

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH
INSTITUTE, a Nevada domestic
nonprofit corporation,

Appellant,

vs.

BRITTNEY MILLER, an individual
engaging in dual employment with the
Nevada State Assembly and Clark
County School District; DINA NEAL, an
individual engaging in dual employment
with the Nevada State Senate and Nevada
State College and College of Southern
Nevada; JAMES OHRENSCHALL, an
individual engaging in dual employment
with the Nevada State Senate and Clark
County Public Defender; SELENA
TORRES, an individual engaging in dual
employment with the Nevada State
Assembly and a Clark County Public
Charter School; and LEGISLATURE OF
THE STATE OF NEVADA,

Respondents.

Supreme Court Case No.: 85935

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Jun 16 2023 04:29 PM
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT’S OPPOSITION
TO RESPONDENTS’ JOINT
MOTION FOR EXTENSION OF
TIME TO FILE ANSWERING
BRIEF (SECOND REQUEST)**

Appellant, Nevada Policy Research Institute (“NPRI”), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the firm Fox Rothschild LLP, hereby submits its Opposition to the Joint Motion for Extension of Time to File Answering Brief (the “Motion to Extend”) filed by the Respondent – Legislators and Respondent-Legislature (“Respondents”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

More than 4 months ago, the Court granted Respondents' first request for enlargement of time when it granted the joint countermotion for legislative continuance pursuant to NRS 1.310 that Respondents filed in response to NPRI's request for expedited briefing. *See* Order on file herein, entered February 9, 2023. The Court's Order resulted in NPRI's opening brief due date being pushed back from May 10, 2023 to June 12, 2023 and resulted in Respondents being given their first extension of a minimum of 33 days, from June 9, 2023 to July 12, 2023, to file answering briefs. This first extension calculation, of course, assumes NPRI would have waited the full 120-day period to file an opening brief allowed under NRAP 31(a)(1). This obviously would not have been the case, however, given NPRI's efforts to notice the appeal in the district court the day immediately following entry of the district court's order below and to move for an expedited briefing schedule the day immediately following docketing of the appeal herein.

Regardless of whether Respondents are making a first or second extension request, or the arguable duration of the additional time given, the facts are undisputed that Respondents requested and received the current briefing schedule, and Respondents knew as early as the beginning of February the specifics of that schedule. The question begs then whether the failure of Respondents' counsel to

provide any specifics of or support for their claim to “some upcoming, scheduled, pre-paid family vacation plans” (Motion at p. 3) is a result of such plans, if any, being made well after entry of the Court’s Order. Even if one or more counsel does reply with proof of travel purchased before entry of the Court’s Order, the fact remains, too, that Respondents waited more than 4 months to seek relief and, certainly not coincidentally, filed their Motion only after NPRI diligently complied with the Court’s briefing schedule and Respondents reviewed NPRI’s opening brief.

For these reasons, as further detailed below, NPRI implores the Court to denounce such obvious gamesmanship and deny Respondents’ Motion in its entirety, inclusive of finding that no good cause exists for this or any future telephonic extension request under NRAP 26(b)(1)(B). This matter, which was first filed in the district court in July, 2020, has languished through two legislative sessions at Respondents’ request. NPRI and the citizens of Nevada deserve a timely resolution of the separation-of-powers question concerning Respondents’ dual service, not further delay tactics.

II. ARGUMENT

In addition to providing no specific facts or documentation to support their Motion, Respondents cite no legal authority for what is tantamount to a second request for extension of time to file their answering briefs. NRAP 26(b) will

permit a party to move to extend the time prescribed by the rules or by its order, but the Court is limited to providing such relief only upon a showing of good cause. NRAP 26(b)(1)(A) and (B). Respondents' Motion fails to meet even this minimum standard.

First, the communications sent by counsel for Respondents Miller and Torres to counsel for NPRI prove without question that counsel waited to make an extension request until after having the opportunity to review NPRI's opening brief, which was said to "look solid" in one counsel's unsolicited opinion. *See* Email Exchange of Bradley Schrager and Colleen McCarty occurring between Monday, June 12, 2023 at 4:30 p.m. and Tuesday June 13, 2023 at 12:33 a.m., a true and correct copy of which is attached hereto as **Exhibit 1**. Thus, Respondents' counsel voluntarily took no action to question the July 12, 2023 due date for the answering briefs, even though they knew of the date as early as February.

Further, the counsel initiating the request acknowledges his travel to be "a couple of weeks here at the end of June," a period ending nearly two weeks prior to the current filing deadline. *Id.* Indeed, the Rules provide ample time, a full 30 days, for Respondents to file their answering brief. NRAP 31(a)(1)(B). It is also worth noting that even though counsel expresses the intent to "file a brief on behalf of [Respondents Miller and Torres] individually to address their own issues," the entirety of the briefing below by counsel related to the instant appeal

consists solely of non-substantive joinders to briefs filed by other counsel on behalf of other Respondents. *See* Appellant's Appendix Vol. 1 PGS 55 – 60, 87 – 89, 176 – 178, and 203 - 205.

Indeed, no less than 6 attorneys represent the 4 Respondents remaining in the instant appeal, half of whom are from the firm representing Respondents Miller and Torres. No explanation is given for why these counsel cannot, either collectively or individually, fulfill the briefing responsibility of their clients. Even the reference to the possibility of having sought a further legislative continuance following the Governor's mandate for additional special sessions fails to carry any weight where, first, the current extension request is based on the purported travel needs of Respondents' counsel, not the Respondents themselves, who are the only ones entitled to invoke the statute. And second, even if NRS 1.310 would have been applicable, the 35th Special Session of the Legislature that began on June 7, 2023 ended, as Respondents and counsel surely knew it would, with an adjournment sine die only 2 days into Respondents' briefing period on June 14, 2023.

As a final matter, in addition to Respondents' complete failure to provide any factual or legal basis to assert good cause exists to grant the Motion pursuant to NRAP 26(b)(1)(A) or (B) as noted above, it is the Court's own words that best illustrate why the soonest possible resolution of the separation-of-powers issue

presented by this appeal remains imperative. In its original remand order herein, the Court specifically called out how the failure to resolve the separation-of-powers question concerning Respondents’ dual service “could result in serious public injury – either by the continued allegedly unlawful service of the above-named officials, or by the refusal of qualified persons to run for office for fear of acting unconstitutionally – because this unsettled issue continues to arise.” *See Nev. Policy Research Inst. v. Cannizzaro*, 138 Nev. Adv. Op. 28 at *10 (2022).

Despite this recognition, the district court held the case under advisement for 5 months following its August 4, 2022 hearing on all pending matters, which left no time for the “future guidance [] necessary because of the lack of judicial interpretation of Nevada’s separation-of-powers clause” to be given in advance of the 2022 General Election. *See id.* at *10-11. And this Court already granted one request for extension of time that, in fact, effectively delayed the matter an additional 4 to 5 months, when counting from the Court’s Order entered February 9, 2023 to the present.

Respondents have failed to provide any cause, let alone good cause, to grant the relief sought in the Motion. Accordingly, Respondents’ Motion should be denied, and the Court should hold firm with the July 12, 2023 due date for answering briefs.

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III. CONCLUSION

For the reasons stated herein, NPRI respectfully requests this Court to deny Respondents' Motion setting forth a second request to extend the time to file responsive briefs and include in the order the denial of any future telephonic request otherwise permitted under NRAP 26(b)(1)(B).

Dated this 16th day of June 2023.

FOX ROTHSCHILD LLP

By: /s/ Deanna L. Forbush
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June 2023, I caused the foregoing
**APPELLANT’S OPPOSITION TO RESPONDENTS’ JOINT MOTION
FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF (SECOND
REQUEST)** to be served on all parties to this action by electronically filing it with
the Court’s e-filing system, which will electronically serve the following:

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/s/ Deborah L. Pressley
An Employee of Fox Rothschild LLP

Exhibit "1"

From: [Bradley Schrager](#)
To: [McCarty, Colleen E.](#)
Cc: jblum@wileypetersenlaw.com; [Powers, Kevin](#); [Berna Rhodes-Ford](#); [Daniel Bravo](#); [Dannielle Fresquez](#); [Forbush, Deanna L.](#)
Subject: [EXT] Re: NPRI v Miller
Date: June 13, 2023 12:33:08 AM

That's awesome. I usually tell my clients those decisions are my province, but every attorney has her own understanding of that sort of thing. Maybe I should give my clients more power in that area, that's food for thought, I'll consider that. But I'm sure you won't need any sort of accommodation at any point during the rest of this case, so it's a moot point. Thanks Colleen!

Bradley Schrager
bschrager@wrslawyers.com

On Jun 12, 2023, at 10:07 PM, McCarty, Colleen E.
<CMcCarty@foxrothschild.com> wrote:

CAUTION: EXTERNAL EMAIL

Counsel,

While I understand the ask and am generally able to encourage a client to agree to a reasonable extension request, the briefing schedule in this matter was set at Respondents' request and I have no authority from my client to stipulate to any additional time beyond that already given by the Court. Further, my client has instructed me to oppose any request for extension beyond the one-time, 14-day extension already available under NRAP 26(b)(1)(B).

Colleen

Colleen E. McCarty

Partner

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From: Bradley Schrager <BSchrager@wrslawyers.com>

Sent: June 12, 2023 4:30 PM

To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>

Cc: 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Powers, Kevin <kpowers@lcb.state.nv.us>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Daniel Bravo <DBravo@wrslawyers.com>; Dannielle Fresquez <DFresquez@wrslawyers.com>

Subject: [EXT] NPRI v Miller

Thanks, Coleen, brief looks solid. I am going to be leaving the country for a couple weeks here at the end of June, do you think you will be amenable to a 30-day extension from the current due date of July 12 for my clients, if I need it later in the month? I haven't spoken to my co-defendants' counsel about this, but I know I will want to file a brief on behalf of my clients individually to address their own issues, even if we all end up joining part of each other's' as well.

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