

Electronically Filed  
Feb 03 2015 03:48 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

GARY SCHMIDT,

Appellant,

v.

BEN KIECKHEFER,

Respondent.

Supreme Court Case No. 66528

District Court Case No. CV14-01227

**MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF**

MICHAEL PAGNI (#6444)

ADAM HOSMER-HENNER (#12779)

McDONALD CARANO WILSON LLP

100 West Liberty Street, 10<sup>th</sup> Floor, P.O. Box 2670, Reno, NV 89505

Telephone: (775) 788-2000; Fax: (775) 788-2020

[mpagni@mcdonaldcarano.com](mailto:mpagni@mcdonaldcarano.com)

[ahosmerhenner@mcdonaldcarano.com](mailto:ahosmerhenner@mcdonaldcarano.com)

*Attorneys for Respondent*

Respondent, State Senator Ben Kieckhefer (“Sen. Kieckhefer”), submits this *Motion for Extension of Time to File Answering Brief*. This Motion is based upon NRAP 26(b) and 31(b)(3) and is supported by the following points and authorities.

## **I. INTRODUCTION**

There is an unresolved Order to Show Cause in this appeal that may result in the dismissal of half of the issues raised in Appellant Gary Schmidt’s (“Schmidt”) Opening Brief. Consequently, Sen. Kieckhefer requests an extension of time to file an Answering Brief until thirty days after this Court determines whether to dismiss that portion of Schmidt’s appeal concerning the temporary restraining order.

## **II. PROCEDURAL BACKGROUND**

As part of this appeal, Schmidt challenged the entry of a Temporary Restraining Order that was entered on June 6, 2014 by Judge Flanagan of the Second Judicial District Court in and for Washoe County. On November 24, 2014, this Court issued an Order to Show Cause requesting that Schmidt demonstrate why “this appeal [should] not be dismissed for lack of jurisdiction with respect to the temporary restraining order.” (Order to Show Cause, Nov. 24, 2014, Doc. No. 14-38535). Schmidt filed his Response to Order to Show Cause on December 11, 2014 (Doc. No. 14-40338) and Sen. Kieckhefer filed a Reply to Appellant’s Response to Order to Show Cause on December 17, 2014. (Doc No. 14-411115).

Prior to receiving a decision from the Court in relation to the Order to Show Cause, Schmidt filed his Opening Brief on January 20, 2015. (Doc. No. 15-01924). Based on the issues raised in the pending Order to Show Cause, counsel for Sen. Kieckhefer sought a stipulation from Schmidt for a thirty-day extension of time in

which to file the Answering Brief. At the end of the day on January 30, 2015, counsel for Schmidt answered that Schmidt would not agree to a stipulation for the extension of time, rendering necessary this Motion for Extension of Time to File Answering Brief.

### **III. ARGUMENT**

NRAP 26(b)(1) permits this Court to “extend the time prescribed by these Rules.” Sen. Kieckhefer’s Answering Brief is currently due on February 26, 2015.<sup>1</sup> Pursuant to NRAP 31(b)(3)(B), an extension of time is warranted “upon a clear showing of good cause.”

There is good cause for this extension because as this Court immediately recognized in its Order to Show Cause, the Court lacks jurisdiction to hear half of the issues raised in the Opening Brief. Schmidt has appealed a temporary restraining order, which is not permitted under clear Nevada law: “a temporary restraining order, which is necessarily of limited duration pending further proceedings on the injunction request, is not [appealable].” *Sicor, Inc. v. Sacks*, 127 Nev. Adv. Op. 81, 266 P.3d 618, 620 (2011) (citing *Sugarman Co. v. Morse Bros.*, 50 Nev. 191, 255 P. 1010 (1927)). Additionally, Schmidt’s appeal is untimely as the Order Granting Temporary Restraining Order was entered on June 6, 2014 and Schmidt’s Notice of Appeal was not filed until September 12, 2014. “[A] notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or

---

<sup>1</sup> Sen. Kieckhefer’s answering brief was initially due on February 19, 2015, “within 30 days after the appellant’s brief is served.” NRAP 31(a)(1)(B). In order to afford the Court additional time to consider the Order to Show Cause and this Motion for Extension, Sen. Kieckhefer requested and received a five-day telephonic extension until February 26, 2015. NRAP 31(b)(1).

order appealed from is served.” NRAP 4(a)(1). The Notice of Appeal was not filed until after the expiration of the thirty-day appeal period.

In the absence of an extension to file an Answering Brief, Sen. Kieckhefer will have to incur potentially wasteful legal fees responding to that portion of the Opening Brief relating to the temporary restraining order, which may be summarily dismissed by the Court. Although motions “for extensions of time beyond that to which the parties are permitted to stipulate under Rule 31(b)(2) are not favored,” this is one situation where such an extension is warranted. Sen. Kieckhefer should be able to receive the benefit of the Court’s decision on the Order to Show Cause prior to filing an Answering Brief.

#### **IV. CONCLUSION**

For all of the foregoing reasons, Sen. Kieckhefer requests that the deadline for filing his Answering Brief be extended until thirty days after this Court determines whether to dismiss that portion of Schmidt’s appeal concerning the temporary restraining order.

//

//

//

//

//

//

//

//

## **AFFIRMATION**

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

Respectfully submitted on February 3, 2015.

MCDONALD CARANO WILSON LLP

By: /s/ Adam Hosmer-Henner  
Michael Pagni (#6444)  
Adam Hosmer-Henner (#12779)  
100 West Liberty Street, 10<sup>th</sup> Floor  
Reno, NV 89511  
[mpagni@mcdonaldcarano.com](mailto:mpagni@mcdonaldcarano.com)  
[ahosmerhenner@mcdonaldcarano.com](mailto:ahosmerhenner@mcdonaldcarano.com)

*Attorneys for Respondent*

## **CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of McDONALD CARANO WILSON LLP and that on February 3, 2015, a true and correct copy of the foregoing was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system and by United States First-Class mail to all unregistered parties as listed below:

CHARLES KOZAK, ESQ  
Kozak Law Firm  
3100 Mill Street, Suite 115  
Reno, NV 89502  
[chuck@kozaklawfirm.com](mailto:chuck@kozaklawfirm.com)

/s/ Jill Nelson  
An Employee of McDonald Carano Wilson