

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF KATHLEEN JUNE
JONES, PROTECTED PERSON

KATHLEEN JUNE JONES,

Appellant,

vs.

ROBYN FRIEDMAN; DONNA
SIMMONS; AND ELIZABETH
BRICKFIELD, GUARDIAN AD LITEM
FOR KATHLEEN JUNE JONES,

Respondents.

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Supreme Court
Case No. 84655

District Court
Case No. G-19-052263-A

MOTION TO DISQUALIFY JUSTICE PATRICIA LEE

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Attorneys for Respondents, Robyn Friedman and Donna Simmons

Respondents Robyn Friedman and Donna Simmons hereby respectfully move this Court to disqualify Justice Patricia Lee from participating in the decision of this matter pursuant to the Nevada Code of Judicial Conduct § 2.11(A)(2)(a), which is part of the Nevada Supreme Court Rules. The rule addressing the situation presented in this appeal may contain a per se disqualification of Justice Lee.

As set forth in various briefs before this Court, this matter is a guardianship matter originating from the Eighth Judicial District Court wherein Kathleen June Jones allegedly directed her attorneys, Barbara Buckley, Esq., Scott Cardenas, Esq. and Elizabeth Mikesell, Esq. of the Legal Aid Center of Southern Nevada, to file the instant appeal of the Findings of Fact, Conclusions of Law, and order Granting Guardian Ad Litem Fees.

Patricia Lee very recently served as a member of the Board of Directors of Legal Aid Center of Southern Nevada. This is shown in her Supreme Court Seat F, Section I, Public Information, Items 1-49, Commission on Judicial Selection Application, Nevada Supreme Court, Seat F, by Patricia Lee, page 10. This is also shown in the Legal Aid Center of Southern Nevada 2021 Annual Report, page 17 located at

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extension://efaidnbmnnnibpcajpcgglefindmkaj/https://www.lacsn.org/images/annual-reports/lacsn_annual_report_2021.pdf (last visited April 11, 2023).

Disqualification of a judge in this circumstance is governed by the Nevada Code of Judicial Conduct § 2.11(A)(2)(a), which is part of the Nevada Supreme Court Rules. This Rule states the following, with emphasis added in bold:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

*(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person **is**:*

*(a) a party to the proceeding or an officer, **director**, general partner, managing member, or trustee of a party;*

A few points are to be made about this rule:

First, Nevada Code of Judicial Conduct § 2.11(A)(2)(a) does address current relationships. While it cannot be said that Justice Lee *is* currently a director of a party in this action—the Legal Aid Center of Southern Nevada, it can be said that Justice Lee *very recently was* a director of a party in this action, and she was acting as said director while the underlying case was taking place in the Eighth Judicial District Court. Therefore, Comment 1 to this section applies in that, “a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provision of paragraphs (A)(1) through (6) apply.”

Second, the rule’s use of the mandatory “shall” language which denotes the importance of this rule to the judiciary, and a lack of discretion in cases where a Justice is currently acting as director of a party. NRS § 0.025(1)(d) (“[s]hall’ imposes a duty to act.”); *Washoe Med. Ctr. v. Dist. Ct.*, 122 Nev. 1298, 1303, 148 P.3d 790, 793 (Nev. 2006) (“shall’ is mandatory and does not denote judicial discretion.”). The use of the phrase, “a judge is disqualified . . .” in Comment 1 to this rule also shows a lack of discretion in cases where Comment 1 applies, as it does herein.

Third, although no “Notice of Voluntary Disclosure” has been filed in this matter by Justice Lee, Comment 2 to this section states that the judge’s duty to disqualify “applies regardless of whether a motion to disqualify is filed.” Therefore, disqualification of Justice Lee is mandated here regardless of whether any party moves for it, but Respondents respectfully move for disqualification now.

Fourth, the rule contains no exceptions or further inquiry past determining that the concerned judge *is* a director of a party. However, Respondents argue that Justice Lee served as a member of the Board of Directors of Legal Aid Center of Southern Nevada before she resigned due to her appointment on this Court and these circumstances create a situation where Justice Lee’s impartiality might reasonably be questioned. Indeed, if you look at the structure of the rule, it states a general rule that a judge should disqualify himself/herself “in any proceeding in which the judge’s impartiality might reasonably be questioned” and then proceeds to give six specific subsections that have a *per se* rule of disqualification because they are clear circumstances under which impartiality might be reasonably questioned, either by a party or the general public. Previously serving as a member of the Board

of Directors for the Appellant’s court-appointed law firm in this matter creates such circumstances. One might worry that even if Justice Lee is not a current member of the Board of Directors of the Legal Aid Center of Southern Nevada, Justice Lee may continue to have strong connections with the organization of which she was a member, and personal connection with Barbara E. Buckley, Esq., the Executive Director of the Legal Aid Center of Southern Nevada, who signed the latest filing on behalf of the Appellant—the Response to the Probate and Trust Section of the State Bar of Nevada’s Motion for Leave to File Amicus Curiae Brief Under NRAP 29(C) filed on February 7, 2023. The rule simply deems this situation as one where Justice Lee’s impartiality could be reasonably questioned.

The rule does allow for de minimis exceptions. The Terminology section of the Nevada Code of Judicial Conduct defines “de minimis” as “in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality.” However, in this instance, Justice Lee’s involvement in the Legal Aid Center of Southern Nevada, and the

time-frame of her involvement cause Rule 2.11 to apply as explained above. Thus, the de minimus exception does not apply.

Justice Lee's biography at the Nevada Supreme Court states, "In 2012, Justice Lee began serving on the Pro Bono Advisory Council to support the effort of Legal Aid Center's Pro Bono Project and was subsequently nominated to the Board of Directors for the Legal Aid Center of Southern Nevada, where she continued to serve until being appointed to her current position [on the Nevada Supreme Court]." https://nvcourts.gov/supreme/court_information/justices/justice_patricia_lee (last visited April 11, 2023).

Again, Justice Lee's involvement in the case creates a situation where her impartiality might reasonably be questioned. It should be remembered that the rule serves also to protect the perceptions of the public at large and not merely the parties involved in the case. The per se rule of disqualification serves to eliminate argument over how much involvement the judge may or may not have had with the case. Indeed, the predictability of the rule is sacrosanct. A Pandora's Box could be opened if the judge involved, or a non-moving party, were allowed to contest disqualification. Evidentiary hearings might have to be set as to

what the former Board of Directors of Legal Aid Center of Southern Nevada—or even their staff—knew or did not know about the case, its policies and procedures, and other factors that might be contested. The disagreement could then devolve into a proceeding where it is the Respondents versus the judge in a fight over disqualification, which inherently leads to a perception of bias. The very purpose of the bright-line rule is to eliminate such proceedings so disqualification is quickly applied, and the parties can move forward with another judicial officer. The rule, in a way, acknowledges that Nevada has many well-qualified judges; therefore, there is no need to seed doubt or mistrust in the impartiality of the judiciary by letting a judge preside who has an inherent or perceived conflict.

The Nevada Code of Judicial Conduct § 2.2 states, “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” In *Ivey v. Eighth Judicial District Court*, 129 Nev. Adv. Op. 16, 299 P.3d 354, 357 (Nev. 2013), the Supreme Court of Nevada established, “[d]etermining whether a judge's recusal is compelled by the Due Process Clause does not require proof of actual bias; instead, a court must objectively determine whether the probability of actual bias is too

high to ensure the protection of a party's due process rights. Id. at 883–84, 129 S.Ct. 2252 (citing *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)).”

The standard for assessing bias is “whether a reasonable person, knowing all the facts, would harbor reasonable doubts about [a judge's] impartiality.” *Varain, In re*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (Nev. 1998) (alteration in original) (quoting *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 431, 438, 894 P.2d 337, 341 (Nev. 1995) (overruled on other grounds by *Towbin Dodge, LLC*, 121 Nev. at 251, 112 P.3d at 1063)). A reasonable person could harbor reasonable doubts about Justice Lee’s ability to be completely impartial given that the Justice Lee worked with, collaborated with and served on the Board of Directors of Appellant’s court-appointed law firm from 2012 until her recent appointment to the Nevada Supreme Court in November 2022.

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Therefore, with all due respect to Justice Lee, Respondents believe Justice Lee is per se disqualified from participating in this appeal and that Respondents need not present nor further argue any actual or implied bias. On this basis, Respondents move to disqualify Justice Lee from all further proceedings related to this appeal.

Dated this 12th day of April, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *MOTION TO DISQUALIFY JUSTICE PATRICIA LEE* with the Nevada Supreme Court on the 12th day of April, 2023 through the Court's electronic filing system. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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I further certify that on the 12th day of April, 2023, I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, to the following:

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Chair for The Probate & Trust Section of the State Bar of Nevada

/s/ Heather Ranck
Employee of Michaelson Law