

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: FV08-03200

Judge:

HONORABLE CHUCK WELLER

Official File Stamp:

07-07-2014:15:35:08

Clerk Accepted:

07-07-2014:16:49:10

Court:

Second Judicial District Court - State of Nevada

Family

Case Title:

ALEXANDER M. FALCONI VS. [REDACTED] A.
[REDACTED] (D11)

Document(s) Submitted:

Ex-Parte Mtn

- **Continuation

Request for Submission

Request for Submission

Filed By:

Marilyn York

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARILYN YORK, ESQ. for ALEXANDER M
FALCONI

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

[REDACTED] ANN [REDACTED]

1 CODE 3370
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3
45 IN THE FAMILY DIVISION
6 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
89 ALEXANDER FALCONI,
1011 Plaintiff,
12

Case No. FV08-03200

13 vs.
14

Dept. No. 11

15 [REDACTED] ANN [REDACTED]
1617 Defendant.
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28ORDER OF RECUSAL; ORDER VACATING HEARINGS

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

In considering whether a judge's impartiality might reasonably be questioned, the Nevada Supreme Court has described the test as "whether a reasonable person, knowing

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

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

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

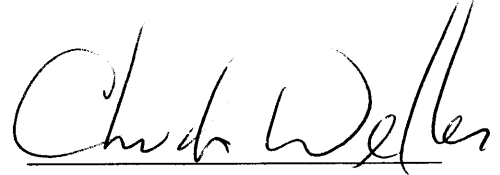
18 In accordance with Commentary 9 to the Nevada Code of Judicial Conduct, Canon
19 4, Rule 4.1, campaign staff for the undersigned judge responded directly to Mr. Falconi,
20 informed him that his website contained false information, and demanded correction or
21 removal of the false information. Mr. Falconi refused to correct or remove the false
22 information.

23 Mr. Falconi's refusal to correct or remove false information from his website
24 concerning my record informs my belief of his credibility. Mandatory disqualification is
25 required if impartiality might be reasonably challenged. Accordingly, the undersigned
26 recuses himself from this case. This matter shall be randomly reassigned to another
27 department in the Family Division of the Second Judicial District Court.
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1 Accordingly, the hearings set for August 13, 2014 at 9:00 a.m. and August 27, 2014
2 are hereby VACATED. The parties will need to reset the hearings with the assigned
3 department. All pending matters will be addressed by the randomly assigned
4 department.

5 **IT IS HEREBY ORDERED**

6 Dated: July 7, 2014.

7 
8 Chad Weller
9 District Court Judge

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11 (FV08-03200)
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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 on the 8th day of July, 2014, in Reno, Nevada, a true copy of the attached document, addressed to:

[REDACTED]

[REDACTED]

I further certify that that on the 8th day of July, 2014, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

MARILYN YORK, ESQ.

Dated this 8th Day of July, 2014.

Shake
ADMINISTRATIVE ASSISTANT