

**ADMINISTRATIVE LAW – ADVISORY REVIEW BOARD  
SUBPOENAS**

**Summary**

The Las Vegas Metropolitan Police Department Citizen Review Board (“citizen review board”) subpoenaed a police officer during an investigation of a citizen’s complaint against him. The Las Vegas Police Protective Association Metro, Inc. (“PPA”) intervened and challenged the jurisdiction of the citizen review board to issue the subpoena.

**Disposition/Outcome**

In a plurality decision, the Court held that since the citizen review board was not reviewing allegations of criminal conduct, the board was within its jurisdiction to issue the subpoena. The Court affirmed the district court’s enforcement of the subpoena.

**Factual and Procedural History**

In 2004, a citizen complaint was filed with the citizen review board against Officer Steve Leyba and another officer. The police department launched several internal investigations and ultimately referred the matter back to the citizen review board for further inquiry. The citizen review board then scheduled a hearing and issued a notice to the officers. The notice stated that “a complaint alleging . . . false arrest, harassment, abuse of authority and conduct unbecoming” had been filed in December, 2003. The citizen review board then issued a subpoena for Officer Leyba.

Officer Leyba did not appear at the hearing, despite making no effort to quash the subpoena. The citizen review board filed an application for a show cause citation and enforcement action in the district court. PPA then intervened over the objection of the citizen review board, and filed an objection to the board’s application in open court.

The district court requested information regarding whether Officer Leyba had committed a crime so that it could determine if the citizen review board had power to issue the subpoena. The citizen review board submitted certain documents for in camera inspection. At the next hearing, the board stated that it was merely investigating whether Officer Leyba had violated police department policies regarding a failure to obtain consent before undertaking a search and seizure. Officer Leyba argued that if he was found to have engaged in the alleged acts, the complaint and investigation could result in criminal liability. The district court ruled that the citizen review board has the power to subpoena officers who are being investigated and that it had the authority in this situation to subpoena the officer. The court also stated that an officer must testify in citizen review board hearings unless the officer invokes the constitutional right against self-incrimination. The court then entered an enforcement order, ordering Officer Leyba “to

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<sup>1</sup> Summarized by Robert Reid.

appear and testify before the hearing panel.”<sup>2</sup>

PPA filed a motion for reconsideration of the district court’s enforcement order, arguing that the court erred in concluding that the officer was being investigated for a crime. The district court denied the motion, and ordered all appearances of the words “false arrest” and “harassment” to be stricken from the citizen review board documents.

PPA simultaneously appealed the enforcement order and filed a petition for a writ enjoining the citizen review board from subpoenaing Officer Leyba in the current matter. The Nevada Supreme Court consolidated the cases, granted a temporary stay, and allowed a variety of interested organizations to file an amicus curiae brief.

## **Discussion**

### *Substantive Appealability*

PPA filed both an appeal and a writ petition because it was unclear whether a district court’s order enforcing the citizen review board’s subpoena was substantively appealable. Although there is no statute that authorizes an appeal from an advisory review board subpoena, NRAP 3A(b)(1) allows an injured party to appeal a final judgment in an action that was started in the same court that the judgment was entered in. A final judgment “is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.”<sup>3</sup> Since the district court’s order resolved all of the issues before the court, it was a final judgment that was appealable by an injured party.

The Court concluded “the proper method for a party to challenge a district court order enforcing or refusing to enforce an administrative subpoena, when the order resolves all issues in the proceeding, is by way of appeal.”<sup>4</sup> Since the extraordinary writs are only available when there is “no plain, speedy, and adequate remedy in the ordinary course of law,”<sup>5</sup> the writ in this instance is precluded by the availability of an appeal.

### *Appellate Standing*

An intervenor has all the rights of a party, including a right to appeal that is independent from that of the original parties. However, under NRAP 3A(a), only “aggrieved parties” are allowed to appeal. The Court noted that in general, PPA members could be subpoenaed by the citizen review board if the district court’s decision stands. Therefore, the Court concluded that PPA is an aggrieved party because the decision “affects its ability and legal right to defend PPA members against citizen review board subpoenas.”<sup>6</sup> PPA therefore had appellate standing.

### *Validity of Citizen Review Board’s Subpoena*

Only subpoenas that are generated within the authority of the entity issuing them are enforceable in court. NRS 289.390(1)(c) empowers an advisory review board to issue subpoenas within its jurisdiction. However, NRS 289.385(1) removes jurisdiction from

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<sup>2</sup> Las Vegas Police Prot. Ass’n v. Dist. Ct., 122 Nev. Adv. Op. 21, 6 (2006).

<sup>3</sup> *Id.* at 8 (quoting Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)).

<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 13.

an advisory review board over “any matter in which it is alleged that a crime has been committed.”<sup>7</sup> The Court, through statutory interpretation principles, determined that the statute should be narrowly interpreted to prohibit an advisory review board from becoming involved in a criminal investigation or proceeding that could lead to criminal charges. The Court stated that the pertinent inquiry should focus on the nature of the investigation rather than whether specific elements of a crime have been alleged in the citizen’s complaint. Therefore, the citizen review board may not refer a citizen complaint to the police department for criminal investigation or review a police department’s internal investigations for concerns involving violations of criminal statutes.

### **Conclusion**

The court found that it had jurisdiction over the appeal, and therefore denied the writ petition. Since the citizen review board’s subpoena was issued in regard to non-criminal conduct, it was validly issued. Therefore, the Court upheld the district court’s order enforcing the subpoena.

### **Rose, C.J., concurring and dissenting**

PPA does not have appellate standing since its rights have not been “adversely and substantially affected” to make it an aggrieved party. Also, the limitation on the citizen review board’s ability to issue subpoenas should only arise when a formal criminal charge has been made. Otherwise, the citizen review board’s jurisdiction will be limited in too many circumstances, and will seriously limit the board’s ability to accomplish its purpose.

### **Maupin, J., concurring and dissenting**

PPA is not an aggrieved party with appellate standing. Also, C.J. Rose properly construed the scope of NRS 289.385(1) in narrowing the jurisdictional limitation involving criminal charges. Justices Gibbons and Hardesty espouse a construction of NRS 289.385(1) that contravenes the legislative purpose in establishing the citizen review boards and yields an absurd result.

### **Gibbons, J., and Hardesty, J., concurring in part and dissenting in part**

PPA does have appellate jurisdiction as an aggrieved party. However, the jurisdictional limitation regarding criminal charges contained in NRS 289.385(1) should be construed more broadly based on the plain language of the statute. The language of the statute prohibits jurisdiction over any complaint that merely alleges criminal conduct. In this case, the complaint alleges criminal conduct, since the underlying factual allegations of the complaint fit the elements of oppression under the color of law, false imprisonment, and the willful disregard of a person’s safety in performing an act or neglecting a duty. Therefore, the citizen review board did not have jurisdiction to issue a subpoena for this investigation and the district court should not have enforced it.

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<sup>7</sup> NEV. REV. STAT. § 289.385(1) (2005).