

FILED
June 30, 2023
State of Nevada
E.M.R.B.
9:00 a.m.

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3 **STATE OF NEVADA**
4 **GOVERNMENT EMPLOYEE-MANAGEMENT**
5 **RELATIONS BOARD**

6 ASSOCIATION OF PROFESSIONAL-
7 TECHNICAL ADMINISTRATORS,

Case No. 2022-002

8 Complainant,

NOTICE OF ENTRY OF ORDER

9 v.

PANEL C

10 WASHOE COUNTY SCHOOL DISTRICT,

ITEM NO. 886

11 Respondent.
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14 TO: Complainant and its attorney, Ronald J. Dreher, Esq; and

15 TO: Respondent and its attorneys, Kevin A. Pick, Esq. and the Office of the General Counsel,
16 Washoe County School District.

17
18 PLEASE TAKE NOTICE that the **ORDER TO DISQUALIFY COUNSEL AND**
19 **GRANTING A CONTINUANCE** was entered in the above-entitled matter on June 30, 2023.

20 A copy of said order is attached hereto.

21 DATED this 30th day of June 2023.

22 GOVERNMENT EMPLOYEE-
23 MANAGEMENT RELATIONS BOARD

24 BY Isabel Franco
25 Isabel Franco, Administrative Assistant II
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CERTIFICATE OF MAILING

1 I hereby certify that I am an employee of the Government Employee-Management Relations
2 Board, and that on the 30th day of June 2023, I served a copy of the foregoing **NOTICE OF ENTRY**
3 **OF ORDER** by mailing a copy thereof, postage prepaid to:

4 Ronald J. Dreher, Esq.
5 P.O. Box 40502
6 Reno, NV 89504

7 Kevin A. Pick, Esq.
8 Washoe County School District
9 Office of the General Counsel
10 P.O. Box 30425
11 Reno, NV 89520-3425

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13 _____
14 Isabel Franco, Administrative Assistant II
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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ASSOCIATION OF PROFESSIONAL-
TECHNICAL ADMINISTRATORS,

Complainant,

v.

WASHOE COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2022-002

**ORDER TO DISQUALIFY COUNSEL
AND GRANTING A CONTINUANCE**

PANEL C

ITEM NO. 886

On June 28, 2023, this matter came before the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision on Respondent's Motions to Disqualify Complainant's Counsel and for a Continuance pursuant to the provision of the Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288. At issue is whether Complainant's legal counsel, Mr. Ron J. Dreher, Esq., should be disqualified as counsel for Complainant on the basis that he would be a necessary witness in the proceedings, and if so, whether a continuance is warranted.

The Board has broad authority over witnesses in proceedings before the Board. *See* NRS 288.120 and 288.210, and NAC 288.205(5), 288.265, 288.273, 288.280 and 288.301. The Board also has extensive authority to control its meetings and to decide preliminary matters under NRS Chapter 288 and NAC Chapter 288. Moreover, the Board is exercising "judicial functions" as a quasi-judicial entity when it conducts hearings such as the one implicated here. *State, ex rel. Bd. of Parole Com'rs v. Morrow*, 127 Nev. 265 (2011). The *Morrow* Court laid out a 4-part test to determine when an administrative body is acting "judicially." *Id.* At 273. The 4-part judicial test is as follows: (1) the

1 ability to present and object to evidence, (2) the ability to cross-examine witnesses, (3) a written
2 decision from the public body, and (4) an opportunity to appeal to a higher authority. *Id.*

3 The proceedings at issue before the Board include all the *Morrow* elements and therefore meet
4 the “judicial test.” In sum, when the Board conducts hearings it is acting judicially, and hence, can
5 exercise the essential judicial functions necessary to ensure the proceedings follow the requisite due
6 process requirements and are fair to all parties. Thus, the Board has the authority to decide whether to
7 disqualify Complainant’s counsel.

8 It cannot be overstated that the October 22, 2021, conversation between Mr. Listinsky and Mr.
9 Ronald Dreher is the key component of the Complaint in this case. Complaint at Paragraph 26. Since
10 Complainant’s legal counsel was a participant in the conversation on October 22, 2021, the Board finds
11 that his testimony is necessary to corroborate what occurred during that conversation. The question
12 then becomes whether it is necessary to disqualify Complainant’s legal counsel as a matter of due
13 process and fairness.

14 Nevada RPC Rule 3.7 precludes a lawyer from acting as an advocate *at trial* when the lawyer is
15 likely to be a necessary witness. In analyzing this provision, the Nevada Supreme Court noted that “the
16 rule is meant to eliminate any confusion and prejudice that could result if an attorney appears before a
17 jury as an advocate and as a witness. *DiMartino v. Eighth Judicial Dist. Court*, 119 Nev. 119, 122, 66
18 P.3d 945, 947 (2003). The Board members are acting as a jury in the proceeding to determine which
19 party prevails and on what basis.

20 Nevada RPC Rule 3.7 does not mandate complete disqualification of an attorney who may be
21 called as a witness; rather it simply prohibits the attorney from appearing as trial counsel. *DiMartino*
22 at 946. Thus, the attorney can continue to handle both pretrial and post-trial proceedings. Many pre-
23 trial filings have been made by Complainant’s counsel and the Board will take those into account when
24 making its decision on the matter. All that is required if disqualification is granted is for someone else
25 to handle the matter at trial.

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1 Notably, this issue is one of first impression for the Board. In other cases where attorneys have
2 been called as witnesses during a hearing before the Board, the attorneys who were testifying recused
3 themselves and allowed other attorneys to handle the matter. For example, Mr. Adam Levine recused
4 himself from questioning witnesses and allowed another attorney to handle the matter when he was
5 called as a witness in *Nye County v. Nye County Association of Sheriff's Supervisors and Counterclaim*
6 *of Nye County Association of Sheriff's Supervisors and David Boruchowitz v. Nye County, EMRB Case*
7 *No. 2022-009*. The Board found this arrangement to be just and proper.

8 Some courts have found that quasi-judicial tribunals such as arbiters have the power
9 to disqualify attorneys having conflicts of interest and have thus not overruled instances where such
10 tribunals have examined motions to disqualify. *See Malik v. Ruttenberg*, 942 A.2d 136, 142 (N.J.
11 Super. Ct. App. Div. 2008); *see also SOC-SMG, Inc. v. Day & Zimmermann, Inc.*, No. 5375-VCS, 2010
12 WL 3634204 (Del. Ch. Sept. 15, 2010) at 2; *Wurtembergisch Fire Ins. Co. v. Republic Ins. Co.*, No. 86
13 CIV. 2696-CSH, 1986 WL 7773, at 1 (S.D.N.Y. July 9, 1986) *Hyatt Franchising v. Shen Zhen New*
14 *World I*, 2017 WL 1397553, at 2 (N.D. Ill. Apr. 19, 2017); *Moore v. Olson*, 351 P.3d 1066, 1074
15 (Alaska 2015); *Cook Chocolate Co. v. Salomon Inc.*, No. 87 CIV. 5705 (RWS), 1988 WL 120464, at 2
16 (S.D.N.Y. Oct. 28, 1988). The Board is quasi-judicial in nature and should possess the same authority
17 as any other judicial body to ensure the proceedings are not tainted due to a potential conflict of
18 interest.

19 The Board engages in the adjudication of disputes which quite naturally involve the resolution
20 of questions about privilege and issues regarding attorney responsibility and conduct. Thus, it is not
21 surprising that quasi-judicial entities have ruled on disqualification and privilege motions and that
22 courts have refused to intervene to second-guess those rulings. The interests of justice are served by the
23 Board using its authority to decide the matter overall, including the impact of allegations of conflicts of
24 interest.

25 Based on the foregoing, it is hereby **ORDERED** that Respondent's Motion to Disqualify
26 Complainant's legal counsel, Mr. Ron J. Dreher, Esq., is hereby **GRANTED**.

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1 It is further **ORDERED** that this matter will be continued until such time as Complainant can
2 obtain representation, at which time, the Commissioner shall set the matter for a hearing.

3 Dated this 30th day of June 2023.

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5 GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 By: 
8 BRENT ECKERSLEY, ESQ., Chair

9 By: 
10 SANDRA MASTERS, Vice-Chair

11 By: 
12 MICHAEL A. URBAN, Board Member