

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT  
DEPARTMENT VII

Replace the highlighted spaces on this page with the vacancy you seek to fill  
VII, XXIX, C or N  
Candidates may only choose one department.

**By**

**Berna Rhodes-Ford**



Personal Information
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1.	Full Name	Berna Lejoyce Rhodes-Ford
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	Yes. I used my maiden name "Rhodes" from 1971 – 1996.
3.	How long have you been a continuous resident of Nevada?	15 years. Since October 2007, and before that I lived in Nevada from 2000 – 2003.
4.	City and county of residence	Las Vegas, Clark County, Nevada
5.	Age	51

Employment History
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6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Nevada State College
Phone	702-992-2378
Physical Address & Website	1300 Nevada State Drive Henderson, NV 89002 www.nsc.edu
Date(s) of Employment	January 2019 - present
Supervisor's Name and Title	DeRionne Pollard President
Your Title	General Counsel
Describe Your Key Duties	Provide advice and counsel to one of the fastest growing baccalaureate colleges in the nation. Serve as chief legal officer responsible for all legal matters affecting the College, including employment issues, student matters, external administrative complaints, contracts, intellectual property, and privacy law. Collaborate with the Nevada System of Higher Education leadership and other institutions as needed.
Reason for Leaving	Still there.

Previous Employer	Brown Law Group
Phone	669-330-1700
Address & Website	600 B Street #1650 San Diego, CA 92101 www.brownlawgroup.com

Date(s) of Employment	April 2016 – January 2019
Supervisor's Name and Title	Janice Brown Founder
Your Title	Of Counsel (April 2016 – September 2017) Partner (September 2017 – January 2019)
Describe Your Key Duties	Contract basis attorney to handle matters in Nevada from April 2016 to September 2017. In September 2017, joined the firm as Partner in Charge of the Las Vegas Office. Corporate law practice includes representing business organizations from formation to sale, including advice on day to day legal issues, corporate structuring, regulatory analysis and compliance, and mergers and acquisitions, and representing businesses in legal disputes in court, before administrative agencies and in alternative dispute resolution forums. Employment law practice includes litigating cases involving Title VII, ADA, ADEA, FMLA and FLSA in union and non-union environments and advising clients on all aspects of employment law, including employment agreements, employee manuals, compliance programs and litigation avoidance.
Reason for Leaving	Joined Nevada State College as General Counsel.

Previous Employer	Rhodes-Ford & Associates
Phone	702-684-6262
Address & Website	8485 W. Sunset Road #106 Las Vegas, NV 89113 www.rhodesford.com
Date(s) of Employment	June 2011 – June 2014 and February 2015 – September 2017
Supervisor's Name and Title	N/A
Your Title	Managing Shareholder
Describe Your Key Duties	Responsible for all administrative and legal decisions of the firm. Handled corporate law and labor law and healthcare law issues from prior practice. Healthcare practice included drafting and reviewing partnership agreements, physician employment agreements, separation agreements, and other documents related to healthcare practice.
Reason for Leaving	Left in June 2014 for a good business opportunity. Returned in February 2015 and closed permanently in September 2017 for other opportunities.

Previous Employer	Gonzalez Saggio & Harlan
Phone	414-277-8500
Address & Website	111 East Wisconsin Avenue, Suite 1000

	Milwaukee, WI 53202 www.gshllp.com
Date(s) of Employment	July 2015 to – February 2016
Supervisor's Name and Title	Karma Rodgers Partner
Your Title	Of Counsel
Describe Your Key Duties	Contract basis attorney to handle corporate and employment law matters in Nevada.
Reason for Leaving	The firm dissolved.

Previous Employer	Ogletree, Deakins, Nash, Stewart and Smoak
Phone	702-791-7600
Address & Website	3800 Howard Hughes Parkway, Suite 1500 Las Vegas, NV 89169 www.ogletree.com
Date(s) of Employment	June 2014 – February 2015
Supervisor's Name and Title	Anthony Martin Managing Shareholder
Your Title	Of Counsel
Describe Your Key Duties	Handled corporate law, labor law and healthcare law issues.
Reason for Leaving	Left to reestablish my own law firm.

Previous Employer	Holland & Hart
Phone	702-669-4600
Address & Website	9555 Hillwood Drive, #2 Las Vegas, NV 89134 www.hollandhart.com
Date(s) of Employment	October 2007 – June 2011
Supervisor's Name and Title	Robert C. Anderson Partner
Your Title	Of Counsel
Describe Your Key Duties	Handled corporate law, labor law and healthcare law issues.
Reason for Leaving	Left to open my own law firm.

Previous Employer	Concentra Inc.
Phone	972-364-8000
Address & Website	5080 Spectrum Dr., #1200W Addison, TX 75001 www.concentra.com
Date(s) of Employment	February 2006 – July 2007
Supervisor's Name and Title	Mark Solls General Counsel
Your Title	Senior Corporate Counsel

Describe Your Key Duties	Hired to direct all legal matters related to employment law of one of the nation's largest healthcare companies with annual revenues of nearly \$1.5 billion. Also worked in other substantive areas, including mergers and acquisitions, bankruptcy, immigration, commercial and healthcare law. Served as Chief of Staff, acting as a liaison to facilitate communication, collaboration and workload efficiencies between the Legal Department and Risk Management Department. Served as company's chief litigation counsel. Revised litigation procedures to assure more efficient delivery of outside legal services. Negotiated with outside counsel regarding fee agreements. Monitored outside counsel legal fees and reduced fees, where necessary, to conform to case budget and reserves.
Reason for Leaving	Downsized during corporate restructuring.

Previous Employer	Little Mendelson
Phone	702-862-8800/214-880-8100
Address & Website	3960 Howard Hughes Parkway #300, Las Vegas, NV 89169/2001 Ross Avenue #1500, Dallas, TX 75201 www.littler.com
Date(s) of Employment	September 2001 – August 2003 (Las Vegas) August 2003 – January 2006 (Dallas)
Supervisor's Name and Title	Patrick Hicks/Scott McDonald Managing Shareholder
Your Title	Associate
Describe Your Key Duties	Litigated employment law cases.
Reason for Leaving	Left Las Vegas office to transfer to Dallas office. Left Dallas office to take an in-house position with a client.

### Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

**Terrell High School**, 701 Town N. Drive, Terrell, TX 75160, 1985 – 1989, high school diploma, graduated.

**Southern Methodist University**, 6425 Boaz Lane, Dallas, TX, 75205, 1989-1993, Bachelor of Business Administration and Bachelor of Arts in Psychology, graduated.

**University of Texas at Arlington**, 701 S. Nedderman Drive, Arlington, TX, 76019, Summer 1991 or 1992, attended to obtain inexpensive credit hours so I could graduate in four years with dual degrees.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

High School:

Salutatorian Graduate 1989  
 Terrell Junior Miss  
 Student Body Chaplain  
 Editor, Tiger Tracks Newspaper  
 Line Officer, Tigerettes Drill Team  
 Marching Band

College:

Vice President of Programming, Program Council  
 President, Alpha Kappa Alpha Sorority, Incorporated, Kappa Mu Chapter  
 Second International Vice President, Alpha Kappa Alpha Sorority, Incorporated  
 Member, Voices of Inspiration College Choir

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

**University of Texas School of Law**, 727 E. Dean Keeton Street, Austin, TX 78705; Juris Doctorate May 1996. The University of Texas School of Law does not rank students.

**American University Washington College of Law**, 4300 Nebraska Avenue NW, Washington, DC 20016; visiting student Spring 1996. I attended the last semester of law school at American University while my husband worked on his Master's Degree. I obtained my degree from the University of Texas.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

The University of Texas School of Law does not allow students to work while in classes. Therefore, I only worked during school breaks. I did, however, work while attending American University Washington College of Law.

**Law Offices of Houston Smith**, Part-Time, Winter Break Intern, December 1993.

**Latham & Watkins**, Full-Time, Summer Clerk, June – August 1994.

**Exxon Corporation**, Full-Time, Summer Clerk, June – August 1995.

**Senator Carol Moseley Braun**, Part-Time, Legislative Intern, January – April 1996.

**Congresswoman Eddie Bernice Johnson**, Part-Time, Legislative Assistant, April – May 1996. (This position became a full-time position after I graduated from law school.)

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

President, Phi Delta Phi Legal Fraternity

Member, Hispanic Law Journal

Regional Conference Chair, Rocky Mountain Black Law Students Association

Cast Member, Assault and Flattery Student Parody Production

## Law Practice

12. State the year you were admitted to the Nevada Bar. 2001
13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. Texas, 1996
14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.  
No
15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

When I was in private practice, approximately 50% of my work has involved litigation matters at the trial court level. I currently serve as General Counsel to Nevada State College and a majority of my practice is advice to my internal clients. My litigation portfolio since becoming General Counsel is approximately 30% of my work.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0%
Juvenile matters	0%
Trial court civil	20%
Appellate civil	10%
Trial court criminal	0%
Appellate criminal	0%
Administrative litigation	0%
Other: Administrative agency	20%
Other: Advice and counsel	50%

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

For my litigation cases, approximately 50% set for jury trials and 50% set for non-jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. **None.** Give the approximate number of non-jury cases tried to a decision in the same period. **One.**

19. List courts and counties in any state where you have practiced in the past five years.

**Eighth Judicial District Court**, Clark County, Nevada.  
**United States District Court for Nevada**, Southern Division, Clark County, Nevada.  
**Henderson Municipal Court**, Clark County, Nevada.  
**Las Vegas Municipal Court**, Clark County, Nevada.  
**Nevada Supreme Court**, Nevada.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date:  Derek Allen v. University Medical Center (2011)
Court and presiding judge and all counsel:  Court: Eighth Judicial District Court, Clark County, Nevada Presiding Judge: Honorable Rob Bare Counsel for Plaintiff: Derek Allen, In Proper Person Counsel for Defendant: Berna Rhodes-Ford
Importance of the case to you and the case's impact on you:  Plaintiff filed his complaint in November 2011 alleging that Defendant UMC negligently housed him on a floor with criminals and failed to give him his medication and water. Plaintiff was brought to the hospital in police custody, had a history of illicit drug use and had drugs in his system at the time of admission. Plaintiff left the hospital against medical advice before any medication could be dispensed.  This case was particularly interesting because the pro per Plaintiff was incarcerated during a portion the case and often went long periods of time with no communication. For example, the case was filed on November 3, 2011, but the early case conference did not occur until October 25, 2013. I had to balance zealously defending my client (i.e., filing a motion to dismiss for failure to prosecute) with the potentially compelling and extraordinary circumstances that might prevent dismissal under NRCPP 16.1 (Plaintiff's incarceration).  Additionally, Plaintiff acted as a "jailhouse lawyer", drafting various documents with no identifiable basis, leaving my client and me no clear way to respond. I was often forced to assume what document Plaintiff attempted to file and respond to that document. Other times, I had to argue alternative arguments because I simply could not figure out what issue Plaintiff was trying to present to the court. Following Plaintiff's release and several attempts



to reach him with no response to the court-ordered deadlines (he responded to other items, but not the required ones), I was able to get the case dismissed.
Your role in the case:  I served as lead counsel for Defendant.

Case 2
Case name and date:  Adrian A. Sampson v. Image 2000 (2013)
Court and presiding judge and all counsel:  Court: United States District Court, District of Nevada Presiding Judge: Honorable Miranda M. Du and Honorable Nancy J. Koppe Counsel for Plaintiffs: Gregory W. Stevens; Gregory W. Stevens Law Office Keith M. Lyons, Jr.; Lyons Law Firm Counsel for Defendants: Berna Rhodes-Ford
Importance of the case to you and the case's impact on you:  This case provides an example of the important function of the judiciary. The Plaintiff was an African-American male who claimed to have been discriminated against on the basis of his race. To the contrary, Plaintiff met virtually none of the position's requirements and refused to implement the recommended techniques to improve his performance. While Title VII was enacted to prevent discrimination on the basis of race, the judicial system was necessary to effectuate its intent. The impact of this case on me was significant – it solidified my belief in the judicial system and reaffirmed my own value system – that regardless of my personal classification, I can vigorously defend my clients without bias.
Your role in the case:  I served as lead counsel for Defendant.

Case 3
Case name and date:  Steve Finn v. Young Philbert et al. (2011)
Court and presiding judge and all counsel:

<p>Court: Eighth Judicial District Court, Clark County, Nevada  Presiding Judge: Honorable Adriana Escobar  Counsel for Plaintiff: William Skupa, Law Offices of William S. Skupa  Counsel for Defendants:</p> <ul style="list-style-type: none"> <li>• Berna Rhodes-Ford; local counsel (Hometec)</li> <li>• Dwight Francis; Gardere Wynn (Hometec)</li> <li>• George Ranalli; Ranalli &amp; Zaniel (Yong Philbert)</li> <li>• Nathan Reinmille; Alverson, Taylor, Mortensen &amp; Sanders (Western United Insurance Company)</li> <li>• Lee Grant II; Brady Vorwerck, Ryder &amp; Caspino (Jeff Heit Plumbing)</li> <li>• Mark Schellerup; Robinson &amp; Wood (Old Republic Home Protection Company)</li> <li>• [Never made an appearance] (Valhalla Marketing, Inc.)</li> <li>• Michael Edwards; Wilson, Elser, Moskowitz, Edelman &amp; Dicker (Daigle Plumbing Company)</li> <li>• Richard Pyatt; Pyatt, Silvestri &amp; Hanlon (Hawthorne Plumbing, Inc.)</li> </ul>
<p>Importance of the case to you and the case's impact on you:</p> <p>My client (a Texas company) was sued in a case of mistaken identity (a Nevada company with a similar name). Despite the fact that my client had no relationship with the plaintiff or any of the other defendants, plaintiff's attorney was initially hesitant to dismiss my client from the lawsuit. Therefore, my client remained in the lawsuit for approximately one year until I was able to establish the lack of a relationship. This case had an impact on me because it showed that, in a legal setting, it is easier to prove that something did happen rather than prove that something did not happen. Additionally, given the numerous defendants in this case, I had to be organized and effectively communicate with several different attorneys while efficiently representing my client. I also had to consider the legal theories posed by the other defendants to determine whether they had positive or negative effects on my client. Eventually, through my diligence, I was able to get my client dismissed.</p>
<p>Your role in the case:</p> <p>I served as local counsel for Defendant Hometec.</p>

Case 4
Case name and date:
Josephine Laskowski v. Zale Corporation, et al. (2011)
Court and presiding judge and all counsel:
Court: United States District Court, District of Nevada Presiding Judge: Honorable James C. Mahan and Honorable Carl W. Hoffman

Counsel for Plaintiff: Michael Balaban; Law Offices of Michael P. Balaban Counsel for Defendant: Berna Rhodes-Ford
Importance of the case to you and the case's impact on you:  This was a discrimination case based upon age and discrimination. The case did not involve complex legal issues or theories. It did, however, serve as a model for civility and professionalism. I always strive to be the peacemaker and utilize the mantra of one of my mentors "I never blow up a deal [or case] for a client." Sometimes, however, given the stress and the inherent adversarial nature of the legal profession, it is not easy to achieve harmonious relationships. In this case, attorneys for both parties worked well together and, because of the civility extended on both sides, we were able to resolve the case early in the litigation process which translated to minimal legal fees for my corporate client and a good result for both parties.
Your role in the case:  I served as lead counsel for Defendant.

Case 5
Case name and date:  Who's Next Beauty Salon v. Elise Cooks (2012)
Court and presiding judge and all counsel:  Court: Eighth Judicial District Court, Clark County, Nevada Presiding Judge: Honorable Kenneth Cory Counsel for Plaintiff: Berna Rhodes-Ford Counsel for Defendant: Joseph Hong; Hong & Hong
Importance of the case to you and the case's impact on you:  This case involved a dispute among business owners – the founder and a business partner. I represented the founder who envisioned the company name, devised profitable procedures, and developed goodwill for the company. Soon after her business partner joined, my client turned over operations with no accountability mechanism. The business partner took over the business, including taking goodwill that belonged to the company and even negotiating a lease with the landlord that excluded the founder. This case impacted me for numerous reasons, including watching the emotional and financial turmoil that my client endured. Additionally, it was difficult watching my trusting client lose her business because she did not understand the need to protect her business and ideas.  The case did not have a high dollar amount, but the emotional value was high. I had to artfully explain to my client why, although she was technically correct, she had to go

through the legal process to obtain what should rightfully belong to her. I had to further explain why her business partner, who was represented by a hard-charging attorney, had a right to present defenses even though she disagreed with them.

As a result of the emotionally-charged parties and hard-charging opposing counsel, the case lasted for longer than it otherwise would have. I gained valuable lessons in providing step-by-step guidance to my client regarding legal strategy, timing and procedure.

Your role in the case: I served as lead counsel for Plaintiff.

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

Yes

I served as a mediator with the Franklin County (Ohio) Municipal Court Mediation Program from approximately 1999 – 2000. As a mediator, I mediated civil disputes. The Program includes disputes involving landlord-tenant, consumer-business, employer-employee and between citizens.

22. Describe any pro bono or public interest work as an attorney.

During the 2015-16 school year, I volunteered approximately four hours a week as a Truancy Diversion Program judge in which I assist children with truancy problems. I volunteered at an elementary school with a homelessness rate of 85%.

When I was in private practice, I often represented 501(c)(3) organizations at a substantially reduced rate for legal services. Additionally, I regularly gave my time to charitable organizations by reviewing bylaws, serving as parliamentarian and reviewing legal documents for the organizations, as necessary.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Bar Associations

Las Vegas National Bar Association

- *Office: Corresponding Secretary* (2015)
- *Committees: Public Image and Relations Committee Chair* (2014) *Nominations and Elections Committee Chair* (2008)
- *Program: Ask A Lawyer Program Coordinator* (2008 – 2009)

## Dallas Bar Association

- *Board: Advisory Board Member* (2007)
- *Committee: Minority Participation Committee Chair* (2006) & *Vice Chair* (2005)

## Dallas Association of Young Lawyers

- *Offices: President-Elect* (2007); *Secretary* (2006); *Director* (2004 & 2005)
- *Committees: Long Range Planning Committee Chair* (2007); *Awards Committee Chair* (2007)

## Dallas Association of Young Lawyers Foundation

- *Board: Board Member* (2006 & 2007)

## J.L. Turner Legal Association

- *Board: Treasurer* (2007); *Director* (2006); *Corresponding Secretary* (2004 & 2005)
- *Committees: Scholarship Committee Chair* (2004 – 2006); *Bylaws Committee* (2004)
- *Awards: Presidential Award* (2004 & 2005)

## J.L. Turner Legal Association Foundation

- *Board: Vice Chair of Board of Directors* (2007)

## American Bar Association

- *Business Law Section: Ambassador* (2008 – 2010)
- *Middle Market and Small Business Committee: Membership Chair* (2010 – 2015)
- *Council for Racial and Ethnic Diversity in the Educational Pipeline: Business Law Section Liaison* (2010 – 2015)

Professional Societies

## National Association of College and University Attorneys

- *Member* (2019 - present)

## Women's Business Enterprise Council West

- *Nevada Forum Chair* (2018); *Senior Vice Chair* (January 2016 – present); *Vice Chair* (August 2015 – December 2015)

## National Association of Women Business Owners, Southern Nevada Chapter

- *Executive Committee: Immediate Past President* (2011); *President* (2010); *Secretary* (2008-2009)

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

<b>Date Taken</b>	<b>Course Title</b>	<b>Credit Hours</b>	<b>Ethics Hours</b>	<b>AAMH Hours</b>
02/28/2018	2018 Business Meeting	1.25	0.00	0.00
08/26/2018	Ethical Issues with Online Attorney Reviews	0.50	0.50	0.00
02/05/2019	General Counsel Institute National Association of College and University Attorneys	10.00	1.25	0.00
06/22/2019	Lawyers New to Higher Education Workshop National Association of College and University Attorneys	8.00	1.00	0.00
06/22/2019	2019 Annual Conference National Association of College and University Attorneys	9.50	3.50	0.00
12/02/2019	Addiction & Co-Occurring Disorders in Professionals Nevada System of Higher Education	0.00	0.00	1.00
12/16/2019	Ethics & Bias in the Workplace Nevada Attorney General's Office	0.00	8.00	0.00
07/30/2020	Clery in Light of COVID-19: What will change, and what will stay the same?	1.00	0.00	0.00
10/09/2020	Nevada Government Civil Attorneys Conference	9.00	8.00	1.00
06/20/2021	2021 Virtual Conference National Association of College and University Attorneys	19.50	2.00	0.00
11/23/2021	Demers v. Austin: Academic Freedom & Faculty Speech on Matters of Public Concern University of Nevada, Reno	1.00	0.00	0.00
12/06/2021	ABA: What the ABA Study on Substance Use and Mental Health Means for the Future of the Profession Clark County District Attorney	0.00	0.00	1.50
12/20/2022	Gambling Addition for Lawyers Esquire CLE LLC	0.00	0.00	1.00

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I work for a governmental agency.

Business & Occupational Experience
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26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? **Yes.** If yes, please list, including the dates of your involvement with the occupation, business, or profession.

I worked as a legislative intern and legislative assistant in Washington, D.C. on Capitol Hill from 1996 – 1997.

I worked as a commercial credit management trainee at a bank in Columbus, OH from 1997 – 1998.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? **Yes** If so, please provide details as to:
- the nature of the business
  - the nature of your duties
  - the extent of your involvement in the administration or management of the business
  - the terms of your service
  - the percentage of your ownership

I was Partner in charge of the Nevada office of Brown Law Group, a law firm based in San Diego. I was responsible for all of the firm's legal matters in Nevada. I assisted with administrative issues to the extent that they involved the Nevada practice. I was with Brown Law Group from 2017 to 2019. I had no ownership interest.

I served as Managing Shareholder of Rhodes-Ford & Associates, P.C., a law firm. As the owner, I was responsible for all aspects of the business, from administrative to legal. I opened the firm in 2011 and closed it in September 2017. I owned 100%.

I served as the Manager of Proclaim, LLC, a religious entity founded by my former pastor, Robert Fowler. I did not have any involvement in the administration or management of the business other than to submit annual list filings and respond to other legal notices. I served in this capacity from 2015 until Pastor Fowler's death in 2020. I had no ownership interest.

I was previously a manager of ABADA, Ltd. ABADA was intended to be a family-owned real estate investment company. My husband and I were 50% owners and attended one tax sale but never purchased any property. The company is not operating at this time.

From October 1996 to October 1998, I served on the board of directors for Rhodes Home Health Care, a family owned home health care agency in Texas. I lived out of state and was not able to attend any board meetings or participate in the management of the company. The company has closed. I had no ownership interest.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership. None.

Civic Professional & Community Involvement
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29. Have you ever held an elective or appointive public office in this or any other state?

Yes

Have you been a candidate for such an office?

No

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

Yes. I was appointed to and served as a commissioner on the Nevada Commission for Minority Affairs. I have never been a candidate for office.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

*Nevada Commission on Minority Affairs, Commissioner (April 2016 – June 2019), Vice Chair (July 2016 – June 2017)*

*Clark County Justice of the Peace Nominating Committee, Member (December 2014 – 2018)*

*City of Cedar Hill, Texas, Streetscape Committee (July 2004 – July 2005)*

*United States Commission on Civil Rights, Nevada State Advisory Committee (January 2002 – May 2003)*

*Ohio Department of Human Services, Child Welfare Stakeholders Group – Early Childhood Care and Education Subcommittee (June 1999 – June 2000)*

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

*“Conducting Lawful Investigations in the Evolving Workplace”, Littler Employer Conference, Reno, NV, September 13, 2022*

*“Legal Issues Trending in the Workplace for all the Right and Wrong Reasons”, Littler Employer Conference, Reno, NV, September 13, 2022*

*“Bias & Discrimination in the Practice of Law”, Nevada Government Civil Attorneys’ Conference, Virtual, October 9, 2020.*

*“Ethics and Bias in the Workplace”, Nevada Attorney General’s Office, Las Vegas, December 16, 2019.*



- "Marijuana and the Workplace Webinar,"* Women's Business Enterprise Council – West, March 2017.
- "M&A Agreements from Start to Finish Webinar,"* National Business Institute, February 2017.
- "Marijuana Business Law in Nevada,"* National Business Institute, Las Vegas, October 2016.
- "Ethical DIY Promotion Tips,"* State Bar of Nevada SMOLO Institute, Las Vegas, September 2016.
- "Medical Marijuana in the Workplace,"* Branch Benefits Consultants, Las Vegas, August 2015.
- "10 Interview Questions You Should Never Ask,"* Workforce Connections, Las Vegas, June 2015.
- "LLC Workshop: Choose, Draft and Maintain,"* National Business Institute, Las Vegas, September 2014.
- "Ethical Issues in Internal Investigations,"* Association of Corporate Counsel Nevada Chapter luncheon, Las Vegas, July 2014.
- "Setting Up Your Business Legally,"* Urban Chamber of Commerce, Las Vegas, October 2012.
- "How to Keep Tax-Exempt Organizations in Compliance,"* National Business Institute, Las Vegas, August 2011.
- "Employment Laws Every Office Manager Should Know,"* Medical Group Management Association, Las Vegas, June 2011.
- "Mastering Mergers and Acquisitions,"* National Business Institute, Las Vegas, September 2010.
- "Reducing the Risk of Fraud and Abuse: How Do You Start?,"* Nevada Healthcare Forum, Las Vegas, October 2010.
- "Tax and Business Implications of Healthcare Reform,"* Holland & Hart Breakfast Briefing, Las Vegas, June 2010.
- "A Googling We Will Go: An Employment Law Update on Social Media, Domestic Partnership, and Mother's Rights,"* Holland & Hart Breakfast Briefing, Las Vegas, May 2010.
- "Legal Land Mines in Healthcare for the In-House Lawyer,"* Association of Corporate Counsel Nevada Chapter luncheon, Las Vegas, March 2010.
- "Health Care Reform: What's Happening,"* American College of Foot and Ankle Surgeons Scientific Conference, Las Vegas, February 2010.

“*HIPAA, Red Flags and Other Compliance Headaches*,” American College of Foot and Ankle Surgeons Scientific Conference, Las Vegas, February 2010.

“*Physician Employment Agreements: Dos and Don'ts*,” Las Vegas, February 2010.

“*HIPAA Changes from the Economic Stimulus Package and Data Breach Response*,” Medical Group Management Association, Las Vegas, December 2009.

“*American Recovery and Reinvestment Act, Electronic Records and HIPAA*,” American College of Healthcare Executives, Healthcare Financial Management Association and Nevada Healthcare Association Annual Meeting, Reno, NV, September 2009.

“*Setting Up and Maintaining Your Corporate Entity Documents*,” National Association of Women Business Owners Workshop Series, July 2009.

“*The (Invisible) Line Between Franchisor and Franchisee: When You Can Be Held Liable for Your Franchisee's Actions*,” June 2009.

“*Procedures for Conducting E-Discovery*,” National Bar Association Annual Labor and Employment Law Conference, New Orleans, March 2009.

“*New Developments Concerning the Anti-Markup Rule, Stark III and HIPAA*,” Trends in Healthcare Compliance and Enforcement Seminar, with William Fischer, January 2009.

“*Employment Issues in Mergers and Acquisitions*,” National Bar Association Annual Labor and Employment Law Conference, Las Vegas, May 2008.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

Make-A-Wish of Southern Nevada, *Board of Directors* (January 2009 – February 2014); *Secretary* (August 2013 – February 2014); *Governance Committee Member* (August 2009 – August 2013)

Las Vegas Urban League, *Governing Board of Directors* (May 2015 – September 2017)

Community Counseling Center of Las Vegas, *Board of Directors* (September 2008 – September 2017)

Cultural Diversity Foundation, *Board of Directors* (August 2014 – August 2016)

Jack and Jill of America, Inc., *Member* (2007 – present); National, Nominating Committee (2019 – 2020); Far West Region, Nominating Committee Chair (2017 – 2019); Las Vegas Chapter, *President* (2017 – 2019); *Vice President* (2015 – 2017) *Treasurer* (June 2014 – 2015); *Legislative Chair* (June 2013 – May 2017; June 2019 – June 2021); *Parliamentarian* (June 2009 – May 2013); *Program Director* (March 2008 – May 2009)

Alpha Kappa Alpha Sorority, Inc. *Member* (1990 – present); International, *Second International Vice President* (July 1992 – July 1994); *Undergraduate Activities Committee Chair* (July 1992 – July 1994); *Leadership Seminar Co-Chair* (July 2017); Far Western Region, *Nevada State*

*Connection Coordinator (AKA Day at the Capitol Chair) (2015 – 2022);* Ida L. Jackson Leadership Institute Faculty Member (2019 – present); *Las Vegas Chapter, Member (2008 – present); President (2019 -2022); First Vice President of Programs (2018); Parliamentarian (2015 – 2017); Bylaws Committee Chair (2015 – 2017); Social Justice and Human Rights Initiative Chair (2014)*

The Links, Incorporated, *Member (May 2013 – May 2020); Western Area, Black Women Empowering Black Women Committee (2021 – present); Las Vegas Chapter, Membership Committee Vice Chair (August 2013 – April 2014); Parliamentarian (May 2014 – April 2016); Financial Secretary (December 2015 – April 2016); Fund Development Co-Chair (May 2016 – April 2018)*

Southern Methodist University, *Alumni Board Member (2012 – 2015); Las Vegas Alumni Chapter, President (October 2014 – October 2017)*

Suicide and Crisis Center, *Board of Directors (March 2004 – October 2007)*

Texas Discovery Gardens, *Secretary, Board of Directors (June 2004 – February 2007)*

Victory Neighborhood Services Center, *Board of Directors (May 2002 – May 2003)*

Greater Columbus Promise for Youth, *Board of Governors (June 1998 – May 1999)*

City Year Young Heroes, *Mentor (January 1998 – May 1998)*

33. List honors, prizes, awards, or other forms of recognition.

Success in the City Honoree, GoUrbanVegas.com, January 2020

Attorney of the Year, Las Vegas Chapter of the National Bar Association, September 2014

Woman in Business Recognition, Urban Chamber of Commerce, March 2014

Super Lawyers, Mountain States Super Lawyers, June 2013, June 2014, June 2015, June 2016, June 2017

Southern Nevada Top Attorneys, Nevada Business Magazine, September 2010, June 2012, June 2014, June 2016

Ruby Garland Woman of Distinction, Charms, Incorporated, June 2016

Featured on Cover, Nevada Business Magazine, September 2012

Entrepreneur of the Year, National Association of Women Business Owners, April 2012

Business Leaders Under 40, Nevada Business Magazine, November 2010

Women to Watch 2010, InBusiness Las Vegas, January 2010

Top 30 Leaders of the Future, *Ebony Magazine*, November 1996

Who's Who Among American Students (Law), 1995 and 1996

Key to the City, *Dayton, OH*, April 1993

Honorary County Commissioner, *Shelby County, TN*, March 1993

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

**Professional Speaking Engagements:**

*"Bias & Discrimination in the Practice of Law"*, Nevada Government Civil Attorneys' Conference, October 9, 2020. (attached)

*"Ethics and Bias in the Workplace"*, Nevada Attorney General's Office, December 16, 2019. (attached)

*"Marijuana and the Workplace Webinar,"* Women's Business Enterprise Council – West, March 2017.

*"M&A Agreements from Start to Finish Webinar,"* National Business Institute, February 2017.

*"Marijuana Business Law in Nevada,"* National Business Institute, Las Vegas, October 2016.

*"Ethical DIY Promotion Tips,"* State Bar of Nevada, SMOLO Institute, September 2016. (attached)

*"Can We Have it All? Work/Life Balance"*, UNLV Women's Research Institute of Nevada, June 2016.

*"Medical Marijuana in the Workplace,"* Branch Benefits Consultants, Las Vegas, August 2015.

*"10 Interview Questions You Should Never Ask,"* Workforce Connections, Las Vegas, June 2015.

*"LLC Workshop: Choose, Draft and Maintain,"* National Business Institute, Las Vegas, September 2014.

*"Ethical Issues in Internal Investigations,"* Association of Corporate Counsel Chapter luncheon, Las Vegas, July 2014. (attached)

*"Setting Up Your Business Legally,"* Urban Chamber of Commerce, Las Vegas, October 2012.

*"How to Keep Tax-Exempt Organizations in Compliance,"* National Business Institute, Las Vegas, August 2011.

*"Employment Laws Every Office Manager Should Know,"* Medical Group Management Association, Las Vegas, June 2011.

*Mastering Mergers and Acquisitions,* National Business Institute, Las Vegas, September 2010.

- “Reducing the Risk of Fraud and Abuse: How Do You Start?”* Nevada Healthcare Forum, Las Vegas, October 2010.
- “Tax and Business Implications of Healthcare Reform,”* Holland & Hart Breakfast Briefing, Las Vegas, June 2010.
- “A Googling We Will Go: An Employment Law Update on Social Media, Domestic Partnership, and Mother's Rights,”* Holland & Hart Breakfast Briefing, Las Vegas, May 2010.
- “Legal Land Mines in Healthcare for the In-House Lawyer,”* Association for Corporate Counsel Nevada Chapter luncheon, Las Vegas, March 2010.
- “Health Care Reform: What's Happening,”* American College of Foot and Ankle Surgeons Scientific Conference, Las Vegas, February 2010.
- “HIPAA, Red Flags and Other Compliance Headaches,”* American College of Foot and Ankle Surgeons Scientific Conference, Las Vegas, February 2010.
- “Physician Employment Agreements: Dos and Don'ts,”* Las Vegas, February 2010.
- “HIPAA Changes from the Economic Stimulus Package and Data Breach Response,”* Medical Group Management Association, Las Vegas, December 2009.
- “American Recovery and Reinvestment Act, Electronic Records and HIPAA,”* American College of Healthcare Executives, Healthcare Financial Management Association and Nevada Healthcare Association Annual Meeting, Reno, NV, September 2009.
- “Setting Up and Maintaining Your Corporate Entity Documents,”* National Association of Women Business Owners Workshop Series, July 2009.
- “The (Invisible) Line Between Franchisor and Franchisee: When You Can Be Held Liable for Your Franchisee's Actions,”* June 2009.
- Procedures for Conducting E-Discovery,* National Bar Association Annual Labor and Employment Law Conference, New Orleans, March 2009.
- “New Developments Concerning the Anti-Markup Rule, Stark III and HIPAA,”* Trends in Healthcare Compliance and Enforcement Seminar, with William Fischer, January 2009.
- Employment Issues in Mergers and Acquisitions,* National Bar Association Annual Labor and Employment Law Conference, Las Vegas, May 2008.

**Other Speaking Engagements:**

“Fraternities v. Sororities: Which has the greater influence on Black culture?”, The R-gument, October 24, 2020 (attached)

Stump Speech for Tom Steyer for President, North Carolina Democratic Dinner, February 29, 2020

“African Americans in the Law”, Nevada State College Multicultural Program, February 28, 2020 (attached)

Occasion Speech, Alpha Kappa Alpha Sorority, Inc. Las Vegas Joint Founders’ Day Luncheon, February 9, 2019 (attached)

Welcome Speech, Alpha Kappa Alpha Sorority, Inc. Kappa Xi Chapter New Member Luncheon, November 19, 2017 (attached)

“Chasing After the Dream: What Does it Take to be Successful?”, Les Femmes Douze Debutantes, June 25, 2016 (attached)

“What is Success?”, Alpha Kappa Alpha Sorority, Inc. and Omega Psi Phi Fraternity, Inc. Scholarship Brunch, May 5, 2015 (attached)

From 1992 – 1994, I served as the Second International Vice President for Alpha Kappa Alpha Sorority, Inc. In that position, I frequently served as keynote speaker at various events, including conferences and workshops. I do not have copies of those speeches but they ranged from motivational speeches for our undergraduate members to operational issues within the sorority.

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

I like to travel.

Conduct
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38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

Yes

My husband and I have had tax liens issued against us. We have always filed tax returns and paid taxes, but there were a few years in which we did not pay enough taxes. As such, tax liens were levied for the tax periods ending in 2010, 2011 and 2012. We entered into a payment plan, have since paid all taxes, and the tax liens have been released. (Copies of the lien releases can be provided upon request.) Erring on the side of caution, we have subsequently been more conservative with the filing of our taxes, even receiving refunds.

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

My husband is the Nevada Attorney General. There may be cases handled by him or the attorneys in his office from time to time. The Attorney General may also be named as a party in his official capacity. It would appear, therefore, that Rule 2.11 of the Revised Nevada Code of Judicial Conduct would require recusal.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

I applied to this commission for the vacancy in Department 29 in September 2016 and the vacancies in Departments 10 and 18 in 2017. I also applied to the selection committee interviewing for openings on the United States District Court in 2021. I was not selected for the positions.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See attached.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

Since my initial applications to this committee, I have continued my professional development to put myself in the best position to successfully acclimate to the bench, if appointed. This professional development includes attending the Judicial Academy at the National Judicial College. This course for aspiring judges covered a myriad of subjects to make the transition to the bench easier for incoming judges and fairer to those who appear in their courtrooms.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See attached.



47. Statement that describes what sets me apart from my peers

My diverse legal background and intersectionality make me an ideal candidate for the bench.

My knowledge, skills and proven effectiveness as an attorney set me apart and qualify me for the position. For example, I have both transactional and litigation experience. I understand how deals are put together and what makes them fall apart. I also understand how and why these matters end up in court and how they are litigated. And I have experience in nearly all aspects of the legal profession, including as a judicial law clerk, legislative employee, in-house attorney, large-firm attorney and solo practitioner. I understand the inner workings of the court, how bills become law, how corporations view cases and the manner in which cases are handled from the solo practitioner level up to the largest law firm. Very few attorneys have this breadth of experience.

In addition, my intersectionality as an African American woman provides a diversity of thought and experience that is needed on the court. Importantly, I have relied upon the different experiences and perspectives I possess and combined them with my abilities and work ethic to bring excellence to any field in which I endeavor. If selected, I will do the same and apply those characteristics to fulfill the duties of a judicial officer.

My background matters because it will greatly benefit the community at large. It matters because I can relate to the parties who come before my court. Specifically, my lived experiences include interacting with people in marginalized communities, as well as those at the upper echelon of society. My background has instilled within me integrity, a proper temperament and a general respect for all human beings.

My background matters because I have lived the experience of a large-firm lawyer and a solo practitioner. I understand the challenges in both settings. I understand the eager young associate wanting to make a name for herself as she handles her first case, and I understand office politics that could affect an attorney's ability to be fully effective. I also understand the pressures of having a small firm and how juggling all of the necessary tasks can be overwhelming.

My experience matters because I understand cases from the simple to the complex. When litigants appear in a courtroom, they need to have confidence in the judge handling their case – confidence that the judge will neither devalue a case perceived to be basic or routine nor fail to understand its complexities or subtle nuances if it involves novel or complicated issues.

My experience matters because I know how to structure a deal and what makes deals fall apart, knowledge that could be useful when presiding over cases involving business transactions, mergers and acquisitions. I also have litigation experience with employment law and business law issues, knowledge that would help me easily transition into my role as a judge, thus minimizing the learning curve.

My experience matters because, as a former law clerk and litigator, I have observed and experienced varying approaches to courtroom practice, both positive and negative. I have witnessed civility and incivility, cordiality and confrontation, as well as zealousness and unpreparedness. Having seen this conduct firsthand, I would be in a position to move beyond it and focus on the case.

My experience matters because I have experience in a number of areas that may present themselves in my court. For example, as a domestic relations and juvenile court clerk, I obtained family law experience, combined with some criminal experience. The criminal matters included

various charges, including theft and murder. Similarly, my appellate court experience involved both civil and criminal matters, ranging from employment law to capital punishment. These experiences provided me with a foundation upon which to build my knowledge in these areas.

I am a quick learner, and having a base that includes transactional law and litigation in the areas of business, family, criminal and employment law will be extremely instrumental in allowing me to “get up to speed” swiftly. To be sure, no judge knows every substantive topic. But my background and abilities will allow me to understand the issues to render legally-sound rulings.

My lived experience matters because I will respect everyone in my courtroom and treat them with dignity. A wise woman once told me “Being a lawyer is what you do. It’s not who you are.” I have carried that mantra with me and have reminded myself that the fact that I was fortunate enough to become a lawyer does not make me better than others. It is, indeed, what I do. Not who I am. I would continue to carry that mantra forward if appointed as a judge.

In short, my life experiences set me apart and make me a great choice for Department VII. While I assume every applicant who applies for this position will be qualified, I believe that my passion and commitment to serve, combined with my unique background, make me best suited for this position. Those things will make me an asset on the bench. It matters to the people who would come before my court, and I hope it matters to you. Thank you for the consideration!

**SUCCESSFUL OPPOSITION TO MOTION TO DISQUALIFY****I. INTRODUCTION**

Plaintiff, Nevada Policy Research Institute (“NPRI”) seeks to deprive adjunct professors and a director from their chosen counsel and force them to personally pay attorneys’ fees to defend against a baseless action. To do so, NPRI misquotes and misapplies the relevant statutes, all the while not even having standing to bring the Motion.

NPRI lacks standing to bring its Motion to Disqualify because it has not demonstrated any particularized harm and it does not have general taxpayer standing. Simply put, NPRI has not been harmed in any way.

Additionally, NPRI cannot establish any of the important interests necessary to support its request. Specifically, NSHE Defendants have a right to choose their own counsel and, if NPRI’s Motion is granted, not only will they be deprived of this right but also they will be required to incur unnecessary expense to obtain new counsel. Importantly, NPRI has filed its Motion for tactical purposes to gain additional time to respond to NSHE Defendants’ Motion to Dismiss.

Contrary to NPRI’s assertions, current counsel are deemed “official attorneys” by the express words of the statute that designate the chief legal officer or authorized representative as the attorney represent any current employee who is involved in a legal action.

Additionally, Nevada law requires that current counsel defend its employees when they are sued because of their employment. NPRI repeatedly references defendants’ dual employment as the basis for the lawsuit. If the defendants were not employed by governmental entities, they would not be sued. Therefore, the official attorneys are required to represent them.

Even if counsel were not obligated to defend, however, there is nothing in the statute that prohibits current counsel from representing the NSHE Defendants on a permissive basis.

For all of these reasons, NPRI's Motion to Disqualify should be denied.

## II. FACTS

The caption of the Amended Complaint identifies each and every defendant as “an individual engaging in dual employment.” (Am. Compl.) Specifically, the Amended Complaint alleges that Osvaldo Fumo is engaging in dual employment with the Nevada State Assembly and University of Nevada, Las Vegas as an Adjunct Instructor (*Id.* ¶ 10), that Dina Neal is engaging in dual employment with the Nevada State Assembly and Nevada State College as an Adjunct Instructor (*Id.* ¶ 14), and that Heidi Seevers Gansert is engaging in dual employment with the Nevada State Senate and the University of Nevada, Reno as the Executive Director, External Relations (*Id.* ¶ 11). In fact, “NPRI files this Complaint for Declaratory and Injunctive Relief to address the ongoing constitutional violations by Defendants, and each of them, for engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments.” (*Id.* ¶ 1). Indeed, the word “employee” or “employment” is stated eighteen times in the caption and body of the Amended Complaint. (*Id.*) It is clear from the Amended Complaint that the NSHE Defendants are being sued because they are employed at NSHE educational institutions.

## III. LEGAL ANALYSIS

### A. NPRI lacks standing to move to disqualify counsel.

Standing is a jurisdictional issue. *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 102, 118 S.Ct. 1003, 1016, 140 L.Ed.2d 210 (1998); *Bender v. Williamsport Area School District*, 475 U.S. 534, 541, 106 S.Ct. 1236, 1331, 89 L.Ed.2d 501 (1986). “The party seeking to disqualify bears the burden of establishing that it has standing to do so.” *Liapis v. Second Judicial District Court*, 128 Nev. 414, 420, 282 P.3d 733, 737

(2012); *see also State ex rel. Cannizzaro v. First Judicial District Court*, 136 Nev. Adv. Op. 34, 466 P.3d 529, 531-532 (2020). “The moving party bears the burden of establishing an ethical violation or other factual predicate upon which the motion [to disqualify] depends.” *Hernandez v. Guglielmo*, 796 F.Supp.2d 1285, 1289 (2011) (citing *United States v. Walker River Irr. Dist.*, No. 3:73CV127ECR (RAM), 2006 WL 618823 (D. Nev. March 10, 2006)). “Disqualification is a drastic measure which courts should hesitate to impose except when absolutely necessary.” *Id.* at 1289-1290(citing *United States v. Titan Pac. Construction Corpl*, 637 F.Supp 1556, 1562 (W.D. Wash. 1986)). A non-client may only establish standing by demonstrating a concrete and particularized injury that is actual and imminent but not hypothetical or conjectural. *Hernandez*, 796 F. Supp. 2d at 1290.

**1. NPRI cannot establish any particularized harm to give it standing**

NPRI has not set forth any facts to demonstrate that it has standing to bring a motion to disqualify. It has not identified any interest it has in the issue as to who represents the NSHE Defendants. NPRI has not alleged any ethical violation resulting from NSHE’s representation of its employees, nor has NPRI pointed to any other actual or imminent harm that will result if the NSHE attorneys continue representation of their clients. Accordingly, NPRI has no legal standing to move for disqualification.

**2. General taxpayer standing is not sufficient to establish standing**

Even if it is assumed that NPRI is attempting to show standing to advance the interests of taxpayers generally, this would be insufficient to establish standing. Nevada law is clear that no generalized taxpayer standing is available to NPRI. *Katz v. Incline Village General Improvement District*, 414 P.3d 300, 2018 WL 1129140 (unpublished decision), Nev. S. Ct. Case No. 70440 (Feb. 26, 2018) (“This court recently reaffirmed the general rule that a taxpayer lacks

standing when he or she has not suffered a special or peculiar injury different from that sustained by the general public.”); *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) (“Generally, a party must show a personal injury and not merely a general interest that is common to all members of the public.”); *Blanding v. City of Las Vegas*, 52 Nev. 52, 74, 280 P. 644, 650 (1929) (rejecting the contention that taxpayers can establish standing without showing special injury).

**B. NPRI cannot establish any of the important interests required to support disqualification**

Because NPRI has failed to establish standing, this Court lacks jurisdiction to entertain NPRI’s motion. Moreover, even if NPRI had standing, an analysis of disqualification principles requires that the motion be denied. Interests that must be considered “include a client’s right to choose legal counsel, the expense of obtaining substitute counsel, and the possibility that such a motion was brought for tactical purposes.” *Cannizzaro*, 466 P.3d at 532 (citing *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.*, 20 Cal.4<sup>th</sup> 1135, 1144-1145, 86 Cal.Rptr.2d 816, 823, 980 P.2d 371, 377-378 (1999)).

**1. NSHE Defendants have a right to choose their own counsel**

As set forth above, the right to choose legal counsel is an important interest that a court should consider when ruling on a motion to disqualify. *Id.* NSHE Defendants have chosen their counsel – counsel who have already begun diligently representing them. The counsel selected by NSHE Defendants have an advantage as it relates to understanding the Nevada System of Higher Education and each of its institutions because counsel is in-house and is familiar with various issues that may arise during the pendency of this litigation. If NSHE Defendants are required to obtain independent counsel, new counsel would be disadvantaged because they

would have to familiarize themselves with the operations of three separate institutions and the Nevada System of Higher Education. Not only would disqualification deny Fumo, Gansert and Neal their right to select counsel, but it would also prejudice them by having to hire counsel who is not familiar with the respective institutions.

**2. NSHE Defendants will incur unnecessary expense if required to obtain different counsel**

Should the Court grant NPRI's Motion, the NSHE Defendants will be burdened with unwarranted expense to hire new counsel. The counsel selected by NSHE Defendants – General Counsel for Nevada State College and Assistant General Counsel for University of Nevada, Reno – are salaried employees who have undertaken the defense of the NSHE Defendants as part of their regular workload. As it stands, there is no expense to the NSHE Defendants and no expense to taxpayers. Forcing NSHE Defendants to obtain separate counsel when there is no expense to taxpayers is punitive. There is no harm to the public. The only harm would be to the NSHE Defendants, two of whom are part-time adjunct professors. Alternatively, and as discussed below, if the NSHE Defendants are forced to obtain separate counsel, they may be entitled to reimbursement of attorneys' fees, costs and other reasonable expenses of their defense from the State of Nevada, pursuant to Nev. Rev. Stat ("NRS") 41.0347, which would be an actual cost to taxpayers. The Motion to Disqualify should be denied on this basis.

**3. NPRI filed its motion solely for tactical purposes**

Moreover, the third consideration raised by *Cannizzaro* – whether the motion to disqualify was brought for tactical purposes – merits close examination. The conclusion to NPRI's motion is telling. Therein, NPRI reveals that one of the objectives behind its motion is



to obtain more time to file an opposition to the NHSE Defendants' Motion to Dismiss by seeking a stay until 10 days from the date that new counsel(s) would appear for the NSHE Defendants. Courts, however, should not permit a party to misuse a motion for disqualification as an instrument of harassment or delay. *Brown v. Eighth Judicial District Court*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000). The Court in *SpeeDee Oil* used the term "tactical abuse" in describing such dangers inherent in a motion to disqualify. *SpeeDee Oil*, 20 Cal.4<sup>th</sup> 1145, 86 Cal.Rptr.2d 823.

NPRI is clearly engaging in such "tactical abuse" here, a wrong that this Court must carefully guard against in considering the motion to disqualify counsel. "Particularly strict judicial scrutiny" must be applied to a motion to disqualify due to the significant possibility of abuse for tactical advantage. *Optyl Eyewear Fashion Int'l Corp. v. Style Cas., Ltd.*, 760 F.2d 1045, 1050 (9<sup>th</sup> Cir. 1985)(citing *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715. 721-722 (7<sup>th</sup> Cir. 1982)). In fact, the *Optyl* court awarded attorneys' fees and double costs as a sanction for misusing a motion to disqualify. *Optyl*, 689 F.2d 1052. Applying strict judicial scrutiny here, it is clear that NPRI's motion must be denied because NPRI has completely failed to show any basis to support a finding that it has legal standing to bring this motion.

### **C. Current counsel qualify as official attorneys per statute**

NPRI argues that "the statutory definition of an 'official attorney' who may provide a defense to a State employee at the State's expense, **limits that representation only** to cases where the employee 'is named as a defendant solely because of an alleged act or omission relating to the public duties or employment'..." (Motion to Disqualify 8:19-21 (emphasis added).) This argument is inaccurate and misleading and should be summarily rejected.

In its Motion, NPRI conveniently and disingenuously omitted the portion of the definition of “official attorney” that relates simply to an action involving an employee. In its entirety, NRS 41.0338 reads:

NRS 41.0338 “Official attorney” defined. **“Official attorney” means:**

1. The Attorney General, in an action which involves:

(a) A present or former state judicial officer, State Legislator, officer or employee of this State, immune contractor or member of a state board or commission; or

(b) A person who is named as a defendant in the action solely because of an alleged act or omission relating to the public duties or employment of a person listed in paragraph (a).

2. **The chief legal officer or other authorized legal representative of a political subdivision, in an action which involves:**

(a) A present or former local judicial officer of that political subdivision, **a present or former officer or employee of that political subdivision** or a present or former member of a local board or commission; or

(b) A person who is named as a defendant in the action solely because of an alleged act or omission relating to the public duties or employment of a person listed in paragraph (a).

NEV. REV. STAT. § 41.0338 (emphasis added).

By the clear words of the statute, which is written in disjunctive form, the official attorney designation is established by the mere fact that the NSHE Defendants are present employees who are involved in an action. Therefore, NSHE Defendants’ current attorneys are well within statutory parameters to act as official attorneys for the defendants and NPRI’s claims to the contrary are groundless.

**D. Nevada law clearly requires defense of the NSHE Defendants.**

Throughout the Motion to Disqualify, NPRI confirms that it is suing the defendants because of their “dual employment”:

- “NPRI’s challenge to the Defendants’ continued dual employment as elected officials serving in the Nevada State Legislature and employees of State or local government, ..., is a matter of significant public importance.” (Motion to Disqualify 6:20-23.)

- “On the contrary, in the instant case the Defendants were named solely because of their individual decisions to serve in the Nevada State Legislature while also being employed by a State or local government.” (Motion to Disqualify 8:3-5.)
  - “Again, the instant litigation seeks only to challenge the fact of Defendants’ State employment, not any actions taken as a result of such employment.” (Motion to Disqualify 8:24-25.)

Additionally, the caption of the Amended Complaint identifies Defendants Fumo, Gansert and Neal as employees of NSHE institutions, and the allegations in the body of the Amended Complaint emphasize their employment with NSHE. In other words, *but for* the defendants’ employment with NSHE, they would not be named in this litigation.

NPRI seems to argue that a state employee can only be represented by official counsel for matters involving the performance of duties. The statute, however, expressly allows for representation for matters related to the public duties **or** employment. The pertinent statutory language follows:

**The official attorney shall provide for the defense, including the defense of cross-claims and counterclaims, or any present or former local judicial officer, state judicial officer, officer or employee of the State or a political subdivision, immune contractor or State Legislator in any civil action brought against that person based on any alleged act or omission relating to the person’s public duties or employment, or any other person who is named as a defendant in a civil action solely because of an alleged act or omission related to the public duties or employment of a local judicial officer, state judicial officer or employee of the State or a political subdivision, immune contractor or State Legislator ...**

NEV. REV. STAT. § 41.0339(1) (emphasis added).

The plain reading of the statute requires that official counsel represent its employees if they are sued because of their employment. Any other reading would nullify the words “or employment” in the statute. The fact that Defendants Fumo, Gansert and Neal are employed by NSHE is the basis for NPRI’s lawsuit. (Motion to Disqualify 8:24-15) (“the instant litigation seeks only to challenge the fact of Defendants’ State employment...”) Employment with NSHE is the very essence of NPRI’s argument. In fact, NPRI references the fact of employment or dual employment repeatedly both in the Amended Complaint and the Motion to Disqualify. The fact

of employment is as pure an act related to employment as could be. Because being employed is related to employment, the NSHE Defendants are entitled to representation under Nevada law, and NPRI's Motion to Disqualify should be denied.

**E. Official counsel is required to represent employees sued in their individual capacities for matters related to their employment.**

NSHE Defendants have been sued because of their employment thereby triggering the responsibility of current counsel to represent them. *See* NEV. REV. STAT. § 41.0339. The failure to provide such defense would subject NSHE to liability for all NSHE Defendants' attorney's fees and litigation costs. NEV. REV. STAT. § 41.0347. As a result, current counsel should be allowed to continue representing NSHE Defendants.

A Nevada U.S. District Court case is instructive. In *Horning v. Washoe County*, the plaintiff sued four sheriffs' deputies in their individual capacities related to a civil rights claim. 108 F.R.D. 364 (D. Nev. 1985). Interpreting NRS 41.0339, the Court determined that NRS 41.0339 required the employer "to defend its employees against any civil action arising out of the performance of their duties, if the employees' acts were not wanton or malicious." *Horning*, 108 at 365. The Court made this determination although the employees were sued in their individual capacities.

Providing a defense to the NSHE Defendants is a mandatory obligation under NRS 41.0339(1). This obligation is required when employees are sued because of the performance of their duties or because of their employment. NEV. REV. STAT. § 41.0339(1). The appearance of NSHE counsel in this litigation on behalf of Defendants Fumo, Gansert and Neal fulfills the statutory directive to NSHE that it protect the legal interests of its employees when they are sued as a result of their employment with NSHE, and NPRI's Motion to Disqualify should be denied.

**F. NRS 41.0339 does not limit official counsel's ability to represent its employees.**

NRS 41.0339 only sets forth the criteria when official counsel **MUST** represent its employees. NEV. REV. STAT. § 41.0339. It does not address circumstances when official counsel **MAY** represent its employees. Addressing this very issue, the federal court for the District of Nevada determined:

The language of NRS 41.0339 specifies the conditions under which the Attorney General is required to provide for the legal defense of certain individuals. It does

not purport to limit the conditions under which it may provide for such individuals' defense. Indeed, NRS 41.03415 grants the Attorney General the discretion to determine whether to tender the defense of a person submitting a request for defense. Moreover, plaintiff cites no authority for the proposition he has standing to complain about the Attorney General's decision to defend these state defendants.

*Kenmore v. Toco*, No. 2:06CV00673JCM-PAL, 2007 WL 556923, at \*5 (D. Nev. Feb. 13, 2007).

As the statute indicates and as the *Kenmore* case confirms, NRS 41.0339 addresses only required representation, not permissive representation. Therefore, even assuming current counsel is not required to represent NSHE Defendants, it is permitted to do so. As such, NPRI's Motion to Disqualify should be denied.

#### IV. CONCLUSION

Disqualification is a drastic measure that should be employed only when absolutely necessary. Disqualification in this case is unwarranted and would prevent Fumo, Gansert and Neal from being represented by counsel of their choice. It would prevent NSHE from protecting the interests of its employees who are sued for the very reason that they are NSHE employees. It would prevent NSHE from fulfilling the statutory mandate to defend its employees who are sued due to their connection with NSHE. It would impose unwarranted legal expenses on these individuals who have done nothing wrong and only wish to serve the State as citizen legislators.

NPRI's narrow and restrictive reading of NRS 41.0339 is erroneous and misplaced. That statute sets out those circumstances in which representation by the official attorney is mandatory. It does not restrict the official attorney from providing representation in other employment-related matters when the official attorney determines in its discretion that such representation is necessary to protect the interests of its employees and, indeed, the institution's own interest in retaining its valued employees.

... For all of the above reasons, NSHE Defendants respectfully request that NPRI's meritless and frivolous Motion to Disqualify be denied.