

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO ALCALA, SR., AS PARENT OF
PEDRO ALCALA, JR., A MINOR,

No. 38508

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

FILED

OCT 04 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Respondents,

and

FERNANDO SOLIS,

Real Party in Interest.

ORDER DENYING PETITION FOR WRITS
OF MANDAMUS AND PROHIBITION

This petition for extraordinary relief, which seeks writs of mandamus and prohibition, challenges Judge Hardcastle's order striking the affidavit(s) of prejudice filed with petitioner's motion to disqualify Judge Hardcastle in the underlying matter for alleged prejudice against petitioner's counsel. (The motion was accompanied by two affidavits of prejudice, but the order referred only to "the affidavit.") Petitioner asks this court to issue a writ of mandamus directing Judge Hardcastle to vacate the order and to withdraw from further action in the underlying matter, and a writ of prohibition prohibiting Judge Hardcastle from taking any further action and ordering that the matter be transferred immediately to another judge under the court's random reassignment procedures. We agree with petitioner that the affidavits of prejudice were

timely under NRS 1.235(1)(b) and that Judge Hardcastle erred by ordering them stricken; however, the error was harmless because the affidavits do not provide a basis for disqualifying Judge Hardcastle.

NRS 1.235(1)(b) required that the affidavits of prejudice be filed "[n]ot less than 3 days before the date set for the hearing of any pretrial matter." NRCP 6(a) and EDCR 1.14, which govern the computation of time limits such as this one, both provide that

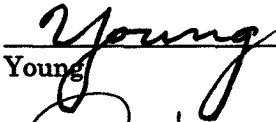
- the day of the act from which the period begins to run shall not be included,
- the last day of the period shall be included, and
- intermediate Saturdays, Sundays and non-judicial days shall be excluded when the time allowed is less than 7 days.

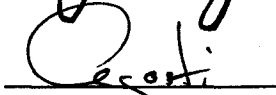
Applying these rules, we conclude that the affidavits of prejudice and the disqualification motion were timely. "Not less than 3 days" necessarily means 3 days or more. Excluding the day they were filed (Wednesday, September 19) and the intermediate Saturday and Sunday (September 22 and 23), but including Thursday and Friday (September 20 and 21) and the last day of the period (Monday, September 24), the motion and affidavits were filed 3 days before the date set for the hearing. Judge Hardcastle erred by striking the affidavits.


We deny the petition for extraordinary relief, however, because the error was harmless. Canon 3B of the Nevada Code of Judicial Conduct requires a judge to hear and decide assigned matters unless disqualification is required, and to perform judicial duties without bias or prejudice. Canon 3E requires a judge to disqualify herself if her impartiality might reasonably be questioned, including instances when the judge is prejudiced against a party or a party's lawyer. NRS 1.230, which provides statutory grounds for disqualifying district court judges, states that a judge shall not act in a proceeding when (1) she entertains actual bias or prejudice for or against one of the parties, or (2) implied bias exists in one of the listed respects. A judge is presumed to be impartial, and prejudice against a party's attorney does not warrant a judge's disqualification, unless the prejudice is extreme—an exceedingly rare

circumstance.¹ Here, petitioner has not set forth any grounds for implying bias; thus, disqualification is only warranted if Judge Hardcastle harbors actual prejudice against him or actual bias in favor of his opponent, or extreme prejudice against petitioner's counsel. The disqualification motion and affidavits of prejudice do not allege extreme prejudice. Because the affidavits do not provide a basis for disqualifying Judge Hardcastle, we

ORDER the petition DENIED.²


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge
Gage & Gage, LLP
Laura Payne Hunt & Associates
Clark County Clerk

¹See Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 644, 649, 940 P.2d 134, 137-38 (1997), and cases cited therein.

²We vacate our September 21, 2001 order temporarily staying the underlying proceedings.