

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRSTIN BLAISE LOBATO,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

}
} Case No. 58913
}
}
}
}

Electronically Filed
Oct 30 2012 09:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**MOTION FOR RECONSIDERATION AND MODIFICATION OF THE
COURT'S ORDER DENYING EXCESS PAGES REPLY BRIEF**

COMES NOW, TRAVIS BARRICK, pro bono counsel for the Petitioner, Kirstin Blaise Lobato, and respectively moves for leave to file this motion for reconsideration of the MOTION FOR LEAVE TO FILE REPLY BRIEF IN EXCESS OF PAGE LIMITS, and for Modification of this Court's ORDER DENYING MOTION. This Motion is made pursuant to and based upon all pleadings and papers on file herein, NRAP Rule 27(b), and the following Memorandum of Points and Authorities.

Dated this 29th day of October 2012.

By: 

Travis N. Barrick, SBN 9257

Gallian Wilcox Welker

Olson & Beckstrom, LC

540 E. St. Louis St.

Las Vegas, Nevada 89104

Pro Bono Attorney For Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

Ms. Lobato respectfully requests that this Court reconsider its “Order Denying Motion” (“Order”) and modify its Order denying her “Motion For Leave To File Reply Brief In Excess Of Page Limits” (“Motion”) for the following reasons.

I. This Court’s Order Misapplies Proportionality Under NRAP 32(a)(7)(A)(i) In Limiting Ms. Lobato’s Reply Brief To 47 Pages.

NRAP 32(a)(7)(A)(i) provides for a reply brief that is half that allowed for “an opening or answering brief.” Ms. Lobato’s Opening Brief was 129 pages; thus, the plain language of NRAP 32(a)(7)(A)(i) would allow a 65 page Reply.

Further, while the State’s Answering Brief was only 93 pages, it failed to comply with NRAP 32(a)(4)’s requirement that “The text shall be double-spaced, except that quotations of more than two lines may be indented and single-spaced.” [Emphasis added.] The State’s Answering Brief has 27 lines of text per page, when only 20 lines of 14 point Times Roman double-spaced can fit on an 8-1/2 x 11 page formatted with 1” margins on each side as required by NRAP 32(a)(4). Thus, the State’s Answering Brief is NOT double-spaced.

Even further, while disguising its violation of NRAP 32(a)(4), the State’s Answering Brief (29,625 words)¹ contains at least 600 words more than Ms. Lobato’s Opening Brief (29, 024).

¹ Verification to State’s Motion for Leave to File Answering Brief in Excess of Type-Volume Limitations, page 3, July 5, 2012.

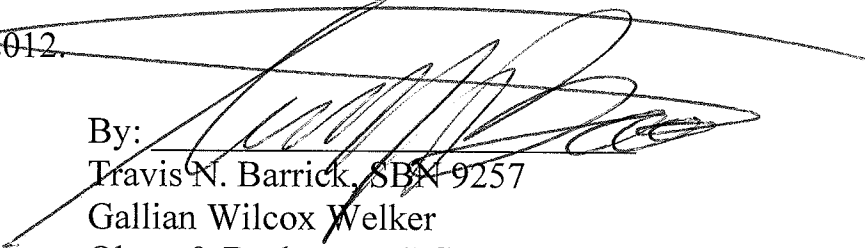
Thus, if the State's Answering Brief had been double-spaced in compliance with NRAP 32(a)(4), it would have exceeded Ms. Lobato's Opening Brief by at least 3 pages.

Therefore, the Court's use of the State's Answering Brief to establish the page limit for Ms. Lobato would reward the State for its violation of NRAP 32(a)(4) and unfairly prejudice Ms. Lobato in responding to it.

II. CONCLUSION.

For the reasons set forth above, Ms. Lobato respectfully requests the Court to grant her leave to file a Reply Brief of 65 pages.

Dated this 29th day of October, 2012.

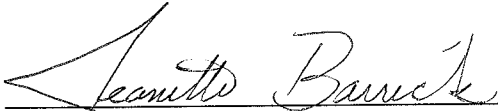


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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of October, 2012, this document was filed electronically with the Nevada Supreme Court and thereby electronically served upon the following:

Steven S. Owens, Esq. District Attorney's Office 200 Lewis Avenue Las Vegas, Nevada 89155	Catherine Cortez-Masto, Esq. Office of the Attorney General 555 E. Washington Avenue, Suite 3900 Las Vegas, NV 89101
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Jeanette Barrick, An Employee of
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