

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
DAVID FRANKLIN BLACKBURN,  
Respondent.

No. 47363

**FILED**

**NOV 09 2006**

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is a State's appeal from an order of the district court granting respondent's pretrial motion to suppress. Third Judicial District Court, Lyon County; Wayne A. Pederson, Judge.

The State argues that reversal is warranted because District Court Judge Pederson should have recused himself. Specifically, the State argues that recusal was mandatory because Judge Pederson had previously acted as an attorney in the case. We agree.

NCJC 3(E)(1)(b) provides that "[a] judge shall disqualify himself . . . in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . . the judge served as a lawyer in the matter in controversy."<sup>1</sup> In construing

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<sup>1</sup>Emphasis added. See also NRS 1.230(2)(c) (A judge shall recuse himself "[w]hen he has been attorney or counsel for either of the parties in the particular action or proceeding before the court.").

NCJC 3(E), this court has recognized that "a judge's improper failure to recuse himself . . . . mandates automatic reversal."<sup>2</sup>

Respondent concedes that, before being appointed to the bench, then defense attorney Pederson made a court appearance on respondent's behalf, requesting a continuance of the proceedings in this case. Respondent, however, argues that reversal is not warranted because: (1) the State failed to timely raise the recusal issue pursuant to NRS 1.235; (2) then defense attorney Pederson's participation in the case was nominal; and (3) there is no evidence of actual bias or even that Judge Pederson recalled appearing on behalf of respondent.

We conclude that recusal was mandatory because Judge Pederson previously acted as an attorney in the case.<sup>3</sup> NCJC 3(E) is designed to "honor the judicial office as a public trust," "maintain confidence in our legal system" and "avoid even the appearance of partiality."<sup>4</sup> It would be inconsistent with these goals for us to overlook the undisputed fact that Judge Pederson's disqualification was automatic and mandatory under the judicial canons.

Accordingly, we


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<sup>2</sup>Turner v. State, 114 Nev. 682, 688, 962 P.2d 1223, 1226 (1998).

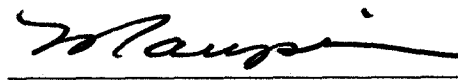
<sup>3</sup>Id. at 686-88, 962 P.2d at 1225-26.

<sup>4</sup>Id. at 688, 962 P.2d at 1226 (quoting Preamble to NCJC and Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860 (1988)).

ORDER the judgment of the district court REVERSED AND  
REMAND this matter to the district court for proceedings consistent with  
this order.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

cc: Honorable Wayne A. Pederson, District Judge  
Attorney General George Chanos/Carson City  
Lyon County District Attorney  
Lyon County Public Defender  
Lyon County Clerk

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<sup>5</sup>In light of our decision reversing the order of the district court, we  
need not consider the State's remaining contentions. Further, upon  
remand, this matter shall be assigned to one of the other departments of  
the Third Judicial District Court.