

A-20-817757-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

November 18, 2020

A-20-817757-C Nevada Policy Research Institute, Plaintiff(s)
vs.
Nicole Cannizzaro, Defendant(s)

November 18, 2020

Minute Order

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building 11th Floor
116

COURT CLERK: Rem Lord

JOURNAL ENTRIES

- Plaintiff's Motion to Disqualify the Official Attorneys from Representing Defendants Osvaldo Fumo, Heidi Seevers Gansert and Dina Neal on Order Shortening Time

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by 11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. Plaintiff says Official Attorneys should be disqualified because Defendants were not sued based upon anything they did in their official capacity but instead are sued for alleged violation of constitution prohibition against dual employment in violation of Article 3 of the Nevada Constitution.

10/9/20 Opposition says Nevada Policy Research Institute lacks standing to even bring this Motion because it cannot demonstrate particularized harm beyond that of any ordinary taxpayer and since standing is a jurisdictional matter, this motion must be denied. Opposition further contends that it is by virtue of the fact that Defendants are government employees that they were sued and Official attorneys are not prohibited from representing them and may choose to represent if so requested. The simple fact is that Official Attorney is a duly authorized legal counsel who is not prohibited from representing the Defendants so this Motion to Disqualify is DENIED. Defendants to submit the Order. COURT FURTHER ORDERED, 11/19/20 hearing VACATED and matter SET for Status Check.

Defendant Nicole Cannizzaro's Motion to Dismiss

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by
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11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Nevada Policy Research Institute simply lacks standing to bring this suit. It is an organization, rather than a particularly-aggrieved individual, harmed by any alleged dual employment. It is quite clear that Nevada Policy Research Institute does not allege any particularized harm beyond that of any ordinary taxpayer and that is simply not enough to give standing to Nevada Policy Research Institute to bring this suit. Nevada Policy Research Institute's Opposition does not make persuasive arguments regarding standing, suggesting that an evidentiary hearing would need to be conducted but not offering any theory as to how an evidentiary hearing would demonstrate particularized harm or otherwise lead to a finding that Nevada Policy Research Institute has standing to pursue this case against Defendants. And the court is not persuaded that Nevada Policy Research Institute comes within the recent Schwartz exception. And, it cannot be ignored that Nevada Policy Research Institute blows hot and cold on whether or not it is suing the Defendants as legislators. Historically, Nevada Policy Research Institute has demonstrated that it has been able to enlist individuals who might provide a more colorable claim of particularized harm but have simply opted not to do so in this case to enhance the possibility of finding that counsel represents someone with actual standing. The court finds that the Reply brief puts the matter to rest. Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motion to Dismiss must be GRANTED. The Joinders of the other Defendants are also GRANTED. Counsel for Defendant to submit the order granting the Motion to Dismiss as to the moving Defendant and all Defendants who filed Joinders to this Motion to Dismiss. COURT FURTHER ORDERED, 11/19/20 hearing VACATED and matter SET for Status Check.

Defendant Jason Frierson's Motion to Dismiss

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by 11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Nevada Policy Research Institute simply lacks standing to bring this suit. It is an organization, rather than a particularly-aggrieved individual, harmed by any alleged dual employment. It is quite clear that Nevada Policy Research Institute does not allege any particularized harm beyond that of any ordinary taxpayer and that is simply not enough to give standing to Nevada Policy Research Institute to bring this suit. Nevada Policy Research Institute's Opposition does not make persuasive arguments regarding standing, suggesting that an evidentiary hearing would need to be conducted but not offering any theory as to how an evidentiary hearing would demonstrate particularized harm or otherwise lead to a finding that Nevada Policy Research Institute has standing to pursue this case against Defendants. And the court is not persuaded that Nevada Policy Research Institute comes within the recent Schwartz exception. And, it cannot be ignored that Nevada Policy Research Institute blows hot and cold on whether or not it is suing the Defendants as legislators. Historically, Nevada Policy Research Institute has demonstrated that it has

been able to enlist individuals who might provide a more colorable claim of particularized harm but have simply opted not to do so in this case to enhance the possibility of finding that counsel represents someone with actual standing. The court finds that the Reply brief puts the matter to rest. Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motion to Dismiss must be GRANTED. The Joinders of the other Defendants are also granted. Counsel for Defendant to submit the order granting the Motion to Dismiss as to the moving Defendant and all Defendants who filed Joinders to this Motion to Dismiss. COURT FURTHER ORDERED, 11/19/20 hearing VACATED and matter SET for Status Check.

Defendant Jason Frierson's Motion to Dismiss

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by 11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Nevada Policy Research Institute simply lacks standing to bring this suit. It is an organization, rather than a particularly-aggrieved individual, harmed by any alleged dual employment. It is quite clear that Nevada Policy Research Institute does not allege any particularized harm beyond that of any ordinary taxpayer and that is simply not enough to give standing to Nevada Policy Research Institute to bring this suit. Nevada Policy Research Institute Opposition does not make persuasive arguments regarding standing, suggesting that an evidentiary hearing would need to be conducted but not offering any theory as to how an evidentiary hearing would demonstrate particularized harm or otherwise lead to a finding that Nevada Policy Research Institute has standing to pursue this case against Defendants. And the court is not persuaded that Nevada Policy Research Institute comes within the recent Schwartz exception. And, it cannot be ignored that Nevada Policy Research Institute blows hot and cold on whether or not it is suing the Defendants as legislators. Historically, Nevada Policy Research Institute has demonstrated that it has been able to enlist individuals who might provide a more colorable claim of particularized harm but have simply opted not to do so in this case to enhance the possibility of finding that counsel represents someone with actual standing. The court finds that the Reply brief puts the matter to rest. Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motion to Dismiss must be GRANTED. The Joinders of the other Defendants are also granted. Counsel for Defendant to submit the order granting the Motion to Dismiss as to the moving Defendant and all Defendants who filed Joinders to this Motion to Dismiss. COURT FURTHER ORDERED, 11/19/20 hearing VACATED and matter SET for Status Check.

Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal's Motion to Dismiss Pursuant to NRCP 12(b)(5) and NRCP 12(b)(6)

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by 11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Nevada Policy Research Institute simply lacks standing to bring this suit. It is an organization, rather than a particularly-aggrieved individual, harmed by any alleged dual employment. It is quite clear that Nevada Policy Research Institute does not allege any particularized harm beyond that of any ordinary taxpayer and that is simply not enough to give standing to Nevada Policy Research Institute to bring this suit. Nevada Policy Research Institute's Opposition does not make persuasive arguments regarding standing, suggesting that an evidentiary hearing would need to be conducted but not offering any theory as to how an evidentiary hearing would demonstrate particularized harm or otherwise lead to a finding that Nevada Policy Research Institute has standing to pursue this case against Defendants. And the court is not persuaded that Nevada Policy Research Institute comes within the recent Schwartz exception. And, it cannot be ignored that Nevada Policy Research Institute blows hot and cold on whether or not it is suing the Ds as legislators. Historically, Nevada Policy Research Institute has demonstrated that it has been able to enlist individuals who might provide a more colorable claim of particularized harm but have simply opted not to do so in this case to enhance the possibility of finding that counsel represents someone with actual standing. The court finds that the Reply brief puts the matter to rest. Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motion to Dismiss must be GRANTED. The Joinders of the other Defendants are also granted. Counsel for Defendants to submit the order granting the Motion to Dismiss as to the moving Defendants and all Defendants who filed Joinders to this Motion to Dismiss. COURT FURTHER ORDERED, 11/19/20 hearing VACATED and matter SET for Status Check.

Nevada Legislature's Motion to Intervene as Defendant

Pursuant to EDCR 2.23 (c) and (d), this matter is being decided on the briefs and pleadings filed by 11/16/2020 by the parties without oral argument since the court deems oral argument unnecessary. The LCB/State of Nevada says it wishes to intervene because it has a real and substantial interest in the issues here since it has historically rendered opinions supporting the kind of employment that the Defendants are alleged to have and providing legal reassurance to the Defendants that such employment is entirely legal and constitutional. Nevada Policy Research Institute opposes saying the Nevada Legislature does not have the right to intervene and that permissive intervention, which is discretionary, should not be permitted. Nevada State Legislature's Reply Brief is very persuasive and the court is persuaded that the Nevada Legislature is entitled to intervene as a matter of right and that even if it were only entitled to permissive intervention, the court chooses to exercise its discretion to find that the Nevada Legislature is also allowed to intervene permissively. Nevada Legislature's Motion to Intervene as Defendant is granted. Nevada Legislature is directed to prepare the order which includes for the court's findings the headlined points contained in the Reply Brief. COURT

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FURTHER ORDERED, matter SET for Status Check.

12/17/20 9:00 AM STATUS CHECK: FILING OF ORDERS (11/17/20)

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /rl 11/18/2020