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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CLARK COUNTY**

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9 **CASE NO. C-19-341767-1**

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **vs**

13 **KIM BLANDINO,**

14 **Defendant.**

15 **ORDER DENYING MOTION TO DISQUALIFY JUDGE MICHELLE LEAVITT**

16
17 **PROCEDURAL BACKGROUND**

18 This is a criminal case. Mr. Blandino was indicted on extortion and
19 impersonation of an officer charges on July 12, 2019. He represents himself in this
20 matter and was appointed standby counsel.

21 Mr. Blandino filed a motion to disqualify Judge Leavitt on December 13, 2019.
22 Judge Leavitt filed an affidavit denying any bias or prejudice towards any party. Mr.
23 Blandino's motion was denied.

24 Mr. Blandino filed his second motion to disqualify Judge Leavitt on May 7, 2020.
25 The motion did not include a certificate of service. Judge Leavitt did not file a response
26 to the motion because Mr. Blandino had not served her or staff counsel. The second
27 motion was also denied.

1 Mr. Blandino filed a motion to reconsider the denial of the December 13, 2019
2 and the May 7, 2020 disqualification motions. His motion for reconsideration was
3 denied.

4 Mr. Blandino filed this third motion to disqualify Judge Leavitt on March 8,
5 2021.

6 Mr. Blandino has filed motions requesting the disqualification of all 58 judges in
7 the Eighth Judicial District Court which sits in Clark County.

8 I was appointed by Nevada Supreme Court Chief Justice James Hardesty to hear
9 Mr. Blandino's pending motion to disqualify Judge Michelle Leavitt.

10
11 **FACTS**

12 Mr. Blandino was indicted on extortion and impersonation of an officer charges
13 on July 12, 2019. He represents himself in this matter and has standby counsel.

14 Judge Michelle Leavitt is the judge assigned to hear Mr. Blandino's criminal case.
15 Judge Leavitt arraigned Mr. Blandino on August 29, 2019.

16 Judge Leavitt referred Mr. Blandino for competency evaluation on September 17,
17 2019.

18 Mr. Blandino filed a motion to disqualify Judge Leavitt and all of the other 57
19 district judges in the Eighth Judicial District on December 13, 2019. Judge Leavitt filed
20 an affidavit denying any bias or prejudice towards any party. Mr. Blandino's motion was
21 denied on January 23, 2020.

22 On April 9, 2020 Mr. Blandino was found to be legally competent.

23 Mr. Blandino filed his second motion to disqualify Judge Leavitt and all of the
24 other district judges on May 7, 2020. The motion did not include a certificate of service.
25 Judge Leavitt did not file a response to the motion because Mr. Blandino had not served
26 her or staff counsel. The second motion was also denied.

1 Mr. Blandino filed a motion to reconsider the denial of the December 13, 2019
2 and the May 7, 2020 disqualification motions. His motion for reconsideration was
3 denied.

4 Mr. Blandino filed the instant motion to disqualify Judge Leavitt on March 8,
5 2021.

6 After the arraignment on August 29, 2019 Mr. Blandino's criminal proceedings
7 were stayed because of the order to have him evaluated for competency. The stay
8 remained in effect until he was found to be competent on April 9, 2020. Since he was
9 found competent on April 29, 2020, more than a year now, the criminal proceedings
10 have been delayed as a result of Mr. Blandino's disqualification motions.

11 Mr. Blandino has been released from jail on conditions.

12 In his March 8, 2021 motion to disqualify Mr. Blandino alleged:

- 13 1. He is trying to have Judge Leavitt removed from the bench and prosecuted
14 by the federal government; he has submitted information to the FBI; he
15 has informed Judge Leavitt that he is preparing a criminal complaint
16 against her for the Department of Justice for criminal violations of 18
17 U.S.C. § 242 and RICO; and facts regarding a judicial discipline complaint
18 involving Judge Leavitt and a Rita Dotson, but not Mr. Blandino, in 2012
19 that resulted in a public reprimand of Judge Leavitt in 2015.
- 20 2. Judge Leavitt said Mr. Blandino waived his speedy trial demand, but this
21 is false because Mr. Blandino had legitimate objections to being forced to
22 wear a mask.
- 23 3. Mr. Blandino is investigating the Eighth Judicial District Court judges for
24 corruption and misconduct.
- 25 4. That each time Mr. Blandino has asserted his rights he has had to pay a
26 price; Judge Leavitt wrongly recommended a competency evaluation of
27

1 Mr. Blandino and signed a Request for Evaluation for Competency form
2 that indicates she was acting on behalf of Mr. Blandino; Mr. Blandino was
3 wrongfully punished at LCC; it is very possible the FBI will find collusion
4 and conspiracy between Judge Leavitt and Judge Hardy related to the
5 competency evaluation.
6

7 LEGAL PRINCIPLES

8 “[T]he primary policy behind the Nevada Code of Judicial Conduct (NCJC) is to
9 promote public confidence in the judiciary. *Hogan v. Warden, Ely State Prison*, 112
10 Nev. 553,
11 558, 916 P.2d 805, 808 (1996). At the same time the NCJC recognizes the tension
12 between legitimate disqualification claims and claims made to obtain tactical
13 advantages in proceedings before a court. *Id.*; NCJC, Scope ¶ 7. In the *Hogan* case,
14 Hogan had filed three motions relating to judicial disqualification. The Supreme Court
15 noted the fact of the multiple motions and noted it was cause for concern that Hogan
16 sought delay and to manipulate his court proceedings. *Id.*

17 A judge is presumed to be unbiased, and the burden is on the party asserting the
18 challenge to establish sufficient factual and legal grounds warranting disqualification.
19 *Hogan* at 559-60. “If a party fails to allege sufficient facts, summary dismissal of the
20 motion has been deemed appropriate.” See, e.g., *PETA v. Berosini*, 111 Nev. 431, 437,
21 894 P.2d 337, 341 (1995); *Ainsworth v. Combined Insurance Co.*, 105 Nev. 237, 270,
22 774 P.2d 1003, 1026, cert. denied, 493 U.S. 958, 107 L. Ed. 2d 361, 110 S. Ct. 376 (1989);
23 *In re Dunleavy*, 104 Nev. at 789, 769 P.2d at 1273-74. The statutory provisions and
24 mechanisms providing for a judge’s disqualification are not activated, and summary
25 dismissal of the challenge is appropriate, where the challenge fails to allege legally
26 cognizable grounds supporting a reasonable inference of bias or prejudice. See *Berger*
27

1 *v. United States*, 255 U.S. 22 (1921); *United States v. Haldeman*, 559 F.2d 31, 129-31
2 (D.C.Cir. 1976), cert. denied 431 U.S. 933 (1977); *United States v. Ming*, 466 F.2d 1000,
3 1003-04 (7th Cir. 1972), cert. denied, 409 U.S. 915 (1972); *Davis v. Board of School*
4 *Com'rs of Mobile County*, 517 F.2d 1044, 1051 (5th Cir. 1975), cert. denied, 425 U.S.
5 944; *United States v. Roca-Alvarez*, 451 F.2d 843, 847-48 (5th Cir. 1971); *United States*
6 *v. Townsend*, 478 F.2d 1072 (3rd Cir. 1973).

7 NRS 1.230 establishes the statutory grounds for disqualifying judges which are:

- 8
- 9 1. A judge shall not act as such in an action or proceeding when the
10 judge entertains actual bias or prejudice for or against one of the
11 parties to the action.
 - 12 2. A judge shall not act as such in an action or proceeding when
13 implied bias exists in any of the following respects:
 - 14 (a) When the judge is a party to or interested in the
15 action or proceeding.
 - 16 (b) When the judge is related to either party by
17 consanguinity or affinity within the third
18 degree.
 - 19 (c) When the judge has been attorney or counsel for
20 either of the parties in the particular action or
21 proceeding before the court.
 - 22 (d) When the judge is related to an attorney or
23 counselor for either of the parties by
24 consanguinity or affinity within the third
25 degree. This paragraph does not apply to the
26 presentation of ex parte or uncontested matters,
27 except in fixing fees for an attorney so related to
the judge.

The NCJC provides substantive grounds for judicial disqualification. *PETA*, 111
Nev. 435, 894 P.2d 340, overruled on other grounds by *Towbin Dodge, LLC v. Dist. Ct.*,

1 121 Nev. 251, 112 P.3d 1063 (2005). Under NCJC 2.11(A) a judge must disqualify herself
2 when her impartiality might reasonably be questioned. “[T]he test for whether a judge’s
3 impartiality might reasonably be questioned is objective.” *PETA*, 111 Nev. at 436, 894
4 P.2d at 340. A judge deciding a disqualification motion must decide “whether a
5 reasonable person, knowing all the facts, would harbor reasonable doubts about [the
6 judge’s] impartiality.” *PETA*, 111 Nev. at 438, 894 P.2d at 341; see *Suh v. Pierce*, 630
7 F.3d 685, 691-92, 2011 WL 135713, at *5 (7th Cir. 2011) (observing that due process
8 requires fair trial in fair tribunal but that most judicial disqualification matters do not
9 rise to constitutional level and that United States Supreme Court has never held that due
10 process requires recusal based solely on appearance of bias).

11 NRS 1.235 provides the procedure for disqualifying judges. It provides in relevant
12 part:

13 1. Any party to an action or proceeding . . . who seeks to disqualify a
14 judge for actual or implied bias or prejudice must file an affidavit
15 specifying the facts upon which the disqualification is sought. . . . Except as
16 otherwise provided in subsections 2 and 3, the affidavit must be filed:

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

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

21 . . .
22 whichever occurs first. If the facts upon which disqualification of the judge
23 is sought are not known to the party before the party is notified of the
24 assignment of the judge or before any pretrial hearing is held, the affidavit
25 may be filed not later than the commencement of the trial or hearing of the
26 case.
27 . . .

28 4. At the time the affidavit is filed, a copy must be served upon the
29 judge sought to be disqualified. Service must be made by delivering the
30 copy to the judge personally or by leaving it at the judge’s chambers with
31 some person of suitable age and discretion employed therein.

32 5. Except as otherwise provided in subsection 6, the judge against
33 whom an affidavit alleging bias or prejudice is filed shall proceed no
34 further with the matter and shall:

35 (a) If the judge is a district judge, immediately transfer the case to
36 another department of the court, if there is more than one department of
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1 the court in the district, or request the judge of another district court to
2 preside at the trial or hearing of the matter;

3 (b) If the judge is a justice of the peace, immediately arrange for
4 another justice of the peace to preside at the trial or hearing of the matter
5 as provided pursuant to NRS 4.032, 4.340 or 4.345, as applicable; or

6 (c) If the judge is a municipal judge, immediately arrange for
7 another municipal judge to preside at the trial or hearing of the matter as
8 provided pursuant to NRS 5.023 or 5.024, as applicable.

9 6. A judge may challenge an affidavit alleging bias or prejudice by
10 filing a written answer with the clerk of the court within 5 judicial days
11 after the affidavit is filed, admitting or denying any or all of the allegations
12 contained in the affidavit and setting forth any additional facts which bear
13 on the question of the judge's disqualification. The question of the judge's
14 disqualification must thereupon be heard and determined by another
15 judge

16 "A judge shall hear and decide matters assigned to the judge, except when
17 disqualification is required by the Rule 2.11 or other law." NCJC 2.7.

18 "Rulings and actions of a judge during the course of official judicial proceedings
19 do not establish legally cognizable grounds for disqualification. *Dunleavy*, 104 Nev. 789-
20 90, 769 P.2d 1275. "The personal bias necessary to disqualify must 'stem from an
21 extrajudicial source and result in an opinion on the merits on some basis other than
22 what the judge learned from his participation in the case.'" *Id.* To permit an allegation of
23 bias, partially founded upon a judge's performance of her constitutionally mandated
24 responsibilities, to disqualify that judge from discharging those duties would nullify the
25 court's authority and permit manipulation of justice, as well as the court. *Id.*

26 Matters not ordinarily sufficient to require recusal include (1) speculation, beliefs,
27 conclusions, innuendo, suspicion, opinion, and similar non-factual matters; (2) prior
rulings in the proceeding, or another proceeding, solely because they were adverse; (3)
baseless personal attacks on or suits against the judge by a party; and (4) threats or
other attempts to intimidate the judge. *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir.
1995).

1 **ANALYSIS**

2 I have several questions about the facts surrounding the service of Mr. Blandino's
3 motion to disqualify on Judge Leavitt, and the timeliness of his motion, but I conclude
4 that Mr. Blandino's motion to disqualify fails to allege legally cognizable grounds
5 supporting a reasonable inference of bias or prejudice and that summary dismissal is
6 appropriate, and therefore do not seek additional information regarding service or
7 timeliness of the motion and decide the matter on the merits. Based upon the facts and
8 the applicable legal principles stated above I will now address the merits of Mr.
9 Blandino's motion to disqualify.

10 The starting point is the law that Judge Leavitt is presumed to be unbiased, and
11 the burden is on Mr. Blandino to establish sufficient factual and legal grounds
12 warranting disqualification. The statutory provisions and mechanisms providing for a
13 judge's disqualification are not activated, and summary dismissal of the challenge is
14 appropriate, where the challenge fails to allege legally cognizable grounds supporting a
15 reasonable inference of bias or prejudice.

16 Under NRS 1.235(1) the affidavit for disqualification must specify the facts upon
17 which disqualification is sought. "Specify" means to "to mention or name in a specific or
18 explicit manner: tell or state precisely or in detail," and to "give full particulars."
19 *Webster's Third New International Dictionary* 2187 (2002). Mr. Blandino's motion
20 fails to specify facts of legally cognizable grounds that support a reasonable inference of
21 bias or prejudice.

22 Considerations applicable to all of Mr. Blandino's allegations are that the fact that
23 he has filed in this action three motions to disqualify Judge Leavitt, he has filed motions
24 to disqualify all of the other 57 other district judges in the Eighth Judicial District Court,
25 the criminal proceedings against Mr. Blandino have been delayed for more than a year
26 as a result of his disqualification motions, during that year he has been free from the

1 custody of the Clark County Jail on pretrial conditions. These facts raise concern that
2 Mr. Blandino has sought delay and to manipulate his court proceedings.

3 I will now address each of Mr. Blandino's allegations in order.
4

5 **1. He is trying to have Judge Leavitt removed from the bench and**
6 **prosecuted by the federal government; he has submitted information to the**
7 **FBI; he has informed Judge Leavitt that he is preparing a criminal**
8 **complaint against her for the Department of Justice for criminal violations**
9 **of 18 U.S.C. § 242 and RICO; and facts regarding a judicial discipline**
10 **complaint involving Judge Leavitt and a Rita Dotson, but not Mr. Blandino,**
11 **in 2012 that resulted in a public reprimand of Judge Leavit in 2015.**

12 The allegation regarding having Judge Leavitt removed from the bench is not
13 specific as to what he has done to remove her from the bench. He alludes to an
14 investigation he has been conducting of Judge Leavitt and the other judges of the Eighth
15 Judicial District Court, but provides few facts of specific acts he has taken in his
16 investigation or to provide the information gleaned from his investigation to the Nevada
17 Commission on Judicial Discipline. He related information of a public reprimand
18 stemming from events in 2012 that do not in any way involve Mr. Blandino, and that
19 were resolved by a public reprimand. Based upon the judicial discipline case Mr.
20 Blandino alleged Judge Leavitt has violated 18 U.S.C. § 242 and possibly RICO
21 violations. It is unlikely the FBI will investigate alleged criminal activity based upon acts
22 committed in 2012, and even if it did investigate it appears the applicable statute of
23 limitations has run its own no criminal charges could be brought at this late date.

24 In short, these allegations are baseless attacks on Judge Leavitt in this
25 disqualification matter. These alleged facts are not evidence of actual or implied bias on
26 the part of Judge Leavitt. These allegations are not legally cognizable grounds
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1 supporting a reasonable inference of bias or prejudice against Mr. Blandino. I conclude
2 a reasonable person who knows all the facts, would not harbor reasonable doubts about
3 Judge Leavitt's impartiality in this case based upon these allegations.
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5 **2. Judge Leavitt said Mr. Blandino waived his speedy trial demand, but**
6 **this is false because Mr. Blandino had legitimate objections to being forced**
7 **to wear a mask.**

8 Mr. Blandino presents no specific facts to support this allegation, he does not
9 reference any specific order or hearing transcript, or any date when this alleged act
10 occurred. Without such supporting information I have no basis to find that anything
11 Judge Leavitt said regarding Mr. Blandino's right to a speedy trial was false, the
12 allegation is just innuendo.

13 This unsupported allegation is a baseless attack on Judge Leavitt in this
14 disqualification matter. The alleged acts are not evidence of actual or implied bias on the
15 part of Judge Leavitt. The allegation is not legally cognizable grounds supporting a
16 reasonable inference of bias or prejudice against Mr. Blandino. I conclude a reasonable
17 person who knows all the facts, would not harbor reasonable doubts about Judge
18 Leavitt's impartiality in this case based upon this allegation.
19

20 **3. Mr. Blandino is investigating the Eighth Judicial District Court judges**
21 **for corruption and misconduct.**

22 Mr. Blandino did not allege any facts as to why he would have a reasonable
23 suspicion that every judge in the Eighth Judicial District Court is guilty of corruption
24 and misconduct, nor how such alleged corruption or misconduct would affect him or his
25 criminal case. He provided no facts to support his belief or opinion that all of the judges
26
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1 are corrupt or guilty of misconduct. This is a baseless attack upon Judge Leavitt and the
2 other judges of the Eighth Judicial District Court.

3 This allegation is not evidence of actual or implied bias on the part of Judge
4 Leavitt. The allegation is not legally cognizable grounds supporting a reasonable
5 inference of bias or prejudice against Mr. Blandino. I conclude a reasonable person, who
6 knows all the facts, would not harbor reasonable doubts about Judge Leavitt's
7 impartiality in this case based upon this allegation.

8
9 **4. That each time Mr. Blandino has asserted his rights he has had to pay**
10 **a price; Judge Leavitt wrongly recommended a competency evaluation of**
11 **Mr. Blandino and signed a Request for Evaluation for Competency form**
12 **that indicates she was acting on behalf of Mr. Blandino; Mr. Blandino was**
13 **wrongfully punished at LCC; it is very possible the FBI will find collusion**
14 **and conspiracy between Judge Leavitt and Judge Hardy related to the**
15 **competency evaluation.**

16 Mr. Blandino does not expressly state any fact to support his conclusion that
17 every time he has asserted a right he has had to pay a price. He seems to suggest that
18 Judge Leavitt's request for a competency evaluation was made without sufficient
19 evidence and was a price he had to pay for asserting his right, but he provides no facts to
20 support his belief or opinion that the request for a competency evaluation was wrongly
21 recommended, nor that the request for the evaluation was based upon any assertion of
22 right by Mr. Blandino. Again, he does not refer to any order, transcript, or even any date
23 that he asserted a right which led to the competency evaluation request.

24 The allegation that the FBI will likely find collusion and conspiracy between
25 Judge Leavitt and Judge Hardy is not supported by any alleged facts, it is pure
26 speculation, innuendo, and a baseless attack on Judge Leavitt and Judge Hardy.

1 Mr. Blandino's allegation that Judge Leavitt signed a Request for Evaluation for
2 Competency form that indicates she was acting on behalf of Mr. Blandino and that that
3 violates his rights, although literally true, has no basis in reality. Mr. Blandino does not
4 allege any specific right that was violated.

5 This allegation is not evidence of actual or implied bias on the part of Judge
6 Leavitt. The allegation is not legally cognizable grounds supporting a reasonable
7 inference of bias or prejudice against Mr. Blandino. I conclude a reasonable person who
8 knows all the facts, would not harbor reasonable doubts about Judge Leavitt's
9 impartiality in this case based upon this allegation.

10
11 **5. Allegations not addressed above**

12 I find the other allegations made by Mr. Blandino in his motion to disqualify
13 Judge Leavitt lack merit and will not be addressed in this order.

14
15 **6. Cumulative effect of the allegations**

16 I have considered the cumulative effect of the allegations upon which Mr.
17 Blandino seeks disqualification. I conclude, as did the judges in *United States v.*
18 *DeTemple*, 162 F.3d 279, 288 (4th Cir. 1998), that "any reasonable observer familiar
19 with the facts of this case would recognize that the number of reasons [the defendant]
20 asserts as a basis for recusal reflects his ingenuity in finding conflicts around every
21 corner rather than the merit of his claim."

22 I conclude all of the allegations taken together do not evidence actual or implied
23 bias on the part of Judge Leavitt. The allegations are not legally cognizable grounds
24 supporting a reasonable inference of bias or prejudice against Mr. Blandino. I conclude
25 a reasonable person who knows all the facts, would not harbor reasonable doubts about
26 Judge Leavitt's impartiality in this case based upon all of the allegations taken together.

1 **7. The duty to sit**


2 The primary policy behind the Code of Judicial Conduct is to promote public
3 confidence in the judiciary. The Code recognizes the tension between legitimate
4 disqualification claims and claims made to obtain tactical advantages in proceedings
5 before a court. I conclude Mr. Blandino's disqualification claims are not legitimate, that
6 they were made to gain tactical advantages in his criminal case before Judge Leavitt.

7 I conclude Mr. Blandino's disqualification allegations failed to overcome the
8 presumption that Judge Leavitt is unbiased. Mr. Blandino failed to present allegations
9 that are legally cognizable grounds supporting a reasonable inference of bias or
10 prejudice, actual or implied, on the part of Judge Leavitt against him or in favor of the
11 State. I conclude a reasonable person who knows all the facts, would not harbor
12 reasonable doubts about Judge Leavitt's impartiality in this case based upon any single
13 allegation or upon all of the allegations taken together. I conclude that disqualification
14 of Judge Leavitt is not required under any statute, rule, or case, and therefore Judge
15 Leavitt has a duty to hear and decide this case.

16
17 **THE COURT ORDERS:**

18 Kim Blandino's March 8, 2021 motion to disqualify Judge Michelle Leavitt is
19 denied and dismissed.

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21 DATED this 10 day of August, 2021.

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25 _____
26 James E. Wilson, Jr.
27 District Judge

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Eighth Judicial District Court of Nevada; that on the 10th day of August 2021, I served a copy of this document by electronic mail and/or by placing a true copy in an envelope addressed to:

Chief Justice James Hardesty Nevada Supreme Court 201 S. Carson St. Carson City, NV 89701-4702 <u>nvscclerk@nvcourts.gov</u>	Michael Dickerson, Deputy District Attorney Clark County District Attorney's Office Regional Justice Center, 3 rd Floor 200 Lewis Ave. Las Vegas, NV 89155 <u>Michael.Dickerson@clarkcountyda.com</u>
Chief Judge Linda Marie Bell Eighth Judicial District Court Regional Justice Center 3 rd Floor 200 Lewis Ave. Las Vegas, NV 89155 <u>Depto7lc@clarkcountycourts.us</u> <u>perrys@clarkcountycourts.us</u>	Kim Blandino, #363075 330 S. Casino Center Blvd. Las Vegas, NV 89101 <u>Kim43792@earthlink.net</u>

