

CODE 3370

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ALEXANDER FALCONI,
an individual,

Petitioner,

Case No. CV13-01019

vs.

Dept. No. 11

SECRETARY OF STATE OF THE
STATE OF NEVADA,
Respondent,

██████████ ANN ██████████
an individual,

Real Party in Interest.

ORDER OF RECUSAL

A judge in Nevada has a "duty to sit." *Millen v. Eighth Judicial Dist. Ct.*, 122 Nev. 1245, 1253, 148 P.3d 694, 700 (2006). In other words, "in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary," a trial judge has a duty to preside to the conclusion of all proceedings. *Ham v. Eighth Judicial Dist. Ct. ex rel. County of Clark*, 93 Nev. 409, 566 P.2d 420 (1977). Pursuant to Nevada Code of Judicial Conduct Canon 2, Rule 2.11, a judge shall disqualify himself from any proceeding in which the judge's impartiality might be reasonably questioned, including if the judge has a personal bias or prejudice concerning a party. The Commentary to Canon 2 states that the test for the appearance of impropriety is "whether the conduct would create in

1 reasonable minds a perception that the judge's ability to carry out judicial responsibilities
2 with integrity, impartiality and competence is impaired."

3 In considering whether a judge's impartiality might reasonably be questioned, the
4 Nevada Supreme Court has described the test as "whether a reasonable person, knowing
5 all the facts, would harbor reasonable doubts about [the judge's] impartiality." *Ybarra v.*
6 *State*, 247 P.3d 269, 272 (2011) (quoting *PETA*, 111 Nev. at 438, 894 P.2d at 341; see *Suh v.*
7 *Pierce*, 630 F.3d 685, 691-92 (7th Cir.2011)(observing that due process requires fair trial in
8 fair tribunal but that most judicial disqualification matters do not rise to constitutional
9 level and that United States Supreme Court has never held that due process requires
10 recusal based solely on appearance of bias)).

11 Nevada Code of Judicial Conduct, Canon 3(E)(1) provides that "A judge shall
12 disqualify himself or herself in a proceeding in which the judge's impartiality might
13 reasonably be questioned." See also NRS 1.230.

14 Petitioner, Alexander Falconi (hereafter "Mr. Falconi") was highly involved in an
15 opponent's campaign against the undersigned for Washoe County District Court Judge for
16 Department 11. This fact, by itself, does not necessitate recusal. See, *City of Las Vegas*
17 *Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 940 P.2d 134 (1997); *Valladares v.*
18 *Second Judicial District Court*, 112 Nev. 79, 910 P.2d 256 (1996). However, in addition, Mr.
19 Falconi has created a website which contains false information about the undersigned
20 judge's record. The website asserts that the false information is truthful and urges voters
21 to consider this information in the upcoming election.

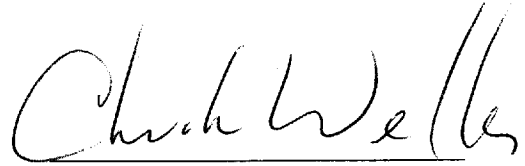
22 In accordance with Commentary 9 to the Nevada Code of Judicial Conduct, Canon
23 4, Rule 4.1, campaign staff for the undersigned judge responded directly to Mr. Falconi,
24 informed him that his website contained false information, and demanded correction or
25 removal of the false information. Mr. Falconi refused to correct or remove the false
26 information.

27 Mr. Falconi's refusal to correct or remove false information from his website
28 concerning my record informs my belief of his credibility. Mandatory disqualification is
required if impartiality might be reasonably challenged. Accordingly, the undersigned

1 recuses himself from this case. This matter shall be randomly reassigned to another
2 department in the Family Division of the Second Judicial District Court.

3 **IT IS HEREBY ORDERED**

4 Dated: July 7, 2014.

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7 District Court Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of JUDGE CHUCK WELLER, and that I deposited for mailing at Reno, Nevada, a true copy of the attached document, addressed to:

Alexander Falconi

[REDACTED]

[REDACTED] Ann [REDACTED]

[REDACTED]

[REDACTED]

I further certify that that I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Kevin Benson, Esq.

Dated this 8th Day of July, 2014.

Shake
ADMINISTRATIVE ASSISTANT