

JUL 27 2015

IN THE SUPREME COURT OF THE STATE OF NEVADA

HONORABLE CATHERINE RAMSEY,
NORTH LAS VEGAS MUNICIPAL
JUDGE,

Petitioner,

vs.

THE HONORABLE ERIC JOHNSON,
DEPARTMENT 20, DISTRICT COURT
JUDGE, EIGHTH JUDICIAL DISTRICT
COURT

Respondent.

THE CITY OF NORTH LAS VEGAS
AND BARBARA A. ANDOLINA, CITY
CLERK OF THE CITY OF NORTH
LAS VEGAS, BETTY HAMILTON,
MICHAEL WILLIAM MORENO and
BOB BORGENSEN, individually and as
Members of "REMOVE RAMSEY
NOW,"

Real Parties in Interest.

REPLY TO PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

Patrick G. Byrne (NV Bar # 7636)

Richard C. Gordon (NV Bar # 9036)

Daniel S. Ivie (NV Bar # 10090)

pbyrne@swlaw.com

rgordon@swlaw.com

divie@swlaw.com

SNELL & WILMER L.L.P.

3883 Howard Hughes Parkway,

Suite 1100

Las Vegas, NV 89169

Telephone: (702) 784-5200

Facsimile: (702) 784-5252

*Attorneys for The City of North Las Vegas and
Barbara Andolina, City Clerk of the City of North Las Vegas*

*Transferred from docket no. 68394
per order filed 7-27-15.*

15-22706

MEMORANDUM OF POINTS AND AUTHORITIES

Real Parties in Interest The City of North Las Vegas and Barbara A. Andolina, City Clerk (collectively, the “City”), by and through their attorneys of record, the law firm of Snell & Wilmer, L.L.P., hereby submit the following Reply to the Honorable Catherine Ramsey’s (“Petitioner”) Response to the Supreme Court’s Order to Show Cause dated July 16, 2015.

I. THE WRIT PETITION IS IMPROPER BECAUSE PETITIONER HAS AN ADEQUATE LEGAL REMEDY THROUGH AN APPEAL OF THE DISTRICT COURT’S ORDER

As the Court explained in its’ Order to Show Cause, Petitioner’s writ petition is improper because the two orders Petitioner challenges are both independent appealable determinations and therefore provide an appropriate avenue for appeal. Order to Show Cause, p. 1. This Court has long held that “[w]rit relief is not available ... when an adequate and speedy legal remedy exists.” *Int'l Game Technlogy, Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Nevada statutes regarding writ relief confirm the Court’s holdings on this point. See NRS 34.170 (writ for mandamus “shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.”); NRS 34.330 (writ for prohibition may only be issued “where there is not a plain, speedy and adequate remedy in the ordinary course of law.”). The right to appeal, “after a final judgment is ultimately entered, will

generally constitute an adequate and speedy legal remedy precluding writ relief.”

D.R. Horton, Inc. v. Eighth Judicial Dist. Court, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007).

In this case, there are at least two independent appealable determinations giving rise to a right to appeal and thus precluding writ relief. Rule 3A(b)(1) and (3) of the Nevada Rules of Appellate Practice provide as follows:

(b) Appealable Determinations. An appeal may be taken from the following judgments and orders of a district court in a civil action:

- (1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.
- ...
- (3) An order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.

NRAP 3(b)(1) and (3). Judge Johnson’s order dismissing Petitioner’s Complaint constitutes a “final judgment” under Rule 3A(b)(1). Similarly, his denial of Petitioner’s oral motion for a stay of the recall election pending appeal constitutes “an order ... refusing to grant an injunction” under Rule 3A(b)(3). Both orders are considered “appealable determinations” under the Rule. Furthermore, Judge Johnson’s order is a final judgment, the appeal of which “constitutes an adequate and speedy legal remedy precluding writ relief.” *D.R. Horton*, 123 Nev. at 474, 168 P.3d at 736.

Rather than simply conceding she made a mistake, Petitioner attempts to double down on her decision to file the writ by arguing it was somehow necessary because of the pending recall election, leaving no other “plain, speedy or adequate remedy.” Pet. Response to Order to Show Cause, p. 4. However, Petitioner ignores her own motion to stay filed contemporaneously with the writ, which afforded her the protection she needed from the pending recall. Moreover, the writ procedure provides a process that is, in effect, no “speedier” than a traditional appeal. If the Court considers the writ, it orders a full briefing schedule.

Instead of the improper writ petition currently before the Court, the proper (and more expeditious) course would have been to file a notice of appeal based on Rule 3A(b)(1) or (3) and then file a motion for an emergency injunction and expedited briefing and decision. For these reasons, Petitioner’s writ petition is procedurally improper under Nevada law. As the City will explain in detail below, the Court should nevertheless consider Petitioner’s writ petition as an opening brief in order to resolve these issues in an expedited manner.

II. THE APPEAL NEEDS TO EXPEDITED

Petitioner and the City agree on one thing: the disputed issues, whether presented by appeal or writ, need to be decided on an expedited basis. Pet. Response to Order to Show Cause, p. 16. The public’s right to engage a recall election should not be unreasonably delayed. To accomplish this objective, the

Court should treat Petitioner's writ petition as an opening brief¹ and issue an expedited briefing schedule and, if necessary, oral argument. Petitioner's recent filing of a notice of appeal in both the District Court and Supreme Court underscores her understanding that the writ petition is improper and a traditional appeal is the required course.

Petitioner's writ petition should be considered an opening brief and the appeal should be considered on an expedited basis because it ultimately impacts significant rights afforded under the Nevada Constitution and Nevada statutes to the citizens of North Las Vegas. The citizens are currently being prevented from exercising their statutory and constitutional rights to elect their public officers and, conversely, to recall those public officers whom they feel should no longer represent them, including judges. To ensure that those rights are not unduly burdened and suppressed, this Court should move to expedite briefing and its consideration of the appeal.

The City respectfully requests that the Court treat this matter on the highest-priority basis in order to reach a decision on these issues as quickly as possible and to minimize the impact on constitutional rights of the citizens of North Las Vegas.

The City proposes that answering briefs be due no later than **Tuesday, July 28,**

¹ Petitioner's Response to the Court's Order to Show Cause again improperly attempts to argue the merits of the underlying action. While the City disputes the arguments, they are not necessary to decide the narrow issue presented by the Court's Order to Show Cause. The City will reserve its arguments on the merits for its response to Petitioner's opening brief.

2015 and that Petitioner's reply brief, if any, be due no later than **Thursday, July 30, 2015**. Once briefing is complete, the City would request that a decision on these issues be rendered as expeditiously as possible.

III. CONCLUSION

Based upon the foregoing, the City of North Las Vegas and Barbara A. Andolina, City Clerk of the City of North Las Vegas, respectfully request that the Court deny Petitioner's writ petition and instead consider it as Petitioner's opening brief in a standard appeal. The City also respectfully requests that the Court order expedited briefing and consideration on the appeal so as to minimize any harm or prejudice to the constitutional rights of the citizens of the City of North Las Vegas.

DATED: July 24, 2015.

Snell & Wilmer L.L.P.

/s/ Richard C. Gordon

Patrick G. Byrne (NV Bar # 7636)
Richard C. Gordon (NV Bar # 9036)
Daniel S. Ivie (NV Bar # 10090)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, NV 89169
Attorneys for The City of North Las Vegas and Barbara Andolina, City Clerk of the City of North Las Vegas

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On July 24, 2015, I caused to be served a true and correct copy of the foregoing **REPLY TO PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE** upon the following by the method indicated:

- BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the facsimile number set forth below and/or included on the Court's Service List for the above-referenced case

/s/ Gaylene Kim

An Employee of Snell & Wilmer L.L.P.