

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS
FOR SENIOR JUSTICE AND JUDGE
STATUS AND ASSIGNMENT OF
SENIOR JUSTICES AND JUDGES
PURSUANT TO SUPREME COURT
RULE 10.

ADKT No. 362

FILED

DEC 16 2004

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

IN THE MATTER OF APPLICATIONS
FOR SENIOR JUSTICE OF THE
PEACE AND SENIOR MUNICIPAL
COURT JUDGE STATUS PURSUANT
TO SUPREME COURT RULE 12 AND
FOR THE RECALL OF JUDGES PRO
TEMPORE PURSUANT TO SUPREME
COURT RULE 11.

ORDER AMENDING RULES 11 AND 12
OF THE SUPREME COURT RULES

WHEREAS, this court has considered the qualifications for senior justices of the peace and senior municipal judges and the process for applying for senior status pursuant to Supreme Court Rule 12; and

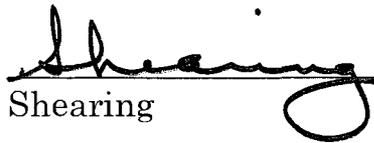
WHEREAS, this court amended Supreme Court Rule 10 governing senior justices and senior district judges effective October 29, 2003; and

WHEREAS, it appears to this court that amendment of Supreme Court Rules 11 and 12 is required to conform these rules to the provisions of Rule 10; accordingly,

IT IS HEREBY ORDERED that Rules 11 and 12 of the Supreme Court Rules shall be amended and shall read as set forth in Exhibit A.

IT IS HEREBY FURTHER ORDERED that these rule amendments shall become effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendment.

Dated this 16th day of December, 2004.

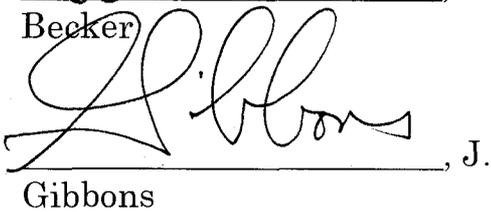

Shearing, C.J.

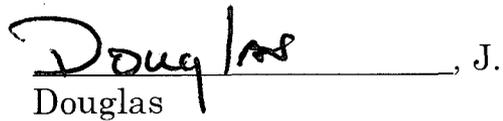

Agosti, J.


Rose, J.


Becker, J.


Maupin, J.


Gibbons, J.


Douglas, J.

cc: All Senior Justices of the Peace
All Senior Municipal Court Judges
Administrative Office of the Courts

EXHIBIT A
AMENDMENT TO RULES 11 AND 12 OF
THE SUPREME COURT RULES

Rule 11. Judges pro tempore; recall; assignment; duties and powers; compensation and expenses; oath; discipline and removal.

1. [Any former supreme court justice, district court judge, justice of the peace or municipal judge, who is not a senior justice or senior judge of the Nevada court system, but who qualifies for retirement under the provisions of NRS 2.060, 3.090, or 286.290 et seq., and has not been removed or retired for cause or defeated for retention in office, may be recalled to temporary service as a judge pro tempore under the provisions of this rule.] *Eligibility for recall.*

The supreme court may recall a former supreme court justice, district court judge, justice of the peace or municipal judge, who is not a senior justice or senior judge of the Nevada court system, to temporary service as a judge pro tempore, provided that:

(a) *He or she has served as a supreme court justice, district court judge, justice of the peace or municipal judge, or any combination thereof, for at least four consecutive years; and*

(b) *He or she is eligible to retire or has retired under the provisions of the Nevada Revised Statutes; and*

(c) *He or she was not removed or retired for cause from that judicial office or defeated for retention in an election for that office.*

2. **Recall.** Whenever the chief justice determines that it will promote the effective administration of justice, [he] *the chief justice* may recall and assign any such person to temporary service on any state court at or below the level of the court on which the former jurist qualified for retirement,

provided that the justice or judge previously served at least two years in that office. No such person is subject to recall as a judge pro tempore except upon his or her prior consent, and, if he or she is currently engaged in practicing law before any of the courts of this state, upon the express written consent of all interested parties. If designated by the governor, at the request of the chief justice, a former district judge may be assigned, as a judge pro tempore, to hear specific cases in the supreme court upon disqualification of a justice thereof. Notwithstanding anything in these rules to the contrary, recall and assignment will be authorized only pursuant to approval of a majority of elected justices of the supreme court.

3. ***Order for temporary assignment.*** The assignment of a judge pro tempore shall be made by an order which shall designate the court to which he or she is assigned, and, in the case of a former district judge assigned to hear and determine a case in the supreme court, the governor shall issue a special commission, as in the case of other judges of the district court. Promptly after assignment of a judge pro tempore under this rule, the clerk of the supreme court shall cause a [certified] copy of the order to be sent to the judge pro tempore and another [certified] copy to the court to which he or she is assigned.

4. ***Duties and powers.*** Each judge pro tempore assigned as provided in this rule has all the judicial powers and duties, while serving under the assignment, of a regularly elected and qualified justice or judge of the court to which he or she is assigned.

5. ***Compensation.*** A former supreme court justice or district judge who accepts an assignment as a judge pro tempore in the supreme court or district court, as provided in this rule, shall receive as compensation for [each day he is] *the time* actually engaged in the performance of duties

under the assignment an amount **[equal to 5 percent of]** *proportional to* the gross monthly salary of a regularly elected and qualified judge of the court on which he *or she* qualified for retirement**[, or one-half of that daily compensation for service of one-half day or less]**. A former supreme court justice, district judge, justice of the peace or municipal judge, who accepts an assignment as a judge pro tempore in a justice's court or a municipal court, shall receive as compensation for **[each day he is]** *the time* actually engaged in the performance of duties under the assignment an amount **[equal to 5 percent of]** *proportional to* the gross monthly salary of a regularly elected and qualified judge of the court to which he *or she* is assigned**[, or one-half of that daily compensation for service of one-half day or less]**. Compensation to judges pro tempore for service in the supreme court and district court shall be paid by the state, and compensation for service in justice's court or municipal court shall be paid by the local entity which the court serves unless the state by law assumes responsibility for funding such courts. Before recalling and assigning former supreme court justices and district judges to serve as judges pro tempore, the chief justice should, within their capabilities, accord preference to those who have elected to declare their continuing availability as senior justices and judges. Compensation shall be paid to a judge pro tempore upon his *or her* certificate that the services were performed for the number of days shown in the certificate.

6. **Expenses.** A judge pro tempore assigned to a court located outside the county in which he *or she* regularly resides shall receive, in addition to daily compensation, traveling expenses and per diem as provided by law while attending court or transacting business under the assignment. The

expenses shall be paid upon presentation of an itemized statement of expenses, certified by the judge pro tempore to be correct.

7. *Oath.* Upon accepting an assignment, a judge pro tempore must take, subscribe and file with the clerk of the supreme court the following oath or affirmation:

“I,, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State notwithstanding, and that I will well and faithfully perform all the duties of the office of a judge pro tempore of the Nevada court system on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.”

8. *Discipline and removal.* By subscribing and filing such oath, a judge pro tempore **[subjects himself]** *is subject* to discipline and loss of status as such for violation of the Nevada Code of Judicial Conduct as applicable to judges pro tempore. Notwithstanding Canon **[5C(3)]** *4C(3)* of the Nevada Code of Judicial Conduct, service as an officer, director, manager, or employee of a business **[affected with a public interest]** shall not preclude recall as a judge pro tempore, but full disclosure of such activity shall in all cases be made a matter of record, and the participation of the justice or judge may in all cases be precluded by any party through a timely objection made before consideration of any contested matter.

Rule 12. Senior justices of the peace and municipal [court] judges; designation; assignment; duties and powers; compensation and expenses; oath; discipline and removal.

1. [Any former justice of the peace or municipal court judge who has performed sufficient judicial service to qualify for retirement under the provisions of NRS 286.290 et. seq., and who was not removed or retired for cause or defeated for retention in office, may apply to become a senior justice of the peace or senior municipal court judge of the Nevada court system, as the case may be, by filing with the clerk of the supreme court the oath of office prescribed in subsection 7 of this rule.] *Eligibility for recall. The supreme court may recall a former justice of the peace or municipal judge to active service as a senior justice of the peace or senior municipal judge of the Nevada court system, provided that:*

(a) *He or she has served as a justice of the peace or municipal judge for at least four consecutive years; and*

(b) *He or she is eligible to retire or has retired under the provisions of the Nevada Revised Statutes; and*

(c) *He or she was not removed or retired for cause from that judicial office or defeated for retention in an election for that office.*

2. **Application.** *A former justice of the peace or municipal judge who meets the requirements of subsection 1 of this rule may apply to be commissioned as a senior justice of the peace or senior municipal judge by filing with the clerk of the supreme court a written application on a form approved by the supreme court. The approved application forms shall be available at the supreme court clerk's office.*

3. *Investigation and approval.* The supreme court may refer an applicant to the administrative office of the courts or the commission on judicial selection for investigation into the background and qualifications of the applicant and for a recommendation as to whether the applicant should receive a commission as a senior justice of the peace or senior municipal judge. If the supreme court determines that **[such former justice of the peace or municipal court judge]** the applicant remains physically and mentally capable of performing valuable judicial service on a continuing basis, and that the **[judge's]** applicant's recall to active service will promote the effective administration of justice, a commission, duly executed and authenticated by the chief justice and clerk, shall thereupon issue under the seal of the supreme court. **[By accepting such commission, senior justices of the peace and senior municipal court judges become ineligible to practice law in any of the courts of this state unless and until they later relinquish in writing their status as such, and undertake to comply with all provisions of the Nevada Code of Judicial Conduct as applicable to periodic part-time judges. Senior justices of the peace and senior municipal court judges are not ineligible to accept employment which contemplates giving advice on legal matters, but which does not contemplate appearances before the courts of this state either as a regular or as a substantial part of such employment.]**

4. *Extra-judicial employment.* A senior justice of the peace or senior municipal judge is ineligible to practice law in any of the courts of this state or to accept employment which contemplates giving advice on legal matters and shall not be a member of or associated with a firm or attorney that practices law. A senior justice of the peace or senior municipal judge may, however,

serve as a private mediator or arbitrator for compensation. Notwithstanding Canon [5C(3)] 4C(3) of the Nevada Code of Judicial Conduct, a senior justice of the peace or senior municipal [court] judge may serve as an officer, director, manager, or employee of a business [affected with a public interest], but full disclosure of such activity shall in all cases be made a matter of record, and the participation of such justice of the peace or municipal [court] judge may in all cases be precluded by any party through a timely objection made before consideration of any contested matter.

[2.] 5. *Eligibility for assignment.* A senior justice of the peace or senior municipal [court] judge [who entered retirement from the office of justice of the peace or municipal court judge] is eligible for temporary assignment to any justice's or municipal court in the State of Nevada to which he or she could be appointed for temporary service as a current justice of the peace or municipal [court] judge, *provided that the justice or judge previously served at least two years in that office.*

[3.] 6. *Temporary assignment.* The assignment of a senior justice of the peace or senior municipal [court] judge shall become effective upon the invitation of a justice of the peace or municipal [court] judge, or by the city council or county commission, of the jurisdiction to which the senior justice of the peace or senior municipal [court] judge is to be assigned and acceptance by the senior justice of the peace or senior municipal [court] judge. [Without specific assignment, senior justices of the peace and senior municipal court judges may perform routine ministerial acts, including the solemnization of marriages, subject to limitations in the jurisdiction in which they are performed, if any, and the administering of oaths, but shall not admit to bail any person accused of a crime.]

[4.] 7. *Duties and powers.* Each senior justice of the peace [and] or senior municipal [court] judge assigned as provided in this rule has all the judicial powers and duties, while serving under the assignment, of a regularly elected and qualified judge of the court to which the senior justice of the peace or senior municipal [court] judge is assigned. *Without specific assignment, senior justices of the peace and senior municipal judges may perform routine ministerial acts, including the solemnization of marriages, subject to limitations in the jurisdiction in which they are performed, if any, and the administering of oaths, but shall not admit to bail any person accused of a crime.*

[5.] 8. *Compensation.* A senior justice of the peace or senior municipal [court] judge assigned as provided in this rule shall receive as compensation for [each day] the time actually engaged in the performance of duties under the assignment an amount [equal to 5 percent of] proportional to the gross monthly salary of the regularly elected and qualified judge of the court to which he or she is assigned, [or one-half of that daily compensation for service of one-half day or less,] or a different amount if approved by the senior justice of the peace or senior municipal [court] judge and provided by the court, the city council or county commission of the jurisdiction to which the senior justice of the peace or senior municipal [court] judge is assigned. The compensation shall be paid by the jurisdiction in which service is performed upon the certificate of the justice of the peace or municipal [court] judge that the services were performed for the number of days shown in the certificate.

[6.] A senior justice of the peace or senior municipal [court] judge assigned to a court located outside the county or city in which he or she regularly resides shall receive, in addition to daily compensation, traveling

expenses and per diem as provided by law while attending court or transacting business under the assignment. The expenses shall be paid by the jurisdiction in which service is performed upon presentation of an itemized statement of the expenses, certified by the senior justice of the peace or senior municipal [court] judge to be correct.

[7. To apply for] 9. Oath. *To accept* a commission as a senior justice of the peace or senior municipal [court] judge, a former justice of the peace or municipal [court] judge must take, subscribe and file with the clerk of the supreme court, the following oath or affirmation:

“I,, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and Government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any State notwithstanding, and that I will well and faithfully perform all the duties of the office of a senior justice of the peace (or senior municipal [court] judge) of the Nevada court system on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.”

[8.] 10. Discipline and removal. The supreme court may for cause revoke the commission of any senior justice of the peace or senior municipal judge, either following notice and opportunity for hearing before the court, or after proceedings before the commission on judicial discipline.