

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE HONORABLE ELIZABETH  
HALVERSON, EIGHTH JUDICIAL  
DISTRICT COURT JUDGE,  
Petitioner,  
vs.  
NEVADA COMMISSION ON JUDICIAL  
DISCIPLINE,  
Respondent.

No. 49788

**FILED**

**JUL 13 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION  
AND UNSEALING RECORD IN THIS MATTER

This original petition for a writ of prohibition challenges certain procedures followed by respondent Nevada Commission on Judicial Discipline in seeking to impose an interim suspension upon petitioner. Although the Commission issued an interim suspension order with respect to petitioner on May 10, 2007, upon petitioner's request for a hearing, the Commission stayed its order's effect. The hearing, limited to the issue of whether petitioner's interim suspension is warranted under NRS 1.4675(3), is scheduled for July 16, 2007. Under NRS 1.4675(4), should petitioner be suspended following this hearing, she may appeal to this court.

This court may issue a writ of prohibition to arrest the proceedings of a tribunal exercising its judicial functions, when such

proceedings are in excess of the tribunal's jurisdiction.<sup>1</sup> Prohibition is an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within this court's discretion.<sup>2</sup> Petitioner bears the burden of demonstrating that extraordinary relief is warranted.<sup>3</sup>

Generally, a writ may issue only when petitioner has no plain, speedy, and adequate legal remedy,<sup>4</sup> and this court has consistently held that an appeal is an adequate legal remedy precluding writ relief.<sup>5</sup> Here, it appears that petitioner will have an adequate legal remedy in the form of an appeal from any interim suspension order.<sup>6</sup> While certain aspects of the proceedings thus far appear somewhat troublesome, in particular, those concerning the Commission's refusal without any stated reason to issue petitioner's requested subpoenas and the Commission's scheduling

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<sup>1</sup>See NRS 34.320.

<sup>2</sup>See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

<sup>3</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>4</sup>NRS 34.330.

<sup>5</sup>See Pan, 120 Nev. at 224, 88 P.3d at 841.

<sup>6</sup>See NRS 1.4675(4) (providing that a judge suspended under that statute may appeal to this court); Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004) (recognizing that an appeal is an adequate legal remedy); NRS 34.330 (indicating that a writ of prohibition may only issue if there is no adequate and speedy legal remedy).

order's allocation of the burden of proof at the hearing,<sup>7</sup> petitioner has not addressed the relevance and scope of her requested subpoenas, and we conclude that any burden of proof issues may properly be addressed in any appeal in this matter. Accordingly, we deny the petition.<sup>8</sup>

In addition, petitioner unilaterally submitted her petition in this matter with a red "SEALED" stamp, despite the absence of any order or authority providing for confidentiality of the petition in this court. Petitioner stated that she did so in light of NRS 1.4683, which provides that proceedings before the Commission are confidential up to the point that a formal statement of charges is filed with the Commission. But petitioner did not file a motion to seal the petition concurrently or in advance of submitting the petition for filing. In an abundance of caution, the clerk of this court filed the petition under seal in the first instance.

But as we held in Attorney General v. Steffen,<sup>9</sup> in connection with the then-effective, nearly identical confidentiality rule governing Commission proceedings at that time, a provision requiring confidentiality in proceedings before the Commission does not authorize confidentiality in proceedings before this court, particularly in light of NRS 1.090,

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<sup>7</sup>See, e.g., In re Jaffe, 814 A.2d 308, 317 (Pa. Ct. Jud. Disc. 2003) (stating that the board seeking a judge's interim suspension has the burden of demonstrating that the suspension is warranted, based on the "totality of the circumstances") (quoting In re Smith, 712 A.2d 849, 852 (Pa. Ct. Jud. Disc. 1998)). The judge bears no burden.

<sup>8</sup>See NRAP 21(b); Smith, 107 Nev. at 677, 818 P.2d at 851.

<sup>9</sup>112 Nev. 369, 373-74, 915 P.2d 245, 248 (1996).

mandating that court proceedings be open to the public. Specifically, we stated that

[t]he scope of the [rule concerning confidentiality] is restricted to “the confidentiality of all proceedings before the Nevada commission on judicial discipline. . . .” [The view that the rule applies to proceedings in this court] disregards not only the right and need of the public to know of such an extraordinary dispute in governmental affairs but also the threat that secret judicial proceedings pose to public confidence in this court and the judiciary.<sup>10</sup>

The rule in effect at the time that Steffen was issued was repealed as part of the legislative overhaul of the Commission pursuant to Article 6, Section 21’s amendment, which vested in the Legislature authority to provide for confidentiality of Commission proceedings. The Legislature then enacted NRS 1.4683 to replace the repealed rule. At the time of this enactment, the Legislature was well aware of Steffen’s holding, and created a statute that is substantively indistinguishable from the former rule. Accordingly, Steffen governs our decision concerning the confidentiality of this petition. While Steffen contemplated the possibility that a compelling government interest could conceivably justify sealing documents in this court, petitioner has not asserted any compelling government interest that might warrant sealing this matter, and we

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<sup>10</sup>Id. at 373-74, 915 P.2d at 248 (quoting former Rule 1 of the Administrative and Procedural Rules for the Nevada Commission on Judicial Discipline (emphasis added in Steffen)).

perceive none.<sup>11</sup> Accordingly, we direct the court clerk to unseal the record in this matter.

It is so ORDERED.<sup>12</sup>

Maupin, C.J.  
Maupin

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

cc: Arrascada & Arrascada, Ltd.  
Gentile DePalma, Ltd.  
Dorothy Nash Holmes

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<sup>11</sup>See id.

<sup>12</sup>The Honorable Mark Gibbons and Michael Cherry, Justices, voluntarily recused themselves from participation in the decision of this matter. The Honorable Nancy Saitta, Justice, did not participate in the decision of this matter.