

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL OLSON,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND THE HONORABLE GENE T.
PORTER, DISTRICT JUDGE,

Respondents,

and

ELEANOR C. AHERN AND DOODLE
BUG RANCH, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Real Parties in Interest.

No. 38721

FILED

OCT 29 2002

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person petition for a writ of mandamus seeks to compel District Judge Gene T. Porter's disqualification in the underlying action for actual prejudice. Having reviewed the petition and attached documents, we conclude that our intervention is not warranted. First, we may, in our discretion, issue a writ of mandamus to compel the district court to perform a required act when petitioner has no other plain, speedy

and adequate remedy at law.¹ The right to appeal from a final judgment is an adequate remedy that precludes writ relief.²

Second, petitioner's affidavit of prejudice was untimely. NRS 1.235(1) specifies that the affidavit must be filed:

(a) Not less than 20 days before the date set for trial or hearing of the case; or

(b) Not less than 3 days before the date set for the hearing of any pretrial matter.

This court has imposed a "whichever occurs first" standard onto NRS 1.235(1) to ensure that "for cause" challenges are initiated before any adversarial proceedings take place.³ Thus, a party has only one window of opportunity within which to challenge a judge for cause: either twenty days before the date set for a trial or hearing of the case, or three days before the hearing of any pretrial matter, whichever occurs first.⁴

Petitioner's window of opportunity closed in September 1999 when Judge Porter ruled on his motion to dismiss and the opposing party's motions to strike his answer and for entry of default. The court's January

¹Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991); NRS 34.160; NRS 34.170.


²See Guerin v. Guerin, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998), abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646, 5 P.3d 569 (2000).


³Valladares v. District Court, 112 Nev. 79, 83-84, 910 P.2d 256, 259-60 (1996).

⁴Id. at 84, 910 P.2d at 260.

2001 reassignment of the case to another judge and its July 2001 reassignment back to Judge Porter did not renew petitioner's window of opportunity to challenge Judge Porter for cause. Accordingly, we

ORDER the petition DENIED.


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Gene T. Porter, District Judge
Daniel Olson
Jeffrey A. Cogan
Kolesar & Leatham, Chtd.
Clark County Clerk