**IN THE SUPREME COURT OF THE STATE OF NEVADA**

KAZUO OKADA,

Petitioner-Defendant,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for Clark County; THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

WYNN RESORTS, LIMITED, a Nevada corporation, ELAINE WYNN, an individual, and STEPHEN WYNN, an individual,

Real Parties in Interest.

CASE NO. 68310

District Court Case Number: A-12-656710-B



**PETITIONER KAZUO OKADA'S OBJECTION TO WYNN RESORTS, LIMITED'S NOTICE OF SUGGESTION OF RECUSAL**

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Petitioner Kazuo Okada ("Mr. Okada") objects to and opposes Real Party in Interest Wynn Resorts, Limited's ("WRL") suggestion (request) that Justices Pickering and Parraguirre recuse themselves from hearing the subject writ petition in this matter.

## INTRODUCTION

WRL's Notice of Suggestion of Recusal ("Suggestion") is not based upon any disqualifying relationship between Justice Pickering or Justice Parraguirre and any of the parties to this matter or their counsel. Instead, it is based solely upon the faulty premise that Mr. Okada's writ petition "involves the same legal and overlapping factual issues in the *Jacobs* Matter" and an unsupported legal premise that the overlap of such issues compels Justices Pickering and Parraguirre to recuse themselves. Suggestion at 1. Justices Pickering and Parraguirre have recused themselves in the *Jacobs* case due to their relationships with counsel for the parties in that matter, but those lawyers and their law firms are not involved in this case. Because WRL's request for the recusal of Justices Pickering and Parraguirre does not overcome the presumption of their impartiality and there are no identical legal or overlapping factual issues in any event, recusal is inappropriate and improper in this case.

## LEGAL ANALYSIS

This Court has long held that a judge or justice "has a duty to 'preside to the

conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard or other compelling reason to the contrary." *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Court*, 116 Nev. 640, 643, 5 P.3d 1059, 1061 (2000) (quoting *Ham v. Dist. Court*, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977)). As this Court has also admonished, "[a] judge has an obligation not to recuse himself where there is no occasion to do so." *Kirksey v. State*, 112 Nev. 980, 1006, 923 P.2d 1102, 1118 (1996). Indeed, the Nevada Code of Judicial Conduct commands that a "judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law." Code of Judicial Conduct, Canon 2, Rule 2.7.

Further, there is a presumption that a justice is impartial, and the burden of establishing sufficient factual and legal grounds warranting disqualification rests upon the party seeking disqualification. *See Hogan v. Warden*, 112 Nev. 553, 559-60, 916 P.2d 805, 809 (1996). "[W]hether a judge's impartiality can reasonably be questioned is an objective question that this court reviews as a question of law using its independent judgment of the undisputed facts." *See City of Las Vegas Redevelopment Agency,* 116 Nev. at 645, 5 P.3d at 1062 (citing *In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998)).

WRL's request for recusal is without merit and should be rejected for at least the following reasons:

*First*, WRL has not met its burden of overcoming the presumption that Justices Pickering and Parraguirre are impartial, or demonstrating any factual or legal basis for a disqualifying interest in this case. Neither Justice has any interest in, or disqualifying relationships with counsel in, the instant case. That they may have relationships with counsel for parties in the *Jacobs* matter does not overcome the presumption of impartiality and does not satisfy WRL's burden to demonstrate specific factual and legal grounds to call into question these Justices' impartiality in this case. This Court has never held that disqualification is required merely because a case presents similar issues as in a separate case involving different parties.

*Second*, the writ petitions in this matter and in the *Jacobs* matter do not involve the same legal issues or overlapping factual issues. As to the legal issues, Mr. Okada's writ petition concerns whether the district court erred (i) in applying a ***presumption*** that an ***individual foreign defendant*** must appear in Nevada for his deposition, contrary to prevailing case law from around the country; and (ii) in refusing to apply NRCP 30(d)(1) or to require the party seeking a 10 day deposition to justify its extraordinary request. On the other hand, the *Jacobs* writ petition concerns whether the district court erred in ordering a ***non-party outside director*** of a corporate defendant to appear for deposition in Hawaii; the length of the deposition is not at issue. As to the factual issues, there is no overlap whatsoever – the cases involve different individuals from different companies.

*Third*, WRL misplaces reliance on the case of *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580 (1986), to support its request for recusal. In *Lavoie*, the U.S. Supreme Court found that a Justice of the Alabama Supreme Court had a "direct, personal, substantial, [and] pecuniary interest" in the case and effectively "acted 'as a judge in his own case'" where the Justice *himself* was a named plaintiff in a separate class action lawsuit against a different insurance company in which he sought damages on the same legal theory as a party in the opinion he authored. *Id.* at 824, 106 S. Ct. at 1586 (citations omitted). The Justice's opinion interpreted Alabama law in a manner that "had the clear and immediate effect of enhancing both the legal status and the settlement value of his own case" against another insurance company. *Id.* Because the Justice authored an opinion that enhanced his own personal claims in a separate lawsuit, the Supreme Court found that he was sufficiently financially interested and thereby disqualified to participate in authoring the opinion. *Id.* at 825, 106 S. Ct. at 1587. Notably, the other justices who participated in the decision were putative class members of the same lawsuit, yet the Supreme Court found that they were not subject to disqualification because, among other reasons, any pecuniary interest by virtue of that status was only "slight." *Id.* at 826-27, 106 S. Ct. at 1588.

This case does not even remotely approach the same concerns regarding impartiality that were implicated in the *Lavoie* case. Justices Pickering and

Parraguirre have no interest in the outcome of this case, and WRL's apparent concern that they would somehow exert improper influence in a manner favorable to Mr. Okada based upon their relationship with counsel for parties in a different case is without basis in fact or law.

## CONCLUSION

For the foregoing reasons, WRL has not shown that Justice Pickering and Justice Parraguirre are required to recuse themselves from considering Mr. Okada's writ petition, and they should not do so.

DATED this 3rd day of August 2015.

By _____

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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Holland & Hart; that, in accordance therewith and on the 3rd day of August 2015, I caused a copy of the **PETITIONER KAZUO OKADA'S OBJECTION TO WYNN RESORTS, LIMITED'S NOTICE OF SUGGESTION OF RECUSAL** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below (as indicated below):

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