

IN THE SUPREME COURT OF THE STATE OF NEVADA

David Harrison Degraw,
Petitioner,

vs.

**The Eighth Judicial District Court of
the State of Nevada, in and for the
County of Clark, and The Honorable
Linda Marquis, District Court Judge,**

Respondents,

Misty Jo Degraw,

Real Party in Interest.

Sup. Ct. Docket No.

Dist. Ct. Case No.

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Elizabeth A. Brown
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PETITIONER’S REPLY TO ORDER TO SHOW CAUSE

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I. CLARIFICATION AND ARGUMENT

A. The Lack of Entry of a Written Order Should Not be Fatal in this Case.

The Court rightly noted that the district court’s ruling by way of minute order without entry of a written order is ineffective for any purpose. *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987). Not surprisingly under the circumstances (given Petitioner’s counsel was in the midst of the legislative session), the fact that a written order had not been entered escaped notice by both parties and the district court. Upon receipt of this Court’s Order to Show Cause (hereinafter “OSC”) the parties immediately submitted a written order for the District Court’s signature, which was then filed on September 11, 2017. *See* Appendix to Reply.

However, this defect need not render the writ unavailable. NRS 34.160 provides that extraordinary writs are available to control a lower court’s conduct. Here, on March 2, 2017, the district court set an evidentiary hearing for March 8, 2017, to be conducted by telephone or Skype. Given Petitioner’s counsel’s inability both to participate given his official duties, and the impossibility of conducting an effective evidentiary hearing by telephone, and given counsel had

just three judicial days to act, the existence of an entered written order, or lack thereof, was immaterial at a practical level. The writ was necessary to stop the arbitrary and capricious nature of the district court's exercise of its discretion.¹

Moreover, consideration of a writ petition is justified where an important issue of law needs clarification and public policy is served by Supreme Court's invocation of its original jurisdiction: "One such instance is when a writ petition offers this court 'a unique opportunity to define the precise parameters of [a] privilege' conferred by a statute that this court has never interpreted."² Here, this Court has never interpreted whether NRS 1.310 is an impermissible intrusion of the Legislature upon the Judiciary. Such a determination is crucial to preserve Nevada's citizen-legislature.

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¹ See *Woerner v. Justice Court of Reno Twp. ex rel. Cty. of Washoe*, 116 Nev. 518, 523, 1 P.3d 377, 380 (2000) ("A writ of mandamus will issue to control a court's arbitrary or capricious exercise of discretion." citing *Marshall v. District Court*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992) (citing *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981)).)

² *Diaz v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 88, 93, 993 P.2d 50, 54 (2000), citing *Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 667, 856 P.2d 244, 247 (1993).

B. The Court Should Consider the Issue Because it is Capable of Repetition.

As noted in its OSC, the Supreme Court “will consider an issue even where it is moot when the matter is ‘capable of repetition, yet evading review.’”³ This situation is deemed an exception to the mootness doctrine when the duration of the challenged action is relatively short and there is a likelihood that a similar issue will arise in the future.⁴

Here, it is very likely that the issue will repeat itself given the number of attorneys currently elected – and likely to be elected in the future – to the Nevada Legislature. In the 79th Legislature, 12 of the 63 legislators (not to mention the Governor and Lt. Governor) were practicing attorneys, many of whom retained their cases into and beyond the legislative session. That a future legislator might carry a case into the period of a legislative session is a near certainty.

One of the hallmarks of the Nevada Legislature is that it is truly a citizen legislature. Its short and infrequent sessions allow for citizens of nearly every

³ Order to Show Cause, filed August 28, 2017 at 2, *citing Traffic Control Servs., Inc. v. United Rentals Nw., Inc.*, 120 Nev. 168, 172, 87 P.3d 1054, 1057 (2004) (*limited on other grounds by HD Supply Facilities Maint., Ltd. v. Bymoen*, 125 Nev. 200, 201, 210 P.3d 183, 183 (2009)) (quotations in the original).

⁴ *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (*citing Binegar v. District Court*, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996) (noting that the matter must be important), *and Langston v. State, Dep't of Mtr. Vehicles*, 110 Nev. 342, 344, 871 P.2d 362, 364 (1994) (pointing out that facts unique to a particular party will not give rise to the mootness exception)).

discipline and occupation to participate and offer their unique insights into the legislative process. Yet given the short length of each legislative session, it is entirely likely that any future similar holding of a trial court would be rendered moot before this Court could weigh-in, thereby evading review.

Attorneys are especially valuable in the legislative effort given their training and experience in interpreting, understanding, and applying statutory language to ordinary life experiences. Though the Legislature would certainly continue to operate without legislators possessing particular expertise, it would be a travesty at best to disincentivize attorneys' participation given their practical understanding of the interpretation and application of legal language. Thus, this matter is important and deserving of this Court's attention.⁵ The issue is certainly capable of repetition yet still evade review. Petitioner requests this Court provide that review.

II. CONCLUSION.

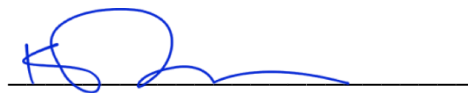
The issues presented in this case are critically important to an effective legislature. Nevada's citizen-Legislature is dependent upon garnering participants of as many relevant disciplines and professions as possible, as such expertise aids in crafting good legislation. NRS 1.310 seeks to strike an appropriate balance

⁵ *Diaz*, 116 Nev. at 93, 993 P.2d at 54; *Binegar*, 112 Nev. at 548, 915 P.2d at 892.

between the Judiciary's need to move cases forward and the Legislature's need to have experienced and active attorneys participate in the deliberative process of legislation.

The lower court in this case declared NRS 1.310 an impermissible intrusion of the Legislature into the Judiciary's inherent powers. Yet because the legislative session is short compared to the judicial process of deciding cases, review of the trial court's determination should fall within the "capable of repetition, yet evading review" exception to mootness. Instead, this Court should address squarely the lower court's abuse of discretion to order an evidentiary hearing by telephone for an attorney-legislator in the midst of a legislative session. This Court should consider the arguments made in the briefs of the parties and amicus curiae and determine whether the Legislature is able to allow, as a practical matter, attorneys to participate in its legislative process.

DATED this 11th day of September 2017.



—
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CERTIFICATE OF COMPLIANCE


1. I certify that the foregoing Reply complies with the formatting requirements of NRAP 29(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in 14 point font and Times New Roman type.

2. I certify that the foregoing Reply complies with the typevolume limitations of NRAP 32(a)(7) because, excluding the parts of the reply exempted by NRAP 32(a)(7)(C), is proportionately spaced, has a typeface of 14 points or more, and contains 1,325 words, which is less than the type-volume limit of 7,000 words.

3. Finally, I hereby certify that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 11th day of September 2017.



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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Family Law Group, and that on the 11th day of September 2017., pursuant to NRAP 25 and NEFCR 8 and 9, I filed and served a true and correct copy of the foregoing Reply to Real Party in Interest Misty Jo Degraw's Answering Brief in the manner noted below, directed to the following:

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