

IN THE SUPREME COURT OF THE STATE OF NEVADA

HONORABLE JUDGE CATHERINE
RAMSEY, NORTH LAS VEGAS
MUNICIPAL JUDGE,

Appellant,

vs.

THE CITY OF NORTH LAS VEGAS
AND BARBARA A. ANDOLINA City
Clerk of NORTH LAS VEGAS, BETTY
HAMILTON, MICHAEL WILLIAM
MORENO, and BOB BORGERSEN,
individually and as Members of
“REMOVE RAMSEY NOW,”

Respondents.

SUPREME COURT NO.: 68450

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Clerk of Supreme Court

**RESPONDENT BETTY HAMILTON, MICHAEL WILLIAM MORENO,
AND BOB BORGERSEN’S OPPOSITION TO MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT**

Respectfully Submitted by:

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Respondents Betty Hamilton, Michael William Moreno, and Bob Borgersen (collectively “Respondents”) have, and are sure the Justices share, the utmost respect for proposed *amicus curiae*, Nevada Judges of Limited Jurisdiction (“NJLJ”), as well as the counsel it has retained for purposes of seeking leave to file. Leave to file an *amicus* brief, however, should never be extended merely as a respectful courtesy. On the contrary, the principles governing *amicus* participation, not to mention the basic dictates of judicial economy and fairness to the opposing parties, mandate that leave only be given when, at minimum, the *amicus* brief will be analytically useful to the Court in its appellate review.

Respondents respectfully assert, as set forth more fully below, that the NJLJ’s leave request in the instant case must be denied. The NJLJ’s public policy arguments set forth in the proposed *amicus* brief are neither useful nor relevant to the Court’s consideration of whether to reverse the District Court’s determination that Appellant, Judge Catherine Ramsey (“Judge Ramsey”), must face a recall election. And, the interests of the parties as to the arguments that actually are relevant are otherwise adequately represented in the case. Respondents ask the Court at this time to direct the Clerk of the Court to return the proposed *amicus* brief unfiled.

II.

ARGUMENT

A. Legal Standard for Granting Leave to File an *Amicus* Brief.

The principles governing the grant to participate as an *amicus curiae* are well-settled. “There is no inherent right to file an *amicus curiae* brief with the Court.” *Long v. Coast Resorts, Inc.*, 49 F.Supp.2d 1177, 1178 (D. Nev. 1999). Rather, the court ultimately retains “broad discretion to either permit or reject the appearance of *amicus curiae*.” *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 (9th Cir. 1987). “The vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigant’s briefs, in effect merely extending the length of the litigant’s brief. Such *amicus* briefs should not be allowed. They are an abuse.” *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)¹; see also *Gabriel Technologies Corp. v. Qualcomm Inc.*, 2012 WL 849167, at *4 (S.D. Cal., Mar. 13, 2012) (“An *amicus* brief is meant to assist the court and not merely extend the length of the litigant’s brief”).

Unnecessary *amicus* submissions have been criticized as imposing a “real burden on the court system,” “impos[ing] a burden of study and the preparation of a response on the parties,” possibly “intended to circumvent the page limitations on

¹ This case has also served as the primary authority cited by the Court in prior denials of *amicus* participation. See, e.g., *Lobato v. State of Nevada*, Supreme Court Case No. 58913, Order Denying Motion dated May 9, 2012.

the parties' briefs," and "attempts to inject interest-group politics into the....appellate process by flaunting the interest of a trade association or other interest group in the outcome." *See National Organization for Women, Inc. v. Schneider*, 223 F.3d 615, 616-17 (7th Cir. 2000).

An *amicus* brief should only be allowed by the court when (1) a party is not represented competently by counsel, or not represented at all; (2) when the *amicus* has an interest in some other case that may be affected by the decision in the present one; or (3) when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d at 1063; *Re2con, LLC v. Telfer Oil Co.*, 2012 WL 6570902 (E.D. Cal. 2012).

B. An Amicus Brief Is Unwarranted In This Case.

1. Judge Ramsey Is Represented Competently By Legal Counsel.

The NJLJ's motion should be denied because, in the instant case, Judge Ramsey appears to be represented by competent legal counsel, which the NJLJ does not argue otherwise in its attempt to justify the admittance of its proposed *amicus* brief, and Judge Ramsey has already made the relevant constitutional law arguments in her Opening Brief.

2. The NJLJ Has Not Demonstrated an Interest in Another Case Affected by the Decision in This Litigation.

The NJLJ's motion does not identify any pending case that may be affected

by the decision in the instant case. Instead, the NJLJ asserts the possible consequences this case could have for unidentified judges who at some point in the future may render an unpopular decision and find themselves subject to a hypothetical recall challenge. This is insufficient under the standard for seeking leave to file an *amicus* brief. See, e.g. *Re2con, LLC v. Telfer Oil Co.*, 2012 WL 6570902.

3. The NJLJ's Proposed *Amicus* Brief Merely Agrees With Judge Ramsey's Argument and Does Not Present Unique Information.

The NJLJ's motion should be denied because the proposed *amicus* brief merely agrees with Judge Ramsey's constitutional interpretation. Agreement by an *amicus* of one party's analysis of the law is of absolutely no use to this Court. See *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d at 1063. Specifically, the NJLJ's reiteration of Judge Ramsey's analysis of the rules of interpretation dealing with the powers of the Commission on Judicial Discipline amounts to little more than cheerleading for one party over another and is improper. See *Long v. Coast Resorts, Inc.*, 49 F.Supp.2d at 1178 (D. Nev. 1999) (noting an *amicus* is to be a friend of the court, not a friend of a party).

Further, the NJLJ has not shown that it possesses unique insight that is unavailable to the Court or counsel for the parties and will affect the outcome of the

dispute. The NJLJ claims that its “short proposed *amicus curiae* brief”² will be able to assist the Court in its review of the constitutional provisions pertaining to the removal of judges, which it asserts conflict with each other and must be harmonized. Even if counsel was not competent or had not already addressed these arguments on Judge Ramsey’s behalf, the NJLJ’s proposed *amicus* brief would not fill this gap.

On the contrary, the NJLJ’s proposed *amicus* brief, despite its length, boils down to the assertion that recall is an obstacle to judicial independence and as such, should not be allowed as a matter of public policy. The Court does not need the NJLJ to point out to it the importance of an independent judiciary. The NJLJ’s purported contribution is not unique, and it does not present a perspective that is necessary to bring before this Court.

C. The NJLJ’s *Amicus* Brief Would Unfairly Prejudice Respondents.

Where an *amicus* brief does not assist the court in determining the outcome of the present dispute, it does little more than extend the length of a party’s brief. *See Gabriel Technologies Corp. v. Qualcomm, Inc.*, 2012 WL 849167 at *4. If the NJLJ’s motion is granted, Judge Ramsey will essentially be given two bites at the apple. The proposed *amicus* brief is fourteen pages long, and the admission of this additional brief would effectively expand the argument in favor of Judge Ramsey’s

² At fourteen pages in length, the NJLJ’s proposed *amicus* brief is only one page shy of the maximum length permitted under the rules. *See* NRAP 29(e).

position to fifty-eight pages³, nearly double the thirty-page limit Respondents will enjoy. It is clear that Respondents would be unfairly prejudiced for this reason, as well as being burdened with having to research and prepare a response to the *amicus* brief itself.

III.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the NJLJ's motion seeking leave to file an *amicus curiae* brief. In the alternative, should the Court grant the NJLJ's motion, Respondents request an opportunity to respond.

Dated this 18 day of August, 2015.

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³ The Court, by its Order dated July 27, 2015, granted Judge Ramsey's request to treat her Petition for Writ of Mandamus, Certiorari or Prohibition, which contained forty-four substantive pages of argument, as her Opening Brief in the appeal.

CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni & Savarese, hereby certifies that on the 18th day of August, 2015, she served a copy of the **RESPONDENT MICHAEL BETTY HAMILTON, MICHAEL WILLIAM MORENO, AND BOB BORGERSEN'S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT**, by Electronic Service with the Nevada Supreme Court in accordance with the Master Service List, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

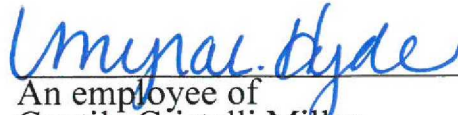
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