

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. CARRIGAN, FOURTH WARD
CITY COUNCIL MEMBER, OF THE CITY
OF SPARKS,
Petitioner,
vs.
THE NEVADA COMMISSION ON ETHICS,
Respondent.

No. 53741

FILED

MAY 08 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges an oral advisory opinion issued by the Nevada Commission on Ethics.

Petitioner Michael A. Carrigan, a Sparks City Council Member, sought an advisory opinion from the Nevada Commission on Ethics regarding his ability to vote at a May 11, 2009, city council meeting which will review a master plan amendment related to the Lazy 8 project. After a May 7, 2009, hearing on petitioner's request, the Commission orally issued an advisory opinion indicating that petitioner was required to abstain from voting at the May 11, 2009, session. Petitioner then filed the instant petition for mandamus or prohibition relief, seeking an order from this court to compel the Commission to vacate its May 7 oral advisory opinion or prohibit it from enforcing that opinion.

A writ of mandamus is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of prohibition may issue to arrest the proceedings of any tribunal or board exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of the tribunal or board. See NRS 34.320. Mandamus and prohibition are extraordinary

remedies, however, and the decision to entertain such a petition is addressed to our sole discretion. We the People Nevada v. Secretary of State, 124 Nev. ___, ___, 192 P.3d 1166, 1170 (2008). Petitions for extraordinary relief generally may only issue when there is no plain, speedy, and adequate remedy at law. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Petitioner bears the burden to demonstrate that our extraordinary intervention is warranted. Id. at 228, 88 P.3d at 844. Moreover, this court “is not an appropriate forum in which to resolve disputed questions of fact.” Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

As a matter of statutory and constitutional law, both the district court and the supreme court have original mandamus and prohibition jurisdiction. Nev. Const. art. 6, §§ 4, 6(1); NRS 34.160; NRS 34.330. Ordinarily, application should be made in the first instance to the district court so that factual and legal issues are fully developed, giving this court an adequate record on which to make a reasoned decision. See State v. County of Douglas, 90 Nev. 272, 276-77, 524 P.2d 1271, 1274 (1974) (noting that “this court prefers that such an application [for extraordinary relief] be addressed to the discretion of the appropriate district court” in the first instance); see also MPC Contractors v. Appeals Officer, 111 Nev. 606, 894 P.2d 384 (1995) (noting that a petition for a writ of prohibition may properly be addressed to the district court, rather than this court). Moreover, there are expedient and efficient remedies available in the district court, in addition to mandamus and prohibition, to address matters such as those presented here, including an application for injunctive relief. See NRS 33.010 (providing that injunctive relief may be granted when it appears that a party is “entitled to the relief demanded, and such relief . . . consists in restraining the commission or continuance

of the act complained of,” when it appears that “the commission or continuance of some act, during the litigation, would produce great or irreparable injury” to the party, and when it appears, during the litigation, that the opposing party “is doing or threatens, or is about to do . . . some act in violation of the [party’s] rights respecting the subject of the action, and tending to render the judgment ineffectual”).

While we have entertained original writ petitions in cases involving exigent circumstances, see State of Nevada v. Justice Court, 112 Nev. 803, 805 n.3, 919 P.2d 401, 402 n.3 (1996), we are not convinced that this matter cannot and should not be addressed by the district court in the first instance. Based on the pleadings,¹ we are not persuaded that extraordinary intervention by this court is appropriate at this time. See NRAP 21(b), Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Accordingly, we

ORDER the petition DENIED.

Hardesty, C.J.
Hardesty

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Sparks City Attorney
Attorney General Catherine Cortez Masto/Carson City
Nevada Commission on Ethics

¹Petitioner’s failure to provide any supporting documentation with his petition constitutes an independent basis for denying this petition. See NRAP 21(b); Pan 120 Nev. at 228, 88 P.3d at 844.