

Ann D. Quinn
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ORDR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Kelly Hurst,

Plaintiff,

vs.

Andrew B. Martin,

Defendant.

CASE NO.: A-12-669377-C

DEPT. NO. 32

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter having come before the Court on the 5th day of November, 2012, on a hearing on an Order to Show Cause; the plaintiff, Kelly Hurst, being present and represented by his attorney, Frank Cremen; and the defendant, Andrew Martin, being present and represented by his attorney, Bradley Scott Schrage; and the Court having weighed and considered the matter, and good cause appearing, the Court hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. That the defendant, Andrew Martin, is a candidate for District Number 9 of the Nevada Assembly. He made his declaration of candidacy for that office on the 5th day of

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1 March, 2012. In his declaration, he listed as his actual, as opposed to constructive, home a
2 residence at 7159 South Durango Drive, Unit 307, Las Vegas, Clark County, Nevada. This
3 is a third-story condominium unit of approximately 962 square feet, with two bedrooms and
4 two baths. It has no garage. It was acquired by Mr. Martin and his life partner, Dana P.
5 Barooshian, on or about December 15, 2011. It is in Assembly District 9.
6

7 2. That in December of 2011, Andrew Martin and Dana Barooshian also owned a
8 residence located at 3317 Daylight Moss Street, Las Vegas, Clark County, Nevada, a home
9 which they had acquired together in June of 2007. This is a two-story residence of
10 approximately 2,500 square feet, with four bedrooms, two-and-one-half baths, and a 503-
11 square foot garage. This residence is located in Assembly District Number 2.
12

13 3. That Mr. Martin and Mr. Barooshian have been in a committed relationship for
14 26 years.
15

16 4. That Mr. Barooshian owns a 1998 BMW automobile, which is registered to
17 him at the residence located at 3317 Daylight Moss Street.
18

19 5. That Andrew Martin owns a 2012 Chevrolet Volt automobile that is registered
20 to him at the residence located at 7159 South Durango Drive, Unit 307.
21

22 6. That Mr. Martin and Mr. Barooshian each have Nevada driver's licenses. Mr.
23 Martin's license reflects a residence located at 7159 South Durango, Unit 307, and Mr.
24 Barooshian's reflects an address located at 3317 Daylight Moss Street.
25

26 7. That in September of 2012, the plaintiff, Kelly Hurst, the Republican candidate
27 for Assembly District Number 9, engaged the services of Thomas Dillard, a licensed private
28 investigator, to determine whether or not Andrew Martin was, in fact, residing at the

1 residence on Durango in Assembly District Number 9, or in the residence located in
2 Daylight Moss in Assembly District Number 2. On September 12, 2012, Detective Dillard
3 commenced a 24-hour surveillance of the residence located at 3317 Daylight Moss Street,
4 which terminated 24 hours later on September 13th. During that period of time, it was
5 evident that Andrew Martin spent the entire night of Wednesday, September 12th, through
6 4:45 p.m. on Thursday, September 13th, at the Daylight Moss residence. He also charged his
7 Volt automobile at this residence. Also in the garage of the residence was the BMW
8 automobile owned by Mr. Barooshian. From the evidence of the surveillance, it would
9 appear that Mr. Martin also spent the night of September 13th in that residence.
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12 8. That the Dillard surveillance was commenced again on September 16, 2012
13 and continued through October 3, 2012. In this period of time, it was evident that Mr.
14 Martin spent each night and the better part of each day at the Daylight Moss residence with
15 the exception of September 18th, 19th, 20th and 21st, when it appears that Mr. Martin, in the
16 BMW, left the Daylight Moss residence to go out of town. Mr. Martin acknowledged this
17 possibility. Mr. Barooshian's BMW automobile and Mr. Martin's Volt were parked in the
18 garage during this entire surveillance period.
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21 9. Mr. Martin's testimony that he spent half of the nights from Saturday,
22 September 22nd, through October 3rd at the residence located at 7159 South Durango, Unit
23 307, was not credible.
24

25 10. That as a practical matter, it was impossible for him to charge his Volt at the
26 Durango address, and Mr. Martin acknowledged that he would do this at the Daylight Moss
27 garage.
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CONCLUSIONS OF LAW

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2 1. Pursuant to N.R.S. 281.050(3), this Court has jurisdiction to determine whether
3 or not Andrew Martin is an actual resident of Assembly District Number 9.

4 2. That N.R.S. 293.1755 provides that no person may be a candidate for any
5 office unless, for at least 30 days immediately preceding the date of the close of filing of
6 declaration of candidacy, he has, in accordance with N.R.S. 281.050, actually, as opposed to
7 constructively, lived in that district to which the office pertains.
8

9 3. That N.R.S.218.0553 provides that each senator and assemblyman must be
10 elected from within the district wherein he resides by registered voters residing in the
11 district.
12

13 4. Under Williams v. Clark County District Court, 118 Nev. 473 (2002), for
14 purposes of meeting the above residency requirements to run for a particular office, a
15 candidate must meet both actual residency requirements as well as domicile requirements.
16 Actual residence is the place of actual living, or physical presence. Legal domicile requires
17 both the fact of living at a place and the intention to return.
18

19 5. From the evidence presented, it is clear that the actual residence of Andrew
20 Martin and his partner, Dana Barooshian, is not 7159 South Durango Drive, Unit 307, Las
21 Vegas, Nevada but 3317 Daylight Moss Street, and that residence is in Assembly District
22 Number 2, not Assembly District Number 9.
23

24 6. From the evidence presented, it is clear that Andrew Martin had no intention to
25 make 7159 South Durango Drive, Unit 307, Las Vegas, Nevada his legal domicile because
26 during the surveillance period, Mr. Martin returned each night, when in Las Vegas, to the
27
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1 3317 Daylight Moss Street residence. The Court believes that Mr. Martin's actions during
2 the surveillance period are representative of Mr. Martin's actions throughout his ownership
3 of the 7159 South Durango Drive, Unit 307, residence, not mere coincidence of timing.
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5 ORDER

6 This Court finds that Andrew Martin is not an actual resident of Assembly District
7 Number 9, the assembly district of the office which he seeks.

8 DATED this 6th day of December, 2012.
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11 _____
12 Rob Bare
13 Judge, District Court, Department 32
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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office, or mailed or faxed a copy to:

Frank J. Cremen, Esq.
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Las Vegas, Nevada 89101
Attorney for Plaintiff

Bradley Scott Schrager, Esq.
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Tara Duenas
Judicial Executive Assistant, Dept. 32