

# Agenda Items # 85, 86, 87

Additional material provided  
after initial posting of  
supporting material but prior to  
meeting.

Items #85, 86 and 87

Dockets

21-03016, 21-03017 and  
21-03018

To be heard together

21-03016, 21-03017



21-03018

1 **SIMONS HALL JOHNSTON PC**  
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6 *Attorneys for Reno Cab Company, Inc.*  
*dba Reno Sparks Cab Co., Roy L. Street dba*  
7 *Capitol Cab Company, and Yellow Cab of Reno, Inc.*

8  
9 **BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

10 IN THE MATTER of the Petitions of Reno Cab  
11 Company, Inc. dba Reno Sparks Cab Co.,  
Roy L. Street dba Capitol Cab Company, and  
12 Yellow Cab of Reno, Inc.

**DOCKET NOS. 21-03016, 21-  
03017, and 21-03018**

13  
14 **MOTION TO DISQUALIFY AND MOTION TO CONTINUE**

15  
16 Reno Cab Company, Inc. dba Reno Sparks Cab Co. ("Reno Sparks Cab"), Roy L.  
17 Street dba Capitol Cab Company ("Capitol Cab"), and Yellow Cab of Reno, Inc. ("Yellow  
18 Cab") (hereinafter collectively "Petitioners"), by and through their counsel, Mark G.  
19 Simons and Jeremy B. Clarke of SIMONS HALL JOHNSTON PC, hereby move to  
20 disqualify Commissioners David Newton and George Assad from acting as hearing  
21 officers for the Nevada Transportation Authority ("NTA") during the May 10, 2021 Hearing  
22 regarding Petitioners' Petitions to Deviate.

23 **I. BASIS OF MOTION.**

24 This hearing is necessitated because the NTA is attempting to alter its "Master  
25 Lease" regulations and precedent which it has followed since 1993. Despite consistent  
26 application of NRS Chapter 706 and NAC Chapter 706 for approximately 28 years, on  
27 September 3, 2020, the NTA issued a letter unilaterally implementing new regulations in  
28 the form of a mandatory "Template Lease." This new regulation mandates that every

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1 Template Lease must be executed and approved by the NTA prior to a driver changing  
2 taxicabs even though there were no applicable revisions to NRS Chapter 706 or NAC  
3 Chapter 706. Under the NTA's new regulation, each Template Lease limits individual  
4 drivers to a single taxicab, improperly creating a lessor/lessee relationship between the  
5 taxicab and the driver, rather than the company and driver.

6 In light of the new regulation, the NTA required Petitioners to file Petitions to  
7 Deviate on March 12, 2021 (the "Petitions") seeking a variance from the NTA to deviate  
8 slightly from new regulation, while at the same time maintaining compliance with statutory  
9 and code requirements. On April 8, 2021, at its regularly scheduled meeting, the NTA  
10 considered the petitions and determined that a hearing, set for May 10, 2021 was  
11 appropriate (the "Hearing"). At present, Commissioner David Newton is scheduled to  
12 preside over the Hearing. Unfortunately, however, Petitioners will be calling  
13 Commissioners Newton and Assad as material witnesses at the Hearing, creating the  
14 appearance potential bias and an unwaivable conflict. Accordingly, Commissioners  
15 Assad and Newton must be disqualified from acting as hearing officers during the  
16 Hearing.

17 **II. LEGAL ARGUMENT.**

18 **A. APPLICABLE AUTHORITIES REQUIRING DISQUALIFICATION.**

19 To begin, "[t]he hearing officers involved in this case serve in a quasi-judicial  
20 capacity, similar in many respects to that of administrative law judges. As this Court  
21 repeatedly has recognized, due process demands impartiality on the part of those who  
22 function in judicial or quasi-judicial capacities." *Schweiker v. McClure*, 456 U.S. 188, 195,  
23 102 S. Ct. 1665, 1670 (1982); see also *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623,  
24 625 (1955) ("to perform its high function in the best way 'justice must satisfy the  
25 appearance of justice'").

26 Specifically, the Nevada Administrative Procedures Act requires that in a contested  
27 case, "[o]pportunity must be afforded all parties to respond and present evidence and  
28 argument on all issues involved." NRS 233B.121(4). Further, "[e]ach party may call and

1 examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter  
2 relevant to the issues . . . ." NRS 223B.123(4).

3 NRS 233B.122(1) provides that, "[n]o agency member who acts as an investigator  
4 or prosecutor in any contested case may take any part in the adjudication of such case."  
5 NRS 233B.122(1). The Administrative Procedures Act identifies the protocol for replacing  
6 an officer when there has been a disqualification as follows:

7 If an officer of an agency disqualifies himself or herself or is  
8 disqualified from participating in the adjudication of any contested case  
9 in which a decision will be rendered which is subject to judicial review,  
10 the officer shall send within 3 working days after the disqualification a  
11 notice of it to the authority which appointed him or her to the agency.  
12 The appointing authority shall within 5 working days after receiving the  
13 notice appoint a person to serve in the place of the disqualified officer  
14 only for the purpose of participating in the adjudication of the contested  
15 case.

16 NRS 233B.122(2).

17 In addition, the United States Code, Federal Rules of Evidence, and Nevada Code  
18 of Judicial Conduct all mandate disqualification of a judicial officer when that officer is a  
19 material witness concerning the matter in dispute. For instance, disqualification is  
20 required when such "judge or lawyer has been a material witness concerning [the  
21 matter]." 28 U.S.C. § 445(b)(2). Rule 605 of the Federal Rules of Evidence provides,  
22 "the presiding judge may not testify as a witness at trial." FRE 605. Finally, in Nevada,  
23 judicial officers are also disqualified when they are likely to be a material witness in the  
24 proceeding. NCJC 2.11(A)(2)(d).

25 **B. COMMISSIONER NEWTOWN SHOULD BE DISQUALIFIED.**

26 The factual history of the NTA's previous approvals of Petitioners' Master Leases  
27 is critical to determining whether the NTA acted arbitrarily by unilaterally creating and  
28 implementing new regulations during the Hearing. Pertinent to the instant Motion,  
Petitioners will demonstrate through documentary evidence and witness testimony that  
the NTA routinely approved Petitioners' Master Leases for decades, including in 2013. In  
reliance on these routine approvals through the NTA's lawful application of NRS 706.473

1 and NAC 706.3753, Petitioners structured their business operations to remain in  
2 compliance with NTA regulations.

3 At the Hearing, Commissioner Newton will be called as a witness to testify  
4 regarding his role as the Senior Deputy Attorney General ("SDAG") in 2013. Indeed,  
5 Commissioner Newton's testimony is significant because, in 2013, the NTA issued at  
6 least two letters approving of Petitioners' form leases. See November 13, 2013 Letter,  
7 attached as Exhibit 1; see also December 10, 2013 Letter, attached as Exhibit 2. It is  
8 further believed that Commissioner Newton's functions in 2013 included representing the  
9 NTA to ensure the NTA complied with all legal requirements, interpreting NRS Chapter  
10 706 and NAC Chapter 706 as applied to Petitioner's Master Leases, and assessing  
11 Petitioners' legal compliance with then existing state law and regulations. Consequently,  
12 Commissioner Newton's testimony will be essential to establishing the NTA's historical  
13 interpretation and application of NRS 706.473 and NAC 706.3753 as applied, not only to  
14 Petitioners, but to all taxicab companies in Nevada.

15 It should also be noted, that as the SDAG in 2013 and pursuant to NRS  
16 233B.122(1), Commissioner Newton served as the "prosecutor" in Petitioners' requests to  
17 approve their form leases. As such, there is no question that Commissioner Newton is  
18 disqualified pursuant to NRS 233B.122(1).

19 Lastly, mindful of his involvement as the SDAG in 2013 and as a material witness  
20 at the Hearing, Commissioner Newton's involvement as a hearing officer gives the  
21 opposite appearance of impartiality. Practically speaking, is Commissioner Newton going  
22 to begin the Hearing as a hearing officer, then "take the stand" as a witness, and then  
23 consider his own testimony as an impartial hearing officer? This presents an impossible  
24 scenario, and one that deprives the Petitioners of due process under the law. See  
25 *Schweiker*, 456 U.S. at 195, 102 S. Ct. at 1670 ("due process demands impartiality on the  
26 part of those who function in judicial or quasi-judicial capacities"). Therefore, there seems  
27 but one choice, Commissioner Newton must be disqualified.  
28

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**C. COMMISSIONER ASSAD MUST ALSO BE DISQUALIFIED.**

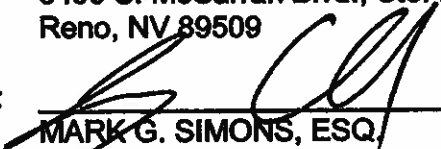
Many of the same statutory and practical reasons just cited also apply to Commissioner Assad. Commissioner Assad was a member of the NTA Commission in 2013 during the approval of the Master Leases and will provide valuable testimony regarding the NTA's historical interpretation and application of NRS Chapter 706 and NAC Chapter 706. He is also expected to testify regarding the process to revise statutes or code provisions, including how those revisions are interpreted and implemented. Petitioners also believe that Commissioner Assad will specifically testify regarding Petitioners' history of compliance and approval with respect to their Master Leases. Accordingly, Commissioner Assad is also a material witness in the Hearing and must be disqualified.

**II. CONCLUSION.**

Based upon the foregoing, Petitioners requests that Commissioners Newton and Assad be disqualified from participation as hearing officers at the Hearing and new hearing officers are appointed pursuant to NRS 233B.122(2). In addition, Petitioners respectfully request a continuance of the May 10, 2021 Hearing for purposes of resolving this Motion and the apparent conflicts.

Dated this 23 day of April, 2021.

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Reno, NV 89509

By: 

MARK G. SIMONS, ESQ.

JEREMY B. CLARKE, ESQ.

*Attorneys for Reno Cab Company, Inc.  
dba Reno Sparks Cab Co., Roy L. Street  
dba Capitol Cab Company, and Yellow Cab  
of Reno, Inc.*

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **MOTION TO DISQUALIFY AND MOTION TO CONTINUE** on all parties to this action by the method(s) indicated below:

☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Gary Mathews  
Administrative Attorney  
Nevada Transportation Authority  
3300 W. Sahara Ave., Suite 200  
Las Vegas, NV 89102

☒ By electronic mail:

Gary Mathews  
[gary.mathews@nta.nv.gov](mailto:gary.mathews@nta.nv.gov)

DATED this 23 day of April, 2021.

  
Employee of Simons Hall Johnston PC

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**SIMONS HALL JOHNSTON PC**  
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*Attorneys for Reno Cab Company, Inc.  
dba Reno Sparks Cab Co., Roy L. Street dba  
Capitol Cab Company, and Yellow Cab of Reno, Inc.*

21-03016, 21-03017



**BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

IN THE MATTER of the Petitions of Reno Cab  
Company, Inc. dba Reno Sparks Cab Co.,  
Roy L. Street dba Capitol Cab Company, and  
Yellow Cab of Reno, Inc.

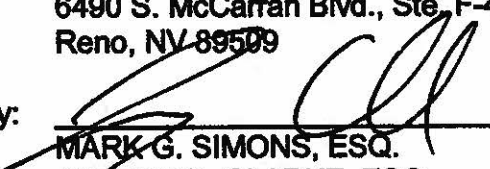
DOCKET NOS. 21-03016, 21-  
03017, and 21-03018

**ERRATA TO MOTION TO DISQUALIFY AND MOTION TO CONTINUE**

Reno Cab Company, Inc. dba Reno Sparks Cab Co. ("Reno Sparks Cab"), Roy L. Street dba Capitol Cab Company ("Capitol Cab"), and Yellow Cab of Reno, Inc. ("Yellow Cab") (hereinafter collectively "Petitioners"), by and through their counsel, Mark G. Simons and Jeremy B. Clarke of SIMONS HALL JOHNSTON PC, hereby file this Errata to their Motion to Disqualify and Motion to Continue. Attached please find the November 13, 2013 Letter, attached as **Exhibit 1**, and the December 10, 2013 Letter, attached as **Exhibit 2**, that were inadvertently not attached to the underlying Motion.

Dated this 27 day of April, 2021.

SIMONS HALL JOHNSTON PC  
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Reno, NV 89509

By: 

MARK G. SIMONS, ESQ.  
JEREMY B. CLARKE, ESQ.  
*Attorneys for Reno Cab Company, Inc.  
dba Reno Sparks Cab Co., Roy L. Street  
dba Capitol Cab Company, and Yellow Cab  
of Reno, Inc.*

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **ERRATA TO MOTION TO DISQUALIFY AND MOTION TO CONTINUE** on all parties to this action by the method(s) indicated below:

☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Gary Mathews  
Administrative Attorney  
Nevada Transportation Authority  
3300 W. Sahara Ave., Suite 200  
Las Vegas, NV 89102

☒ By electronic mail:

Gary Mathews  
[gary.mathews@nta.nv.gov](mailto:gary.mathews@nta.nv.gov)

DATED this 27 day of April, 2021.

  
Employee of Simons Hall Johnston PC

**EXHIBIT LIST**

| NO. | DESCRIPTION     | PAGES |
|-----|-----------------|-------|
| 1   | 11/13/13 Letter | 1     |
| 2   | 12/10/13 Letter | 1     |

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**EXHIBIT 1**

**EXHIBIT 1**

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY  
**NEVADA TRANSPORTATION AUTHORITY**

BRUCE BRESLOW  
Director B&I

ANDREW J. MACKAY  
Chairman

MONICA B METZ  
Commissioner

GEORGE ASSAD  
Commissioner

November 13, 2013

Michelle R. Bumgarner, Esq..  
Law Offices of Michelle Bumgarner, Ltd.  
611 Sierra Rose Dr.  
Reno, NV 89511

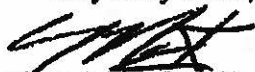
Re: Lease Agreement Revisions for Reno Cab Co., Inc.,  
Docket No. 13-11012

Dear Ms. Bumgarner:

I have reviewed your letter requesting approval for your client, Reno Cab Company, Inc. d/b/a Reno-Sparks Cab Company, to revise its master lease agreement. After reviewing the proposed changes, I have determined that the draft lease agreement meets all provisions of Nevada Revised Statutes (NRS) 706.473 to 706.475, inclusive, and Nevada Administrative Code (NAC) 706.375 to 706.3754, inclusive, and is hereby approved. Please provide a copy of the revised lease agreement to your client and your client's lessee drivers, and ensure that it is executed no later than November 22, 2013.

If you have any questions or need additional information concerning this matter, please do not hesitate to contact Deputy Commissioner Marilyn Skibinski, Administrative Attorney Jim Day, or me at your convenience.

Very Truly Yours,

  
Andrew J. MacKay, Chairman

Cc: Marilyn Skibinski  
Jim Day  
Agency Read File

# EXHIBIT 2

# EXHIBIT 2

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



DEPARTMENT OF BUSINESS AND INDUSTRY  
**NEVADA TRANSPORTATION AUTHORITY**

BRUCE BRESLOW  
Director B&I

ANDREW J. MACKAY  
Chairman

MONICA B. METZ  
Commissioner

GEORGE ASSAD  
Commissioner

December 10, 2013

Michelle R. Bumgarner, Esq..  
Law Offices of Michelle Bumgarner, Ltd.  
611 Sierra Rose Dr.  
Reno, NV 89511

Re: Lease Agreement Revisions for Yellow Cab Company of Reno, Inc.,  
Docket No. 13-11012

Dear Ms. Bumgarner:

I have reviewed your letter requesting approval for your client, Yellow Cab Company of Reno, Inc. d/b/a Yellow Cab, to revise its master lease agreement. After reviewing the proposed changes, I have determined that the draft lease agreement meets all provisions of Nevada Revised Statutes (NRS) 706.473 to 706.475, inclusive, and Nevada Administrative Code (NAC) 706.375 to 706.3754, inclusive, and is hereby approved. Please provide a copy of the revised lease agreement to your client and your client's lessee drivers, and ensure that it is executed no later than December 20, 2013.

If you have any questions or need additional information concerning this matter, please do not hesitate to contact Deputy Commissioner Marilyn Skibinski, Administrative Attorney Jim Day, or me at your convenience.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew J. MacKay".

Andrew J. MacKay, Chairman

Cc: Marilyn Skibinski  
Jim Day  
Agency Read File

# **SIMONS • HALL • JOHNSTON**

April 23, 2021

Nevada Transportation Authority  
Attn: Liz Babcock  
3300 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89102

**RE: Docket Nos. 21-03016, 21-03017, 21-03018**

Dear Ms. Babcock:

Enclosed please find a Motion to Disqualify and Motion to Continue in the above-entitled matters. Please cause the enclosed to be filed with the Nevada Transportation Authority and provide a file-stamped copy to this office. For your convenience, I have also enclosed a self-addressed stamped envelope.

Thank you again for your assistance in this matter. Please do not hesitate to contact this office with any questions or comments.

Sincerely,



Jodi Alhasan,  
Paralegal/Legal Assistant  
to Mark G. Simons

ja

Enclosures

cc: Gary Mathews w/encl. (via email at [gary.mathews@nta.nv.gov](mailto:gary.mathews@nta.nv.gov))