

DC-990004525-107  
23 Pages  
FV04-04071 FURER VS. ELOISA  
ANDREW E. FURER  
District Court  
Washoe County  
NVC

1 CODE: 3370

**FILED**

OCT 29 2008

HOWARD W. CONYERS, CLERK

By: [Signature]  
DEPUTY CLERK

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7 IN THE FAMILY DIVISION  
8 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF WASHOE

10 ANDREW FURER,

Applicant,

Case No. FV04-04071

11 vs.

12 ELOISA FURER,

Dept. No. 2

13 Adverse Party.  
14 \_\_\_\_\_

15 **ORDER**

16 Judge Weller entered a recusal order on October 21, 2008. The matter was  
17 randomly assigned to Department 2 on October 21, 2008. This Court now discloses and  
18 orders as follows.

19 1. Mr. Furer's counsel suggested in the objection to recommendation that it was  
20 unclear which judge should preside over the objection hearing. Counsel then disclosed he  
21 "had brief, non-substantive conversations with Judge Hardy regarding the lengthy delays  
22 in getting the decree of divorce entered and what options [he] may have to hasten entry of  
23 that decree."

24 2. This Court agrees with Mr. Meador's factual rendition of the conversation,  
25 which was grounded in this Court's role as presiding judge of the family division.

26 3. This Court has had conversations with Judge Weller about the Furer divorce  
27 proceeding. To the best of this Court's recollection, none of the conversations were  
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1 substantive in nature. This Court did infer from the conversations that Ms. Furer was a  
2 recalcitrant litigant.

3 4. This Court spoke with Master Cooke several times regarding the Chapter 33  
4 proceeding presently pending. The conversations generally focused on the meaning of  
5 NRS Chapter 22 and its decisional authority. This Court did not direct the content of  
6 Master Cooke's recommendation.

7 5. This Court's conversations with Judge Weller and Master Cooke are  
8 authorized by NCJC 3B(7)(c). However, the canons are silent regarding any such  
9 conversation when one of the judges will sit in judgment of the other judicial officer's  
10 recommendation. The conversations may create an appearance of impartiality.

11 6. This Court "shall hear and decide matters assigned to the judge except those  
12 in which disqualification is required." NCJC 3B(1). In Nevada, questions of  
13 disqualification are resolved in favor of remaining on the case. See generally Ham v.  
14 District Court, 93 Nev. 409, 566 P.2d 420 (1977); Las Vegas Downtown Redev. Agency v.  
15 Hecht, 113 Nev. 644, 940 P.2d 134 (1997).

16 7. The duty to sit is controversial. Indeed, the Nevada Judicial Code  
17 Commission has just voted to recommend a different disqualification standard for the  
18 Supreme Court's review when adopting changes to the Code of Judicial Conduct. See  
19 Professor Jeff Stempel's Memorandum, attached as an exhibit, for further analysis.  
20 According to Professor Stempel, close questions of disqualification should be resolved in  
21 favor of disqualification.

22 8. This Court can be impartial in this matter. This Court will not enter a  
23 voluntary recusal order. However, the above disclosures are appropriate because of the  
24 conversations with Master Cooke. Either party may file a motion for disqualification,  
25 which will be tendered to Chief Judge Steinheimer for adjudication. Any such motion  
26 shall be filed no later than Monday, November 10, 2008.

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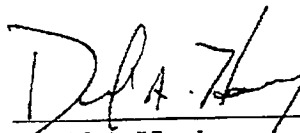
1           9.     Ms. Furer shall file a response to Mr. Furer's objection no later than Monday,  
2 November 10, 2008. This Court will construe Ms. Furer's failure to file a response as a  
3 confession of error.

4           10.    This Court enjoys discretion to determine the manner in which the master's  
5 recommendation will be reviewed. WDCR 32(1)(a). A hearing shall be in the form of a  
6 review of the record with oral argument, unless expressly ordered otherwise. WDCR  
7 32(1)(b). This Court may grant a de novo trial in extraordinary circumstances. Id. This  
8 Court concludes a de novo review is not warranted. The objection will primarily involve a  
9 review of Master Cooke's interpretation of NRS Chapter 22.

10          11.    The parties, through counsel, shall immediately appear and set this matter  
11 for a one-hour hearing. Ms. Furer's attorney may appear telephonically to set the hearing  
12 date. Ms. Furer shall be present at the objection hearing.

13           **IT IS SO ORDERED.**

14           Dated: October 29, 2008.

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17           David A. Hardy  
18           District Court Judge  
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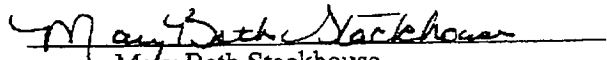
**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and on the 29<sup>th</sup> day of October, 2008, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

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