, 289, 607 P.2d 1140, 1141 (1980) (holding that a writ of prohibition "will not issue if the court sought to be restrained had jurisdiction to hear and determine the matter under consideration"); *see also* NRS 34.320 (providing that a writ of prohibition is available to "arrest[ ] the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person").

*Archon Corp. v. Eighth Jud. Dist. Ct.*, 133 Nev. 816, 824, 407 P.3d 702, 709 (2017) (explaining that advisory mandamus “must be issued sparingly and thoughtfully due to its disruptive nature”).

Next, although we have entertained petitioner’s arguments concerning the district court’s denial of his motion for disqualification of opposing counsel, see *New Horizon Kids Quest III, Inc. v. Eighth Jud. Dist. Ct.*, 133 Nev. 86, 88, 392 P.3d 166, 168 (2017) (recognizing that mandamus is the appropriate vehicle to challenge an order denying disqualification of counsel), we are not convinced that writ relief is appropriate on that ground. This court defers to the district court’s familiarity with the facts of the case to determine if disqualification is warranted, see *id.* at 89, 392 P.3d at 168, and the district court has “broad discretion” in resolving disqualification issues, see *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000). When the district court is vested with such discretion, “we can issue traditional mandamus only where the lower court has manifestly abused that discretion or acted arbitrarily or capriciously.” *Walker v. Second Jud. Dist. Ct.*, 136 Nev. 678, 680, 476 P.3d 1194, 1196 (2020). Thus, “traditional mandamus relief does not lie where a discretionary lower court decision ‘result[s] from a mere error in judgment’; instead, mandamus is available only where ‘the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.’” *Id.* at 680-81, 476 P.3d at 1197 (quoting *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011)).

Here, as the district court found, petitioner’s arguments concerning disqualification are predicated upon his allegations of spoliation. Even considering those allegations to the extent they relate to petitioner’s

motion for disqualification, we are not persuaded that writ relief is warranted. Petitioner states in his petition that on June 23, 2021, he “learned that there was no point to discovery attempts to inspect the motorcycle” due to the alleged spoliation. Assuming, for the sake of argument, that petitioner is correct that there was no specific deadline for him to move the district court for spoliation sanctions or the disqualification of opposing counsel due to the purported conflict arising from the alleged spoliation,<sup>3</sup> it was nonetheless incumbent on him to seek such relief below in a timely manner, before the issue became an “emergency” on the eve of trial. Under these circumstances, we cannot say that the district court abused its discretion, much less *manifestly* abused its discretion. *See Walker*, 136 Nev. at 680, 476 P.3d at 1196; *see also Brown*, 116 Nev. at 1205, 14 P.3d at 1270 (cautioning against the misuse of motions for disqualification as instruments of delay).

Nor do we discern any abuse of discretion in the district court’s denial of petitioner’s motion to stay, particularly given that the underlying litigation has been pending for over four years and is finally on the verge of trial. *See Aspen Fin. Servs. v. Eighth Jud. Dist. Ct.*, 128 Nev. 635, 640, 649, 289 P.3d 201, 205, 210 (2012) (reviewing the district court’s denial of a motion to stay for an abuse of discretion in the context of a writ petition and recognizing that there is a weighty interest in the expeditious resolution of

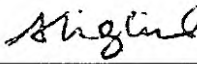
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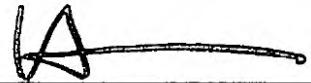
<sup>3</sup>We further assume, for the sake of argument, that petitioner had standing to seek disqualification despite his failure to address the issue in his petition. *See Liapis v. Second Jud. Dist. Ct.*, 128 Nev. 414, 420, 282 P.3d 733, 737 (2012) (noting that the party seeking disqualification bears the burden to establish that they have standing to do so and explaining that only a former or current client generally has standing to bring a motion to disqualify counsel based on a conflict of interest).

cases, especially those that have been pending on the district court's docket for extended periods of time). Accordingly, we

ORDER the petition DENIED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Cadish

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Herndon

cc: Hon. Maria A. Gall, District Judge  
Holland & Hart LLP/Las Vegas  
McDonald Carano LLP/Reno  
Bailey Kennedy  
McDonald Carano LLP/Las Vegas  
Reeves Law, PLC  
Ranalli Zaniel Fowler & Moran, LLC/Henderson  
Law Office of Michael E. Smith, Esq., P.C.  
Injury Lawyers of Nevada  
Willoughby Shulman Injury Lawyers  
Emerson Law Group  
Eighth District Court Clerk

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<sup>4</sup>Given this order, petitioner's Emergency Motion under NRAP 27(e) for Stay Pending Writ Petition is denied as moot.