

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.

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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' REPLY IN SUPPORT OF
MOTION TO EXCEED PAGE LIMIT FOR
RESPONDENTS' REPLY IN SUPPORT OF 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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REPLY

Respondents Assemblymen Ira Hansen and Jim Wheeler (the Assemblymen) hereby file this reply in support of their motion to exceed the page limit for their reply in support of 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 241.¹

In their motion to exceed the page limit, the Assemblymen state in detail how each argument in their 18-page reply directly, specifically and cogently addresses, with citation to relevant authority, each of the multitude of arguments raised by the Commission in its response, including the following arguments which the Commission made for the first time in its response and which the Assemblymen could address only in their reply: (1) the Commission's argument that the Assemblymen are not "persons" who have standing under NRS 241.037(2) to bring an OML complaint because they filed the complaint in their official

¹ Along with its response opposing the Assemblymen's motion to exceed the page limit, the Commission also filed a motion to strike the Assemblymen's motion to dismiss the appeal, reply and supplemental exhibits. Pursuant to NRAP 27(a)(3), the Assemblymen are filing a separate response in opposition to the Commission's motion to strike as permitted by that rule.

governmental capacities, not as “private persons,” and because they were not denied a right conferred by the OML; (2) the Commission’s argument that, although it is the public body which actually holds the power to determine whether to appeal, it was not required to and did not, as a body, make the decision to appeal in a public meeting under the OML because “direction” to appeal was given to its counsel by the Commission’s chair and executive director; (3) the Commission’s argument that its counsel had the authority under NRS 281A.260 and the rules of professional conduct to file the appeal without first obtaining authorization from the Commission as a body; (4) the Commission’s argument that its decision to appeal is completely exempt from the OML under NRS 241.016(3) and 281A.440(16); and (5) the Commission’s argument that at its post-violation meeting on December 16, 2015, it cured the OML violation by taking corrective action under NRS 241.0365 to ratify the void notice of appeal to make it effective retrospectively during the jurisdictional appeal period.

Given the multitude of arguments raised by the Commission in its response, including those raised for the first time, there is good cause for the extra pages in the reply so the Assemblymen can properly address each argument raised by the Commission in a cogent manner with comprehensive citation to relevant authority, including caselaw from other jurisdictions. See 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.”).

Furthermore, the Commission provides no argument or explanation of how the Assemblymen’s reply violates NRAP 27(a)(4), which provides that “[a] reply shall not present matters that do not relate to the response.” Given that each argument in the Assemblymen’s reply directly, specifically and cogently addresses, with citation to relevant authority, each matter raised by the Commission in its response, the Assemblymen’s reply conforms with NRAP 27(a)(4) because it presents only matters that relate directly to the Commission’s response.

The Commission also ignores the fact that its attempt to ratify the void notice of appeal at the Dec. 16 meeting occurred *after* the Assemblymen had already filed their motion to dismiss the appeal. As a result, it is untenable for the Commission to claim the Assemblymen are improperly using their reply to challenge the validity of the Commission’s actions at the Dec. 16 meeting when the Commission, for the first time in its response, raised its actions at the Dec. 16 meeting as a defense. Therefore, the Assemblymen’s reply provided them with the first opportunity in this appeal to challenge the validity of the Commission’s actions at the Dec. 16 meeting, and their reply properly challenges and addresses, with citation to relevant authority, the validity of the Commission’s attempt to ratify the void notice of appeal at the Dec. 16 meeting.

The Commission also claims the Assemblymen's motion to dismiss and reply raise new theories on appeal and rely on matters outside the appellate record and therefore the legal issues raised by the motion to dismiss and reply must be decided first by the district court. This is wrong as a matter of law because the legal issues raised by the motion to dismiss and reply are pure questions of law which involve issues of statutory construction and which this Court may decide de novo without any deference to the district court. In particular, this Court may decide as a matter of law whether the appeal should be dismissed 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.

The Commission also claims the Assemblymen, after submitting their reply, improperly and untimely submitted supplemental exhibits consisting of the second OML complaint in the district court and proof of service thereof. First, the Assemblymen's submission of the supplemental exhibits has no relevance or bearing on the merits of the motion to exceed the page limit for their reply. Second, the supplemental exhibits were not untimely because they were submitted to this Court immediately after they were filed with the district court. Third, as explained in the submission, the supplemental exhibits were submitted to this Court for informational purposes only in order to keep the Court fully informed of the district court cases. There is nothing improper in such a submission.

Finally, the Assemblymen's counsel again want to stress that they take no pleasure in asking the Court for permission to exceed the page limits or in preparing briefs that exceed the page limits. Nevertheless, the Assemblymen's counsel believe they have a professional obligation to their clients and this Court to respond to all arguments raised by the Commission and to address those arguments "with high standards of diligence, professionalism, and competence." Barry v. Lindner, 119 Nev. 661, 671 (2003); Polk v. State, 126 Nev. 180, 184 (2010). The Assemblymen's counsel also believe this duty requires them to avoid inadequate appellate practices, such as discussing issues without including "cogent argument and citation to relevant authority." Berkson, 126 Nev. at 501-02. Therefore, the additional pages are the direct result of thoroughly discussing all of the important issues of statewide concern and first impression raised by this case in a cogent manner with comprehensive citation to "adequate supporting law," including relevant caselaw from other jurisdictions. Barry, 119 Nev. at 672.

Therefore, the Assemblymen respectfully ask the Court to grant their motion to exceed the page limit for their reply to 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 14th day of March, 2016.

Respectfully submitted,

BRENDA J. ERDOES

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 14th day of March, 2016, 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' Reply in Support of their Motion to Exceed the Page Limit for their Reply in Support of 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:

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