IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS KNICKMEYER,
Appellant,
vs.
THE STATE OF NEVADA, ex. rel.
EIGHTH JUDICIAL DISTRICT COURT,
Respondent.

No. 71372

FILED

SEP 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

RESPONSE

Counsel for appellant has filed a motion to disqualify me from participating in the resolution of this matter. The sole basis for the motion is that I served as a district judge in the Eighth Judicial District prior to my appointment to this court. Counsel does state that there is "no evidence that [I] had any prior interaction or contact with Appellant" while I was a district judge. Nevertheless, counsel argues that I should recuse myself pursuant to NCJC Rule 1.2 and/or NCJC Rule 2.11, based on my "status as a former district judge." I file this response pursuant to NRAP 35(b)(2), which provides, in part, that a "challenged justice or judge may submit a response to the motion [to disqualify] in writing . . ."

To the extent that counsel seeks my voluntary recusal, I decline. Pursuant to NRS 1.225, I have no actual bias in this case and disagree with the suggestion that I should be disqualified for any implied bias based on my previous service as a district judge. The possibility exists that while serving as a district judge I may have met appellant at some time in the past, since we both apparently worked in the same building for a limited period of time, along with hundreds of other employees who also worked there during that time. While I cannot categorically deny ever meeting appellant in some casual or momentary way at some point (perhaps while

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passing each other in the hallways), I do not believe that I have ever met him and think it unlikely that I ever have. I can say, quite categorically, that even if I did ever encounter him for a moment in the hallways or the elevator, I have no relationship with him, professional or otherwise, that would create any actual bias toward or against him.

Counsel asserts that an appearance of impropriety exists because I was "employed" by the same entity that employed appellant. Specifically, the motion asserts that I "was an employee of the Respondent as a district court judge for the Eighth Judicial District Court from 2011-2016 [*sic*]." However, district court judges are more properly categorized as elected officials of the State of Nevada, not employees of the Eighth Judicial District Court. *See e.g.,* NRS 3.030 (salaries of district judges must be paid in biweekly installments out of the State Judicial Elected Officials Account of the Supreme Court); NRS 281.010 (district judges are elected officials); and NRS 293.064 (district judges defined as a judicial officers). Further, I note that my service as a district judge ended when I began my appointed term to the court of appeals on January 5, 2015.

Under Nevada Code of Judicial Conduct Rules 1.2 and 2.11, a judge should act in a manner that promotes "public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety;" and that a judge should disqualify him or herself when the judge's "impartiality might reasonably be questioned" such as when the judge "has a personal bias . . . or personal knowledge of facts that are in dispute in a proceeding." The Nevada Supreme Court has explained that the test for evaluating whether a judge's impartiality might reasonably be questioned is an objective one, i.e., whether a reasonable person knowing all the facts would have reasonable

doubts about a judge's impartiality. *See Ybarra v. State,* 127 Nev. 47, 51, 247 P.3d 269, 272 (2011)); *PETA v. Bobby Berosini, Ltd.,* 111 Nev. 431, 436, 894 P.2d 337, 340 (1995) (overruled on other grounds by *Towbin Dodge v. Dist. Ct.,* 121 Nev. 251, 260-61, 112 P.3d 1063, 1069-70 (2005)). In this matter, while I did serve as a district judge in the Eighth Judicial District Court, as counsel for appellant admits, I have not had any "interaction or contact" regarding the circumstances of this case with appellant during my service as a district judge. Thus, it seems readily apparent that no reasonable person would have reasonable doubts about my impartiality in participating in this case.[1] Accordingly, I believe it is clear the motion to disqualify should be denied.

It is so ORDERED.

_____, J.
Tao

cc: Kirk T. Kennedy
Attorney General/Carson City
Attorney General/Las Vegas

[1]There have been appeals before the supreme court involving the eighth judicial district court as a party where justices who were formerly district court judges in that district participated in the appeal. *See e.g., Vogel v. Grierson,* Docket No. 62225; *Eighth Judicial Dist. Ct. v. Fox,* Docket No. 66114.