

Marquis Aurbach

Craig R. Anderson, Esq.

Nevada Bar No. 6882

Jackie V. Nichols, Esq.

Nevada Bar No. 14246

10001 Park Run Drive

Las Vegas, Nevada 89145

Telephone: (702) 382-0711

Facsimile: (702) 382-5816

canderson@maclaw.com

jnichols@maclaw.com

Attorneys for Petitioner Las Vegas Metropolitan Police Department

Electronically Filed
Aug 10 2022 04:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT FOR THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE ADRIANA ESCOBAR,
DISTRICT JUDGE,

Respondents,

and

DUE DILIGENCE GROUP, LLC, a
limited liability company,

Real Party in Interest.

Case No.: 85129

**PETITIONER LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S REPLY IN
SUPPORT OF EMERGENCY
MOTION FOR RELIEF TO STAY
UNDER NRAP 27(e)**

I. INTRODUCTION

On July 14, 2022 Judge Escobar orally told the parties she would be disqualifying herself and informed the parties she would move the recusal through quickly. LVMPD waited for the Minute Order, anticipating it would contain the factual and legal basis for Judge Escobar's recusal. The Minute Order filed on July 27, 2022 did not provide an adequate basis for recusal nor did it include the basis for recusal that was stated at the hearing. Accordingly, LVMPD filed its Writ of Prohibition and the accompanying Motion to Stay at the earliest possible time. Furthermore, the NRAP 8(c) factors weigh heavily in favor of granting the Motion to Stay.

II. LEGAL ARGUMENT

A. PETITIONER DID SEEK RELIEF AT THE EARLIEST POSSIBLE TIME

The hearing where Judge Escobar first informed the parties she would be disqualifying herself was on July 14, 2022. At that time, Judge Escobar noted that she understood the need for the underlying petition to move forward and stated she would "do everything, today, possible to make sure it goes forward quickly." Ex. 5 at p. 5. Based on these representations, LVMPD waited for an order from Judge Escobar anticipating that an order would provide the facts or information to support the basis for Judge Escobar's recusal. Indeed, a verbal order from the court is not sufficient. *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380,

1382 (1987) (oral pronouncement from the bench are ineffective for any purpose). Despite Judge Escobar's representation that a formal order would follow, Judge Escobar, instead filed a minute order filed on the afternoon of July 27, 2022 almost two weeks later. The minute order only provided that Judge Escobar "could not hear the case any further since the Court's impartiality would be questioned due to a personal connection to a party cited in the pleadings." Exhibit 6. Since LVMPD asserts Judge Escobar's basis, with nothing more, is an improper recusal, LVMPD quickly researched the issue and filed its Writ Petition and its Emergency Motion for Stay followed it the same day. Accordingly, there was no delay in LVMPD filing its request for stay or the Writ Petition.

B. LVMPD SATISFIES THE NRAP 8(C) FACTORS FOR THIS COURT TO ENTER A STAY PENDING A DECISION ON ITS WRIT PETITION.

1. The Object of Petitioner's Appeal Will Be Defeated Absent A Stay.

Petitioner's appeal pertains to whether Judge Escobar's recusal was improper under NCJC 2.11(A). If the stay is not entered, Judge Gall will enter decisions on disputed substantive issues when it should be Judge Escobar entering decisions. The object of the Writ Petition then becomes moot as the decisions made by Judge Gall cannot be undone.

2. LVMPD Will Suffer Serious Injury if a Stay is Denied.

Again, the pending Writ Petition asserts that Judge Escobar's recusal was improper and that she should be presiding over the case. If the stay is not granted and another judge decides the case on the merits, LVMPD will suffer a significant prejudice. The harm is that Judge Escobar is the proper judge to be deciding the case and allowing a judge to recuse him or herself with little to no factual support causes significant prejudice to LVMPD and sets a dangerous precedent.

3. DDG Will Not Suffer Irreparable Injury if a Stay is Granted

A grant of a stay preserves the status quo until this Court can issue a decision on the Writ Petition. DDG fails to address what irreparable injury would be caused to it if the stay is granted.

4. LVMPD is Likely to Prevail on the Merits of its Writ Petition

Contrary to DDG's Opposition, the case law cited by LVMPD is applicable. Whether a recusal is voluntary or requested by a party does not change the fact that a long-term friendship, without more, is not sufficient in law or fact for recusal under Rule 2.11(A). A judge has a duty to preside over the matters assigned to them and is presumed to be impartial, so if a judge is recusing "there must be a compelling reason – in other words, a showing of sufficient factual and legal grounds – warranting judicial disqualification or recusal." *Humboldt Cnty. Pub.*

Def. v. Sixth Jud. Dist. Ct. of State, 126 Nev. 722, 367 P.3d 781 (2010). Judge Escobar did not provide a compelling reason or even a factual basis for recusal. To be sure, Petitioners agreed that recusal was not necessary at the initial hearing. *See* Exhibit 5. More tellingly, Petitioners failed to cite to any authority that supports Judge Escobar's recusal. Without such, the recusal was improper and LVMPD is likely to prevail on the merits of its Writ Petition.

III. CONCLUSION

Based on the foregoing, LVMPD requests that a stay be entered until the Court issues a decision on its pending Writ Petition.

Dated this 10th day of August, 2022.

MARQUIS AURBACH

By: /s/ Jackie V. Nichols
Craig R. Anderson, Esq.
Nevada Bar No. 6882
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Petitioner Las Vegas
Metropolitan Police Department

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR RELIEF TO STAY UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 10th day of August, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
bschrager@wrslawyers.com
dbravo@wrslawyers.com
Attorneys for Plaintiff Due Diligence Group, LLC

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Honorable Maria Gall
Eighth Judicial District Court Judge, Department 9
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Current Presiding Judge

Honorable Adriana Escobar
Eighth Judicial District Court Judge, Department 14
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Real Party in Interest

Jonathan Berkon, Esq. (*pro hac vice forthcoming*)
Courtney Weisman, Esq. (*pro hac vice forthcoming*)
Meaghan Mixon, Esq. (*pro hac vice forthcoming*)
Maya Sequeira, Esq. (*pro hac vice forthcoming*)
Elias Law Group LLP
10 G St. NE Suite 600
Washington, DC 20002
Attorneys for Plaintiff Due Diligence Group, LLC

/s/ Leah A. Dell
An employee of Marquis Aurbach