

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

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4 Electronically Filed
5 Feb 02 2016 01:44 p.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

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

10 No. 69100

11 Appellant,

12 vs.

13 **IRA HANSEN, in his official capacity as Nevada**
14 **State Assemblyman for Assembly District No. 32;**
15 **And JIM WHEELER, in his official capacity as**
16 **Nevada State Assemblyman for Assembly District**
17 **No. 39,**

18 Respondents.

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21 **STIPULATION AND ORDER**
22 **EXTENDING BRIEFING SCHEDULE**
23 **UNTIL ISSUANCE OF DECISION**
24 **ON THE MOTION TO DISMISS**
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1 **BACKGROUND**

2 This appeal was filed by Appellant, the Commission on Ethics of the State
3 of Nevada (“Commission”), represented by its counsel, Tracy L. Chase,
4 Commission Counsel, from a judicial review of an administrative proceeding
5 sought by Respondent Ira Hansen, in his official capacity as Nevada State
6 Assemblyman for Assembly District No. 32, and Respondent Jim Wheeler, in his
7 official capacity as Nevada State Assemblyman for Assembly District No. 39
8 (the Assemblymen), who are represented by their counsel, the Legal Division of
9 the Legislative Counsel Bureau (LCB), and Brenda J. Erdoes, Legislative
10 Counsel, Kevin C. Powers, Chief Litigation Counsel, and Eileen G. O’Grady,
11 Chief Deputy Legislative Counsel.

12 The appeal arises from a case filed in the First Judicial District Court,
13 Hansen v. Commission on Ethics, Case No. 15 OC 00076 1B, Dept. No. II,
14 which is referred to herein as “the ethics case.” The ethics case involves a
15 petition for judicial review filed by the Assemblymen against the Commission
16 under the Ethics Law in NRS Chapter 281A and the Administrative Procedure
17 Act (APA) in NRS Chapter 233B.

18 The underlying administrative proceedings commenced in March 2014,
19 with the filing of two separate Third-Party Requests for Opinion (“RFOs”) with
20 the Commission requesting investigation of the alleged actions of Assemblymen
21 Hansen and Wheeler to determine whether their respective conduct violated the
22 provisions of NRS Chapter 281A. Thereafter, the two RFOs were consolidated
23 and, pursuant to a stipulation and order approved by the Commission, the
24 Assemblymen filed a motion to dismiss the RFOs which sought review of the
25 subject matter jurisdiction of the Commission alleging that the Commission lacks
26 subject matter jurisdiction over the RFOs because: (1) all allegations against the
27 Assemblymen involve actions taken within the sphere of legitimate legislative
28 activity; and (2) those legislative actions are protected by NRS 281A.020(2)(d)

1 and NRS 41.071 and the constitutional doctrines of separation of powers and
2 legislative privilege and immunity. The jurisdictional review culminated in the
3 Commission's issuance of an Order on Review of Jurisdictional Determination
4 denying the motion to dismiss and indicating that additional jurisdictional fact-
5 finding was needed to determine if the conduct of each Assemblymen was within
6 the sphere of legitimate legislative activity and/or conduct related to the
7 representation of their constituents.

8 The Assemblymen filed a petition for judicial review with respect to the
9 Order on Review of Jurisdictional Determination issued by the Commission. On
10 October 1, 2015, the district court entered an order that: (1) denied the
11 Commission's motion to dismiss the petition for judicial review; and (2) granted
12 the Assemblymen's petition for judicial review and ordered the Commission to
13 terminate its ethics proceedings against the Assemblymen. On October 26, 2015,
14 the Assemblymen served the Commission with written notice of entry of the
15 district court's order, and on October 29, 2015, the Commission filed a notice of
16 appeal, which is docketed as Commission on Ethics v. Hansen, Nevada Supreme
17 Court Case No. 69100.

18 On December 1, 2015, the Assemblymen filed a separate case in the First
19 Judicial District Court, Case No. 15 OC 00261 1B, Dept. I, ("OML Case")
20 pursuant to NRS 241.037(2) alleging that the Commission violated Nevada's
21 Open Meeting Law ("OML") when the Commission filed a notice of appeal in
22 the ethics case and requesting that the notice of appeal be declared void under
23 NRS 241.036 of the OML.

24 On December 21, 2015, the Assemblymen filed Respondents' Motion to
25 Dismiss Appeal for Lack of Appellate Jurisdiction or, in the alternative, Motion
26 to Stay Appeal and Remand to District Court for Resolution of Respondents'
27 Complaint to Void Notice of Appeal filed by Commission on Ethics as Action
28 taken in Violation of Open Meeting Law ("Motion to Dismiss"). On January 19,

1 2016, the Commission filed an opposition to the Motion to Dismiss
2 (“Opposition”). The reply is due to be filed by the Assemblymen on February 9,
3 2016.

4 The original briefing schedule for the appeal was issued prior to the filing
5 of the Motion to Dismiss. *See* Order Removing from Settlement Program and
6 Reinstating Briefing dated November 16, 2015 (“Scheduling Order”). The
7 Scheduling Order reinstated the briefing schedule instructing that the opening
8 brief and appendix shall be filed within 90 days, which date is February 16, 2016,
9 and thereafter briefing shall proceed in accordance with NRAP 31(a)(1).

10 LAW GOVERNING EXTENSIONS

11 It is well established that a court possesses the inherent power to control its
12 docket and provide for the efficient and economical use of judicial resources. In
13 furtherance of this authority, NRAP 26(b)(2) provides:

14 Except as otherwise provided in these Rules, or when not otherwise
15 controlled by statute, the time prescribed by these Rules to perform
16 any act may be extended once for appellant(s) and once for
17 respondent(s) by stipulation of the parties. No stipulation extending
18 time is effective unless approved by the court or a justice or judge
19 thereof; and such stipulations must be filed before expiration of the
20 time period that is sought to be extended.

21 The parties agree that the Nevada Supreme Court’s decision regarding the
22 Assemblymen’s Motion to Dismiss is likely to bear upon the course of the
23 proceedings in this appeal. Pursuant to NRAP 26(b)(2), these circumstances
24 provide good cause for the parties to stipulate to an extension of the briefing
25 schedule applicable to both parties. The parties agree it would promote efficient
26 and economical use of judicial resources and stipulate to an extension of time to
27 file of Appellant’s Opening Brief and Appendix until sixty (60) days after entry
28 of the Supreme Court’s Order regarding the Motion to Dismiss, unless such order
stays the appeal or is dispositive of the appeal, and thereafter, briefing shall

1 proceed in accordance with NRAP 31(a)(1). Therefore, the parties respectfully
2 ask this Court to enter an order approving the extension of the briefing schedule
3 as stipulated by the parties.

4 **STIPULATION OF PARTIES**

5 Having met and conferred in good faith, counsel for the parties hereby
6 agree and stipulate, contingent upon approval by the Court, as follows:

7 1. It would promote efficient and economical use of judicial resources for
8 the Supreme Court to issue its ruling on the pending Motion to Dismiss prior to
9 the filing of briefs by the parties.

10 2. Until such time as the Supreme Court issues its ruling on the Motion to
11 Dismiss, the parties will not be required to file and serve their respective briefs
12 and any appendix.

13 3. Upon the issuance of the ruling on the Motion to Dismiss, unless such
14 ruling stays the appeal or is dispositive of the appeal, the briefing schedule shall
15 be reinstated and Appellant shall have sixty (60) days to file and serve the
16 opening brief and appendix. Thereafter, briefing shall proceed in accordance with
17 NRAP 31(a)(1).

18 IT IS SO STIPULATED.

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20 DATED: This 2nd day of February, 2016.

DATED: This 2nd day of February, 2016.

21
22 By: Tracy L. Chase

23 **TRACY L. CHASE**
24 Commission Counsel
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IT IS SO ORDERED:

DATE: _____

JUSTICE OF THE SUPREME COURT