

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA ex rel. NICOLE J. CANNIZZARO, in her official capacity as Senate Majority Leader of the Senate of the State of Nevada; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate of the State of Nevada; LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION, in its official capacity as the legal agency of the Legislative Department of the State of Nevada; BRENDA J. ERDOES, Esq., in her official capacity as Legislative Counsel and Chief of the Legislative Counsel Bureau, Legal Division, and in her professional capacity as an attorney and licensed member of the State Bar of Nevada; and KEVIN C. POWERS, Esq., in his official capacity as Chief Litigation Counsel of the Legislative Counsel Bureau, Legal Division, and in his professional capacity as an attorney and licensed member of the State Bar of Nevada,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for CARSON CITY; and THE HONORABLE JAMES TODD RUSSELL, District Judge,

Respondents, and

JAMES A. SETTELMEYER, JOSEPH P. HARDY, HEIDI SEEVERS GANSERT,

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 80313

Original Action for Writ to
First Judicial District Court,
Carson City, Nevada,
Case No. 19 OC 00127 1B

**PETITIONERS' MOTION
TO EXCEED PAGE LIMIT
FOR PETITIONERS'
EMERGENCY MOTION
UNDER NRAP 8(a)(2) AND
NRAP 27(e) FOR STAY OF
ALL DISTRICT COURT
PROCEEDINGS
PENDING RESOLUTION
OF PETITION FOR
WRIT OF MANDAMUS**

SCOTT T. HAMMOND, PETE
GOICOECHEA, BEN KIECKHEFER,
IRA D. HANSEN, and KEITH F.
PICKARD, in their official capacities as
members of the Senate of the State of
Nevada and individually,

Real Parties in Interest.

**PETITIONERS' MOTION TO EXCEED PAGE LIMIT FOR
PETITIONERS' EMERGENCY MOTION UNDER NRAP 8(a)(2) AND
NRAP 27(e) FOR STAY OF ALL DISTRICT COURT PROCEEDINGS
PENDING RESOLUTION OF PETITION FOR WRIT OF
MANDAMUS**

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MOTION TO EXCEED PAGE LIMIT

Petitioners State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift (“Legislative Defendants”), by and through their counsel the Legal Division of the Legislative Counsel Bureau (“LCB Legal”) under NRS 218F.720; and LCB Legal, in its official capacity as the legal agency of the Legislative Department of the State of Nevada; Brenda J. Erdoes, Esq., in her official capacity as Legislative Counsel and Chief of LCB Legal and in her professional capacity as an attorney and licensed member of the State Bar of Nevada; and Kevin C. Powers, Esq., in his official capacity as Chief Litigation Counsel of LCB Legal and in his professional capacity as an attorney and licensed member of the State Bar of Nevada, hereby file this motion to exceed the page limit for their emergency motion under NRAP 8(a)(2) and NRAP 27(e) for a stay of all district court proceedings pending resolution of their petition for writ of mandamus (“writ petition”).

To properly support the emergency motion for a stay under NRAP 8(a)(2) and NRAP 27(e), LCB Legal respectfully requests to exceed the 10-page limit prescribed by NRAP 27(d)(2) for ordinary motions and to file a 23-page emergency motion for a stay.

DECLARATION OF REASONS FOR THE MOTION

I. Background.

The Petitioners' writ petition and emergency motion for a stay concern the order entered by the district court in the underlying action on December 19, 2019, which: (1) disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720; (2) required the Legislative Defendants to obtain separate outside counsel to represent them in their official capacity in this litigation; (3) denied a stay of the district court proceedings requested by LCB Legal to address the consequences of the order requiring the Legislative Defendants to obtain separate outside counsel to represent them in their official capacity in this litigation; and (4) set a procedural schedule for briefing dispositive motions on the merits of the underlying action requiring the Legislative Defendants to file an opposition to the Plaintiffs' motion for summary judgment and file their own counter-motion for summary judgment not later than January 21, 2020.

To address emergency circumstances and prevent irreparable harm arising from the district court's disqualification order, the Petitioners filed the emergency motion for a stay because, unless this Court stays the district court proceedings pending resolution of the writ petition, the object of the Petitioners' writ petition—

to obtain appellate review of the district court's disqualification order—will be entirely defeated and irretrievably lost.

II. Argument.

In filing this motion to exceed the page limit, LCB Legal is respectful of this Court's admonition to appellate counsel to observe reasonable limitations on arguments filed with this Court. See Hernandez v. State, 117 Nev. 463 (2001). However, to properly support an emergency motion for a stay under NRAP 8(a)(2), NRAP 8(c) and NRAP 27(e), LCB Legal was required to meet several important requirements under the appellate rules.

First, under NRAP 27(e), the emergency motion must explain the reasons why relief is needed in less than 14 days to avoid irreparable harm. Second, under NRAP 8(a)(2), the emergency motion must explain the reasons why moving first in the district court for a stay would be impracticable. Finally, under NRAP 8(c), the emergency motion must thoroughly discuss, with citations to relevant authority, each of the four factors considered by this Court in deciding stay motions, and the fourth factor must include a discussion of why the Petitioners are likely to prevail on the merits of their writ petition. Fritz Hansen v. Dist. Ct., 116 Nev. 650 (2000); Mikohn Gaming Corp. v. McCrea, 120 Nev. 248 (2004); State v. Robles-Nieves, 129 Nev. 537 (2013).

To properly address these important requirements under the appellate rules, LCB Legal needed to exceed the page limit to meet this Court’s high standards of appellate practice in which this 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 meeting all of the important requirements under the appellate rules for supporting the emergency motion for a stay in a cogent manner with comprehensive citation to “adequate supporting law,” including relevant case law from other jurisdictions. Barry, 119 Nev. at 672.

Accordingly, for these reasons, the Petitioners ask this Court to grant their motion to exceed the page limit for their emergency motion for a stay.

CONCLUSION

Based on the foregoing, the Petitioners ask this Court to grant their motion to exceed the page limit for their emergency motion for a stay of all district court proceedings pending resolution of the writ petition.

DATED: This **3rd** day of January, 2020.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers

KEVIN C. POWERS

Chief Litigation Counsel

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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 3rd day of January, 2020, pursuant to NRAP 25 and the parties' stipulation and consent to service by electronic mail, I served a true and correct copy of this Motion to Exceed Page Limit for Emergency Motion under NRAP 8(a)(2) and NRAP 27(e) for Stay of All District Court Proceedings Pending Resolution of Petition for Writ of Mandamus, as follows:

By means of the Nevada Supreme Court's electronic filing system and electronic mail directed to:
KAREN A. PETERSON, ESQ.
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Attorneys for All Real Parties in Interest and All Other Plaintiffs in the District Court Proceedings

By United States Mail, postage prepaid, directed to:
HONORABLE JAMES T. RUSSELL
FIRST JUDICIAL DISTRICT COURT
885 E. Musser St. Room 3061
Carson City, NV 89701
Respondent District Judge

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

By electronic mail directed to:
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State of Nevada ex rel. Governor Steve Sisolak, Lieutenant Governor Kate Marshall, Nevada Department of Taxation and Nevada Department of Motor Vehicles