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Taylor v. Brill, 138 Nev. Adv. Op. 81 (Dec. 15, 2022)

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Taylor v. Brill, 138 Nev. Adv. Op. 81 (Dec. 15, 2022)¹
SUPREME COURT CLARIFIES WHEN A JUDGE IS CONSIDERED TO HAVE
PREVIOUSLY PRESIDED OVER A MATTER.

Summary

Judges are required to disqualify themselves when their impartiality might be questioned, such as if they have previously presided as judge over the matter in another court. A judge is said to preside over a matter when they have exercised some control or authority over the matter, not when they have had purely administrative contact.

Background

Justice Douglas Herndon disclosed that he had inherited the underlying matter during his service as a district judge. His disclosure stated the matter never appeared on his calendar and he had no knowledge of the case before the instant appeal. Appellant Taylor moved to disqualify Justice Herndon, asserting the rule does not require an inquiry into the judge's involvement in the case. Justice Herndon asserts his impartiality cannot reasonably be questioned and the rule does not require disqualification.

Discussion

In Nevada, “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: . . . [t]he judge . . . previously presided as judge over the matter in another court.”² The court notes the Nevada rule is derived from the American Bar Association’s model code, but points out despite the wide adoption of the rule, there have not been many decisions that discuss the meaning of “preside” within the context of the rule.

However, the court examines authorities that have considered the issue and notes an understanding that a judge’s limited involvement in a case is insufficient to trigger the rule’s mandatory disqualification requirement.³ Rather, a judge must exercise some control or authority over the matter in lower court to “preside” over a matter.

Here, the parties filed no motions in the case while it was assigned to Justice Herndon in district court, and he did not decide any matters nor hear any argument. He did not exercise control or authority in the matter in district court. Therefore, despite the case being administratively assigned to him, Justice Herndon did not preside over the matter in a way that requires disqualification and the appellant’s motion is denied.

Conclusion

Judges are required to disqualify themselves when their impartiality might be questioned, such as if they have previously presided as judge over the matter in another court. A judge is said to preside over a matter when they have exercised some control or authority over the matter, not when they have had purely administrative contact. Here, Justice Herndon did not exercise any authority over the matter, and he is not disqualified. The appellant’s motion is denied.

¹ By Jefferson Cummings.

² NEV. CODE OF JUD. CONDUCT 2.11(A)(6)(d).

³ See *In re Disqualification of Tucker*, 167 Ohio St. 3d 1237, 1239, 193 N.E.3d 593, 594 (Ohio 2022); *In re L.M.*, 276 P.3d 1088, 1108 (Okla. Civ. App. 2012).