

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

THE COMMISSION ON ETHICS OF  
THE STATE OF NEVADA,

Appellant,

vs.

IRA HANSEN, IN HIS OFFICIAL  
CAPACITY AS NEVADA STATE  
ASSEMBLYMAN FOR ASSEMBLY  
DISTRICT NO. 32; AND JIM  
WHEELER, IN HIS OFFICIAL  
CAPACITY AS NEVADA STATE  
ASSEMBLYMAN FOR ASSEMBLY  
DISTRICT NO. 39,

Respondents.

Electronically Filed  
Dec 07 2015 01:51 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**Supreme Court Case No. 69100**

Appeal from First Judicial District  
Court, Carson City, Nevada,  
Case No. 15 OC 00076 1B

**RESPONDENTS' MOTION TO EXCEED PAGE LIMIT FOR  
RESPONDENTS' MOTION TO DISMISS APPEAL  
FOR LACK OF APPELLATE JURISDICTION**

**OR, IN THE ALTERNATIVE,**

**MOTION TO STAY APPEAL AND REMAND TO DISTRICT COURT  
FOR RESOLUTION OF RESPONDENTS' COMPLAINT TO VOID  
NOTICE OF APPEAL FILED BY COMMISSION ON ETHICS AS  
ACTION TAKEN IN VIOLATION OF OPEN MEETING LAW**

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*Attorneys for Respondents*

## **MOTION**

Pursuant to NRAP 27(a) and 27(d)(2), Respondents Ira Hansen, in his official capacity as Nevada State Assemblyman for Assembly District No. 32, and Jim Wheeler, in his official capacity as Nevada State Assemblyman for Assembly District No. 39 (the Assemblymen), by and through their counsel the Legal Division of the Legislative Counsel Bureau (LCB), hereby file this motion to exceed the page limit for their motion to: (1) dismiss the appeal for lack of appellate jurisdiction; or (2) in the alternative, stay the appeal and remand to the district court for resolution of the Assemblymen's complaint under NRS 241.037(2) to void the notice of appeal filed by Appellant Commission on Ethics (Commission) as action taken by the Commission in violation of the Open Meeting Law (OML) codified in NRS Chapter 241.<sup>1</sup> This motion is being filed with a copy of the proposed motion to dismiss the appeal for lack of appellate jurisdiction, etc., and this motion is based upon the following declaration of counsel stating in detail the reasons for the motion to exceed the page limit.

### **DECLARATION OF REASONS FOR THE MOTION**

The Assemblymen respectfully request to exceed the 10-page limit prescribed by NRAP 27(d)(2) for motions and file a 36-page motion to dismiss the appeal for

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<sup>1</sup> All OML citations are to the law as amended in 2015 by SB70, 2015 Nev.Stat., ch.226, §§2-7, at 1054-62, and SB158, 2015 Nev.Stat., ch.84, §2, at 329-32.

lack of appellate jurisdiction, etc. In filing this motion to exceed the page limit, the Assemblymen's attorneys are respectful of the Court's admonition to counsel to observe reasonable limitations on arguments filed with the Court. See Hernandez v. State, 117 Nev. 463 (2001). However, the Assemblymen's motion to exceed the page limit is necessary because their motion to dismiss the appeal for lack of appellate jurisdiction, etc., raises several important issues of law under the OML which are significant issues of statewide concern and precedential issues of first impression for Nevada's appellate courts.

In particular, the Assemblymen's motion to dismiss the appeal for lack of appellate jurisdiction, etc., raises the following issues of law under the OML:

1. Did the Commission violate the OML when it filed a notice of appeal without first making its decision or taking "action" to appeal the district court's order in an open and public meeting that complied with the OML?
2. If the Commission violated the OML, is the Commission's notice of appeal void as a matter of law under the absolute voiding rule in NRS 241.036 and is it therefore invalid and without any legal force or effect?
3. If the Commission's notice of appeal is void as a matter of law and therefore invalid and without any legal force or effect, should the Court dismiss the Commission's appeal for lack of appellate jurisdiction because the Commission

did not legally file a valid notice of appeal during the jurisdictional appeal period and thereby lost the right to appeal in this case?

4. If the Court decides not to consider the OML issue in the first instance on appeal, should the Court stay the appeal and remand to the district court for resolution of the Assemblymen's pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission's notice of appeal as action taken by the Commission in violation of the OML?

To properly address these important issues of statewide concern and first impression, the Assemblymen needed to exceed the page limit to meet the Court's high standards of appellate practice in which the Court "expects all appeals to be pursued with high standards of diligence, professionalism, and competence." Barry v. Lindner, 119 Nev. 661, 671 (2003); Polk v. State, 126 Nev. 180, 184 (2010). This duty requires counsel to avoid inadequate appellate practices, such as discussing issues without including "cogent argument and citation to relevant authority." Berkson v. Lepome, 126 Nev. 492, 501-02 (2010) ("It is well established that this court need not consider issues not supported by cogent argument and citation to relevant authority."). Therefore, the additional pages are the direct result of thoroughly discussing all of the important issues of statewide concern and first impression raised by the motion to dismiss in a cogent manner

with comprehensive citation to “adequate supporting law,” including relevant caselaw from other jurisdictions. Barry, 119 Nev. at 672.

Therefore, for the foregoing reasons, the Assemblymen respectfully ask the Court to grant their motion to exceed the page limit for their motion to: (1) dismiss the appeal for lack of appellate jurisdiction; or (2) in the alternative, stay the appeal and remand to the district court for resolution of the Assemblymen’s pending OML complaint filed in the district court under NRS 241.037(2) to void the Commission’s notice of appeal as action taken by the Commission in violation of the OML.

DATED: This 7th day of December, 2015.

Respectfully submitted,

**BRENDA J. ERDOES**  
Legislative Counsel

By: /s/ Kevin C. Powers

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*Attorneys for Respondents*

## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 7th day of December, 2015, pursuant to NRAP 25, NEFCR 8 and 9 and the parties' stipulation and consent to service by electronic means, I filed and served a true and correct copy of Respondents' Motion to Exceed the Page Limit for their Motion to Dismiss Appeal for Lack of Appellate Jurisdiction, Etc., by electronic means to registered users of the Nevada Supreme Court's electronic filing system and by electronic mail, directed to the following:

Tracy L. Chase, Esq.  
Commission Counsel  
NEVADA COMMISSION ON ETHICS  
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*Attorney for Appellant*

/s/ Kevin C. Powers  
An Employee of the Legislative Counsel Bureau