



CLERK OF THE COURT

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8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 SCOTT FINANCIAL CORPORATION, a North
Dakota corporation; and BRADLEY J. SCOTT,
12 an individual,

13 Plaintiffs,

14 vs.

15 MARTIN A. MUCKLEROY, an individual; and
LAYNE K. MORRILL, an individual, DOES I
16 through V; and ROE CORPORATIONS VI
through X, inclusive,

17
18 Defendants.

Case No.: A - 1 1 - 6 3 8 6 8 9 - C
Dept. No.: X X X

COMPLAINT AND JURY DEMAND

[EXEMPT FROM ARBITRATION:
AMOUNT IN CONTROVERSY IN
EXCESS OF \$50,000.00]

19
20 COME NOW Plaintiffs SCOTT FINANCIAL CORPORATION and BRADLEY J. SCOTT
21 ("Plaintiffs"), by and through their counsel, J. Randall Jones, Esq., Mark M. Jones, Esq. and Matthew
22 S. Carter, Esq. of KEMP, JONES & COULTHARD, LLP, and for their claims for relief against the
23 Defendants herein, assert and allege as follows:

24 1. Plaintiff SCOTT FINANCIAL is a North Dakota corporation licensed to do business in
25 the State of Nevada.

26 2. Plaintiff BRADLEY J. SCOTT is, and at all times relevant hereto, has been a resident
27 of North Dakota and is the President of Scott Financial Corporation.

28 3. Defendant MARTIN A. MUCKLEROY is, and at all times relevant hereto has been, a

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1 resident of Clark County, State of Nevada.

2 4. Defendant LAYNE K. MORRILL is and at all times relevant hereto has been, a resident
3 of Arizona and was admitted *Pro Hac Vice* to practice law in the Eighth Judicial District Court, and has
4 been actively practicing law in Nevada since January, 2009.

5 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
6 of Defendants herein designated as DOES I through V, and ROES VI through X, are Defendant
7 individuals, corporations, partnerships and other business entities unknown to Plaintiffs at this time, who
8 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon
9 allege that each of said Defendants is responsible in some manner for the events and happenings and
10 proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend this
11 Complaint to allege their true names and capacities when ascertained, and will further ask leave to join said
12 Defendants in these proceedings.

13 6. The Eighth Judicial District Court is the proper venue for this matter in that this action
14 involves a dispute in which all events took place in Clark County, Nevada.

15 **FACTUAL ALLEGATIONS**

16 7. On or about January 13, 2009, Club Vista Financial Services, L.L.C. ("CVFS"), Gary
17 Tharaldson, and Tharaldson Motels, II, Inc. ("TM2I") (collectively the "Tharaldson Entities") filed a
18 lawsuit in the Eighth Judicial District Court, identified as Case No. A579963, (the "Tharaldson Lawsuit").

19 8. The lawsuit is related to a \$110 million dollar loan (the "Loan") made by Plaintiff SCOTT
20 FINANCIAL CORPORATION to Gemstone Development West for the development of a mixed used
21 condominium project in Las Vegas known as ManhattanWest.

22 9. CVFS was a participant in the Loan and Tharaldson and TM2I guaranteed the Loan.

23 10. The Tharaldson entities are represented, in the Tharaldson Lawsuit, by MARTIN A.
24 MUCKLEROY, an attorney licensed in the State of Nevada, and LAYNE K. MORRILL, an attorney
25 licensed in the State of Arizona and admitted *Pro Hac Vice* to the Eighth Judicial District Court.

26 11. As a result of Defendants' representation of the Plaintiffs in the Tharaldson Lawsuit the
27 Defendants became aware of the nature and scope of Brad Scott's and Scott Financial's profession and
28 business, namely the lending of monies in commercial loan transactions through participation with

1 commercial banks and lending companies.

2 12. On or about June 15, 2010, Jim Sheppard and Vicki Sheppard, the preferred residential
3 mortgage lenders on the Manhattan West project, received subpoenas from Mr. Muckleroy to appear for
4 their depositions related to the Tharaldson Lawsuit. Those depositions were subsequently cancelled by
5 Mr. Muckleroy and/or Mr. Morrill for unspecified reasons.

6 13. On or about August 16, 2010, Mr. Muckleroy contacted Mr. and Mrs. Sheppard and
7 requested that they attend a meeting with him and Mr. Morrill at his office allegedly to discuss the
8 Sheppards' knowledge of the facts of the Tharaldson Lawsuit.

9 14. As arranged by Mr. Muckleroy, on or about August 19, 2010, Mr. and Mrs. Sheppard went
10 to Mr. Muckleroy's office for what they had been led to believe was a discussion of their knowledge of
11 facts relevant to the Tharaldson Lawsuit.

12 15. Upon arrival at Mr. Muckleroy's office, Mr. Muckleroy began relating to the Sheppards
13 certain underlying "facts" of the Tharaldson Lawsuit including conduct of the parties. Among the "facts"
14 that Mr. Muckleroy initially related to the Sheppards was that Brad Scott, along with certain other
15 defendants in the Tharaldson Lawsuit "were con artists, scum, had defrauded the system and committed
16 fraud." See Deposition of James Sheppard, Vol. 1, pg. 59, lines 21-25; pg. 60, lines 1-6 and 16-22
17 attached hereto as Exhibit "1".

18 16. Mr. Morrill then joined the group and the parties moved into Mr. Muckleroy's conference
19 room to continue the discussion.

20 17. Mr. Morrill then proceeded to tell the Sheppards that Brad Scott had "used the [Sheppards']
21 letters to dupe the system; that it was bank fraud;" that Brad Scott, "was receiving a \$2 million
22 commission to check that box. And so that's [Brad Scott's] motive for doing that."; "that was essentially
23 the bank fraud Mr. Scott was committing so he could get the \$2 million." See deposition of James
24 Sheppard, Vol. 1, pg. 64, lines 23-24, pg. 65, lines 1-5; and that "Brad Scott for Scott Financial and Bank
25 of Oklahoma were in a conspiracy to commit bank fraud," see deposition of James Sheppard, Vol. 1, pg.
26 66, line 25; pg. 67, lines 1-2.

27 18. All of the above statements by Mr. Muckleroy and Mr. Morrill were made as statements
28 of fact, without qualification, and not as expressions of the Defendants' opinion.

19. That Defendants made their false and defamatory statements with malice, and the intent to convince the Sheppards of the bad character of the Plaintiffs in order to induce and convince the Sheppards to sign affidavits in favor of the Defendants' clients in the Tharldson Lawsuit.

20. The Defendants' false and defamatory statements were made with reckless disregard of the accuracy and truth of the statements made in an attempt to gain an advantage in the Tharldson Lawsuit.

FIRST CLAIM FOR RELIEF
(Defamation - Against Martin A. Muckleroy)

21. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained within the paragraphs above.

22. Mr. Muckleroy knowingly made false and defamatory statements about the Plaintiffs.

23. Mr. Muckleroy's statements were published to Mr. and Mrs. Sheppard.

24. The aforementioned accusations and statements made by Mr. Muckleroy would normally tend to lower the reputation of the Plaintiffs in the community, and in the profession and business or industry in which Plaintiffs worked, and would excite derogatory opinions about the Plaintiffs, and hold the Plaintiffs up to contempt.

25. Mr. Muckleroy was at least negligent in making the statements.

26. As a direct and proximate cause of Mr. Muckleroy's conduct, as described above, Plaintiffs have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000).

27. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving rise of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

28. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving rise to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

SECOND CLAIM FOR RELIEF
(Defamation - Against Layne K. Morrill)

29. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained within the paragraphs above.

1 30. Mr. Morrill knowingly made false and defamatory statements about the Plaintiffs.

2 31. Mr. Morrill's statements were published to Mr. and Mrs. Sheppard.

3 32. The aforementioned accusations and statements made by Mr. Morrill would normally tend
4 to lower the reputation of the Plaintiffs in the community, and in the profession and business or industry
5 in which Plaintiffs worked, and would excite derogatory opinions about the Plaintiffs and hold the
6 Plaintiffs up to contempt.

7 33. Mr. Morrill was at least negligent in making the statements.

8 34. As a direct and proximate cause of Mr. Morrill's conduct, as described above, Plaintiffs
9 have been damaged in an amount in excess of Ten Thousand Dollars (\$10,000).

10 35. Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights
11 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving rise
12 of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

13 36. Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights
14 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving rise
15 to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

16 **THIRD CLAIM FOR RELIEF**
17 **(Defamation Per Se - Against Martin A. Muckleroy)**

18 37. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained
19 within the paragraphs above.

20 38. Mr. Muckleroy's statements constitute defamation or slander per se in that they impute to
21 the Plaintiffs the commission of a crime (bank fraud), and tend to injure the Plaintiffs in their trade,
22 business and profession.

23 39. As a direct and proximate cause of Mr. Muckleroy's conduct, as described above, Plaintiffs
24 suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000).

25 40. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the
26 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving
27 rise of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

28 ...

1 41. Mr. Muckleroy's false and defamatory statements were made in reckless disregard of the
2 rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving
3 rise to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

4 **FOURTH CLAIM FOR RELIEF**
5 **(Defamation Per Se - Against Layne K. Morrill)**

6 42. Plaintiffs re-allege and incorporate herein by reference each and every allegation contained
7 within the paragraphs above.

8 43. Mr. Morrill's statements constitute defamation or slander per se in that they impute to the
9 Plaintiffs the commission of a crime (bank fraud), and tend to injure the Plaintiffs in their trade, business
10 and profession.

11 44. As a direct and proximate cause of Mr. Morrill's conduct, as described above, Plaintiffs
12 suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000).

13 45. Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights
14 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute implied malice giving rise
15 of a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

16 46. Mr. Morrill's false and defamatory statements were made in reckless disregard of the rights
17 of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual malice giving rise
18 to a claim for punitive and exemplary damages in excess of Ten Thousand Dollars (\$10,000).

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby requests a jury trial for all issues so triable.

21 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- 22 1. General and special damages in an amount in excess of \$10,000.00;
23 2. Punitive and exemplary damages in excess of \$10,000.00;
24 3. Attorney's fees and costs; and
25
26
27
28

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1 4. For such other relief that the Court deems just and proper.

2 DATED this 30 day of March, 2011.

3 Respectfully submitted,

4 KEMP, JONES & COULTHARD, LLP

5 

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CLUB VISTA FINANCIAL SERVICES,
L.L.C., a Nevada limited liability company,
THARALDSON MOTELS II, INC., a North
Dakota corporation; and GARY D.
THARALDSON,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT FOR THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE MARK R.
DENTON, DISTRICT JUDGE,

Respondents.

and

SCOTT FINANCIAL CORPORATION, A
North Dakota corporation; BRADLEY J.
SCOTT; BANK OF OKLAHOMA, N.A., a
national bank; GEMSTONE
DEVELOPMENT WEST, INC., a Nevada
corporation; ASPHALT PRODUCTS
CORPORATION, dba APCO
CONSTRUCTION, a Nevada Corporation

Real Parties in Interest.

Case No.: 57641

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Aug 09 2011 02:48 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**PETITIONERS' SUPPLEMENTAL
REPLY IN SUPPORT OF PETITION
FOR WRIT OF MANDAMUS OR
PROHIBITION**

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Attorneys for Petitioners

I. INTRODUCTION

The Scott Defendants have already represented to this Court that they do not believe these proceedings are moot.¹ Instead, the Scott Defendants suggest that the substitution of Petitioners' trial counsel, Attorneys Morrill and Aronson, somehow changes the legal issues presented to this Court, even though these attorneys are still counsel for Petitioners in this original proceeding and the companion Supreme Court Case No. 57784 which is still pending. Notably, the Scott Defendants do not cite any legal authority in their supplemental answer explaining *how* the issues before this Court may have possibly changed, thus undermining the validity of the Scott Defendants' entire argument offered in their supplemental answer.²

While pretending to be completely unaware of the reason for the substitution of Petitioners' trial counsel, the Scott Defendants conveniently ignore the fact that they have recently filed a lawsuit against Attorneys Morrill and Muckleroy in the Eighth Judicial District Court.³ Accordingly, the Scott Defendants' isolated citations to potential disqualification were actually orchestrated by the Scott Defendants themselves. Therefore, the Court should not allow the Scott Defendants to benefit in this proceeding from their own efforts to remove Petitioners' trial counsel.

Finally, the Scott Defendants continue to refer to initial discovery disclosures naming Attorney Morrill as a witness that has already been withdrawn and supplemented,

¹ See Order Granting Motion to Supplement Answer, pg. 2 (filed on Jul. 12, 2011) ("The Scott parties have replied, stating that their motion never argued the issue presented in the writ petition was moot . . .").

² See Sheriff, Humbolt County v. Gleave, 104 Nev. 496, 498, 761 P.2d 416, 418 (1988) (stating that this Court does not consider arguments that are not supported by legal authority).

³ See Complaint filed by the Scott Defendants against Martin A. Muckleroy, Esq. and Layne K. Morrill, Esq., Case No. A638689, Dept. 30 (filed on April 6, 2011), attached as **Exhibit 1**.

as addressed in the principal briefing. As such, the Scott Defendants' regurgitated argument in their supplemental answer does not change the record or Petitioners' previous explanation. Very simply, the Scott Defendants' mere supposition that Attorneys Morrill and Aronson will testify as witnesses at trial does not give the Scott Defendants the right to depose these individuals. In any event, the Scott Defendants do not even attempt to analyze any legal authority or explain how the legal analysis already presented to the Court might possibly change due to the substituted counsel. Therefore, the Court should reject the bare arguments of counsel offered in the Scott Defendants' supplemental answer.

II. LEGAL ARGUMENT

A. **THE COURT CAN IGNORE THE SCOTT DEFENDANTS' SUPPLEMENTAL ANSWER BECAUSE IT CONTAINS NO CITATION TO LEGAL AUTHORITY.**

Instead of citing to any legal authority, the Scott Defendants' supplemental answer contains only bare arguments of counsel. It is well established that bare arguments of counsel do not constitute evidence,⁴ and this Court does not consider legal arguments offered without any supporting authority.⁵ The Scott Defendants expect this Court to simply agree with their unsupported claim that each of the legal issues presented in this original proceeding have now become irrelevant and that the entire writ petition can be "summarily denied." The fundamental problem with the Scott Defendants' supplemental answer is that it fails to cite to any legal authority explaining why this Court should believe their legal arguments. Therefore, this Court should ignore the Scott Defendants'

⁴ See Bird v. Casa Royale W., 97 Nev. 67, 70–71, 624 P.2d 17, 19 (1981) (explaining that bald assertions without corroborating evidence do not give rise to a material fact in the context of summary judgment).

⁵ See Gleave.

entire supplemental answer for failure to cite to any legal authority supporting their position.

B. ATTORNEYS MORRILL AND ARONSON ARE STILL COUNSEL IN THIS ORIGINAL PROCEEDING AND THE COMPANION SUPREME COURT CASE NO. 57784, WHICH IS STILL PENDING.

The Scott Defendants' supplemental answer asserts that Attorneys Morrill and Aronson are completely removed from this litigation. Yet, Petitioners' former trial counsel are still counsel for Petitioners in this original proceeding, as well as the companion Supreme Court Case No. 57784, which is still pending.⁶ Thus, the Scott Defendants' argument that Morrill and Aronson are no longer acting as attorneys for Petitioners is simply untrue. Hence, the Scott Defendants' unsupported argument that former counsel can be freely deposed once they withdraw does not even factually apply to this case, even if such a notion were true. Therefore, the grounds set forth in the Scott Defendants' supplemental answer do not justify a supposed summary denial, as they suggest.

C. THE SCOTT DEFENDANTS SHOULD NOT BENEFIT FROM THEIR OWN EFFORTS TO REMOVE PETITIONERS' TRIAL COUNSEL.

The Scott Defendants pretend to be unaware of any reason why Attorneys Morrill and Aronson are no longer counsel of record for Petitioners in the District Court. However, the Scott Defendants conveniently ignore their lawsuits in both Arizona and Nevada directed personally at Petitioners' former trial counsel and their law firm, which were designed to seek an advantage in this litigation. Instead of seeking discovery in this litigation through the normal channels of the Nevada Rules of Civil Procedure, the Scott

⁶ The Court's official service list in both cases (Nos. 57641 and 57784) still reflects Morrill & Aronson, P.L.C. and Cooksey, Toolen, Gage, Duffy & Woog as counsel of record for Petitioners.

1 Defendants filed a separate lawsuit against Morrill & Aronson, P.L.C. in Arizona.⁷ The
2 entire purpose of this Arizona lawsuit was to take the depositions of Attorneys Morrill
3 and Aronson to extract information from them and gain an advantage in this litigation.⁸

4 Not satisfied with their failed attempts to carry out these depositions of counsel,
5 the Scott Defendants recently sued Attorneys Morrill and Muckleroy in the Eighth
6 Judicial District Court.⁹ Without citing to the record, or mentioning this recent lawsuit
7 filed while this writ petition has been pending, the Scott Defendants claim in their
8 supplemental answer that Attorney Morrill committed an “act of pressuring and
9 intimidating independent witnesses Jim and Vicki Sheppard to sign false affidavits and
10 destroy their communications with him . . .”¹⁰ Aside from being completely unsupported
11 by the record, and thus of no consequence,¹¹ the Court can see the types of allegations the
12 Scott Defendants have cast upon Petitioners’ former trial counsel in an attempt to gain an
13 advantage in this litigation, as well as this original proceeding. However, the Court
14 should refuse to permit the Scott Defendants’ gamesmanship to somehow allow them to
15 gain an advantage in the District Court litigation or in this original proceeding.

16 **D. THE SCOTT DEFENDANTS MISCONSTRUE THE ROLE OF**
17 **ATTORNEYS MORRILL AND ARONSON IN THE DISTRICT**
18 **COURT PROCEEDINGS.**

19 In their supplemental answer, the Scott Defendants repeat their argument that
20 “Morrill affirmatively designated himself as a witness with ‘discoverable information

21 ⁷ See Petitioners’ Appendix (“PA”) 1:88–110.

22 ⁸ Id.

23 ⁹ See **Exhibit 1**.

24 ¹⁰ Supplemental Answer, pg. 2, lines 13–15.

25 ¹¹ See Allianz Ins. Co. v. Gagnon, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) (stating
26 that this Court does not need to consider the contentions of a party in which the brief fails
to cite to the record); see also NRAP 28(e).

1 related to dealings between Scott Financial and Tharaldson and related companies.”¹²
2 This was the same argument the Scott Defendants made in their first answer to writ
3 petition.¹³ So, there is nothing new about the Scott Defendants’ argument. And, this so-
4 called new argument fails to take into account the explanation already provided by
5 Petitioners in their writ petition:

6 Although it is correct that Petitioners’ initial 16.1 disclosure did identify
7 attorney Morrill, the supplemental disclosure clearly and unequivocally
8 stated: ‘Plaintiffs do not believe Mr. Morrill has any discoverable
9 information relevant to this lawsuit.’¹⁴ The supplemental disclosure went
10 on to state that any knowledge Mr. Morrill has about the case is protected
11 by the attorney/client and/or work-product privileges, and that although Mr.
12 Morrill may have information regarding negotiations concerning the subject
13 of other loans, ‘that subject is not relevant to this lawsuit.’¹⁵ And
14 Petitioners have made very clear that Mr. Morrill will not be called by
15 Petitioners as a witness at trial.¹⁶

16 Despite this explanation provided by Petitioners of the supplemental 16.1
17 disclosures limiting Mr. Morrill’s knowledge to irrelevant matters, the Scott Defendants
18 continue to focus on the initial disclosure without even addressing this supplemental
19 disclosure. And, the Scott Defendants expect that their supposition of who Petitioners
20 might call as witnesses at trial somehow carries weight, even though Petitioners have
21 unequivocally stated that Attorney Morrill will not be called as a witness at trial. In
22 essence, the Scott Defendants’ supplemental answer is a regurgitation of their same
23 baseless argument previously made without taking into account the true state of the

24 ¹² Supplemental Answer, pg. 2, lines 11–13 (referencing PA 3:468).

25 ¹³ See Answer to Petition for Writ of Mandamus or Prohibition, pg. 8 (filed on Feb. 8,
26 2011).

¹⁴ (referencing PA 3:514:27; emphasis in original).

¹⁵ (referencing PA 3:514:28 through PA 3:515:3; emphasis in original).

¹⁶ Petition for Writ of Mandamus or Prohibition, pg. 17, lines 9–18 (filed on Jan. 28,
2011) (referencing PA 1:75:8–9).

1 record. Therefore, the Court should disregard the Scott Defendants' mere belief and
2 supposition as to the continued role of Attorneys Morrill and Aronson in this litigation.

3
4 **E. THE LEGAL ISSUES BEFORE THIS COURT HAVE NOT**
5 **CHANGED DUE TO THE LIMITED SUBSTITUTION OF**
6 **PETITIONERS' TRIAL COUNSEL.**

7 The Court has already received complete briefing on the legal issues of whether
8 the District Court abused its discretion in allowing the depositions of Petitioners' now-
9 former trial counsel to go forward. Indeed, various courts from other jurisdictions have
10 addressed identical or similar issues, as fully set forth in the principal briefing. The
11 seminal case discussing depositions of counsel is Shelton v. American Motors Corp.,¹⁷ as
12 the Court previously recognized in its January 31, 2011 Order Granting Temporary Stay
13 and Directing Answer. However, the Scott Defendants' supplemental answer does not
14 even mention Shelton or any of the cases that they relied upon in their first answer. As
15 such, the Scott Defendants presumably expect this Court to make legal arguments for
16 them.

17 As noted in the principal briefing, the Shelton test contains three factors for a court
18 to weigh in determining whether a deposition of counsel is warranted: (1) whether other
19 means exist to obtain the information; (2) whether the information sought is relevant and
20 non-privileged; and (3) whether the information is crucial to the preparation of the case.
21 None of these factors makes a distinction of whether the proposed deposition of counsel
22 is current counsel or former counsel. The Scott Defendants are simply offering a factual
23 distinction regarding the status of Petitioners' counsel that makes no legal difference.
24 Additionally, the Scott Defendants do not even attempt to point to a legal difference due
25 to the change in status of Petitioners' counsel. In fact, this Court granted extraordinary

26

¹⁷ 805 F.2d 1323 (8th Cir. 1986).

1 relief in Wardleigh v. District Court prohibiting the unbridled deposition of a *former*
2 attorney:

3 [T]he legal files and the deposition of Lattin do fall under the [work-
4 product] doctrine to the extent that either source of discovery reflects the
5 mental impressions, conclusions, opinions, or legal theories of the
attorneys. It is thus clear that no blanket right to the legal files and
unbridled depositional testimony of attorney Lattin exists.¹⁸

6 Accordingly, all the relief Petitioners have requested in this original proceeding is still
7 available to them under the prevailing case law already cited in the principal briefing. It
8 is telling that the Scott Defendants do not cite a single case supporting their position.

9 The Scott Defendants would have this Court believe that since Attorneys Morrill
10 and Aronson have been substituted in the District Court litigation (but not in this Court),
11 any information they have about this case is now freely discoverable—as if Attorneys
12 Morrill and Aronson had no continuing duties to their clients. However, the Nevada
13 Rules of Professional Conduct, Rule 1.9 outlines the duties that attorneys have to their
14 former clients.¹⁹ Among the other duties owed to former clients, RPC 1.9(c)(2) mandates

15 _____
16 ¹⁸ 111 Nev. 345, 358, 891 P.2d 1180, 1188 (1995).

17 ¹⁹ **Rule 1.9. Duties to Former Clients.**

18 (a) A lawyer who has formerly represented a client in a matter shall not thereafter
19 represent another person in the same or a substantially related matter in which that
person's interests are materially adverse to the interests of the former client unless the
former client gives informed consent, confirmed in writing.

20 (b) A lawyer shall not knowingly represent a person in the same or a substantially
21 related matter in which a firm with which the lawyer formerly was associated had
previously represented a client:

22 (1) Whose interests are materially adverse to that person; and

23 (2) About whom the lawyer had acquired information protected by Rules 1.6 and
1.9(c) that is material to the matter;

24 (3) Unless the former client gives informed consent, confirmed in writing.

25 (c) A lawyer who has formerly represented a client in a matter or whose present or
former firm has formerly represented a client in a matter shall not thereafter:

26 (1) Use information relating to the representation to the disadvantage of the
former client except as these Rules would permit or require with respect to a client, or
when the information has become generally known; or

1 that attorneys cannot “[r]eveal information relating to the representation except as these
2 Rules would permit or require with respect to a client.” In other words, the mental
3 impressions and other privileged information held by an attorney do not simply become
4 available to the public once the formal attorney-client relationship terminates in one
5 forum out of many. Therefore, the Court should reject the Scott Defendants’ unsupported
6 suggestion that the substitution of Attorneys Morrill and Aronson in the District Court
7 litigation somehow changes the legal issues before this Court.

8 **III. CONCLUSION**

9 Although the Court granted the Scott Defendants leave to file their supplemental
10 answer, the document fails to cite to any legal authority. Instead, the supplemental
11 answer merely contains argument of counsel. Despite this Court’s recognition of Shelton
12 as the seminal case governing attorney depositions, the Scott Defendants fail to identify
13 how the Shelton factors are affected by the substitution of Petitioners’ trial counsel—who
14 remain as counsel in this original proceeding.

15 While the Scott Defendants have prematurely celebrated the substitution of
16 Attorneys Morrill and Aronson, it was the Scott Defendants themselves that orchestrated
17 the substitution by filing separate lawsuits against them and their law firms in both
18 Arizona and Nevada. So, the Court should not allow the Scott Defendants to benefit
19 from their own gamesmanship.

20 Additionally, the Scott Defendants continue to ignore the fact that Attorney
21 Morrill will not be called as a witness at trial, as evidenced in supplemental 16.1
22 disclosures. Certainly, the Scott Defendants’ mere supposition is insufficient for this
23 Court to deny Petitioners’ requested relief.

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26 (2) Reveal information relating to the representation except as these Rules would
permit or require with respect to a client.

1 Finally, the factual distinction of Petitioners' substituted trial counsel makes no
2 legal difference. The Shelton factors are unchanged, and the relief available to
3 Petitioners has been afforded by this Court in previous cases involving depositions of
4 former counsel. Moreover, Petitioners' former trial counsel continues to owe duties to
5 Petitioners as both counsel in this original proceeding and under RPC 1.9 governing
6 duties to former clients. Therefore, the entire premise of the Scott Defendants'
7 supplemental answer is without merit and should be rejected by this Court.

8 Dated this 21st day of July, 2011.

9
10 MARQUIS AURBACH COFFING

11 By /s/ Terry A. Coffing
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONERS' SUPPLEMENTAL REPLY
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**
was filed electronically with the Nevada Supreme Court on the 21st day of July, 2011.
Electronic Service of the foregoing document shall be made in accordance with the
Master Service List as follows:

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J. Randall Jones, Esq.
Von Heinz, Esq.

I further certify that I served a copy of this document by mailing a true and correct
copy thereof, postage prepaid, addressed to:

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