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State of Nevada ex rel. Cannizzaro v. First Jud. Dist. Ct., 136 Nev. Adv. Op. 34 (June 26, 2020)

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ATTORNEY-CLIENT RELATIONSHIP: CONFLICT OF INTEREST

SUMMARY

Eight Nevada State Senators (collectively “Senator Plaintiffs”) sued, among others, Senator Cannizzaro and Secretary Clift (collectively “Legislative Defendants”) in their official capacities for actions taken on behalf of the Legislature related to the passage of Senate Bills 542 and 551. The Legislative Counsel Bureau Legal Division (“LCB Legal”) filed an answer to Senator Plaintiffs’ complaint on behalf of the Legislative Defendants. The Senator Plaintiffs then moved to disqualify LCB Legal alleging a conflict of interest under the Nevada Rules of Professional Conduct (“RPC”) Rule 1.7 in which the district court granted.² The Supreme Court of the State of Nevada granted Legislative Defendants’ petition for a writ of mandamus.

BACKGROUND

LCB Legal has an attorney-client relationship with the Legislature as a whole. LCB Legal will only represent the individual legislators in their official capacities as constituent members of the Legislature when the individual legislators are acting on behalf of the Legislature.

The Senator Plaintiffs sued the Legislative Defendants alleging that Senate Bills 542 and 551 were unconstitutionally approved. Specifically, the two Bills were allegedly approved with a two-thirds’ affirmative vote instead of the required simply majority vote.

The district court granted Senator Plaintiffs’ motion to disqualify LCB Legal because LCB Legal provided a legal opinion during the legislative session regarding the vote requirement dispute for the alleged benefit of Legislative Defendants, therefore creating a conflict of interest.

The Legislative Defendants filed a petition for a writ of mandamus because an order disqualifying counsel is not appealable immediately.³

DISCUSSION

The Supreme Court applied de novo review because the facts were undisputed and de novo is the appropriate standard for reviewing a district court’s interpretation of a statute or court rule.⁴

The Supreme Court relied on several cases in support of its decision. In *Ward*, the California appellate court determined the county attorney was not disqualified by a conflict of interest from representing the commissioner board members in their official capacities against a suit brought by the county assessor in his individual and taxpayer capacities.⁵ In *Cole*, the Tenth Circuit Court of Appeals concluded that the attorney for the school district was not disqualified

¹ By Kiley Harrison.

² Nev. R. Prof'l. Conduct R. 1.7 (2006) (prohibiting a lawyer from representing a client if a concurrent conflict of interest exists with another client).

³ Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007).

⁴ Marquis & Aurbach v. Eighth Judicial Dist. Court, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006).

⁵ Ward v. Superior Court, 138 Cal. Rptr. 532, 533-38 (Ct. App. 1997).

from representing the school district against the principal's lawsuit even though the principal had consulted with the attorneys on previous occasions regarding legal advice.⁶

Additionally, the Supreme Court, in regard to the Senate Plaintiffs' allegation that the unconstitutional passing of the two Bills nullified their votes and deprived them of the power to act, disagreed that said allegations were made on behalf of the Legislature as an entity but instead found the allegations deprived the Senator Plaintiffs' of their individual rights as senators.

The Supreme Court ultimately ruled that the Senator Plaintiffs lacked standing to bring the motion to disqualify LCB Legal because they do not have an attorney-client relationship with LCB Legal when they are not acting on behalf of the Legislature. Instead the Senator Plaintiffs brought this suit in their official capacities for acts the Legislative Defendants took on behalf of the Legislature as a whole. LCB Legal is permitted to represent the Legislative Defendants to protect the institutional interests of its organizational client, the Legislature, and defend against allegations challenging the constitutionality of the two Bills' passage.

CONCLUSION

The Supreme Court of the State of Nevada, applying de novo review, concluded that the district court erred in disqualifying LCB Legal from representing the Legislative Defendants. LCB Legal, having an attorney-client relationship with the Legislature and its constituents, is permitted to represent the Legislature Defendants because they were sued for acts taken on behalf of the Legislature as a whole. The representation of the Legislature Defendants is not a conflict of interest under RPC Rule 1.7 because LCB Legal does not have an attorney-client relationship with the Senator Plaintiffs.

DISSENT (Justice Silver, with whom Chief Justice Pickering, agrees)

The writ of mandamus should be denied because NRS 218F.720 does not require LCB legal provide legal representation and because the district court did not abuse its discretion. The determination of whether an attorney-client relationship exists is a factual determination and the Supreme Court should defer to the district court's factual finding unless it is clearly erroneous.⁷

Additionally, the Senators Plaintiffs are just as much the clients of LCB Legal in this case as the Legislative Defendants. Determining when an organization lawyer is representing the organization as a whole, individuals within the organization, or some other representation combination, is a question of fact under the Restatement (Third) of the Law Governing Lawyers § 14. LCB Legal had a duty to take reasonable steps to inform the Legislature constituents of the fact of the dual representation.⁸

⁶ Cole v. Ruidoso Municipal Schools, 43 F.3d 1373, 1384 (10th Cir. 1994).

⁷ Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

⁸ Nev. R. Prof. Conduct R. 1.13(f) (2006).