

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**MICHAEL A. CARRIGAN**, Fourth Ward  
City Council Member of the City of Sparks,

Appellant,

vs.

**THE COMMISSION ON ETHICS OF  
THE STATE OF NEVADA**,

Respondent.

---

Electronically Filed  
Oct 20 2011 10:18 a.m.  
Docket No. 51920 Tracie K. Lindeman  
Clerk of Supreme Court

**RESPONSE OF THE COMMISSION  
ON ETHICS OF THE STATE OF  
NEVADA TO THE NEVADA  
LEGISLATURE'S MOTION FOR  
LEAVE TO FILE AN AMICUS  
BRIEF**

Appeal from the First Judicial District Court of the State of Nevada  
District Court No. 07-OC-012451B

John P. Elwood  
Jeremy C. Marwell  
Vinson & Elkins LLP  
2200 Pennsylvania Avenue NW  
Suite 500 West  
Washington, DC 20037  
(202) 639-6500

Yvonne M. Nevarez-Goodson (#8474)  
Commission Counsel  
Nevada Commission on Ethics  
704 West Nye Lane, Suite 204  
Carson City, NV 89703  
Tel: (775) 687-5469

*Counsel for the Nevada Commission on Ethics*

1   **RESPONSE BY THE COMMISSION ON ETHICS OF THE STATE OF NEVADA**  
2                                   **TO THE NEVADA LEGISLATURE’S**  
3                                   **MOTION FOR LEAVE TO FILE AN AMICUS BRIEF**

4           Respondent the Commission on Ethics of the State of Nevada (“Commission”) supports the Motion for Leave to File *Amicus Curiae* Brief filed by the Legislature of the State of Nevada, for the reasons persuasively set forth in the Legislature’s Motion and Reply. (Doc. No. 11-31652, 11-32088) The Commission files this short Response to suggest respectfully that if this Court grants the Legislature’s Motion, the appropriate course of action under NRAP 29(f) is to issue an Order authorizing Appellant Michael A. Carrigan to resubmit, within eight days of that Order, a single 15-page Reply in lieu of the brief Mr. Carrigan filed with this Court on October 13, 2011. (Doc. No. 11-31589)

12           As this Court is aware, on remand to this Court from the Supreme Court of the United States, Mr. Carrigan filed a motion seeking a supplemental round of briefing in the form of an opening brief, an answering brief by the Commission, and a single reply. (Doc. No. 11-21091) On July 29, 2011, this Court granted that motion, specifying that the supplemental opening brief was to be filed within 30 days, the supplemental answering brief within 30 days of service of the opening brief, and any supplemental reply within 15 days of service of the answering brief. (Doc. No. 11-22887). On August 8, 2011, this Court issued an Order Granting Motion Regarding Supplemental Brief Page Limits, specifying that the “supplemental opening brief and supplemental answering brief shall be no longer than 30 pages” and “any supplemental reply brief” filed by Mr.

1 Carrigan “shall be no longer than 15 pages.” (Doc. No. 11-23829) The page lengths in  
2 that order, which expressly conform to the default lengths provided in NRAP  
3 32(a)(7)(A), *see* Aug. 8 Order at 1, are plainly crafted to take account of the possibility  
4 that Mr. Carrigan as Appellant, or the Commission as Respondent, would need to address  
5 within that allotted briefing space any amicus briefs filed under NRAP 29.

6 In seeking leave to file an amicus brief more than 7 days after the Commission’s  
7 answering brief, the Nevada Legislature anticipates that under NRAP 29(f) “Carrigan will  
8 be given a reasonable opportunity to respond to the Legislature’s amicus brief.” *See*  
9 Reply 3; *accord* Motion 3 (Court will “specify the time within which Appellant Carrigan  
10 may respond”).

11 Mr. Carrigan, however, opposes that aspect of the Legislature’s Motion. Mr.  
12 Carrigan’s primary ground for that opposition is a concern about inefficiency. Allowing  
13 the Legislature to file its *amicus* brief now, Mr. Carrigan fears, will deny him the  
14 opportunity “to respond efficiently to both the Commission’s and the Legislature’s briefs  
15 in one filing.” Opp. 3. Mr. Carrigan anticipates a substantial burden “to [himself] and  
16 his counsel” in having to prepare an “additional brief.” *Id.* And, in turn, Mr. Carrigan  
17 wishes to avoid “this Court [] hav[ing] to commit additional time and resources to  
18 reading[] [that] “additional brief.” *Id.*

19 One efficient solution to each of Mr. Carrigan’s concerns is for this Court to issue  
20 an Order authorizing Mr. Carrigan to re-file a single, amended 15-page Reply brief  
21 responding to both the Commission’s and the Legislature’s arguments, within eight days.  
22 In that unitary brief, Mr. Carrigan will be free to respond as “efficiently” as he sees fit “to

1 both the Commission's and the Legislature's briefs in one filing." Opp. 3. Nor will "this  
2 Court [] have to commit additional time and resources to reading[] an additional brief."

3 *Id.*

4 Moreover, re-filing the additional brief should not require Mr. Carrigan to expend  
5 significant effort. Mr. Carrigan represents to the Court that the Legislature's brief "adds  
6 nothing of relevance to briefs already filed," Opp. 1, does not "hav[e] anything new to  
7 say," *id.* at 3, and merely "sets forth arguments duplicative both of those [the Legislature]  
8 has made previously and of the arguments the Commission has made in its supplemental  
9 briefing," *id.* Mr. Carrigan states that the "*only* argument the Legislature makes that was  
10 not covered by the Commission" relates to due process rights of participants in the  
11 August 23, 2006 City Council meeting. *Id.* at 4. By Mr. Carrigan's own account, the  
12 task of modifying his existing reply brief to account for that single new argument will not  
13 be unduly burdensome. This approach serves judicial economy, preserves the usual  
14 allocation of briefing space, *see* NRAP 32(a)(7)(A), and provides Mr. Carrigan an  
15 efficient route to respond to arguments he represents to be "duplicative," Opp. 3. An  
16 eight-day period would provide him ample time to make that revision. *Compare* July 29  
17 Order at 1-2 (reply to be filed within 15 days of service of respondent's brief), *with*  
18 NRAP 29(f) (setting default rule that amicus briefs be filed no later than 7 days after the  
19 brief of the party being supported is filed).

1 CONCLUSION

2 For the foregoing reasons, the Commission asks that the Court grant the Motion of  
3 the Nevada Legislature for Leave to File *Amicus Curiae* Brief, and issue an Order  
4 authorizing Mr. Carrigan to re-file with this Court a single 15-page Reply brief within  
5 eight days.

6  
7 Dated: October 20, 2011

Respectfully submitted,

8  
9 John P. Elwood  
10 Jeremy C. Marwell  
11 Vinson & Elkins LLP  
12 2200 Pennsylvania Avenue, NW  
13 Suite 500 West  
14 Washington, DC 20037  
15 Tel: (202) 639-6500  
16

/s/ Yvonne M. Nevarez-Goodson  
Yvonne M. Nevarez-Goodson (#8474)  
Commission Counsel  
Nevada Commission on Ethics  
704 West Nye Lane, Suite 204  
Carson City, NV 89703  
Tel: (775) 687-5469

17 *Counsel for the Nevada Commission on Ethics*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Rule 25(d) of the Nevada Rules of Appellate Procedure, I hereby  
3 certify that on this 20th day of October, 2011, a true and correct copy of the RESPONSE  
4 OF THE COMMISSION ON ETHICS OF THE STATE OF NEVADA TO THE  
5 NEVADA LEGISLATURE'S MOTION FOR LEAVE TO FILE *AMICUS CURIAE*  
6 BRIEF, was electronically served pursuant to Rule 9 of the Nevada Electronic Filing  
7 Rules on the following:

8 John W. Griffin  
9 Matthew M. Griffin  
10 GRIFFIN, ROWE & NAVE LLP  
11 1400 South Virginia Street  
12 Suite A  
13 Reno, NV 89502  
14

15 And a true and correct copy of the foregoing was electronically served on the following:

16 Mark S. Davies  
17 Rachel M. McKenzie  
18 Orrick, Herrington & Sutcliffe LLP  
19 Columbia Center  
20 1152 15th Street, NW  
21 Washington, DC 20005  
22 mark.davies@orrick.com  
23 rmckenzie@orrick.com  
24

25 Dated: October 20, 2011

26 /s/ Yvonne Nevarez-Goodson  
27 *Counsel for Respondent*  
*Nevada Commission on Ethics*