

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARDSON CONSTRUCTION, INC.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,
and
CERBERUS PYROTRONICS,
Real Party in Interest.

No. 39705

FILED

JUN 28 2002

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Richardson Construction, through this petition for a writ of mandamus, seeks to compel the district court to disqualify Cerberus Pyrotronics' counsel for a conflict of interest under SCR 159. SCR 159 generally prohibits a lawyer who has formerly represented a client from later representing an adverse party in the same or a substantially related matter, and from using information relating to the former representation to the former client's disadvantage. SCR 160 imputes an individual lawyer's disqualification to his or her law firm. The party moving for disqualification bears the burden of proving disqualification is warranted.¹

We have reviewed the petition and attached documents, and we conclude that our intervention is not warranted. Although we may, at

¹See Robbins v. Gillock, 109 Nev. 1015, 862 P.2d 1195 (1993).

our discretion,² issue a writ of mandamus to compel the district court to perform a required act,³ or to control an arbitrary or capricious exercise of discretion,⁴ Richardson has not demonstrated that the district court failed to perform any required act, or exercised its discretion arbitrarily or capriciously.

Cerberus Pyrotronics filed the underlying action against Richardson and its insurer in August 1997 to recover money allegedly due under a construction subcontract. On March 1, 2002, the law firm of Bible, Hoy & Trachok took over as counsel for Cerberus. The law firm had represented Richardson years earlier in an action against White Pine School District, but Richardson did not immediately object. Richardson also did not object during discussions between counsel leading to an agreement to continue the scheduled trial date from March 11, 2002, to May 20, 2002. And Richardson did not object during the pretrial conference during which counsel exchanged lists of witnesses and exhibits. Richardson waited to file its motion to disqualify the law firm until May 14, 2002, less than one week before trial was set to begin.

The district court vacated the trial date and rescheduled the trial for June 3, 2002.⁵ Cerberus opposed disqualification of its counsel on

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

³NRS 34.160.


⁴Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

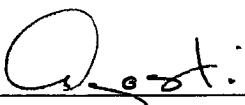
⁵The trial date was again vacated on the parties' stipulation and is now apparently scheduled to begin March 10, 2003.


the basis that the litigation was neither the same nor substantially related to the previous litigation, and that the law firm had not obtained any information relating to its representation of Richardson years earlier that could be used to Richardson's disadvantage in the present litigation. On May 31, 2002, the district court entered an order denying the disqualification motion.

It is undisputed that the underlying litigation does not concern the matter that the law firm previously handled for Richardson between 1995 and 1997. Absent evidence that the two matters are substantially related, or that the law firm gained some information from representing Richardson that could now be used to Richardson's disadvantage, disqualification is not warranted. No such evidence appears in the petition or supporting documents. Accordingly, we deny the petition for a writ of mandamus.

It is so ORDERED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Valorie Vega, District Judge
Parker Nelson & Arin, Chtd.
Bible, Hoy & Trachok
Clark County Clerk