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**NEVADA BOARD OF PAROLE COMMISSIONERS**

To: Board of Parole Commissioners

Subject: Parole Board Agenda Item V - Delegation of Authority to Appeal Litigation

From: David M. Smith, Hearings Examiner II

RE: **Section 2.5 of Assembly Bill 70 of the 80<sup>th</sup> Legislative Session  
October 31, 2019 Meeting of the Board**

In May 2018, the Nevada Supreme Court published an Opinion<sup>1</sup> stating that an attorney for a public body must have authorization from a client in a public meeting prior to initiating a case, settling a case, or filing a notice of appeal on litigation concerning the public body.

In the 2019 session, the Assembly Committee on Government Affairs sponsored Assembly Bill 70 which, in addition to making various changes to Nevada’s Open Meeting Law, addressed the Supreme Court Opinion and specified in section 2.5 that:

***A public body may delegate authority to the chair or the executive director of the public body, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the public body or any member or employee of the public body is a party in an official capacity or participates or intervenes in an official capacity.***

The Attorney General’s Office testified in favor of this section stating that during litigation, since significant consequences can be imposed on a party for failing to take action within a specific timeframe, it is important for public bodies to be able to delegate litigation decisions to protect them from legal liability.

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<sup>1</sup> *The Comm’n on Ethics of the State of Nevada v. Hansen*, 134 Nev. 304, 419 P.3d 140 (2018).

Since the Parole Board is a full-time board, the main issues concerning timely litigation decision-making involve the manner and strategy of defense, settlement decisions, and the decision to appeal rulings.

As such, I recommend that the Board delegate to the Chair of the Board the authority to:

1. Request that the Attorney General defend against any lawsuits filed against the Board of Parole Commissioners, its members and/or employees; and
2. Make any decision regarding litigation concerning any defensive action or proceeding in which the Board of Parole Commissioners, its members and/or employees is a party in an official capacity or participates or intervenes in an official capacity, when, after consultation with the Attorney General's Office, it is the opinion of the Chair that it is in the best interests of the Board of Parole Commissioners, its members and/or employees to do so.

If the Board concurs with this recommendation, the motion may be worded as:

*I move that the Board delegate to the Chairman of the Board the authority to request that the Attorney General defend against any lawsuits filed against the Board of Parole Commissioners, its members and/or employees; and make any decision regarding litigation concerning any defensive action or proceeding in which the Board of Parole Commissioners, its members and/or employees is a party in an official capacity or participates or intervenes in an official capacity, when, after consultation with the Attorney General's Office, it is the opinion of the Chair that it is in the best interests of the Board of Parole Commissioners, its members and/or employees to do so.*