

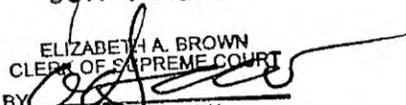
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. LOMBARDO, AN
INDIVIDUAL,
Appellant,
vs.
NEVADA COMMISSION ON ETHICS, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA; ROSS E.
ARMSTRONG, EXECUTIVE
DIRECTOR FOR THE NEVADA
COMMISSION ON ETHICS; AND THE
LEGISLATURE OF THE STATE OF
NEVADA,
Respondents.

No. 88093

FILED

JUN 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a petition for judicial review of a Nevada Commission on Ethics decision for failure to timely serve the Attorney General. First Judicial District Court, Carson City; James E. Wilson, Judge.

FACTS AND PROCEDURAL HISTORY

Appellant Joseph M. Lombardo ran for Governor while serving as Sheriff of the Las Vegas Metropolitan Police Department. Three campaign photos and a video depicted Lombardo in his sheriff's uniform or wearing his sheriff's badge. Acting on a complaint filed by its Executive Director, the Nevada Commission on Ethics ordered a hearing to determine whether Lombardo's use of these campaign images violated Nevada's Ethics in Government law, specifically, NRS 281A.400(2) (providing that a public officer shall not use their government position to grant themselves an unwarranted advantage), and NRS 281A.400(7) (providing that a public

officer shall not use governmental property or equipment “to benefit a significant personal or pecuniary interest”).

The Commission issued and served Lombardo with a notice of hearing, executed by Commission Counsel, Tracy Chase. *See* NRS 281A.250(1) (authorizing the Commission to appoint a full-time Commission Counsel to act as its legal adviser). Soon thereafter, Chase retired. Because of her retirement, the Commission asked the Office of the Attorney General (OAG) to represent it in the Lombardo matter. *See* NRS 281A.260(3) (providing that, where Commission Counsel is unavailable, the Commission may ask the OAG to appoint a deputy attorney general or to hire outside counsel to represent it).

The Office of the Attorney General, however, declined representation. By then, Lombardo had won the election, and the OAG determined that, effective January 4, 2023—the date Lombardo was to be sworn in as Governor—it had a conflict of interest and could not provide legal representation to the Commission. The OAG provided private conflict counsel, Wayne Klomp, for the Commission instead. *See* NRS 228.110(1)(b)(2) (permitting retention of outside counsel if the Attorney General determines that it would “constitute a conflict of interest for the Attorney General or a deputy of the Attorney General to serve as the legal adviser in such matter”).

The Commission and the OAG repeatedly confirmed the OAG’s conflict of interest and consequent recusal. After Klomp was retained, the Commission’s Chair notified its Executive Director and Lombardo that “the Office of the Attorney General has recused itself from representing the Commission in this proceeding” and that private attorney Wayne Klomp will serve “as conflict counsel to represent the Commission.” As the

Commission's attorney, Klomp signed and served several procedural orders, each of which stated under his signature line that, "The Commission has retained outside counsel during the vacancy of the Commission Counsel position and recusal of the Office of the Attorney General." And on two occasions when the Executive Director's or Lombardo's lawyers mistakenly sent emails to the OAG instead of to Klomp, a deputy attorney general responded that the material should go to Wayne Klomp, who is "handling the Lombardo . . . matter[]."

Lombardo's alleged ethical violations came before the Commission on the Executive Director's and Lombardo's cross-motions for summary judgment. After a public hearing, the Commission issued its written decision. On a split vote, the Commission found that Lombardo had not violated NRS 281A.400(2) but that he had willfully committed four violations of NRS 281A.400(7) (one for each campaign image), for which it censured Lombardo and imposed a \$20,000 fine.

Lombardo timely filed a petition for judicial review, asserting constitutional and statute-based challenges to the decision. Around the same time, the Commission hired new Commission Counsel, Brandi Jensen, to replace Chase. Lombardo sent Jensen a courtesy copy of the petition and asked her to accept service for both named respondents, the Commission and its Executive Director, Ross Armstrong (together, the Commission). Jensen agreed and signed a formal acceptance of service on their behalf which stated that Jensen would be appearing as counsel of record for both. Jensen and Lombardo's lawyers signed and submitted stipulations transmitting the administrative record, setting an expedited briefing schedule, and allowing the Legislature, through its Legislative Counsel

Bureau's General Counsel, to intervene and be heard on the legal issues presented, all of which the district court approved.

NRS 233B.130(2)(c) and (5) require petitions for judicial review to be served on the agency, the parties, and the OAG within 45 days of filing, unless the time is extended for good cause shown. Shortly after the 45-day deadline expired, the Commission filed, through Jensen, a motion to dismiss Lombardo's petition for judicial review because he had not served the OAG. The next day, Lombardo served the OAG.¹ He also opposed the motion to dismiss and countermoved for an extension of time to serve the OAG, which the Commission opposed. In his opposition and countermotion, Lombardo argued that, since the OAG had recused due to a conflict of interest and was neither a party nor representing a party, serving the OAG was not required and would be futile. He also argued that, if such service was required, he effectuated it as soon as the Commission raised it as an issue and that, applying recognized good-cause factors (reasonable belief service was not needed, diligence, lack of prejudice, and the policy of deciding cases on the merits), the brief extension requested should be granted.

The district court granted the Commission's motion to dismiss and denied Lombardo's countermotion for an extension of time to serve the OAG. The orders summarily state that Lombardo did not "serve his Petition for Judicial Review on the Attorney General within the 45-day statutory period" and "has failed to demonstrate good cause for an extension of time to correct his statutory failure." Lombardo timely appealed.

¹After being served, the OAG did not respond and has not appeared or participated in this case in district court or on appeal.

DISCUSSION

Lombardo raises the same arguments on appeal that he did in district court: first, he argues that NRS 233B.130(2)(c)(1) does not require service on the OAG where, as here, the OAG is not a party and has recused itself from representing a party in the case; second, he argues that the district court abused its discretion by denying his motion for an extension of time to serve the OAG under NRS 233B.130(5). Questions of statutory interpretation are reviewed de novo. *Spar Bus. Servs., Inc. v. Olson*, 135 Nev. 296, 298, 448 P.3d 539, 541 (2019). A district court's good cause determination is reviewed for an abuse of discretion. *Id.* "While review for abuse of discretion is ordinarily deferential, deference is not owed to legal error," *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010), "or to findings so conclusory they may mask legal error," *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). And where all recognized factors point in favor of good cause, a district court abuses its discretion in not finding it to exist. *See Scrimmer v. Eighth Jud. Dist. Ct.*, 116 Nev. 507, 517, 998 P.2d 1190, 1196-97 (2000) (granting mandamus to correct a district court's failure to recognize and apply appropriate good cause criteria); *State ex rel. Teeter v. Eighth Jud. Dist. Ct.*, 64 Nev. 256, 263, 180 P.2d 590, 593 (1947) (granting mandamus where, in denying relief, the district court failed to apply recognized good-cause factors the record established; noting that when courts "are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; when that is discerned, it is the duty of the court to follow it") (internal quotation marks omitted).

NRS 233B.130(2)(c)(1)'s jurisdictional service requirement

A petition for judicial review must name as respondents and be served on "the agency and all parties of record to the administrative

proceeding.” NRS 233B.130(2)(a); NRS 233B.130(5). To ensure the agency receives proper notice of the petition, the petition must also be served on the agency’s administrative head. NRS 233B.130(2)(c)(2). In addition, to ensure proper case processing and tracking, service on the OAG, which generally provides legal advice to agencies, is required. NRS 233B.130(2)(c)(1); see *Heat & Frost Insulators & Allied Workers Loc. 16 v. Lab. Comm’r*, 134 Nev. 1, 3-4, 408 P.3d 156, 159 (2018) (citing 2015 Nev. Stat., ch. 160, § 9, at 709); Hearing on A.B. 53 Before the Assemb. Gov’t Affairs Comm., 78th Leg. (Nev., Feb. 13, 2015), at 4, 17, 21-22 (explaining that the OAG often represents agencies, including small agencies that do not have counsel on staff, and that the OAG service requirement ensures the agency does not miss judicial review deadlines). Under NRS 233B.130(5), petitions for judicial review must be served “within 45 days after the filing of the petition, unless, upon a showing of good cause, the district court extends the time for such service.”

We have stated that NRS 233B.130(2)(c)(1)’s requirement that the petition be served on the OAG in addition to the named respondents is “mandatory and jurisdictional.” *Heat & Frost*, 134 Nev. at 4-5, 408 P.3d at 159-60; see *Spar*, 135 Nev. at 298, 448 P.3d at 542. The Commission maintains that, because the service requirement is jurisdictional, Lombardo’s argument that service should be excused because it was futile necessarily fails, suggesting without citation of authority that a jurisdictional statute’s requirements must be met, even though futile. But we do not need to resolve this debate to decide this appeal. While our caselaw deems NRS 233B.130(2)(c)(1)’s service requirement jurisdictional, those same cases hold that NRS 233B.130(5)’s 45-day service deadline is *not* jurisdictional because the statute expressly allows good-cause extensions.

Spar, 135 Nev. at 298-99, 448 P.3d at 542. Failure to timely serve the petition on the OAG, therefore, will not require dismissal where service is made after the deadline and good cause supports an extension. *Id.*

Lombardo’s position is similar to that addressed in *Heat & Frost*, where the petitioner neither served the OAG nor moved for an extension of time until NRS 233B.130(5)’s 45-day service deadline had passed. 134 Nev. at 3, 4-5, 408 P.3d at 158-60. The district court dismissed the petition, but this court reversed and remanded for the district court to decide whether good cause existed to extend the time to effect service. *Id.* at 5, 408 P.3d at 160. Similarly, Lombardo complied with the “mandatory and jurisdictional” service requirement in NRS 233B.130(2)(c)(1) by serving his petition for judicial review on the OAG, albeit late. *Id.* at 4-5, 408 P.3d at 159-60. If good cause exists to extend the 45-day service period—as we conclude, below, that it does—then Lombardo’s service here complied with NRS 233B.130(2)(c)(1)’s service mandate. Thus, to the extent the district court concluded it lacked jurisdiction because Lombardo did not serve the OAG within 45 days of filing his petition, this was error. *See id.* at 3-4, 408 P.3d at 158-59.

“Good cause” to extend NRS 233B.130(5)’s 45-day deadline

Under NRS 233B.130(5), the 45-day window to serve a petition may be extended upon a showing of good cause. NRS Chapter 233B does not define “good cause.” Nor are there universal good-cause factors—it is context specific and fact dependent. *See, e.g., Cause, Black’s Law Dictionary* (12th ed. 2024) (defining “good cause” simply as “[a] legally sufficient reason”). The service and timing requirements for a civil complaint differ from those applicable to a petition for judicial review, *see Dep’t of Corr. v. DeRosa*, 136 Nev. 339, 342, 466 P.3d 1253, 1255 (2020); NRCP 4(e), so the former do not apply straight-across to the latter context. *Spar*, 135 Nev. at

299-300, 448 P.3d at 542-43 & id. at 300 n.4, 448 P.3d at 543 n.4 (citing NRCPC 81(a)). Nonetheless, the considerations for deciding “good cause” have been “construed broadly across [different] procedural and statutory contexts.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). And here, as in most such cases, the analysis begins with the reason for the delay, see *Spar*, 135 Nev. at 300, 448 P.3d at 543 (upholding the district court’s finding of no good cause to extend service where the reasons for the delay were pretextual and belied by the record), and also includes the movant’s diligence, competing claims of prejudice, and the policy of deciding cases on the merits. See *Scrimmer*, 116 Nev. at 516, 998 P.2d at 1195-96 (listing factors applicable to an extension of time under NRCPC 4 for serving a civil complaint, including diligence and prejudice); *Dornbach v. Tenth Jud. Dist. Ct.*, 130 Nev. 305, 311, 324 P.3d 369, 373 (2014) (considering in the context of a motion to dismiss for failing to comply with NRCPC 16.1’s early case conference requirements the rule’s purpose and “the basic underlying policy to have each case decided upon its merits”) (quoting *Hotel Last Frontier Corp. v. Frontier Props., Inc.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963)).

Lombardo explains that he did not serve the Attorney General because the OAG had recused itself due to a conflict of interest, which made such service futile. See *Dornbach*, 130 Nev. at 311-12, 324 P.3d at 373-74 (affirming refusal to dismiss a case where failure to comply with subject deadline would have been “fruitless”); *Dougan v. Gustaveson*, 108 Nev. 517, 522-23, 835 P.2d 795, 798-99 (1992) (reversing dismissal for failure to timely serve early case conference report given “unique circumstance” rendering it “fruitless” to hold case conference before the defendants answered the complaint), *abrogated in part by Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050

(2007). The OAG and its deputies are “the legal advisers on all state matters arising in the Executive Department of the State Government,” except, as relevant here, when the Attorney General determines that it “could constitute a conflict of interest for the Attorney General or a deputy . . . to serve as the legal adviser in such matter.” NRS 228.110(1)(b)(2). The ethics violations charged pitted the Commission against the Governor, each part of the executive branch; the Nevada Rules of Professional Conduct prohibit an attorney from representing one client against another before a tribunal. NRPC 1.7(b)(3); NRPC 1.11(d)(1). On this record, it was reasonable for Lombardo to accept the repeated representations that were made that the OAG had recused itself from the matter because the Attorney General had determined it had a conflict of interest and to conclude that the conflict and recusal were continuing. See *De Tie v. Orange County*, 152 F.3d 1109, 1112 (9th Cir. 1998) (finding good cause for a delay in service where it was reasonable to believe it was inappropriate).²

The Commission disagrees. It argues that “recusal” only applies to judges, not the OAG; that the OAG in fact “continued to participate in the underlying administrative matter, including the adjudicatory hearing”; and that the petition for judicial review was “a new and separate case,” requiring service on the OAG despite recusal. These

²The Commission argued in district court that Lombardo’s belief service was not required, even if reasonable, could not constitute good cause. As support, the Commission cited *Dougan*, 108 Nev. at 520, 835 P.2d at 797, for the proposition that an attorney’s inadvertence cannot constitute good cause. The Commission properly does not repeat this argument on appeal—*Scrimmer* rejected *Dougan*’s statement to that effect as dictum and legally incorrect. 116 Nev. at 514-15, 517, 998 P.2d at 1195, 1196.

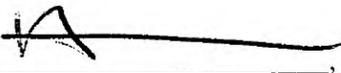
arguments contradict both the record facts and applicable law. The word “recusal” originated with the Commission. To “recuse” means “[t]o challenge or object to (a judge, expert, etc.) as being *disqualified* to serve in a case because of prejudice or a *conflict of interest*.” *Recuse*, *Black’s Law Dictionary* (12th ed. 2024) (emphases added). The OAG “recused” itself when it hired outside counsel to represent the Commission because it had a “conflict of interest.” And the record does not support that, despite its recusal, the OAG participated in the proceeding; while a deputy attorney general’s presence was noted at the outset of the public hearing, there were a number of different matters on the agenda, including the Lombardo matter, in which the deputy did not participate. Finally, Nevada caselaw establishes that “a petition for judicial review involves *ongoing proceedings, like an appeal*,” *DeRosa*, 136 Nev. at 341, 466 P.3d at 1255 (emphasis added), and so does not constitute a “new and separate proceeding.”

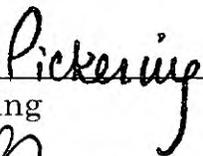
Lombardo was also diligent in filing his petition. He named the correct parties, served the Executive Director and the Commission (the parties), and expedited the prosecution of his petition to the extent possible, stipulating to the administrative record, the briefing schedule, and the Legislature’s intervention. Commission Counsel Jensen accepted service for the two named respondents, appeared for them in district court, and at no time before filing the motion to dismiss raised service on the OAG as an issue. The day after receiving the Commission’s motion, Lombardo served the OAG, which was shortly after the 45-day service period expired. Denying an extension precludes judicial review, because the 30 days a party has to file a petition for judicial review has expired and cannot be extended. *See* NRS 233B.130(2)(d). At the same time, the OAG-service delay caused the Commission no prejudice. *See Domino v. Gaughan*, 103 Nev. 582, 584,

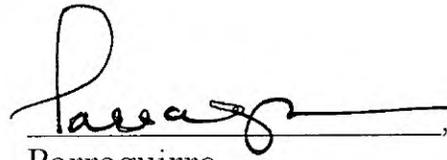
747 P.2d 236, 237 (1987) (considering diligence and prejudice together in determining good cause). To the contrary, service on the OAG served no purpose, because the Commission had its own counsel, the OAG had recused itself during the administrative agency proceedings and, once formally served with the petition for judicial review, the OAG did not enter or make an appearance in the case.

Finally, public policy supports deciding cases on the merits. See *Dornbach*, 130 Nev. at 311, 324 P.3d at 373. NRS 233B.130 requires service to ensure efficient case processing but, while the service requirement is jurisdictional, the statute recognizes that extensions of time to accomplish service are appropriate upon a showing of good cause. The record and arguments presented establish such cause. Accordingly, we

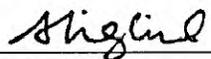
REVERSE the district court's orders granting the motion to dismiss and denying the countermotion to extend time to serve the OAG AND REMAND this matter to the district court for further proceedings consistent with this order.

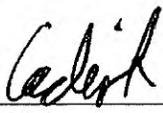

_____, C.J.
Herndon


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Lee

cc: Hon. Kristin Luis, District Judge
David Wasick, Settlement Judge
Campbell & Williams
State of Nevada Commission on Ethics
Legislative Counsel Bureau Legal Division
Carson City Clerk