

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 MATTHEW TRAVIS HOUSTON,

5 Appellant,

6 vs.

7 DANIEL L, SCHWARTZ, an Individual,

8 Respondent.

Case No.: 87670

Electronically Filed
Jan 31 2024 02:49 PM
Elizabeth A. Brown
Clerk of Supreme Court

9
10 **RESPONDENT'S ANSWERING BRIEF**

11
12
13
14
15
16
17 MATTHEW HOUSTON #120652
18 IN PROPER PERSON
19 P.O. BOX 650
INDIAN SPRINGS, NV 89070

DANIEL L. SCHWARTZ, ESQ.
LEWIS BRISBOIS BISGAARD
& SMITH
2300 W. SAHARA AVE., STE. 900
LAS VEGAS, NV 89102

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF AUTHORITIES ii

NRAP 26.1 DISCLOSURE iii

I. STATEMENT OF THE LEGAL ISSUES PRESENTED 1

II. STATEMENT OF THE CASE..... 1

III. STATEMENT OF FACTS 3

IV. STANDARD OF REVIEW 5

V. ARGUMENT 6

ISSUES RAISED BY MR. HOUSTON’S APPEAL

1. APPELLANT’S ALLEGATIONS AGAINST PARTIES
OTHER THAN MR. SCHWARTZ ARE IRRELEVANT
TO ANY CONSIDERATION IN THIS APPEAL..... 6

2. APPELLANT’S OPENING BRIEF FAILS TO COMPLY
WITH THE NEVADA RULES OF APPELLATE
PROCEDURE AND IS PROPERLY STRICKEN
WITH AN AWARD OF SANCTIONS..... 11

3. FRIVOLOUS CIVIL APPEALS, SUCH AS THE
MATTER AT HAND, ARE PROPERLY
SUBJECT TO SANCTIONS..... 13

VI. CONCLUSION 14

CERTIFICATE OF COMPLIANCE 16

CERTIFICATE OF MAILING 18

TABLE OF AUTHORITIES

CASES

Bonnell v. Lawrence,

128 Nev. 394, 404, 282 P.3d 712, 718 (2012)10

Horne v. SIIS,

113 Nev. 532, 537, 936 P.2d 839 (1997)6

Maxwell v. SIIS,

113 Nev. 532, 537, 849 P.2d 267, 270 (1993)6

McCracken v. Fancy,

98 Nev. 30, 639 P.2d 552 (1982)6

North Las Vegas v. Public Service Comm'n,

83 Nev. 278, 291, 429 P.2d 66 (1967).....6

State v. State Bank & Tr. Co.,

36 Nev. 526, 538, 137, 400, 403 (1913)12

Valley Bank of Nevada v. Ginsburg,

110 Nev. 440, 444, 874 P.2d 729, 732 (1994)12

Vanisi v. State,

117 Nev. 330, 340, 22 P.3d 1164, 1171 (2001)10

STATUTES

NRS 233B.135 5

MISCELLANEOUS

US Constitution, Article III, Section 2, Clause 1 11

NRAP 28 11

NRAP 38 12

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons
3 and entities as described in NRAP 26.1(a), and must be disclosed:


4 1. The Respondent, DANIEL L. SCHWARTZ, ESQ., states that he does
5 not have any parent corporation, or any publicly held corporation that owns 10% or
6 more of his stock, nor any publicly held corporation that has a direct financial
7 interest in the outcome of the litigation. NRAP 26.1(a).

8 2. The undersigned counsel of record for DANIEL L. SCHWARTZ,
9 ESQ., has appeared in this matter before the District Court and at the administrative
10 proceedings before the Department of Administration.

11 These representations are made in order that the judges of this court may
12 evaluate possible disqualifications or recusal.

13 DATED this 31st day of January, 2024.

14 LEWIS BRISBOIS BISGAARD & SMITH LLP

15
16
17 By: 
18 DANIEL L. SCHWARTZ, ESQ.
19 Nevada Bar No. 005125
20 2300 W. Sahara Ave., Ste. 900, Box 28
21 Las Vegas, NV 89102
22 Attorneys for the Respondent
23
24
25
26
27

1 I.

2 **STATEMENT OF THE LEGAL ISSUES PRESENTED**

3 1. Whether the Appellants' Opening Brief is Complaint with the Rules
4 of Appellate Procedure..

5 A. Appellant's complaints against parties other than Mr. Schwartz
6 are irrelevant to any consideration in this appeal.

7 B. Appellant's Opening Brief fails to comply with the Nevada
8 Rules of Appellate Procedure and is properly stricken with an award
9 of sanctions.

10 C. Frivolous Civil Appeals, such as the matter at hand, are properly
11 subject to sanctions.

12 II.

13 **STATEMENT OF THE CASE**

14 Given the ersatz "Opening Brief" the Plaintiff has submitted to this Court
15 and in light of the meandering, free-association nature of Plaintiff's hand-written
16 filings which are wholly unsupported by admissible evidence, Mr. Schwartz is
17 hard-pressed to ascertain the alleged wrongs he has supposedly committed or the
18 relief Plaintiff seeks by way of this appeal.

19 The Plaintiff, Matthew Travis Houston (hereinafter referred to as "Mr.
20 Houston" or "Plaintiff"), is an incarcerated workers' compensation claimant. The
21 Defendant, Daniel L. Schwartz, Esq. (hereinafter referred to as "Mr. Schwartz" or
22 Defendant"), is a partner in the law firm Lewis Brisbois Bisgaard Smith, LLP,
23 which represents Mr. Houston's Employer, Encore Event Technologies
24 ("Employer") in Mr. Houston's workers' compensation claim, Claim Number
25 30166612006-001.

26 ///

27 ///

1 As the result of Defendant's representation of his Employer in his workers
2 compensation claim, Mr. Houston filed a pro se - *forma pauperis* suit against Mr.
3 Schwartz in the Eighth Judicial District Court, denominated as A-22-858580-C.
4 Mr. Houston sought injunctive relief and money damages from approximately 138
5 named defendants in the amount of \$36,500,000.00, each. (ROA 1-133). On
6 motion, the court dismissed the suit against Mr. Schwartz for failure to state a
7 claim for relief. The court held that as an attorney representing the Employer and
8 Administrator in Mr. Houston's workers compensation claim, Mr. Schwartz owed
9 no duties and breached no duties owed to Plaintiff. Notice of Entry of Order was
10 filed on July 13, 2023. (ROA pp. 647-652).

11 In addition to that dismissed action, Mr. Houston brought approximately five
12 other pro se - *forma pauperis* lawsuits before the Eighth District Judicial Court,
13 designated as Case Numbers A-22-758861-C; A-22-856372-C; A-22-853203-W;
14 A-17-758861-C; and C-21-357927-1. Named defendants in these lawsuits include,
15 but are not limited to, Mr. Schwartz, the State of Nevada, Las Vegas Fire and
16 Rescue, multiple Clark County police officers, the University of Iowa, the City of
17 Maquoketa, Joe Lombardo, Carolyn Goodman, District Judge David M. Jones,
18 Diane Ferrante, Brian P. Clark, Mandalay Bay Corporation, Calvin Johnson,
19 Bernstein & Poisson, Brian Williams, and Rose McMorris-Alexander, to name but
20 a few. Mr. Houston's numerous Complaints invariably carry incoherent, rambling
21 pronouncements of fact wholly unsupported by any competent evidence wherein
22 Plaintiff bandies about various out-of-context legal phrases to the point of
23 nonsense. Some of Plaintiff's claimed causes of action include, but are not limited
24 to, cruel and unusual punishment, right to be free from illegal searches and illegal
25 warrants, declaration of human rights and the Mandela rules, and the right of
26 people to petition the government for redress of grievances.

27 ///

1 As his Opening Brief, Mr. Houston has submitted a packet containing
2 handwritten papers and pleadings from various lawsuits he has previously filed in
3 Nevada State and Federal Courts. This document packet falls woefully short of the
4 requirements of an Opening Brief. Plaintiff has provided no assertion of the legal
5 issues presented for review, no statement describing the nature of the case, no
6 statement of relevant facts, no argument summary, no citations to authorities or the
7 record, no standard of review, and no statement of the precise relief sought. Absent
8 these required components or an order from this Court consolidating the actions
9 wherein Mr. Houston has named Mr. Schwartz as a defendant, it appears Mr.
10 Houston's current filing may be an appeal of the dismissal of his personal lawsuit
11 against Mr. Schwartz. Mr. Schwartz avers Mr. Houston's Opening Brief is
12 properly stricken with an award of appropriate sanctions.

13 III.

14 STATEMENT OF FACTS

15 Appellant, MATTHEW HOUSTON (hereinafter referred to as "Mr.
16 Houston" or "Plaintiff"), is an indigent incarcerated workers compensation
17 claimant who reported that he died from an industrial fall on September 20, 2016.
18 Respondent, DANIEL L, SCHWARTZ, ESQ. (hereinafter referred to as "Mr.
19 Schwartz" or "Defendant"), is a partner in the law firm Lewis Brisbois Bisgaard &
20 Smith, LLP (hereinafter referred to as "LBBS"), who represents Plaintiff's
21 Employer, Encore Event Technologies (hereinafter referred to as "Employer"), in
22 Mr. Houston's workers compensation claim, designated as Claim Number
23 30166612006-001.

24 As the result of that legal representation, the "Reverand Matthew Travis
25 Houston, Chtd." filed a 138-page lawsuit against Mr. Schwartz in the Eighth
26 Judicial District Court as Case Number A-22-858580-C seeking injunctive relief
27 and damages in the amount of \$36,500,000 (each) from approximately 140

1 defendants. (ROA pp. 1-133). Plaintiff stated that he was abducted from his motel
2 room without any service of summons or warrant and without being read that he
3 had any kind of rights. This false arrest prevented him from attending a doctor's
4 appointment scheduled for the next day, with his continuing imprisonment
5 preventing him from attending to his medical disability. Plaintiff averred he was
6 put through traumatic events that were cruel and unusual punishment of an
7 innocent man. Mr. Houston alleged:

8 Due to crimes both civil and criminal, not to mention the willful
9 missions of Rosemary McMorris-Alexander, Dianne Ferrante,
10 Sedgwick and the prosecutions' most unlawful use of overreaching
11 tactics of their exploitation of the innocent man has put the Petitioner-
Appellant into an unmanageable state of duress, homelessness, and
extensive incarceration.

12 On Motion, the District Court granted dismissal of the complaint against Mr.
13 Schwartz, finding that the Plaintiff had failed to allege a claim for which relief
14 could be granted. (ROA 149-195). Plaintiff alleged that Mr. Schwartz was the
15 attorney for Sedgwick, who was the Administrator for Mr. Houston's workers
16 compensation claim. The court found that as an attorney adverse to claimant, Mr.
17 Schwartz owed the claimant no duties under Nevada law. Further, the court
18 refused any attempted amendment stating such would be futile as Mr. Houston
19 could not allege any duty that Mr. Schwartz owed to him. (ROA pp. 650-651).
20 Plaintiff appealed this Decision. Subsequently, the Plaintiff, as "Reverend
21 Matthew Travis Houston, Chtd.," would again file suit against Mr. Schwartz
22 seeking "an expeditious order setting civil jury trial." (ROA pp. 573-574).

23 Mr. Houston's "Opening Brief" is nothing more than a long-winded,
24 meandering expression of his supposed grievances and imagined civil conspiracies
25 arising from his workers compensation claim, dragging Mr. Schwartz into court
26 merely for because he serves as legal counsel for Plaintiff's employer. Reviewing
27 Plaintiff's variously titled packet of filings (hereinafter referred to as "Opening

1 Brief”), evidences he has merely resubmitted copies of three prior Complaints and
2 accompanying statements he has filed with various Nevada courts. To wit:

- 3 1. A handwritten complaint in the Court of Appeals of the State of
4 Nevada against Mr. Schwartz (not an individual (*sic*)), Dianne
5 Ferrante et al; the State of Nevada; Brian Clark; Joseph M. Lombardi
6 et al; Mandalay Bay Corp. et al; Calvin Johnson et al; Daniel L.
7 Schwartz et al; and Bernstein & Poisson, LLP;
- 8 2. A handwritten complaint in the United States District Court -
9 District of Nevada, naming Brian E. Williams et al as respondents;
10 and
- 11 3. A handwritten complaint in the US District Court – District of
12 Nevada naming B. Williams et al as respondents.

13 Given that the contents of Plaintiff’s Opening Brief it is clear he has failed to
14 identify any legal issues for consideration by this Court. Plainly stated, Plaintiff
15 has failed to posit a case or controversy before this Court. Absent a proper
16 Opening Brief, this Court cannot make any ruling due to Mr. Houston’s failure to
17 present a case or controversy. In light of Plaintiff’s utter failure to comply with the
18 controlling Rules, Mr. Schwartz avers that the Opening Brief is properly stricken
19 with an award of appropriate sanctions.

20 IV.

21 STANDARD OF REVIEW

22 Judicial review of a final decision of an agency is governed by NRS
23 233B.135.

24 NRS 233B.135 Judicial review: manner of conducting; burden of;
25 standard of review.

- 26 1. Judicial review of a final decision of an agency must be:
27 (a) Conducted by the court without a jury; and
(b) Be confined to the record.

28 In cases concerning alleged irregularities in procedure before an
29 agency that are not shown in the record, the court may receive
30 evidence concerning the irregularities.

31 2. The final decision of the agency shall be deemed reasonable
32 and lawful until reversed or set aside in whole or in part by the court.
33 The burden of proof is on the part attacking or resisting the decision to
34 show that the final decision is invalid pursuant to subsection 3.

35 3. The court shall not substitute its judgment for that of the agency
36 as to the weight of evidence on a question of fact. The court may
37 remand or affirm the final decision or set it aside in whole or in part if
38 substantial rights of the petitioner have been prejudiced because the
39 final decision of the agency is:

- 1 (a) In violation of constitutional or statutory provisions;
2 (b) In excess of the statutory authority of the agency;
3 (c) Made upon unlawful procedure;
4 (d) Affected by other error of law;
5 (e) Clearly erroneous in view of the reliable, probative and
6 substantial evidence on the whole record; or
7 (f) Arbitrary or capricious or characterized by abuse of
8 discretion.

9 The standard of review is whether there is substantial evidence to support
10 the underlying decision. The reviewing court should limit its review of
11 administrative decisions to determine if they are based upon substantial evidence.
12 *North Las Vegas v. Public Service Comm'n*, 83 Nev. 278, 291, 429 P.2d 66 (1967);
13 *McCracken v. Fancy*, 98 Nev. 30, 639 P.2d 552 (1982). Substantial evidence is
14 that quantity and quality of evidence which a reasonable man would accept as
15 adequate to support a conclusion. See *Maxwell v. SIIS*, 113 Nev. 532, 537, 936
16 P.2d 331, 849 P.2d 267, 270; and *Horne v. SIIS*, 113 Nev. 532, 537, 936 P.2d 839
17 (1997).

18 V.

19 ARGUMENT

20 1. APPELLANT'S ALLEGATIONS AGAINST PARTIES OTHER
21 THAN MR. SCHWARTZ ARE IRRELEVANT TO ANY
22 CONSIDERATION IN THIS APPEAL.

23 In his complaint against Mr. Schwartz (*See Plaintiff's Opening Brief*, pp. 1-
24 4), without any supporting admissible evidence, Mr. Houston alleges that he was
25 wrongfully convicted and imprisoned for a total of six years which interfered with
26 and prolonged the treatment of his industrial injuries. Mr. Schwartz had nothing to
27 do with Mr. Houston's criminal proceedings. Plaintiff avers that John Afshar
28 should be disbarred – a matter in which Mr. Schwartz is not involved. Plaintiff
contends that his wrongful convictions have denied his recovery from his industrial
work accident and the terrible One October terrorist attack. Mr. Schwartz has
nothing to do with these events. Without describing any particulars, plaintiff

1 alleges he continues to be victimized by Freeman Companies, et al., a company
2 that Mr. Schwartz represents in workers compensation litigation. Plaintiff goes on
3 to discuss his attempt to withdraw his guilty plea and provides a discourse
4 addressing the meaning of the term “allege” – a criminal issue with which Mr.
5 Schwartz is not involved. Plaintiff claims entitlement to relief because of judicial
6 bias against him in Justice Court for Las Vegas Township, Municipal Court of the
7 City of Las Vegas and the Eighth Judicial District Court, as well as Federal and
8 State appellate jurisdictions. Other than appearing as a litigator before these
9 tribunals, Mr. Schwartz has no involvement with these entities or the judicial
10 decisions issued by those tribunals.

11 Plaintiff alleges a false arrest of his person for a dismissed DUI case where
12 Judge Linda Marie Bell erroneously and maliciously denied Mr. Houston’s
13 application to mental health court. Assuredly, Mr. Schwartz had no involvement in
14 Mr. Houston’s criminal activities or with Judge Bell’s rulings. Amongst his free-
15 association ramblings and again without any corroborating evidence, plaintiff next
16 alleges that Mr. Schwartz is a “nefarious mob leader” with the firm Lewis Brisbois
17 Bisgaard & Smith who somehow induced Judge Bell into prosecutorial misconduct
18 and malicious prosecution. Mr. Schwartz is a partner with Lewis Brisbois
19 Bisgaard & Smith; by all other accounts, Mr. Schwartz is neither wicked nor a
20 criminal, nor is he a “mob leader.” The allegation is nothing but absurd and clearly
21 calculated to attack Mr. Schwartz’s character. More troubling is Plaintiff’s serious
22 accusation that both Mr. Schwartz and his law firm somehow meddled in the
23 Nevada justice system and, more particularly, induced Judge Bell to judicial
24 misconduct. While rightfully such allegations should result in defamation actions,
25 doing so would only provide this vexatious litigant more and additional
26 opportunity to continue to harangue by way of deranged railings and diatribes.

27 ///

1 In his next barrage, Plaintiff targeted Rosemarie McMorris-Alexander, et al.
2 and the “deep-seated (*sic*) favoritism of insurance companies over injured workers
3 in the State of Nevada that is blatantly supported by the Nevada Gaming
4 Commission.” Then Mr. Houston asserts the spurious claim that Mr. Schwartz was
5 an employee of the Nevada Attorney for Injured Workers. Since well before ever
6 encountering Mr. Houston, Mr. Schwartz has been a partner in an insurance
7 defense firm and is not affiliated in any way with representation of workers
8 compensation claimants. Plaintiff then shifts his focus to Magistrate Melissa de la
9 Garza’s “deep-seated (*sic*) favoritism of Craig Mueller & Associates.” Again, Mr.
10 Schwartz has no involvement in the events described. Lastly, Plaintiff directs his
11 comments to the prior actions of the Nevada Supreme Court where judicial bias
12 has been exercised against him since his false arrest and the perjury by Rosemarie
13 McMorris-Alexander et al. Yet again, Mr. Schwartz has no involvement in
14 Plaintiff’s criminal activities or the decisions of this Court.

15 The fifth page of Plaintiff’s Opening Brief, entitled, “Declaration of
16 Matthew Travis Houston,” appears to argue the Plaintiff is entitled to transcripts,
17 pleadings, and any and all transcribed material as he is “legally blind – visually
18 impaired.” Mr. Schwartz is not referenced in this Declaration, nor does Plaintiff
19 identify any duty owed or duty breached by Mr. Schwartz. Plaintiff then goes on
20 to deride the malicious negligence, employment discrimination, and “other
21 problems of the contemptible Freeman Companies’ Encore Events Technologies.”
22 Without a shred of evidentiary support, Plaintiff then alleges that Sedgwick’s
23 Claims Manager, Rosemarie McMorris-Alexander, fabricated a false police report
24 that resulted in his arrest. (*See* Plaintiff’s “Opening Brief”, p. 5). Certainly, Mr.
25 Schwartz had no involvement in these activities.

26 ///

27 ///

1 At page 6 of Plaintiff's Opening Brief, is found a motion for reconsideration
2 filed in the United States District Court - District of Nevada against Respondent
3 Brian E. Williams, et al. Therein, Plaintiff alleges that he was wrongfully
4 convicted and incarcerated at Nevada's High Desert State Prison after being
5 kidnapped from his home due to the by the perjury and willful omissions of Dianne
6 Ferrante, et al. Plaintiff states that if Judge Jennifer Dorsey had actually read his
7 petition she would have ruled on the merits. Noticeably, Plaintiff makes absolutely
8 no mention of Mr. Schwartz in this document. Plaintiff fails to identify any duty
9 owed to him by Mr. Schwartz nor does he describe any breach of any such duty.

10 At pages 7-8 of Plaintiff's Opening Brief is a motion for reconsideration
11 filed in the US District Court - District of Nevada in an action naming B.
12 Williams, et al. as Respondents. Plaintiff argued that he was a *pro se* Nevada
13 prisoner who became illegally incarcerated and wrongfully convicted due to false
14 police reports made by Rosemarie McMorris-Alexander that resulted in Mr.
15 Houston's kidnapping "and revealing to this court and the world the nefarious
16 scheme of Nevada Workers Compensation - a scheme that is malicious in it's
17 intent, malicious to the injured workers, their families, and American society as a
18 whole." Yet again, nowhere in these ramblings does Plaintiff allege any actions
19 taken by Mr. Schwartz in violation of any duty owed. Rather, Plaintiff rails at the
20 Nevada Supreme Court's and the Nevada Appellate Court's repeated denials of his
21 representation of "operative facts" and "the federal legal theory upon which his
22 claims are based." Mr. Schwartz clearly had no involvement in any kidnapping or
23 in any of these appeals court activities.

24 The next document in Plaintiff's Opening Brief is a lawsuit filed against
25 Joseph M. Lombardo et al. (*See* Plaintiff's Opening Brief, pp. 9-14). Mr. Houston
26 argues that his complaint was meritoriously valid and should not have been
27 dismissed. Plaintiff alleged judicial bias and called for the recusal of Judge Craig

1 Denny. Plaintiff stated that he was not only the victim of an industrial accident
2 that resulted in catastrophic injuries and causing him to become blind/visually
3 impaired but that he is factually innocent of the crime for which he was convicted
4 and incarcerated. Clearly Plaintiff's DUI conviction is not before this Court, nor
5 are any actions taken by Mr. Schwartz that resulted in harm to Mr. Houston.
6 Plaintiff alleges that he suffers from Battered Person's Syndrome that prevents him
7 from adhering to court orders and explains his "vague and often times nonsensical
8 and disjointed statements on a variety of topics." Plaintiff further alleged that his
9 motion was denied in retaliation and prejudiced by the District of Nevada due to
10 the legal malpractice of Bernstein & Poisson, LLP et al. Assuredly, Mr. Schwartz
11 is not mentioned, nor did he have any involvement in these described activities.

12 Still without a shred of evidence, Plaintiff next alleges "a nefarious perjury"
13 by Rosemarie McMorris-Alexander, et al. that was deliberately planned in a
14 conspiracy between Sedgwick and Lewis Brisbois Bisgaard & Smith to "have Mr.
15 Smith falsely imprisoned so that they can continue to profit off of the plaintiff's
16 injuries." The suggestion that Mr. Schwartz, his Firm, and Sedgwick conspired to
17 have Mr. Houston falsely imprisoned while they profit from his injuries, absent
18 any admissible supporting evidence, must be viewed as purely the product of
19 Plaintiff's imagination, unfettered by the bonds of reality.

20 But Plaintiff's imaginings have no grounding in reality or fact. Despite the
21 extensive "parade of horrors" recited in his several pleadings, Plaintiff has failed
22 to present any actual admissible evidence in support of any allegations against Mr.
23 Schwartz, evidencing a duty owed to him by Mr. Schwartz, or demonstrating a
24 breach of that duty owed him by the Defendant. The allegations carried in
25 Plaintiff's filings consist of nothing but free-association venting which has no

26 ///

27 ///

1 place in litigation before this Court. By submitting the same three (3) previously
2 filed complaints as his Opening Brief, the Plaintiff has utterly failed to present an
3 appealable issue. As such, Mr. Schwartz urges that Mr. Houston's filing be
4 stricken.

5 2. APPELLANT'S OPENING BRIEF FAILS TO COMPLY WITH
6 THE NEVADA RULES OF APPELLATE PROCEDURE AND IS
7 PROPERLY STRICKEN WITH AN AWARD OF SANCTIONS.

8 Under the fundamental requirements of the Nevada Rules of Appellate
9 Procedure, Mr. Houston's brief is properly stricken with all allegations against Mr.
10 Schwartz dismissed. Although he is an incarcerated pro se litigant, plaintiff must
11 nevertheless follow the rules. *Vanisi v. State*, 117 Nev. 330, 340, 22 P.3d 1164,
12 1171 (2001) (party proceeding proper person in a criminal case must comply with
13 the relevant rules of procedural and substantive law); *Bonnell v. Lawrence*, 128
14 Nev. 394, 404, 282 P.3d 712, 718 (2012) (The rules of civil procedure "cannot be
15 applied differently merely because a party not learned in the law is acting pro se.").
16 The variously titled documents that Mr. Houston submitted as his "Opening Brief"
17 fall far short of the NRAP briefing requirements. Plaintiff's imagination, which he
18 articulates in various and repeated statements of fact in his various Complaints are
19 bereft of admissible evidentiary support. Apparently the Plaintiff would actually
20 have this Court believe that Mr. Schwartz is a "nefarious mob leader," that Lewis
21 Brisbois Bisgaard & Smith interfered with a judge and the judicial process
22 resulting in judicial misconduct, and/or that Mr. Schwartz and his Firm are
23 responsible for his incarceration and are continuing to profit from his workers
24 compensation claim. Nowhere in the Record does there exist any document(s)
25 supporting Plaintiff's representations of facts. As a pro se litigant, while Plaintiff

25 ///

26 ///

27 ///

1 may be excused from the requirement that he support every factual allegation with
2 a citation to the record on appeal, nevertheless Mr. Houston must be expected to
3 make at least a minimal attempt at compliance with the requirements that all
4 arguments before this Court must satisfy.

5 Under NRAP 28(j), all briefs must be concise, presented with accuracy,
6 logically arranged with proper headings and free from burdensome, irrelevant,
7 immaterial or scandalous matters. Mr. Houston's Opening Brief utterly fails at
8 compliance with these requirements. In point of fact, his many and several factual
9 recitations consist of nothing but irrelevant, immaterial, and scandalous matters
10 wholly unsupported by competent evidence. Moreover, Plaintiff has failed to
11 articulate any legal theories for testing and consideration by this Court. By
12 resubmitting previously filed complaints, Plaintiff has failed to identify or
13 articulate any contradictory legal holdings warranting this Court's consideration.
14 Despite that the Plaintiff appears pro se, his resubmission of previously filed
15 complaints in matters lying outside the jurisdiction of this Court simply cannot be
16 viewed or accepted as constituting a legitimate appeal. It is well established that
17 the judicial power of the courts only extends to "cases" or "controversies." U.S.
18 Const. art. III, § 2, cl. 1. Clearly Plaintiff has presented neither a case nor a
19 controversy for this Court's consideration. As such, Mr. Schwartz avers that the
20 instant appeal is properly stricken. Under the Rule, non-compliant briefs may be
21 disregarded or stricken, on motion or sua sponte by the court, and the court may
22 assess attorney fees or other monetary sanctions. Mr. Schwartz asserts this Court
23 should properly strike Mr. Houston's Opening Brief with an assessment of attorney
24 fees for having to respond to Plaintiff's unsupported and fanciful speculations.

25 ///

26 ///

27 ///

1 3. FRIVOLOUS CIVIL APPEALS, SUCH AS THE MATTER AT
2 HAND, ARE PROPERLY SUBJECT TO SANCTIONS.

3 Given that Mr. Houston's Opening Brief contains nothing but page after
4 hand-written page of gross suppositions, wild imaginings, and rote speculation
5 with allegations that have already been submitted for consideration to Nevada
6 courts, Mr. Schwartz submits that consideration under NRAP Rule 38 is warranted.
7 Just as he has failed to comply with the briefing requirements, Plaintiff has made
8 absolutely no attempt to identify questions of law justifying his appearance before
9 this Court.

10 NRAP 38 provides:

11 (a) Frivolous Appeals; Costs. If the Supreme Court or Court of
12 Appeals determines that an appeal is frivolous, it may impose
13 monetary sanctions.

14 (b) Frivolous Appeals; Attorney Fees as Costs. When an appeal
15 has been taken or been processed in a frivolous manner, when
16 circumstances indicate that an appeal has been taken or processed
solely for purposes of delay, when an appeal has been occasioned
through respondent's imposition on the court below, or whenever the
appellate processes of the court have been otherwise misused, the
court may, on its own motion, require the offending party to pay, as
costs on appeal, such attorney fees as it deems appropriate to
discourage like conduct in the future.

17 It is well established that this Court has jurisdiction to consider an appeal
18 only when the appeal is authorized by statute or court rule. *Valley Bank of Nev. v.*
19 *Ginsburg*, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994). "No order of the lower
20 court, no sanction, or permit, can authorize this court to take cognizance of a
21 matter on appeal unless the right of appeal clearly appears as a matter of law."
22 *State v. State Bank & Tr. Co.*, 36 Nev. 526, 538, 137 P. 400, 403 (1913). By way
23 of his Opening Brief and the submission of a packet containing previously filed
24 complaints, it is clear the Plaintiff posits no case or controversy before this Court.
25 Plaintiff's mere rehash of his prior pleadings cannot be construed as the proper
26 framing of an appellate issue. Mr. Schwartz asserts that the instant action is
27 nothing less than a frivolous misuse of the appellate process by an obviously

1 litigious and vexatious pro se litigant set upon demeaning and harassing Mr.
2 Schwartz for having the temerity to serve as Employer's legal counsel. Plaintiff
3 made no effort whatsoever to prepare a legitimate opening brief carrying the
4 proper identification of the issues on appeal leaving Mr. Schwartz to speculate as
5 to the issues before this Court and the relief sought. Plaintiff's various statements
6 of facts, even when he is relieved of the requirement to provide factual citations,
7 are supported by absolutely no admissible evidentiary material. Mr. Schwartz avers
8 the imposition of sanctions for Mr. Houston's frivolous Opening Brief is
9 warranted.

10 **VI.**

11 **CONCLUSION**

12 By way of repeated and frequent lawsuits, Mr. Houston harangues and
13 complains regarding his workers compensation claim, as well as his false
14 imprisonment for a false DUI charge and a litany of alleged wrongs against him by
15 approximately 140 individuals, companies, corporations, and judges. As the result
16 of his legal representation of Plaintiff's employer, Mr. Houston has frequently and
17 repeatedly dragged Mr. Schwartz into court despite the utter absence of supporting
18 competent evidence. Now, without identifying any legal issue for consideration,
19 Plaintiff has submitted various previously filed Complaints and statements as his
20 Opening Brief. Mr. Houston has failed to address even the most basic of
21 requirements for briefing before this Court. In light of his failure to even make a
22 passing attempt at complying with the Rules of Appellate Procedure and given the
23 outrageous nature of his claims, Mr. Schwartz is hard-pressed to understand the
24 legal issue(s) before this Court or the nature of relief the Plaintiff seeks by way of

25 ///

26 ///

27 ///

1 appeal. Mr. Houston's Opening Brief is wholly deficient and filed only for the
2 purpose of misusing the legal system to excoriate and harass Mr. Schwartz. Mr.
3 Schwartz asserts and maintains that Mr. Houston's Opening Brief is properly
4 stricken with an award of sanctions given the frivolous nature of the appeal.

5 DATED this 31st day of January, 2024.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8
9 By:  _____

10 DANIEL L. SCHWARTZ, ESQ.

11 Nevada Bar No. 005125

12 2300 W. Sahara Ave., Ste. 900, Box 28

13 Las Vegas, NV 89102

14 Attorneys for the Respondent

1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared
5 in a proportionally spaced typeface using Microsoft Word in Times New Roman
6 font size 14.
7

8
9 2. I further certify that this brief complies with the type-volume
10 limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14
12 points or more, and contains 12,831 words and 1,287 lines of text.
13

14 3. Finally, I hereby certify that I have read this appellate brief, and to the
15 best of my knowledge, information, and belief, it is not frivolous or interposed for
16 any improper purpose. I further certify that this brief complies with all applicable
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
18 every assertion in the brief regarding matters in the record to be supported by a
19 reference to the page and volume number, if any, of the transcript or Appendix
20 where the matter relied on is to be found.
21
22

23 ///

24 ///

25 ///


26 ///

27

1 4. I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 DATED this 31st day of January, 2024.


6 LEWIS BRISBOIS BISGAARD & SMITH LLP
7

8
9
10 By:  For
11 DANIEL L. SCHWARTZ, ESQ.
12 Nevada Bar No. 005125
13 2300 W. Sahara Ave., Ste. 900, Box 28
14 Las Vegas, NV 89102
15 Attorneys for the Respondent
16
17
18
19
20
21
22
23
24
25
26
27

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify
3 that, on the 31st day of January 2024 service of the attached **RESPONDENT'S**
4 **ANSWERING BRIEF** was made this date by electronic service or by depositing a
5 true copy of the same for mailing, first class mail, as follows:

6 MATTHEW HOUSTON #120652
7 P.O. BOX 650
8 INDIAN SPRINGS, NV 89070
9

10 
11 An employee of LEWIS BRISBOIS
12 BISGAARD
13 & SMITH LLP
14
15
16
17
18
19
20
21
22
23
24
25
26
27