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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

In the Matter of)
)
THE HONORABLE CHARLES WELLER,)
District Court Judge, Second Judicial District)
Court, Family Division, County of Washoe,)
State of Nevada,)
)
Respondent.)

CASE NO. 2017-025-P

ORDER DENYING MOTION TO DISQUALIFY AS MOOT

Currently before the Commission on Judicial Discipline (“Commission”) is a Motion to Disqualify (“Motion”), which was filed by counsel to the Honorable Charles “Chuck” Weller, Second Judicial District Court for Washoe County, Nevada (“Respondent”) on June 29, 2017. Opposition to Respondent’s Motion was filed by the Prosecuting Officer to the Commission (“Prosecuting Officer”) on July 9, 2017. The Reply to the Prosecuting Officer’s Opposition was filed by counsel for Respondent on July 12, 2018. On July 19, 2018, pursuant to Commission Procedural Rule 4.4, for public cases, Commissioner Hahn filed his affidavit in response to the Motion, wherein he voluntarily withdrew from Respondent’s hearing panel.

STATEMENT OF FACTS

The underlying complaints allege that Respondent, a Family Court Judge in Washoe County, Nevada, acted in violation of the Judicial Canons in two separate cases.¹ In both cases, such actions involved Respondent’s comments at a February 1, 2017 meeting of the Washoe County Domestic Violence Task Force (“Task Force”). The Formal Statement of Charges (“FSOC”) states that Respondent admitted to making a comment to the effect: “Women should or may be concerned about cuts to the Violence Against Women Act (“VAWA”) as it will put women back in their place.” A Task Force member stated to the effect: “Are you saying that we need to be in a place?” Respondent replied

¹ The cases were consolidated for the purposes of the hearing.

1 to the effect: “Yes, the kitchen and the bedroom.” (Hereinafter collectively referred to as “the
2 comments”).

3 **I. Motion**

4 On June 29, 2018, Respondent’s counsel filed a Motion seeking to disqualify Commissioner
5 Bruce C. Hahn, Esq. based upon his role as an Assistant District Attorney for Washoe County. In this
6 role, Respondent claims that Mr. Hahn has direct supervisory authority over Washoe County Chief
7 Deputy Attorney Derek Dreiling, who is a member of the Task Force. Moreover, Respondent states that
8 Chief Dreiling attended part of the February 1, 2017 Task Force meeting. Respondent further states that
9 at the April 4, 2018 Task Force meeting, it was suggested that all Task Force members support those
10 who filed complaints against Respondent.

11 Respondent sets forth the argument that, pursuant to the Spring 2018 Judicial Conduct Reporter,
12 an attorney commissioner should not participate in the consideration of a complaint against a judge if
13 the attorney practices in the same district as the judge or if a member of the attorney’s law firm has a
14 case before the judge. Respondent opines that Commissioner Hahn practices in the same judicial
15 district as Respondent and that attorneys in his office represent parties before Respondent. Thus,
16 Respondent argues that Mr. Hahn should be disqualified from serving as a member of the Commission
17 in any proceeding involving pending charges against Respondent. Respondent further argues that his
18 motion is timely pursuant to Commission Procedural Rule 4 for public cases and that Commissioner
19 Hahn should be disqualified from this matter pursuant to Commission Procedural Rule 3.6.

20 **II. Opposition**

21 The Prosecuting Officer argues that the Spring 2018 Judicial Conduct Reporter guidelines are
22 not controlling in this matter. She notes that Commission Procedural Rule 3.6 states that a
23 Commissioner may be disqualified based upon implied bias and appearance of impropriety. The
24 Prosecuting Officer contends that in *Mosley v. NV Comm’n. on Judicial Discipline*, 117 Nev. 371, 22
25 P.3d 655 (2001), which relied on *Withrow v. Larkin*, 421 U.S. 35, 37, 95 S.Ct.1456, 43 L.Ed.2d 712
26 (1975), there is a presumption that commissioners are unbiased, and argues that Respondent’s claims do
27 not rise to the level to overcome that presumption.

28 ///

1 The Prosecuting Officer further argues that in *Ivey v. Eighth Judicial District Court*, 129 Nev.
2 Adv. Op. 16, 299 P. 3d 354 (2013), the Nevada Supreme Court cited to NRS 1.230(2)(c) to interpret
3 “implied bias” as personal bias or prejudice against a party or that party’s lawyer, a personal knowledge
4 of the facts, a “more than a de minimis interest that could be substantially affected by the proceeding,”
5 or an economic interest in the case. *Id* at 358. Further she notes that, in a concurring opinion, Justice
6 Saitta relied on the Nevada Code of Judicial Conduct (“Code”), Rule 1.2, “Promoting Confidence in the
7 Judiciary”, Comment 5. The Prosecuting Officer asserts that the Comment defines the test for an
8 appearance of impropriety as whether the conduct would create a perception in a “reasonable mind” that
9 the judge violated the Code or engaged in other conduct which negatively impacts his/her honesty,
10 impartiality, temperament, or fitness to serve. *Id* at 360-61.

11 The Prosecuting Officer argues that Commissioner Hahn’s situation fails to implicate implied
12 bias or create the appearance of impropriety to a reasonable mind. For further support, she cites to *City*
13 *of Las Vegas v. the Eighth Judicial District Court*, 116 Nev. 640, 5 P.3d 1059 (2000), wherein the
14 Supreme Court found that campaign contributions “do not constitute grounds for disqualification under
15 ...Canon 3(E).” *Id* at 1063. The Prosecuting Officer further argues that if the Supreme Court requires a
16 judge to sit in a situation where he had direct economic involvement, it would certainly support Mr.
17 Hahn sitting on this hearing panel when he had no direct involvement in the meeting in question, and
18 there is no evidence he even discussed the meeting with the co-worker who may, or may not, have
19 attended the relevant portion of the meeting.

20 The Prosecuting Officer cited to *DeCastro v. the State of Nev.*, 381 P.3d 606 (2012)
21 (unpublished) regarding implied bias as to a juror for the proposition that implied bias exists in extreme
22 situations where it is highly unlikely that the average person could remain impartial in deliberations.
23 She argues that Commissioner Hahn can remain impartial in this instance and there is no evidence he
24 has any relationship with Respondent’s case.

25 The Prosecuting Officer further cited to *State v. Eighth Judicial District Court (Zogheib)*, 130
26 Nev. Adv. Op. 18, 321 p. 3d 882 (2014), stating that the defendant moved to disqualify the Clark
27 County District Attorney's Office due to a conflict of interest because *Zogheib* was represented by
28 District Attorney Steven Wolfson's office, while Wolfson was a criminal defense lawyer prior to

1 becoming District Attorney. *Id.* at 883-84. She also adds that the Supreme Court of Nevada stated that
2 the Model Rules of Professional Conduct no longer applied the appearance of impropriety standard. *Id.*
3 Therefore, the Prosecuting Officer concludes that the Supreme Court did not disqualify the District
4 Attorney's Office from the criminal case and as such, it is highly unlikely that the Court would support
5 disqualifying Assistant District Attorney Hahn from this case.

6 III. Reply

7 On July 12, 2018, Respondent filed his Reply. Respondent sets forth that the Prosecuting Officer
8 did not object to the timeliness of the Motion and thus conceded the same. Respondent emphasized that
9 Washoe County Chief District Attorney, Criminal Division, Derek Dreiling is a member of the Task
10 Force and attended at least a portion of the meeting in question, and is supervised by Commissioner
11 Hahn in his role as Assistant District Attorney. Respondent argued that pursuant to
12 *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 431, 894 P.2d 337 (1995), Commissioner Hahn must be
13 disqualified. Respondent states that in *PETA*, District Judge Lehman had been appointed by the
14 governor to sit on the case. *Id.* In a petition for rehearing, the opinion was withdrawn "to avoid even the
15 appearance of impropriety and to promote public confidence in the integrity of the judicial process,"
16 where it was shown that Lehman was a member of the advisory board to a foundation that had used the
17 defendant's services in the action on appeal as its representative. *Id.* Respondent notes that *PETA* was
18 quoted by the United States Supreme Court in *Liljeberg v. Health Services Acquisition Corp.*, 486 US.
19 847 (1988) and quoted with approval in *United States v. Cooley*, 1 F. 3d 985, 992-3 (10th Cir. 1993).
20 Respondent highlights that the question regarding disqualification centers upon whether a reasonable
21 person, knowing all the facts, would harbor doubts about Commissioner Hahn's impartiality. *PETA* at
22 438.

23 Respondent further states that a reasonable person would expect a Task Force member to be
24 aware of what transpires at a Task Force meeting. Further, he claims that because Mr. Dreiling serves
25 on the Task Force as a representative of the District Attorney's Office, a reasonable person would
26 expect that Assistant District Attorney Hahn would have an interest in the Task Force being successful.
27 Respondent further argues that Commissioner Hahn should be disqualified because he practices in the
28 same district as Respondent, citing the Judicial Conduct Reporter, Spring 2018 edition. Respondent

1 argues that this is a common-sense guideline offered by a well-regarded organization, and should apply
2 in this instance.

3 Respondent further argues that the Prosecuting Officer's citation to *DeCastro* is not appropriate
4 as it is an unpublished case. Moreover, Respondent claims that the Prosecuting Officer's cases dealing
5 with campaign contributions, *Ivey* and *City of Las Vegas*, are not relevant as there is no campaign
6 contribution factor in this case. Further, Respondent notes that the *Zogheib* case addressed whether an
7 individual prosecutor's conflict of interest can be imputed to the prosecutor's entire office. The
8 reasoning of the case, he avers, is inapplicable as it applies to an entire office and rejected the
9 appearance of impropriety standard to determine whether a conflict of interest could be imputed to an
10 office of lawyers. Respondent avers that the appearance of impropriety standard is applicable to judges
11 pursuant to Rule 1.2 of the Code, and thus Commissioner Hahn must be disqualified for cause.

12 ISSUES

13 Whether Commissioner Bruce Hahn, Esq. should be disqualified from the hearing based upon
14 the appearance of impropriety.

15 STANDARDS OF LAW

16 Commission Procedural Rule 3.6

17 6. Any member of the Commission or sitting Alternate member may be disqualified
18 upon challenge for cause by the Respondent or by counsel prosecuting a complaint or a
19 Formal Statement of Charges. A challenge must be heard by the Commission, and the
20 Commission may disqualify any commissioner who by reason of actual or implied bias
21 would, in the opinion of a majority of the members present, either be prevented from
22 adjudicating the matter in a fair and impartial manner or, by reason of facts creating an
23 appearance of impropriety, be prevented from adjudicating the matter in a manner
24 consistent with maintenance of public confidence in the Commission.

22 DISCUSSION

23 In reviewing the grounds for disqualification, it is helpful to review the Code pertaining to
24 judicial impartiality. The Code "provides substantive grounds for judicial disqualification." *PETA v.*
25 *Bobby Berosini, Ltd.*, 111 Nev. 431, 435, 894 P.2d 337, 340 (1995), overruled on other grounds
26 by *Towbin Dodge, LLC. v. Dist. Ct.*, 121 Nev. 251, 112 P.3d 1063 (2005). "[T]he test for whether a
27 judge's impartiality might reasonably be questioned is objective and presents a question of law [such
28 that] this court will exercise its independent judgment of the undisputed

1 facts.” *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011) (alterations in original, quotation
2 marks and internal citations omitted). Rule 1.2 of the Code states that “[a] judge shall act at all times in
3 a manner that promotes public confidence in the independence, integrity and impartiality of the
4 judiciary and shall avoid impropriety and the appearance of impropriety.” Rule 2.11(A) provides that
5 “[a] judge shall disqualify himself ... in a proceeding in which the judge's impartiality might reasonably
6 be questioned.” Even though none of the listed grounds for disqualification delineated in Rule 2.11
7 apply in this instance, the Rule addresses the importance of impartiality.

8 Disqualification is required when a reasonable person, knowing all the facts, would harbor
9 reasonable doubts about the judge's impartiality. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905
10 (2016) (The Court asks whether, as an objective matter, the average judge in her position is likely to be
11 neutral, or whether there is an unconstitutional potential for bias). “[A] judge is presumed to be
12 impartial, and the party asserting a challenge carries the burden of establishing sufficient factual and
13 legal grounds warranting disqualification.” *Ybarra*, 127 Nev. at 51, 247 P.3d at 272. Because a judge is
14 presumed to be impartial, “the burden is on the party asserting the challenge to establish sufficient
15 factual grounds warranting disqualification.” *Goldman v. Bryan*, 104 Nev. 644, 649, 764 P.2d 1296,
16 1299 (1988), abrogated on other grounds by *Halverson v. Hardcastle*, 123 Nev. 245, 266, 163 P.3d 428,
17 443 (2007); see *PETA*, 111 Nev. at 437, 894 P.2d at 341. Therefore, the question is “whether a
18 reasonable person, knowing all the facts, would harbor reasonable doubts about [the judge's]
19 impartiality.” *PETA*, 111 Nev. at 438, 894 P.2d at 341.

20 The record does not convey sufficient facts to show that disqualification is required of
21 Commissioner Hahn. For example, there is no information about what, if anything, Commissioner Hahn
22 knows about the Task Force or how such knowledge would increase or decrease the potential for bias in
23 this matter. There is no evidence that Commissioner Hahn working in the same court district could
24 potentially inject bias into his decisions in the present case.

25 There are simply no facts in the record that even hint at the possibility that Commissioner Hahn
26 would be influenced by unconstitutional bias. Respondent’s claim is purely speculative and lacks
27 factual support from the record. See *Rippo v. State*, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (2017)
28 (“Disqualification must be based on facts, rather than mere speculation”). Accordingly, Respondent

1 cannot show that Commissioner Hahn's position as an Assistant District Attorney would cause an
2 objective person to have reasonable doubts about the judge's impartiality. *See Ybarra*, 127 Nev.
3 at 51, 247 P.3d at 272. However, in this instance, Commissioner Hahn has voluntarily removed himself
4 from the panel. *See Affidavit of Commissioner Hahn attached hereto.*

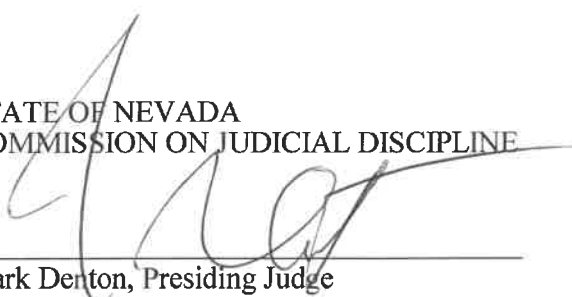
5 While the Commission does not believe that Mr. Hahn's disqualification is necessary,
6 Commissioner Hahn's voluntarily removal of himself from the hearing panel renders this Motion moot.
7 Therefore, this Order does not need to address the appearance of impropriety standard, and thus the
8 Motion to Disqualify is denied as moot.

9 The Honorable Mark Denton is authorized to sign this Order on behalf of the full Commission.

10 IT IS SO ORDERED.

11 DATED this 26th day of July, 2018.

12 STATE OF NEVADA
13 COMMISSION ON JUDICIAL DISCIPLINE

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16 Mark Denton, Presiding Judge
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CERTIFICATE OF SERVICE

I hereby certify on this 20th day of July, 2018, I transmitted a copy of the foregoing
ORDER DENYING MOTION TO DISQUALIFY AS MOOT, via email and by placing said document
in the U.S. Mail, postage prepaid, addressed to:

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Tarah L. Hansen, Commission Clerk

1 AFFIDAVIT OF BRUCE C. HAHN

2 STATE OF NEVADA)


3) ss.

4 COUNTY OF WASHOE)

5 I, Bruce C. Hahn, hereby swear under penalty of perjury, that the following assertions are
6 true of my own personal knowledge:

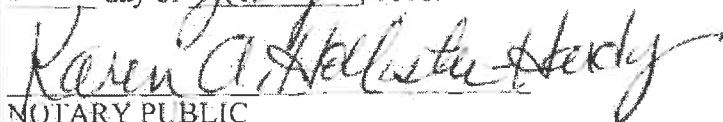
- 7 1. I am an Assistant District Attorney for the Washoe County District Attorney's Office.
- 8 2. I am a Commissioner for the State of Nevada Commission on Judicial Discipline.
- 9 3. I am currently a panel member for the hearing scheduled to commence on Thursday,
10 August 30, 2018 and conclude on Friday, August 31, 2018, *In the Matter of The*
11 *Honorable Charles Weller, District Court Judge, Second Judicial District Court,*
12 *Family Division. County of Washoe, State of Nevada, Case No. 2017-025-P.*
- 13 4. At all relevant times, including at the commencement of the above-entitled action, I
14 have been an Assistant District Attorney for the Criminal Division of the District
15 Attorney's Office. Judge Weller handles no criminal cases to my knowledge.
- 16 5. I have reviewed Judge Weller's June 29, 2018 'Motion to Disqualify' myself from
17 sitting as a panel member in his disciplinary hearing. I know of no law, statute or rule
18 that requires me to recuse myself. I choose to voluntarily recuse myself from the
19 hearing panel here of my own accord.
- 20 6. I reserve the right to serve as a Commissioner for the Commission on Judicial
21 Discipline for any and all other matters in their entirety that may arise out of the
22 Second Judicial District Court of the State of Nevada and Washoe County.

23 DATED this 19th day of July, 2018.


BRUCE C. HAHN

24
25 SUBSCRIBED AND SWORN before me

26 17th day of July, 2018.

27 
28 NOTARY PUBLIC

