

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, BOARD OF
PAROLE COMMISSIONERS

Appellants,

vs.

STATE OF NEVADA,

Respondent.

Supreme Court Case No. 75799

District Court Case No. C78-1052

Electronically Filed
May 30 2018 04:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' MOTION TO HOLD APPEAL IN ABEYANCE

This appeal arises from a Petition for Modification of Sentence filed by the Nevada Board of Parole Commissioners (Parole Board) pursuant to NRS 176.033(2) in an underlying criminal proceeding. The Parole Board likely is not a “party” to the underlying criminal proceeding and thus cannot file an appeal. As a result, the Parole Board intends to file a writ petition. A writ petition is the proper vehicle to review the District Court’s ruling. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. Adv. Op. 16, 368 P.3d 1198, 1200 (2016).

However, because the District Court denied the Parole Board’s Petition for Modification of Sentence (which is an appealable final order under NRS 177.015), the Parole Board filed a “protective” notice of appeal to preserve any appellate rights if it is later considered a “party.” *See United States v. Owen*, 553 F.3d 161, 165 (2d Cir. 2009) (“Finally, nothing in this opinion should be read to criticize the practice of filing a ‘protective’ notice of appeal ... To the contrary, a ‘protective’

notice of appeal is a useful litigation tool where, as here, the timeliness of a subsequent appeal could be called into question.”).

Since the forthcoming writ proceeding is the appropriate vehicle to litigate the issues presented, the Parole Board respectfully requests that the Court hold this appeal and all deadlines in abeyance until the writ is resolved. *See Owen*, 553 F.3d at 164 (“In the normal course, a ‘protective’ notice of appeal should be held in abeyance” until it “become[s] effective”).

RESPECTFULLY SUBMITTED this 30th day of May, 2018.

ADAM PAUL LAXALT
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document in accordance with this Court's electronic filing system and consistent with NEFCR 9 on May 30, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system as follows:

Terrence McCarthy, Esq.
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I further certify that some of the participants in the case are not registered as electronic users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

Marlin Thompson
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/s/ Barbara D. Cozens
An employee of the Office of
The Attorney General