

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM BLANDINO,  
Petitioner,

vs.

JOSEPH LOMBARDO, SHERIFF; THE  
HONORABLE MICHELLE LEAVITT,  
DISTRICT JUDGE; AND THE  
HONORABLE LINDA MARIE BELL, OF  
THE EIGHTH JUDICIAL DISTRICT  
COURT,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 83472

**FILED**

OCT 14 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

*ORDER DENYING AMENDED PETITION*

On September 30, 2021, petitioner's motion for leave to file a writ petition with excess pages was denied, and the petition filed on September 8, 2021, was stricken. Petitioner then submitted the instant petition to this court, titled "Emergency Petition with Request for Leave to Amend for Mandamus and/or Prohibition and/or certiorari and to take Judicial Notice and to Suspend Rules Pursuant to NRAP 2."<sup>1</sup> In the petition, petitioner seeks temporary respite from house arrest conditions for the fifth time, claiming that there is no neutral district judge he can ask to decide the matter, and he also raises issues relating to various aspects of the underlying criminal proceedings.

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<sup>1</sup>As the amended petition also names Judge James Wilson in the caption, we direct the clerk of this court to modify the caption on this docket to include as a respondent Judge Wilson of the First Judicial District Court, who was appointed to rule on petitioner's disqualification motion.

As petitioner's NRAP 27(e) certificate indicates that this petition was filed "in response" to our September 30 order and the title suggests leave to amend is being sought, we construe this petition as seeking leave to file an amended petition compliant with the NRAP 27(d)(2) page limits in this docket (i.e., reconsideration of our September 30 order),<sup>2</sup> and we grant that request. To the extent petitioner sought to file a new action with this petition, the same outcome results. The amended petition was filed on October 5, 2021.

However, while petitioner entitled his petition "Emergency Petition" under NRAP 21(a)(6) and seeks relief by October 8, 2021, he does not explain what irreparable harm will befall him on that date, and the vague facts alleged in his NRAP 27(e) certificate regarding being on house arrest in violation of the law and needing to visit his son in California do not constitute the type of emergency to which the rule applies. Accordingly, while we have expedited our review of this matter, we decline to treat the petition as an emergency under NRAP 27(e).

On August 10, 2021, the judge appointed by this court to hear petitioner's third motion to disqualify Judge Michelle Leavitt, after noting concerns with the motion's service and timeliness, went on to conclude that

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<sup>2</sup>Although petitioner certified that "the relevant portions" of the petition contain less than 7,000 words, excluding the certificate of compliance, petitioner does not otherwise explain which portions of the petition were counted or identify the petition's exact word count, as required by NRAP 32(a)(9)(B). Moreover, the margins do not appear to strictly comply with NRAP 27(d)(1)(D). Nevertheless, we have accepted the petition, NRAP 2, and we caution petitioner that any and all future petitions must comply with the NRAP.



petitioner's allegations did not demonstrate actual or implied bias and were not legally cognizable grounds for disqualification, but rather constituted illegitimate claims made to gain tactical advantages in his criminal case, and ultimately denied the motion. In the current amended petition before this court, petitioner raises a number of issues surrounding his attempts to obtain Judge Leavitt's disqualification, including (1) the district court failed to comply with NRS 1.235(6)'s procedural requirements for filing the judge's response to a disqualification motion and for allowing an agreed-upon judge to hear the matter; (2) that Nevada courts, including the appointed judge in denying his disqualification motion, have refused to follow *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (recognizing that courts deciding disqualification motions under the Due Process Clause based on alleged bias must ask "whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable"); (3) that another judge was not but should have been assigned to hear his first disqualification motion two years ago, resulting in the violation of his speedy trial rights; (4) that Judge Leavitt has a disability rendering her unfit to preside over his and others' criminal trials; and (5) that he was prevented from having the appointed judge also decide his amended motion to disqualify, asking that he additionally be allowed to seek reconsideration from that judge.

Having reviewed petitioner's arguments, we conclude that our intervention on writ petition is not warranted. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (noting that the decision to entertain a petition for writ relief lies within the discretion of this court). This court has long cautioned that writ relief is not available to correct any and every error that might occur at the lower court level, instead reserving those issues for appeal. *Walker v.*

*Second Judicial Dist. Court*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1197 (2020). Thus, we have observed, extraordinary writ relief may issue only when there exists no adequate and speedy remedy at law, upon demonstration of a clear legal right to the relief requested, and when irreparable harm will occur without such relief. *Id.* at 1196; *see also* NRS 34.020(2); NRS 34.170; NRS 34.330; *Double Diamond v. Second Judicial Dist. Court*, 131 Nev. 557, 565, 354 P.3d 641, 647 (2015) (Pickering, J., concurring); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). The burden to demonstrate that extraordinary writ relief is warranted is on petitioner. *See Pan*, 120 Nev. at 228, 88 P.3d at 844.

Petitioner has not demonstrated that our intervention is appropriate here. There is no showing that NRS 1.235(6) was violated, given the multiple times disqualification was sought in the underlying proceedings and the appointed judge's observation that petitioner may not have effectively completed service of the third motion to disqualify, and regardless, petitioner has not demonstrated that he has a clear legal right to disqualification based on any such violations. *See, e.g., Libby v. State*, 109 Nev. 905, 912, 859 P.2d 1050, 1054 (1993), *cert. granted, judgment vacated on other grounds*, 516 U.S. 1037 (1996) (holding that error in failing to follow the procedure mandated by NRS 1.235 was harmless). As for the appointed judge's failure to cite to *Rippo*, such failure does not warrant writ relief, as the judge first noted that petitioner has not asserted legally cognizable claims, meaning such claims could "not constitute a sufficient basis for requiring recusal under the Constitution," *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986), and second, the judge expressly considered the cumulative effect of petitioner's allegations and found they did not support a reasonable inference of bias. Nor has petitioner shown that he

has a clear legal right to Judge Leavitt's disqualification based on any of the other he issues raises. Such arguments involve factual issues better resolved on appeal with a complete record. *See Walker*, 136 Nev., Adv. Op. 80, 476 P.3d at 1198. Finally, we note that petitioner has not shown any legal right to file an amended motion to disqualify or for reconsideration of the order denying disqualification, or that the duties for which the judge was appointed included any such motions. Accordingly, we conclude that our extraordinary intervention is not appropriate in this matter,<sup>3</sup> and we

ORDER the petition DENIED.

Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

cc: Hon. Linda Marie Bell, Chief Judge  
Hon. Michelle Leavitt, District Judge  
Kim Blandino  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We note that a number of requests for relief in the petition's conclusion section are not supported by cogent factual and legal arguments.