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

11 The State of Nevada,)
12 Petitioner) Supreme Court Case No.: 68545
13 vs.)
14 The Eighth Judicial District Court of the) **PETITION FOR REHEARING**
15 Nevada of Nevada, in and for the County)
16 of Clark, and the Honorable Rob Bare,)
17 District Judge,)
18 Respondents,)
19 And)
20 Jennifer Schneider,)
Real Party in Interest)

21
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1 MEMORANDUM OF POINTS AND AUTHORITIES

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3 Statement of the Case

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5 Jennifer Schneider was charged with misdemeanor driving under the
6 influence and proceeded to trial in Las Vegas Justice Court, Department 13.
7 Another Justice of the Peace presided over the trial and found Ms. Schneider
8 guilty of the DUI. During sentencing, the Judge stated that she was following
9 the policy of Judge Suzan Baucum when, prior to any argument regarding
10 sentencing, Ms. Schneider was to be remanded into custody (although
11 statutory sentencing discretion allows the Court to impose community service
12 in lieu of custody). While Ms. Schneider was eventually allowed to post \$500
13 in cash as bail for a 24-hour incarceration, the sitting Judge made it clear on
14 the record that *Judge Baucum had a policy whereby Defendants who exercised*
15 *their constitutional right to proceed to trial were automatically subject to*
16 *incarceration upon conviction.*
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22 The conviction and sentence were appealed to Clark County District
23 Court, Department 32 before the Honorable Rob Bare. Judge Bare determined
24 there was no substantive error within the trial, but found that Ms. Schneider's
25 sentence was unconstitutional as a result of a policy to discourage defendants
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1 from exercising their right to a trial. As a result, both the conviction and
2 sentence were reversed.
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4 The State filed a petition for extraordinary relief to this Court,
5 requesting Judge Bare's decision be reversed. On August 12, 2016, this Court
6 issued a Decision denying the Petition in part and granting it in part;
7 specifically, this Court affirmed the portion of Judge Bare's decision which
8 found that Judge Baucum's automatic remand policy demonstrated improper
9 prejudice and bias towards defendants who exercised their right to trial.
10 Notwithstanding this fact, however, this Court nonetheless reversed Judge
11 Bare's decision and reinstated the conviction. This Petition for Rehearing
12 follows.
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17 **ARGUMENT**
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19 Pursuant to NRAP 40(5)(c), this Court may consider rehearing when the
20 court has "overlooked, misapplied or failed to consider a statute, procedural
21 rule, regulation or decision directly controlling a dispositive issue in the case."
22 In the instant matter, the Court's decision that the District Court arbitrarily
23 exercised its discretion failed to consider directly contradicting decisions by
24 this Court.
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1 Nevada law has long held that even the appearance of bias or other
2 impropriety may be sufficient to disqualify or otherwise invalidate the
3 proceedings of a sitting judge. For example, *Kinna v. State*, 84 Nev. 642, 447
4 P.2d 32 (1968), holds:
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7 Firmly embedded in our tradition of even-handed justice –
8 and indeed its very cornerstone – is the concept that the trial
9 judge must, at all times, be and remain impartial. So deeply
10 ingrained is this tradition that it is now well settled that the
11 trial judge must not only be totally indifferent as between the
12 parties, but he must also give the appearance of being so. *Id.*
at 647.

13 The law is equally clear that such an appearance of bias, prejudice or
14 any similar concept of pre-judgment which call into question the neutrality of
15 a trial may be grounds for reversal. *Holderer v. Aetna Cas. & Sur. Co.*, 114 Nev.
16 845, 963 P.2d 459 (1998).
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19 In the instant case, this Court found that Judge Bare was acting
20 arbitrarily or capriciously because he failed to account for the state of the
21 evidence as required by *Kinna*. The requirements in *Kinna* are simple: weigh
22 the state of the evidence versus the strength of the bias or other misconduct.
23 Even *Kinna* makes it apparent, however, that bias can overcome even strong
24 evidence of guilt. “[E]ven when the evidence is quite apparent, misconduct may
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1 *so interfere with the right to a fair trial as to constitute grounds for reversal.”*
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3 *Kinna*, 84 Nev. 642 at 647 (emphasis added).

4 In this case, Judge Bare made a factual finding on the record that there
5 were no errors within the trial itself, but nonetheless found that the bias
6 which manifested during sentencing was sufficiently severe as to cast doubt
7 on the neutrality of the entire trial. The logic of Judge Bare’s decision is simple
8 and straightforward: the substance of the bias itself was to punish those who
9 exercise their right to trial. As a result of the policy’s self-evident hostility
10 towards trial defendants, this bias exists as a pre-determined negative
11 perspective of those who proceed to trial. A judge who has an automatically
12 negative viewpoint of defendants who exercise their right to trial can hardly
13 be said to avoid the appearance of impropriety during the trial itself.

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18 *Prejudices and biases are not turned on and off depending on what stage*
19 *the litigation is currently in; a predisposition against those who proceed to trial*
20 *does not magically disappear during the trial itself, only to reappear at*
21 *sentencing.* A perspective which places trial-bound defendants at such an
22 obvious disadvantage does not lie dormant, suddenly to activate at
23 sentencing. At the very least, Judge Baucum’s policy was sufficient to create an
24 *appearance of bias* and impropriety during the trial.
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1 *Kinna* required that Judge Bare undertake a calculative analysis of trial
2 merits versus bias. He did so. He concluded, per his appellate authority, that
3 the bias outweighed the merits because Judge Baucum's automatic-remand
4 policy created an appearance of bias, if not actual bias. This Court's decision,
5 which professes to "be reluctant[] to entertain petitions like this one 'that
6 request review of a decision of the district court acting in its appellate
7 capacity,'" does little more than summarily dispose of the analysis undertaken
8 by the appellate court and substitute in its preferred result.
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11 The decision of Judge Bare is not reached without reason or rationale;
12 even the appearance of bias is strong medicine to the Nevada judicial system,
13 which has strived since its inception to create impartial and unbiased
14 decisionmakers. Neutrality is the essence and cornerstone of any successful
15 legal philosophy both in substance and in public perception; even *Kinna* states
16 that juries look to the judge "as their guide and guardian." As Judge Bare
17 logically and reasonably concluded, this is not merely a case where a simple
18 offhanded comment was made, or where a judicial officer momentarily
19 stepped outside their role as the neutral party. This is a case where *the*
20 *department has an official policy to punish defendants who proceed to trial by*
21 *subjecting them to automatic incarceration.*
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1 Judge Bare's decision is not only directly on point within the law, but is
2 also an honest and legitimate attempt to preserve this Court's own time-
3 honored tradition of maintaining neutrality among the courts. His decision
4 aimed at protecting the integrity of the Nevada court system can hardly be
5 said to be arbitrary or capricious; furthermore, overturning Judge Bare's
6 decision will carry many implications not just for this case, but in every
7 department of every jurisdiction throughout the state of Nevada that has any
8 care towards maintaining a judicial system that is fair, just, or gives credence
9 to the notion of Due Process of Law.
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14 For these reasons, Ms. Schneider respectfully requests this Court
15 reconsider its earlier Order and reinstate the decision of the District Court
16 acting in its appellate capacity.
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CERTIFICATE OF COMPLIANCE

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3 1. I certify that this brief complies with the formatting requirements of
4 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the
5 type style requirements of NRAP 32(a)(6) because this brief has been
6 prepared in a proportionally spaced typeface using Microsoft Word
7 2007 with 14 point, double spaced Cambria font.
8
- 9
10 2. I further certify that this brief complies with the page-or-type-volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
12 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a
13 typeface of 14 points or more and contains approximately 1,646 words.
14
- 15 3. I hereby certify that I have read this appellate brief, and to the best of
16 my knowledge, information and belief, it is not frivolous or interposed
17 for any improper purpose. I further certify that this brief complies with
18 all applicable Nevada Rules of Appellate Procedure, in particular NRAP
19 28(c), which requires every assertion in the brief regarding matters in
20 the record to be supported by a reference to the page of the transcript
21 or appendix where the matter relied on is to be found.
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1 I understand that I may be subject to sanction in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 Dated this 19 day of August, 2016.
6

8 MUELLER, HINDS & ASSOCIATES.
9 Respectfully Submitted By:
10
11 CRAIG A. MUELLER, ESQ.
12 Attorney for Petitioner

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRAP 25(d), I hereby certify that on the 19th day of
15 August, 2016, I served a true and correct copy of the Petition for
16
17 Writ of Mandamus to the last known address set forth below:
18

19 The Honorable Judge Rob Bare
20 Eighth Judicial District
21 Department 32
22 200 Lewis Avenue
23 Las Vegas, Nevada 89101

24 Steve Wolfson
25 Office of Clark County District Attorney
26 200 Lewis Avenue
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28 Rosa Ramirez
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