

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35144

THE STATE OF NEVADA, EX REL. AMY HARVEY, THE DULY-ELECTED COUNTY CLERK OF WASHOE COUNTY AND EX OFFICIO COURT CLERK OF THE SECOND JUDICIAL DISTRICT COURT, AND AMY HARVEY IN HER OFFICIAL CAPACITY AS CLERK OF THE SECOND JUDICIAL DISTRICT COURT,

Plaintiff/Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE CHARLES M. MCGEE, CHIEF JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE BRENT T. ADAMS, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE JANET J. BERRY, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE PETER I. BREEN, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE JAMES W. HARDESTY, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE SCOTT JORDAN, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE STEVEN R. KOSACH, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; THE HONORABLE DEBORAH SCHUMACHER, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT; AND THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE, SECOND JUDICIAL DISTRICT COURT,

Defendants/Respondents and Real Parties in Interest.

FILED

JUL 26 2000

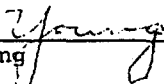
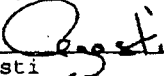
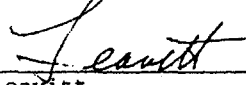
JANETTE M. BLOCK
CLERK OF SUPREME COURT
BY *S. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING MOTION TO DISMISS

This is an original proceeding in quo warranto or alternatively, an original petition for a writ of prohibition. On March 24, 2000, defendants/respondents filed an answer to plaintiff/petitioner's application, which incorporates a

motion to dismiss the complaint under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted.¹ Because the arguments in support of the motion go to the merits of this proceeding, rather than any deficiency in the pleadings, we deny the motion. NRCP 12(b)(5). Defendants/respondents' arguments shall be considered when the merits of this proceeding are decided.

It is so ORDERED.

 _____ Young	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Attorney General
Clark County District Attorney, Civil Division
Douglas County District Attorney
Michael E. Langton

¹Although defendants/respondents' motion seeks to dismiss the entire complaint/petition, we note that a motion to dismiss is inappropriate as to plaintiff/petitioner's alternative petition for a writ of prohibition, which does not fall under the purview of NRCP 12(b)(5). See NRAP 21.