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### Summary of Morrow v. Dist. Ct., 129 Nev. Adv. Op. 69

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## CIVIL PROCEDURE – PEREMPTORY CHALLENGE OF JUDGES

### **Summary**

An original petition for a writ of mandamus from a district court order rejecting petitioner’s peremptory challenge of a judge in a divorce action.

### **Disposition/Outcome**

The ten day timeframe in which to file a peremptory challenge of a judge under SCR 48.1 commences with notice to the party of a hearing in the matter regardless of whether the party has made an appearance. However, in accordance with NRCP 6(a), non-judicial days are not counted as days within the ten day timeframe.

### **Facts and Procedural History**

On April 18<sup>th</sup>, 2012, real party in interest Kourtney Morrow (hereinafter “Kourtney”) filed a complaint for divorce from Craig and a motion for child custody with the Eight Judicial District Court. Since the motion raised issues of temporary child custody, a hearing was set for May 18, 2012, to be heard by the Honorable Robert Teuton. On April 20, 2012, Kourtney properly served Craig Morrow (hereinafter “Craig”) with the summons, complaint, and motion. On May 3, 2012, Craig retained counsel and on May 4, 2012, through counsel, made his first appearance and filed a peremptory challenge against Judge Teuton. On May 8, 2012, the clerk of the court reassigned the matter to the Honorable Cynthia Dianne Steel. On May 11, 2012, Judge Steel issued an order rejecting the peremptory challenge and transferring the matter back to Judge Teuton. In the order, Judge Steel determined that, according to SCR 48.1, the time to file a peremptory challenge had expired on April 30, 2012, ten calendar days after Craig was served notice. Craig then filed a writ petition challenging the order.

### **Discussion**

The three-justice panel issued a per curiam opinion on the computation of allowable time for filing a peremptory challenge, which was an issue of first impression.

### **Peremptory Challenge Rule**

As a matter of right, each party in a district court civil action is entitled to peremptorily challenge the judge assigned to the case before any hearing is commenced or any ruling is made on a contested matter.<sup>2</sup> Any such challenge must be made within ten days after notification to the parties of a trial or hearing date.<sup>3</sup>

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<sup>1</sup> By David H. Rigdon.

<sup>2</sup> SUP. CT. R. 48.1(1); SUP. CT. R. 48.1(5).

<sup>3</sup> SUP. CT. R. 48.1(3).

Craig argued that the time to file a peremptory challenge cannot expire until a party has made a first appearance. Kourtney argued that under the plain language of SCR 48.1 the time to file a peremptory challenge may expire before a first appearance and therefore the District Court properly rejected the challenge. While Craig argued that the summons giving him notice of the hearing stated that he had twenty days to respond to the complaint, the Court held NRCP 12(a)(1), which provides a party twenty days to answer a complaint before a default judgment may be issued, does not hold in abeyance all other required timelines.<sup>4</sup> Under the plain language of the rule, the Court held that since Craig was properly served with notice of the hearing on April 20, 2012, the ten day period of SCR 48.1(3)(a) commenced on that date.

### The NRCP control the computation of time for SCR 48.1(3)

SCR 4 provides that if an act that is required to be done by a party falls on a non-judicial day, the act must be performed on the next succeeding judicial day.<sup>5</sup> By contrast, NCRP 6(a) expressly sets forth the method for computing time for any time limit prescribed by the NRCP, local rules of a district court, orders of the court, or by any applicable statute.<sup>6</sup> Kourtney argued that SCR 4 operates to make NRCP 6(a) inapplicable. To resolve the issue the Court applied the long standing rule of statutory interpretation that where two rules apply, they are to be harmonized and read so as to give effect to both wherever possible.<sup>7</sup> The Court held that SCR 4 and NCRP 6(a) are not in conflict since SCR 4 only deals with the situation where the final day an act must be done falls on a non-judicial day whereas NRCP 6(a) deals with the computation of time limits from beginning to end.

Since the NRCP govern the procedure in any civil action in a district court<sup>8</sup> and SCR 48.1(1) specifically states that it is a procedure in a civil action in a district court<sup>9</sup>, the Court held that SCR 48.1 falls within the ambit of the NRCP. NCRP 6(a) provides that, where a specified time limit is eleven days or less, non-judicial days shall not be counted.<sup>10</sup> Therefore, the Court held that the District Court erred in failing to exclude non-judicial days from the ten day time limit imposed by SCR 48.1.

### Conclusion

The Court concluded that the peremptory challenge was properly filed and granted the petition for mandamus directing the district court to vacate its order and reassign the case to another judge. The Court held that while the plain language of SCR 48.1 requires a peremptory challenge to be filed within ten days of receipt of a notice of hearing, NRCP 6(a)'s exclusion of

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<sup>4</sup> See NEV. R. CIV. P. 12(a)(1) (“A defendant shall serve an answer within 20 days after being served with the summons and complaint, unless otherwise provided by statute when service of process is made pursuant to Rule 4(e)(3)”).

<sup>5</sup> SUP. CT. R. 4.

<sup>6</sup> NEV. R. CIV. P. 6(a).

<sup>7</sup> *Albios v. Horizon Cmty's, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).

<sup>8</sup> NEV. R. CIV. P. 1 (“These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action”).

<sup>9</sup> SUP. CT. R. 48.1(1) (“In any civil action pending in a district court . . .”).

<sup>10</sup> NEV. R. CIV. P. 6(a).

non-judicial days from the computation of time for periods of eleven days or less applies. After excluding the non-judicial days, Craig's peremptory challenge was filed within the ten day timeframe.