

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA DEPARTMENT
OF EMPLOYMENT, TRAINING AND
REHABILITATION, EMPLOYMENT
SECURITY DIVISION,

Appellant,

vs.

SIERRA NATIONAL CORPORA-
TION, *dba* THE LOVE RANCH, a
NEVADA CORPORATION,

Respondents.

Supreme Court Case No. 76639
District Court No.: 17DC00221B
Electronically Filed
Nov 22 2019 09:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO RESPONDENT'S OBJECTION TO JUSTICE SILVER

Pursuant to this Court's Order dated November 14, 2019, the Employment Security Division (ESD) would join in Justice Silver's response to the objection and would offer the following:

Undersigned Counsel for the Employment Security Division, during his years of criminal practice both as a prosecutor and criminal defense lawyer between 2004 and May of 2019, interacted with Justice Silver at various times as she was a Deputy District Attorney and then District Judge in Clark County, and has found her to be of the utmost integrity and a legal practitioner of the highest ethical standards. If Justice Silver states she can be fair and does not need to recuse herself, she is undoubtedly telling the truth.

This disclosure made by Justice Silver is not one that rises to the level of a mandatory disqualification or recusal. Respondent cites no authority to support a mandatory disqualification or recusal by Justice Silver. In addition, Respondent cites no authority that is factually similar to the case at bar to support their position. Respondent's position lacks legal support.

Furthermore, as noted in Justice Silver's response, Rosa Mendez, the DETR employee in question and current public information officer was not employed by DETR during the handling of the Nevada Public Records Act Request, which was made by counsel for the Respondent in October of 2017. It is this request, the events leading up to the request, and the subsequent handling of the request that are at issue in this case. Indeed, the only portion of the case in which Ms. Mendez was employed by DETR was during part of the appellate briefing conducted this past year. Any issue this Court may take with any act or failure to act by DETR regarding this case, were long over and completed before Ms. Mendez's employment at DETR began. Therefore, any assertion that Ms. Mendez somehow had knowledge of or currently has a stake in the matter is fiction.

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In addition, if the exact request were made today, Ms. Mendez's only role as public information officer would be forwarding the request to the ESD Administrator's Office and/or to the Office of Legal Counsel for action because the request related to unemployment insurance information subject to confidentiality requirements as outlined in NRS 612.265 and 20 C.F.R. § 603 and is specifically exempt from public records requests or inspections pursuant to NRS 239.010.

Ms. Mendez's major role at DETR is drafting and/or issuing press releases or public statements on behalf of DETR, which are normally confined to economic reports, unemployment or jobs numbers, employment opportunities, and/or career training services offered by DETR.

Contrary to the assertions made in Respondent's Objection, Ms. Mendez makes no decisions and bears no responsibilities regarding what information is released or withheld by DETR. Ms. Mendez is simply the vessel by which any information that is communicated to the public is released. In some cases, Ms. Mendez is not even responsible for the content of such press releases or public statements, as they are drafted by other DETR officials.

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Respondent's argument appears to be that in the unlikely event that DETR chooses to make a public statement regarding the decision in this case, Justice Silver cannot fairly decide this matter because the person who might draft or release the public statement on behalf of DETR is her sister-in-law. Respondent's arguments lack merit or legal support. Respondent's Objection to Justice Silver's participating in this case should be denied.

DATED this 22nd day of November, 2019.

/s/ TROY C. JORDAN
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONSE TO RESPONDENT'S OBJECTION TO JUSTICE SILVER was filed electronically with the Nevada Supreme Court on the 22nd day of November, 2019. Electronic service was made in accordance with the Master List as follows:

ANTHONY HALL, ESQ.

RICO CORDOVA, ESQ.

DATED this 22nd day of November, 2019.

/s/ Sheri C. Ihler
SHERI C. IHLER